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German Code of Criminal Procedure

(Strafprozeßordnung – StPO)

Code of Criminal Procedure in the version published on 7 April 1987 (Federal Law Gazette I, p. 1074, 1319), as last amended by Article 6 of the Act of 21 February 2024 (Federal Law Gazette 2024 I, No. 54)

Book 1
General provisions

Division 1
Substantive jurisdiction of courts

Section 1
Operation of Courts Constitution Act

Substantive jurisdiction of the courts is determined by the Courts Constitution Act (*Gerichtsverfassungsgesetz*).

Section 2
Joinder and severance of criminal cases

(1) Connected criminal cases which individually would fall within the jurisdiction of courts of different rank may be tried jointly by the court of superior jurisdiction. Connected criminal cases of which individual cases would fall within the jurisdiction of particular criminal divisions pursuant to section 74 (2) and sections 74a and 74c of the Courts Constitution Act may be tried jointly by the criminal division which enjoys precedence pursuant to section 74e of the Courts Constitution Act.
(2) Such court may make an order severing connected criminal cases on grounds of expediency.

Section 3
Meaning of ‘connected’

Cases are deemed to be connected if one person is accused of having committed more than one offence or if, in the case of one offence, more than one person is charged as an offender or participant, or is charged with handling stolen data, aiding after the fact, obstructing prosecution or punishment, or handling stolen goods.

Section 4
Joinder and severance of pending criminal cases

(1) The court may make an order directing the joinder of connected or the severance of joined criminal cases even after the opening of the main proceedings, upon application by the public prosecution office, the defendant or ex officio.
(2) The court of higher rank to whose district the other courts belong is competent to make the order. If there is no such court, it is for the common upper court to decide.

Section 5
Decisive proceedings

For the duration of the connection, the criminal case which falls within the jurisdiction of the court of higher rank is decisive in respect of the proceedings.

Section 6
Review of substantive jurisdiction

The court is required to review its substantive jurisdiction ex officio at every stage of the proceedings.

Section 6a
Jurisdiction of particular criminal divisions

Prior to the opening of the main proceedings, the court is required to review ex officio whether particular criminal divisions have jurisdiction pursuant to the provisions of the Courts Constitution Act (section 74 (2) and sections 74a and 74c of the Courts Constitution Act). Thereafter, it may take account of its lack of jurisdiction only upon an objection being filed by the defendant. The defendant may file such an objection in the course of the main hearing only prior to commencement of his or her examination on the charges.

Division 2
Venue

Section 7
Venue at place of commission

(1) Venue is deemed to be established in the court in whose district the offence was committed.
(2) If essential elements of an offence are established by the content of a publication appearing within the territorial scope of this federal statute, only the court in whose district the publication appeared is deemed to have jurisdiction pursuant to subsection (1). However, in cases of insult initiated by private prosecution, the court in whose district the publication was distributed also has jurisdiction if the domicile or habitual residence of the person insulted is in that district.

Section 8
Venue at domicile or habitual residence

(1) Venue is also deemed to be established in the court in whose district the indicted accused has his or her domicile at the time the charges are preferred.
(2) If the indicted accused has no domicile within the territorial scope of this federal statute, venue is also determined by his or her habitual residence and, if such place of residence is not known, by his or her last domicile.

Section 9
Venue at place of apprehension

Venue is also deemed to be established in the court in whose district the accused was apprehended.

Section 10
Venue for offences committed abroad on board ships or aircraft

(1) If the offence was committed outside the territorial scope of this statute on a ship authorised to fly the federal flag, 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 statute first reached by the ship after commission of the offence.
(2) Subsection (1) applies accordingly to aircraft authorised to bear the nationality sign of the Federal Republic of Germany.

Section 10a
Venue for offences committed abroad at sea

If no venue is established for an offence committed at sea outside the territorial scope of this statute, the venue is Hamburg; the competent local court is Hamburg Local Court.

Section 11
Venue for offences committed abroad by extraterritorial German nationals and German civil servants

(1) In the case of Germans who enjoy the right of extraterritoriality and civil servants of the Federal Government or of one of the *Länder* employed abroad, venue is determined by the domicile which they had in Germany. If they had no such domicile, the seat of the Federal Government is considered to be their domicile.
(2) These provisions do not apply to honorary consuls.

Section 11a
Venue for offences committed abroad by soldiers on special foreign deployment

If an offence is committed outside the territorial scope of this statute by soldiers of the Federal Armed Forces on special deployment abroad (section 62 (1) of the Act on the Legal Status of Military Personnel (*Soldatengesetz*)), venue is deemed to be established in the court competent for the City of Kempten.

Section 12
Concurrence of more than one venue

(1) If more than one court has jurisdiction pursuant to the provisions of sections 7 to 11a and 13a, the court which first opened the investigation takes precedence.
(2) The investigation and decision may, however, be transferred to one of the other competent courts by the common upper court.

Section 13
Venue for connected criminal cases

(1) Venue for connected criminal cases each of which, pursuant to the provisions of sections 7 to 11, would be subject to the jurisdiction of different courts, is deemed to be established in each court having jurisdiction over one of the criminal cases.
(2) If several connected criminal cases are pending before different courts, they may be joined, in whole or in part, before one of the courts where such courts so agree, upon application by the public prosecution office. If no such agreement is reached, then upon application by the public prosecution office or an indicted accused, the common upper court is required to decide whether and in which court the cases are to be joined.
(3) Cases which have been joined may be severed in the same manner.

Section 13a
Determination of jurisdiction by Federal Court of Justice

If venue cannot be established in any court within the territorial scope of this federal statute, or if such court cannot be ascertained, then the Federal Court of Justice decides which court is competent.

Section 14
Determination of jurisdiction by common upper court

If a dispute arises between courts as regards jurisdiction, the common upper court decides which court is to conduct the investigation and give the decision.

Section 15
Venue established by assignment owing to competent court's impediment

If a competent court is, in an individual case, legally or factually hindered from exercising its judicial authority or if it is feared that a hearing before such a court may endanger public safety, the next upper court is to assign the investigation and decision to a court of equal rank in another district.

Section 16
Review of local jurisdiction; objection of lack of jurisdiction

(1) Prior to the opening of the main proceedings, the court is required to review its local jurisdiction ex officio. Thereafter, it may declare its lack of jurisdiction only upon an objection being filed by the defendant. The defendant may only file such an objection up until the commencement of his or her examination on the charges in the main hearing.
(2) Where charges have been preferred by the European Public Prosecutor's Office, the court also conducts a review, based on an objection filed by the defendant, to establish whether the European Public Prosecutor's Office is authorised, pursuant to Article 36 (3) of Regulation (EU) 2017/1939 of the Council of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1), to prefer charges before a court within the territorial scope of this statute. Subsection (1) sentence 3 applies accordingly.

Sections 17 and 18
(repealed)

Section 19
Determination of jurisdiction in event of disputed jurisdiction

Where more than one court, one of which is competent, has stated in decisions which are no longer contestable that it lacks jurisdiction, the common upper court designates the competent court.

Section 20
Investigatory acts by court lacking jurisdiction

Individual investigatory acts by a court lacking jurisdiction are not ineffective by virtue of that lack of jurisdiction alone.

Section 21
Powers in exigent circumstances

A court lacking jurisdiction must conduct those investigatory acts which are to be undertaken in its district where delay is likely to jeopardise the success of the investigation.

Division 3
Exclusion and challenge of court personnel

Section 22
Debarment from exercising judicial office by law

Judges are to be barred by law from exercising their judicial office

1. if they themselves were aggrieved by the offence;
2. if they are or were the spouse, the life partner, the guardian or the carer of the accused or of the aggrieved person;
3. if they are or were lineally related or related by marriage, collaterally related to the third degree or related by marriage to the second degree to the accused or to the aggrieved person;
4. if they have acted in the case as an official of the public prosecution office, as a police officer, as a lawyer (*Rechtsanwalt*) representing the aggrieved person or as defence counsel;
5. if they have been heard in the case as a witness or expert.

Section 23
Debarment of judges for participating in contested decision

(1) Judges who were involved in reaching a decision contested by way of appellate remedy are to be barred by law from participating in the decision of the court of higher instance.
(2) Judges who were involved in reaching a decision which was contested by application to reopen the proceedings are to be barred by law from participating in decisions related to proceedings to reopen the case. If the contested decision was taken by a court of higher instance, a judge who participated in the original decision of the court of lower instance is also to be barred. Sentences 1 and 2 apply accordingly to participation in decisions to prepare the reopening of the proceedings.

Section 24
Challenge of judges; fear of bias

(1) Judges may be challenged both if they have been barred by law from exercising judicial office and for fear of bias.
(2) A challenge for fear of bias may be brought where there is reason to doubt the impartiality of a judge.
(3) The public prosecution office, the private prosecutor and the accused may exercise the right of challenge. The court personnel appointed to participate in the decision are to be named upon the request of the parties entitled to exercise the right of challenge.

Section 25
Time point for challenge

(1) The challenge on grounds of fear of bias of an adjudicating judge is admissible prior to commencement of the examination of the first defendant as to the defendant’s personal circumstances or, during the main hearing on an appeal on points of fact and law (*Berufung*) or an appeal on points of law (*Revision*), prior to commencement of the rapporteur’s statement. If the composition of the court was already communicated in accordance with section 222a (1) sentence 2 prior to

commencement of the main hearing, the motion for challenge must be filed without delay. All grounds for the challenge are to be stated at the same time.
(2) In all other cases, judges may be challenged only

1. if the circumstances on which the challenge is based occurred later or became known to the person entitled to challenge at a later date and
2. if the right of challenge is asserted without delay.

A challenge is no longer admissible once the defendant has had the last word.

Section 26
Procedure for challenge

(1) The motion for challenge must be filed with the court of which the judge is a member; it may be made orally to be recorded by the court registry. The court may request that the applicant provide, within an appropriate period, written grounds for a motion for challenge which was filed in the main hearing.
(2) The grounds for the challenge and, in the case under section 25 (1) sentence 2 and (2), the fact that the request was submitted in time must be substantiated. The taking of an oath to substantiate a challenge is not admissible. Reference may be made to the testimony of the challenged judge to substantiate a challenge.
(3) The challenged judge is required to make an official statement concerning the grounds for challenge.

Section 26a
Rejection of inadmissible motion for challenge

(1) The court rejects a motion for challenge of a judge for being inadmissible if

1. the challenge is not made in time,
2. there is no disclosure of the grounds for the challenge or of any means of substantiating the challenge, or such disclosure is not made within the time limit specified in section 26 (1) sentence 2 or
3. it is obvious that the challenge is made merely to delay the proceedings or for purposes which are irrelevant to the proceedings.

(2) The court reaches a decision on a rejection pursuant to subsection (1) without excluding the challenged judge from the bench. In the case under subsection (1) no. 3, a unanimous decision and disclosure of the circumstances constituting the grounds for rejection is required. Where commissioned or requested judges, judges in preparatory proceedings or criminal court judges are challenged, they themselves decide whether the challenge is to be rejected as inadmissible.

Section 27
Decision on admissible motion for challenge

(1) If the challenge is not rejected as inadmissible, the court of which the challenged person is a member decides on the motion of challenge without the challenged person’s participation.
(2) If a judge of the adjudicating criminal division is challenged, it is for the criminal division to decide the issue in the composition of the court prescribed for decisions made outside the main hearing.
(3) If a judge at the local court is challenged, it is for another judge of the same court to decide. A decision is not required if the person challenged considers the motion for challenge to be well-founded.

(4) If the court which is to give a decision lacks a quorum after exclusion of the challenged judge, it is for the next superior court to decide.

Section 28
Appellate remedy

(1) An order declaring a challenge to be well-founded is not contestable.
(2) An immediate complaint (*sofortige Beschwerde*) may be lodged against an order rejecting the challenge as inadmissible or unfounded. If the order concerns an adjudicating judge, it may only be contested together with the judgment.

Section 29
Procedure following challenge of judge

(1) Prior to disposal of the motion for challenge, a challenged judge is permitted to perform only those acts which may not be deferred.
(2) Conduct of the main hearing may not be deferred; it continues, with the participation of the challenged judge, until such time as a decision is taken on the motion for challenge. Decisions which can be taken outside of the context of the main hearing may only be taken with the participation of the challenged judge if they may not be deferred.
(3) A decision on the motion for challenge must be taken within two weeks at the latest, and in any case before judgment is given. The two-week time period in respect of such decision begins to run

1. on the day on which the motion for challenge is filed in cases where a judge is challenged before or during the main hearing,
2. on the day on which the written grounds are received in cases where the court has tasked the applicant, pursuant to section 26 (1) sentence 2, with providing written grounds for the motion for challenge within a time limit to be determined by the court.

If the next day of the main hearing but one does not take place until the two-week period has elapsed, a decision may be taken on the motion for challenge up until the start of that day at the latest.
(4) If the challenge is declared well-founded and the main hearing thus need not be suspended, that part of the hearing completed after submission of the motion for challenge is to be repeated. This does not apply to those parts of the main hearing which cannot be repeated, or if such repetition requires unreasonable effort.

Section 30
Judge’s self-recusal and ex officio challenge

The court competent to decide on a motion for challenge also decides where no such motion has been filed but a judge reports circumstances which may justify his or her being challenged or if for other reasons doubts arise as to whether a judge is barred by law.

Section 31
Lay judges, registry clerks

(1) The provisions of this Division apply accordingly to lay judges and to registry clerks and other persons assisting as recording clerks.
(2) It is for the presiding judge to decide. In a grand criminal division and a criminal division with lay judges, it is for the judicial members of the bench to decide. If a

recording clerk has been assigned to a judge, the latter decides on his or her challenge or disqualification.

Division 4
Management of files and communications in proceedings

Section 32
Electronic file management; authorisation to issue statutory instruments

(1) Files may be kept in electronic form. The Federal Government and the *Land* governments each determine, by statutory instrument, for their respective area of responsibility the date from which files may be kept in electronic form. They may restrict the introduction of electronic file management to individual courts or prosecuting authorities or to generally determined proceedings, and they may determine that files being kept in paper form are to continue to be kept in paper form even after electronic file management has been introduced; where such restrictions are applied, the statutory instrument may specify that it be determined, in an administrative provision of which public notice is to be given, in which proceedings which files are to be kept in electronic form. This authorisation may also be delegated, by statutory instrument, to the competent federal or *Land* ministries.
(2) The Federal Government and the *Land* governments each determine, by statutory instrument, for their respective area of responsibility which organisational and technical parameters reflecting the state of the art are to apply to the management of electronic files, including the data protection, data security and accessibility requirements to be complied with. They may, by statutory instrument, delegate this authorisation to the competent federal or *Land* ministries.
(3) The Federal Government determines, by statutory instrument requiring the approval of the Bundesrat, which standards apply in respect of the transmission of electronic files between the prosecuting authorities and the courts. It may, by statutory instrument not requiring the approval of the Bundesrat, delegate this authorisation to the competent federal ministries.

Section 32a
Electronic communications with prosecuting authorities and courts; authorisation to issue statutory instruments

(1) Electronic documents may be submitted to the prosecuting authorities and courts in accordance with the provisions of the following subsections.
(2) Electronic documents must be suitable for being processed by the prosecuting authority or the court. The Federal Government determines, by statutory instrument requiring the approval of the Bundesrat, technical parameters for the transmission of electronic documents and their suitability for processing by the prosecuting authority or the court.
(3) When being kept as electronic documents, documents requiring the written form and a signature must bear a qualified electronic signature of the person responsible for them or else must be signed by the person responsible and submitted via a secure method of transmission.
(4) ‘Secure method of transmission’ means

1. the postbox and mailing service which is linked to a De-Mail account if the sender is securely logged in within the meaning of section 4 (1) sentence 2 of the De-Mail Act (*De-Mail-Gesetz*) when the message is sent and

confirmation of being securely logged in pursuant to section 5 (5) of the De-Mail Act is requested,

2. the method of transmission between a special electronic legal mailbox pursuant to sections 31a and 31b of the Federal Code for Lawyers (*Bundesrechtsanwaltsordnung*), or a corresponding electronic mailbox established on a legal basis, and the authority's or the court's electronic mailroom,

3. the method of transmission between an authority's or a public-law legal entity's mailbox which was established following an identification procedure and the authority's or the court's electronic mailroom,

4. the method of transmission between a natural or legal person's or another entity's electronic mailbox which was established following an identification procedure and the authority's or the court's electronic mailroom,

5. the method of transmission between a postbox and mailing service established following an identification procedure which is linked to a user account within the meaning of section 2 (5) of the Online Access Act (*Onlinezugangsgesetz*) and the authority's or the court's electronic mailroom,

6. other methods of transmission which are standardised across Germany and which have been determined by statutory instrument issued by the Federal Government with the approval of the Bundesrat for which the authenticity and integrity of the data and accessibility are guaranteed.

Further details concerning the methods of transmission referred to in sentence 1 nos. 3 to 5 are regulated by statutory instrument as referred to in subsection (2) sentence 2.

(5) An electronic document is deemed to have been received as soon as it has been stored on the device designated by the authority or court for such receipt. The sender is to be sent automatic confirmation of the date and time of receipt.

(6) If an electronic document is not suitable for being processed by the authority or court, the sender is to be promptly notified thereof, with reference being made to the fact that the document has not been validly received. An electronic document is deemed to have been received on the date and time of its earlier submission if the sender promptly re-submits it in a form which is suitable for being processed by the authority or the court and the sender substantiates that it corresponds exactly to the content of the initially submitted document.

Section 32b
Creation and transmission of electronic documents used by prosecuting authorities and courts; authorisation to issue statutory instruments

(1) If a document used by the prosecuting authorities or courts is drawn up as an electronic document, all those persons responsible for the document must add their names to the document. Documents requiring a signature must in addition bear a qualified electronic signature of all the persons responsible for them.

(2) An electronic document is deemed to have been added to the files as soon as it has been stored in the electronic file by a person responsible or such person has occasioned such storage.

(3) If files are kept in electronic form, the prosecuting authorities and the courts are, as a rule, to transmit documents to each other as electronic documents. Bills of indictment, applications for the making of summary penalty orders outside of main hearings, appeals on points of fact and law and their grounds, appeals on points of law, their grounds and responses, and court decisions drawn up as electronic documents are to be transmitted as electronic documents. Where this is temporarily not possible for technical reasons, transmission in paper form is permissible; upon request, an electronic document is to be filed subsequently.
(4) Copies and certified copies may be issued in paper form or in electronic form. Electronically certified copies must bear a qualified electronic signature of the person certifying the copies. If a certified copy is issued in paper form by transferring an electronic document which bears a qualified electronic signature or which was submitted via a secure method of transmission, the note certifying the document must include the result of an authenticity and integrity check of the electronic document.
(5) The Federal Government determines, by statutory instrument requiring the approval of the Bundesrat, the standards applicable to the drawing up of electronic documents and their transmission between the prosecuting authorities and the courts. It may, by statutory instrument not requiring the approval of the Bundesrat, delegate this authorisation to the competent federal ministries.

Section 32c
Electronic forms; authorisation to issue statutory instruments

The Federal Government may, by statutory instrument requiring the approval of the Bundesrat, introduce electronic forms. The statutory instrument may determine that the information contained in the form is to be transmitted, in full or in part, in a structured, machine-readable format. The forms are to be made available for use on an internet communications platform specified in the statutory instrument. The statutory instrument may determine that, in derogation from section 32a (3), identification of the user of the form may be provided by means of electronic proof of identity pursuant to section 18 of the Act on Identity Cards (*Personalausweisgesetz*), section 12 of the eID Card Act (*eID-Karte-Gesetz*) or section 78 (5) of the Residence Act (*Aufenthaltsgesetz*). The Federal Government may, by statutory instrument not requiring the approval of the Bundesrat, delegate this authorisation to the competent federal ministries.

Section 32d
Obligation of electronic transmission

Defence counsel and lawyers are, as a rule, to transmit as electronic documents written submissions and their annexes, and applications and statements to be submitted in writing to the prosecuting authorities and courts. They must submit as an electronic document an appeal on points of fact and law and its grounds, an appeal on points of law, its grounds and the response, a private prosecution and a declaration of joinder in the case of private accessory prosecution. If this is temporarily not possible for technical reasons, submission in paper form is admissible. The temporary impossibility is to be substantiated when making the submission in paper form or immediately thereafter; upon request, an electronic document is to be filed subsequently.

Section 32e
Conversion of documents for file management purposes

(1) Documents which do not correspond to the form in which a particular file is being kept (source documents) are to be converted into the corresponding form. Source documents being held as evidence may be converted into the corresponding form.
(2) When converting documents, technology reflecting the state of the art is to be used to ensure that the converted document corresponds to the source document both visually and in terms of content.
(3) When converting a non-electronic source document into an electronic document, proof of conversion is to be added which records which procedures were used in the conversion and that it corresponds both visually and in terms of content to the source document. Where papers used by the public prosecution office or the court which have been signed by hand by the person responsible are converted, the proof of conversion must bear a qualified electronic signature of the registry clerk of the public prosecution office or of the court. When converting an electronic source document which bears a qualified electronic signature or which was submitted via a secure method of transmission, an entry is to be made in the files of the result of the authenticity and integrity check done on the source document.
(4) In ongoing proceedings, source documents which are not being held as evidence must be stored or held in safekeeping for at least six months following conversion. Once proceedings have been concluded or become time-barred, source documents which are not being held as evidence may be stored or held in safekeeping up to the end of the second calendar year, at most, which follows the conclusion of the proceedings.
(5) Source documents which are not being held as evidence may be examined under the same conditions as apply to secured evidence. Whoever is authorised to inspect the files is authorised to examine them.

Section 32f
Inspection of files; authorisation to issue statutory instrument

(1) Inspection of electronic files is granted by making the content of the file available for retrieval or by transmitting the content of the file using a secure method of transmission. Upon specific request, inspection of the files is granted by means of inspection of the electronic files on official premises. A hard copy of the files or a data carrier containing the content of the electronic file is transmitted on the basis of a request, which must include specific reasons, only if the person making the application has a justified interest therein. Where important reasons constitute an obstacle to inspection of the files in the manner provided for under sentence 1, such inspection may also be granted without a request in the manner provided for under sentences 2 and 3.
(2) Inspection of files which are available in paper form is granted by means of inspection of the files on official premises. Unless precluded for important reasons, inspection of the files may also be granted by making the content of the files available for retrieval, by transmitting the content of the file using a secure method of transmission or by making a copy of the files available to be taken away. Upon special request, defence counsel or lawyers are given the files to take away for inspection on their own business or private premises, unless this is precluded for important reasons.
(3) Decisions concerning the manner in which inspection of the files is to be granted in accordance with subsections (1) and (2) are not contestable.
(4) Technical and organisational measures are to be taken to guarantee that third parties cannot obtain knowledge of the content of the files whilst the files are laid

open for inspection. The name of the person to whom inspection of the files is granted is, as a rule, to be made identifiable in perpetuity by applying technical measures reflecting the state of the art to the files retrieved and to transmitted electronic documents.
(5) Persons who are granted inspection of the files may, neither in full nor in part, publicly disseminate those files, documents, hard copies or copies which were surrendered to them pursuant to subsection (1) or (2), nor may they be transmitted or made available to third parties for purposes other than the proceedings in question. They may use personal data which they have acquired in accordance with subsection (1) or (2) only for the purpose for which they were granted inspection of the files. They may use these data for other purposes only if they could be permitted information about them or inspection of the files for those purposes. Persons who are granted inspection of the files are to be made aware of the limitations as to use.
(6) The Federal Government determines, by statutory instrument requiring the approval of the Bundesrat, the standards applicable to inspection of electronic files. It may, by statutory instrument not requiring the approval of the Bundesrat, delegate this authorisation to the competent federal ministries.

Division 4a
Court decisions

Section 33
Right to be heard before decision is rendered

(1) A decision of the court rendered in the course of the main hearing is taken after hearing the parties to the proceedings.
(2) A decision of the court rendered outside a main hearing is taken after a written or oral declaration by the public prosecution office.
(3) If a decision has been taken pursuant to subsection (2), another party is to be heard before facts or evidentiary conclusions in respect of which that party has not yet been heard are used to his or her detriment.
(4) If remand detention, seizure or other measures have been ordered, subsection (3) does not apply if the prior hearing would jeopardise the purpose of such an order. Special provisions governing the hearing of the parties are not affected by subsection (3).

Section 33a
Restoration of status quo ante following breach of right to be heard

If the court has, in an order, violated the right of a party to be heard in a manner which may affect the outcome of the case and if such party has no right to lodge a complaint nor any other legal remedy against this order, then as far as the detriment still exists the court makes an order, either ex officio or upon application, reverting the proceedings to the situation before the decision in question was given. Section 47 applies accordingly.

Section 34
Reasons for contestable and rejection decisions

Decisions which may be contested by appellate remedy and those refusing an application are to include reasons.

Section 34a
Legal force by virtue of order following rejection of appellate remedy

If, after an appellate remedy has been sought in time, the contested decision immediately enters into force by virtue of an order, it is deemed to have entered into force at the end of the day on which the order was given.

Section 35
Notification of decisions

(1) Decisions which are delivered in the presence of the person to whom they refer are to be notified to that person orally. Said person is to be given a copy upon request.
(2) Other decisions are notified by service thereof. Where notification of the decision does not start time running in respect of a time limit, the decision may be notified informally.
(3) Papers served on individuals who are not at liberty are to be read out to them upon request.

Section 35a
Instruction on appellate remedies

Upon notification of a decision which is contestable by way of appellate remedy within a given time limit, the person concerned is to be informed of the options for contesting such decision and of the relevant time limits and the procedures prescribed. Upon notification of a judgment, the defendant is also to be informed of the legal consequences arising out of section 40 (3) and out of section 350 (2) and, if an appeal on points of fact and law is admissible against the judgment, about the legal consequences arising out of sections 329 and 330. Where a negotiated agreement (section 257c) has preceded a judgment, the person concerned is also to be informed that he or she is in any case free to seek an appellate remedy.

Division 4b
Procedure in respect of service

Section 36
Service and enforcement of decisions

(1) The presiding judge orders service of decisions. The court registry ensures that service is effected.
(2) Decisions requiring enforcement are to be submitted to the public prosecution office, which takes any necessary action. This does not apply to decisions concerning order during sittings.

Section 37
Procedure for service

(1) The provisions of the Code of Civil Procedure (*Zivilprozessordnung*) apply accordingly to the procedure for service.
(2) If service which is intended to be made on a party is effected on several persons authorised to receive it, time limits are calculated from the date on which the last person was served.
(3) If a translation of the judgment is to be made available to a party to the proceedings pursuant to section 187 (1) and (2) of the Courts Constitution Act, the judgment is to be served together with the translation. In such cases, service on the other parties to the proceedings is to be effected at the same time as service pursuant to sentence 1.

Section 38
Direct summons

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

Section 39
(repealed)

Section 40
Service by publication

(1) If service on an accused upon whom a summons to the main hearing has not yet been served cannot be effected in Germany in the prescribed manner and if compliance with the provisions for service abroad appears impracticable or will presumably be unsuccessful, then service by publication is admissible. Service is considered effected once two weeks have elapsed since the notice was displayed.
(2) If the summons to the main hearing has already been served on the defendant, then service on the defendant by publication is admissible if it cannot be effected in Germany in the prescribed manner.
(3) In proceedings concerning an appeal on points of fact and law or an appeal on points of law filed by the defendant, service by publication is already admissible if it is not possible to effect service at an address at which service was last effected or which the defendant last provided.

Section 41
Service on public prosecution office

Service on the public prosecution office is made by electronic transmission (section 32b (3)) or by producing the original copy of the paper to be served. If a time limit begins to run upon service and service is made by producing the original copy, the public prosecution office is required to make a note on the original of the day of production. In the case of electronic transmission, the date and time of receipt (section 32a (5) sentence 1) must be placed on record.

Division 5
Time limits and restoration of status quo ante

Section 42
Calculation of time limits determined in days

When calculating a time limit determined in days, the day on which the time or the event determining the beginning of the time limit falls is not counted.

Section 43
Calculation of time limits determined in weeks and months

(1) A time limit determined in weeks or months expires at the end of the day of the last week or the last month whose name or number corresponds to the day on which the time limit began; if the last month lacks such a day, the time limit expires at the end of the last day of that month.
(2) If the end of a time limit falls on a Sunday, a general public holiday or a Saturday, the time limit expires at the end of the next working day.

Section 44
Restoration of status quo ante following failure to observe time limits

If someone was prevented from observing a time limit through no fault of their own, they are to be granted restoration of the status quo ante upon application. Failure to observe the time limit for filing an appellate remedy is not considered a fault if

instruction pursuant to section 35a sentences 1 and 2, section 319 (2) sentence 3 or section 346 (2) sentence 3 has not been given.

Section 45
Requirements of application for restoration of status quo ante

(1) The application for restoration of the status quo ante must be filed, within one week after the reason for non-compliance no longer applies, with the court where the time limit ought to have been observed. To observe the time limit, it is sufficient for the application to be filed in time with the court which is to decide on the application.
(2) The facts justifying the application must be substantiated at the time the application is filed or during the proceedings concerning the application. The omitted act must be subsequently undertaken within the time limit for filing the application. Where this is done, restoration may also be granted without an application being filed.

Section 46
Jurisdiction, appellate remedy

(1) The decision on the application is taken by the court which would have been competent to decide on the facts of the case if the act concerned had been completed on time.
(2) A decision granting the application is not contestable.
(3) An immediate complaint may be lodged against a decision refusing an application.

Section 47
No suspension of enforcement

(1) An application for restoration of the status quo ante does not suspend enforcement of a court decision.
(2) The court may, however, order that enforcement be postponed.
(3) If restoration of the status quo ante annuls the legal effect of a court decision, then warrants of arrest or orders for placement and other orders which were in force at the time the court decision took effect again become effective. In the case of a warrant of arrest or an order for placement, the court granting restoration of the status quo ante makes an order revoking such warrant of arrest or order for placement if it is evident that the requirements therefor are no longer met. If this is not the case, the court competent pursuant to section 126 (2) is required to review the detention without delay.

Division 6
Witnesses

Section 48
Obligations on witnesses; summons

(1) Witnesses are obliged to appear before the judge on the date set down for their examination. They are under the obligation to testify if no exception admissible by statute applies.
(2) A witness summons specifies procedural requirements serving the interests of the witness, the forms of assistance available to witnesses and the legal consequences of failure to appear.
(3) (repealed)

Section 48a
Particularly vulnerable witnesses; requirement of expedited action

(1) If the witness is also the aggrieved person, then account is to be taken at all times of his or her particular vulnerability throughout hearings, examinations and other investigatory acts concerning him or her. An examination is, in particular, to be made

1. as to whether an imminent risk of serious detriment to the witness's wellbeing requires measures to be taken pursuant to section 168e or section 247a,
2. as to whether any of the witness's overriding interests meriting protection require that the public be excluded pursuant to section 171b (1) of the Courts Constitution Act and
3. as to what extent it is possible to refrain from asking non-essential questions concerning the witness's personal sphere of life pursuant to section 68a (1).

Account is, further, to be taken of the witness's personal situation and the nature and circumstances of the offence.
(2) Hearings, examinations and other investigatory acts concerning acts to the detriment of a minor aggrieved person must be conducted in a particularly expedited manner insofar as this is necessary, taking account of the witness's personal situation and the nature and circumstances of the offence, to protect the minor aggrieved person or to prevent the loss of evidence.

Section 49
Examination of Federal President

The Federal President is to be examined in his or her place of abode. The Federal President is not summoned to the main hearing. The record of his or her examination by the court is to be read out at the main hearing.

Section 50
Examination of members of parliament and of government

(1) Members of the Bundestag, of the Bundesrat, of a *Land* parliament or of a second chamber are to be examined whilst present at their place of assembly.
(2) Members of the Federal Government or of a *Land* government are to be examined at their government office or, if they are not there, at the place where they are.
(3) Any deviation from the foregoing provisions requires,

in the case of members of an body mentioned in subsection (1), the approval of that body,

in the case of members of the Federal Government, the approval of the Federal Government,

in the case of members of a *Land* government, the approval of the *Land* government.

(4) Members of the legislative bodies mentioned in subsection (1) and members of the Federal Government or of a *Land* government, if examined outside the main hearing, are not to be summoned to such hearing. The record of their judicial examination is to be read out at the main hearing.

Section 51
Consequences of witness's failure to appear in court

(1) Witnesses who have been properly summoned yet fail to appear are charged with the costs attributable to their failure to appear. At the same time, an administrative fine is to be imposed and an order made for arrest for disobedience to court orders if the administrative fine cannot be collected. Witnesses may also be brought before the court by force; section 135 applies accordingly. In the case of repeated non-appearance, the administrative measure may be imposed a second time.
(2) No costs are charged nor any administrative measure imposed where witnesses provide a sufficient and timely excuse for their non-appearance. If the excuse required under sentence 1 is not provided in time, the charging of costs and the imposition of an administrative measure is dispensed with only if it is demonstrated that the delayed excuse is not the witness's fault. If the witness is sufficiently excused thereafter, the orders made are revoked subject to the conditions of sentence 2.
(3) Authority to order such measures is also vested in the judge in the preliminary investigation and in a commissioned and a requested judge.

Section 52
Right of accused's relatives to refuse testimony

(1) The following persons may refuse to testify:

1. the accused's fiancé or fiancée;
2. the accused's spouse, even if the marriage no longer exists;
2a. the accused's life partner, even if the life partnership no longer exists;
3. a person who is or was lineally related or related by marriage, collaterally related to the third degree or related by marriage to the second degree to the accused.

(2) If minors, owing to the lack of intellectual maturity, or minors or persons placed in care, owing to mental illness or disability, do not have sufficient understanding of the importance of their right to refuse testimony, then testimony may be taken from such persons only if they are willing to testify and if their statutory representative also agrees to their examination. If the statutory representative is himself or herself accused, said representative may not decide on the exercise of the right of refusal to testify; the same applies to that parent who is not accused if both parents are entitled to act as statutory representative.
(3) Persons who are entitled to refuse to testify and, in the cases under subsection (2), also their representatives authorised to decide on the exercise of the right of refusal to testify are to be instructed concerning their right prior to each examination. They may revoke the waiver of this right during the examination.

Section 53
Right to refuse testimony on professional grounds

(1) The following persons may also refuse to testify:

1. clergy, concerning that information which was confided to them or which became known to them in their capacity as spiritual advisers;

2. defence counsel of the accused, concerning that information which was confided to them or which became known to them in this capacity;

3. lawyers and non-lawyer providers of legal services who have been admitted to a bar association (*Kammerrechtsbeistände*), patent attorneys, notaries, certified public accountants, sworn auditors, tax consultants (*Steuerberater*) and tax representatives (*Steuerbevollmächtigte*), doctors, dentists, psychotherapists, psychological psychotherapists, psychotherapists specialising in the treatment of children and juveniles, pharmacists and midwives, concerning that information which was confided to them or which became known to them in this capacity; subject to section 53a, the same does not apply to in-house lawyers (section 46 (2) of the Federal Code for Lawyers) and in-house patent attorneys (section 41a (2) of the Federal Code for Patent Attorneys (*Patentanwaltsordnung*)) in respect of that which was confided to them or became known to them in this capacity;

3a. members or representatives of a recognised counselling agency under sections 3 and 8 of the Act on Pregnancies in Conflict Situations (*Schwangerschaftskonfliktgesetz*), concerning that information which was confided to them or which became known to them in this capacity;

3b. drug dependency counsellors in a counselling agency recognised or set up by an authority, a body, an institution or a foundation under public law, concerning that information which was confided to them or which became known to them in this capacity;

4. Members of the Bundestag, of the Federal Convention, of the European Parliament from the Federal Republic of Germany or of a *Land* parliament, concerning persons who have confided certain facts to them in their capacity as members of these bodies or to whom they have confided facts in this particular capacity, and concerning the facts themselves;

5. individuals who are or have been professionally involved in the preparation, production or dissemination of printed matter, broadcasts, film documentaries or in the information and communication services involved in instruction or in the formation of opinion.

The persons designated in sentence 1 no. 5 may refuse to testify concerning the author or contributor of comments and documentation or concerning any other informant or the information communicated to them in their professional capacity, including its content, and concerning the content of materials which they have produced themselves and matters which have received their professional attention. This only applies insofar as this concerns contributions, documentation, information and materials for the editorial element of their activity or information and communication services which have been editorially reviewed.
(2) The persons designated in subsection (1) sentence 1 nos. 2 to 3b may not refuse to testify if they have been released from their obligation of secrecy. The right of the persons designated in subsection (1) sentence 1 no. 5 to refuse to testify concerning the content of materials which they themselves have produced and matters which have received their professional attention lapses if the testimony is required to assist in investigating a serious criminal offence (*Verbrechen*) or if the subject of the investigation is

1. a crime against peace and of endangering the democratic state under the rule of law or of treason and of endangering external security (sections 80a, 85, 87, 88, 95, also in conjunction with sections 97b, 97a, 98 to 100a of the Criminal Code (*Strafgesetzbuch*)),
2. a crime against sexual self-determination under sections 174 to 174c, 176a, 176b and section 177 (2) no. 1 of the Criminal Code or
3. money laundering under section 261 of the Criminal Code whose prior offence is subject to an increased minimum prison sentence,

and an investigation of the facts and circumstances or an investigation as to the whereabouts of the accused would otherwise offer no prospect of success or would be much more difficult. The witness may refuse to testify even in such cases, however, where testimony would result in disclosure of the identity of the author or contributor of comments and documentation or of any other informant, or of the information communicated to him or her in the professional capacity pursuant to subsection (1) sentence 1 no. 5 or of the content of such communications.

Section 53a
Right of persons involved to refuse testimony

(1) Persons who, in the context of

1. a contractual relationship, including one concerning the joint exercise of a profession,
2. a measure preparatory to vocational training or
3. some other ancillary activity,

are involved in the professional activity of persons who have the right to refuse testimony on professional grounds pursuant to section 53 (1) sentence 1 nos. 1 to 4 are equal to those persons. The decision as to whether or not such persons are to exercise their right to refuse to testify is taken by the persons with the right to refuse testimony on professional grounds, unless such a decision cannot be obtained within a foreseeable time.
(2) Release from the obligation of secrecy (section 53 (2) sentence 1) applies equally to the persons involved referred to in subsection (1).

Section 54
Authorisation for members of public service to testify

(1) The special provisions of civil service law apply to the examination of judges, civil servants and other persons in the public service as witnesses concerning circumstances covered by their official obligation of secrecy and to permission to testify.
(2) Members of the Bundestag, of a *Land* parliament, of the Federal Government or of a *Land* government and employees of a federal or *Land* parliamentary group are subject to the special provisions applicable to them.
(3) The Federal President may refuse to testify if his or her testimony would be detrimental to the welfare of the Federation or of one of the *Länder*.
(4) These provisions also apply if the persons referred to in the above are no longer members of the public service or employees of a parliamentary group or if their terms of office have expired, insofar as the events concerned occurred or became known to them during their terms of service, employment or office.

Section 55
Right to refuse to give information

(1) Witnesses may refuse to answer any questions the reply to which would subject them or one of their relatives as indicated in section 52 (1) to the risk of being prosecuted for an offence or a regulatory offence.
(2) Witnesses are to be instructed as to their right to refuse to answer.

Section 56
Substantiation of grounds for refusal to testify

The fact on which a witness bases the refusal to testify in the cases under sections 52, 53 and 55 is to be substantiated upon request. A sworn declaration by the witness is sufficient.

Section 57
Instruction

Before examination, witnesses are warned that they must tell the truth and are instructed as to the criminal law consequences of making incorrect or incomplete statements. They are to be informed of the possibility that they may be placed under oath. If they are placed under oath, they are to be instructed on the importance of the oath and on the fact that the oath may be taken with or without religious affirmation.

Section 58
Examination; identity parade

(1) Witnesses are to be examined individually and in the absence of those witnesses who are to be heard later on.
(2) An identity parade with other witnesses or with the accused in the preliminary investigation is admissible if this appears necessary for the further proceedings. Defence counsel is permitted to be present during an identity parade with the accused. Defence counsel is to be given prior notice of the date set down for the identity parade. He or she is not entitled to have the date postponed on account of being prevented from attending. If an accused has no defence counsel, he or she must be informed that, in the case under section 140, an application can be made to have court-appointed defence counsel appointed in accordance with section 141 (1) and section 142 (1).

Section 58a
Video and audio recording of examination

(1) A video and audio recording may be made of the examination of a witness. After evaluation of the relevant circumstances, the examination is, as a rule, to be recorded and conducted as a judicial examination

1. if the interests meriting protection of persons under 18 years of age and of persons who as children or juveniles were aggrieved by one of the offences under section 255a (2) can thus be better safeguarded or
2. if there is a concern that it will not be possible to examine the witness during the main hearing and the recording is required in order to establish the truth.

The examination must, following an evaluation of the relevant circumstances, be recorded and conducted as a judicial examination if the interests meriting protection of persons who have been aggrieved by offences against sexual self-determination (sections 174 to 184j of the Criminal Code) can thus be better safeguarded and the

witness consented, prior to the examination, to the video and audio recording being made.
(2) Use of the audio-visual recording is admissible only for the purposes of the criminal prosecution and only insofar as it is required in order to establish the truth. Section 101 (8) applies accordingly. Sections 147 and 406e apply accordingly, subject to the proviso that copies of the recording may be made available to persons entitled to inspect the files. The copies may not be duplicated nor may they be passed on. They are to be returned to the public prosecution office as soon as there is no further legitimate interest in using them. The transfer of the recording or the release of copies to persons or authorities other than those aforementioned is subject to the consent of the witness.
(3) If the witness does not consent to a copy of the recording of his or her examination as a witness being made available pursuant to subsection (2) sentence 3, then the record is to be released instead to the persons entitled to inspect the files in accordance with section 147 and section 406e. The right to view the recording pursuant to section 147 and section 406e remains unaffected. The witness is to be informed of the right to refuse consent under sentence 1.

Section 58b
Examination by way of audio-visual transmission

The examination of a witness outside the main hearing may be effected in such a way that the witness is located somewhere other than the place where the person is being examined and the examination is simultaneously transmitted audio-visually to the place where the witness is located and to the examination room.

Section 59
Administration of oath

(1) Witnesses are only placed under oath if the court, at its discretion, deems it necessary because of the decisive importance of the statement or in order to obtain a true statement. The reason why the witness is placed under oath need not be specified in the record, unless the witness is examined outside the main hearing.
(2) Witnesses are placed under oath individually after they have been examined. Unless otherwise provided, the oath is taken at the main hearing.

Section 60
Prohibitions in respect of administration of oath

No oath is administered

1. to persons who are under 18 years of age at the time of the examination or who do not have sufficient understanding of the nature and importance of the oath owing to a lack of intellectual maturity or to mental illness or disability;

2. to persons who are suspected of having committed the offence which forms the subject of the investigation or of having participated in it, or who are suspected of handling stolen data, aiding after the fact, obstructing prosecution or punishment, or handling stolen goods, or who have already been sentenced in respect thereof.

Section 61
Right to refuse to give testimony under oath

The relatives of the accused indicated in section 52 (1) have the right to refuse to give testimony under oath; they are to be instructed accordingly.

Section 62
Administration of oath in preparatory proceedings

Administration of an oath in the preparatory proceedings is admissible

1. in exigent circumstances or
2. if the witness is expected to be unavailable at the main hearing

and the conditions of section 59 (1) apply.

Section 63
Administration of oath on examination by commissioned or requested judge

Where a witness is examined by a commissioned or requested judge, an oath must be administered where admissible if so demanded in the commission or request by the court.

Section 64
Form 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, to the best of your knowledge, you have told the pure truth and have not concealed anything’,

whereupon the witness says the words:

‘I swear, 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, to the best of your knowledge, you have told the pure truth and have not concealed anything’,

whereupon the witness says the words:

‘I swear’.

(3) If a witness indicates that, as a member of a religious denomination or of a community professing a creed, he or she wishes to use a formula of affirmation used by such denomination or community, it may be added to the oath.
(4) The person swearing the oath is, as a rule, to raise his or her right hand when taking the oath.

Section 65
Affirmation of truth of testimony equivalent to oath

(1) If a witness states that he or she does not wish to swear an oath for reasons of faith or conscience, then he or she is required to affirm the truth of the testimony. The affirmation is equivalent to an oath; the witness is to be informed 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 the court and affirm that, to the best of your knowledge, you have told the pure truth and have not concealed anything’,

whereupon the witness says:

'Yes'.

(3) Section 64 (3) applies accordingly.

Section 66
Taking of oath by hearing or speech impaired persons

(1) Hearing or speech impaired persons may choose to take the oath by repeating the form of oath or by writing down and signing the form of oath or with the help of a person who facilitates communication to be appointed by the court. The court is required to provide appropriate technical aids. The hearing or speech impaired person is to be instructed as to the right to choose.
(2) The court may require that the oath be taken in written form or may order the attendance of a person who facilitates communication if the hearing or speech impaired person has not exercised the right to choose under subsection (1) or if it is not possible, or only with disproportionate effort, to take the oath in the manner chosen pursuant to subsection (1).
(3) Sections 64 and 65 apply accordingly.

Section 67
Reliance on prior oath

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

Section 68
Examination as to witness's identity; limitation of information, victim protection

(1) The examination begins with the witness being asked to state his or her first name, last name, name at birth, age, occupation and full address. In a judicial examination in the presence of the accused and in the main hearing, except in cases where there is doubt as to the witness's identity, the witness is not asked to state his or her full address but only his or her place of residence or the place where he or she is staying. Witnesses who have made observations in their official capacity may state their place of work instead of their full address.
(2) Furthermore, witnesses are, as a rule, to be permitted to state their business address or place of work or another address at which documents can be served instead of stating their full address if there is well-founded reason to fear that legally protected interests of the witness or of another person may be endangered or that witnesses or another person may be improperly influenced by witnesses stating their full address. In a judicial examination in the presence of the accused and in the main hearing, the witness is, as a rule, to be permitted not to state his or her place of residence or the place where he or she is staying if the conditions of sentence 1 are met upon such statement being made.
(3) If there is well-founded reason to fear that revealing the identity or the place of residence or whereabouts of a witness would endanger that witness's or another person's life, limb or liberty, the witness may be permitted not to provide personal identification data or to provide such data only in respect of an earlier identity. However, if so asked at the main hearing, the witness is required to state in what capacity the facts he or she is indicating became known to him or her. If the witness has been permitted, under the conditions of sentence 1, not to provide personal

identification data or to provide such data only in respect of an earlier identity, then contrary to section 176 (2) sentence 1 of the Courts Constitution Act the witness may completely or partially cover his or her face.
(4) If there are sufficient indications that the conditions of subsection (2) or (3) obtain, then witnesses are to be advised of the rights provided thereunder. In the case under subsection (2), witnesses are, as a rule, to be assisted in specifying an address at which documents can be served. Documentation establishing witnesses' place of residence or whereabouts, full address or identity are to be kept by the public prosecution office. They are only added to the files when the fear of danger ceases. If the witness was permitted to restrict the information to be given in accordance with subsection (2) sentence 1, the public prosecution office arranges ex officio for the registration authority to enter a prohibition of disclosure pursuant to section 51 (1) of the Federal Act on Registration (*Bundesmeldegesetz*) if the witness consents thereto.
(5) Subsections (2) to (4) also apply after conclusion of the examination of the witness. Insofar as a witness was permitted not to provide data, it must be ensured in the course of the provision of information from or inspection of the files that these data are not made known to other persons, unless a danger within the meaning of subsections (2) and (3) appears to be ruled out.

Section 68a
Limitation of right to ask questions to protect privacy

(1) Questions concerning facts which may dishonour the witness or a relative of the witness within the meaning of section 52 (1) or which concern their personal sphere of life are, as a rule, to be asked only if they cannot be dispensed with.
(2) Questions concerning circumstances justifying the witness's credibility in the case at hand, in particular concerning his or her relationship with the accused or the aggrieved person, are to be asked insofar as this is necessary. Witnesses are, as a rule, to be asked about any previous convictions only if their establishment is necessary in order to decide whether the conditions of section 60 no. 2 have been met or to determine a witness's credibility.

Section 68b
Assistance of legal counsel for witnesses

(1) Witnesses may avail themselves of the assistance of legal counsel. Assisting legal counsel who appears at the examination of a witness is permitted to be present. He or she may be barred from the examination if certain facts justify the assumption that the assisting legal counsel's presence would not only negligibly hinder the orderly taking of evidence. As a rule, this is the case if, on the basis of certain facts, it can be assumed that

1. assisting counsel participated in the offence to be investigated or in handling stolen data, aiding after the fact, obstruction of prosecution or punishment, or handling of stolen goods connected therewith,
2. the testimony of the witness will be influenced by the fact that assisting counsel appears to be committed not only to the interests of the witness or
3. assisting counsel will use information obtained during the examination for the suppression of evidence within the meaning of section 112 (2) no. 3 or will pass on such information in a manner which is detrimental to the purpose of the investigation.

(2) A witness who does not have the assistance of legal counsel at his or her examination and of whose interests meriting protection account cannot be taken in another way is to be assigned such counsel for the duration of the examination if special circumstances obtain from which it is evident that the witness is unable to exercise his or her rights at the examination. Section 142 (5) sentences 1 and 3 applies accordingly.
(3) Decisions pursuant to subsection (1) sentence 3 and subsection (2) sentence 1 are not contestable. The grounds therefor are to be placed on record, insofar as this does not jeopardise the purpose of the investigation.

Section 69
Examination as to subject matter

(1) Witnesses are to be directed to state, without prompting or interruption, all they know about the subject of their examination. The subject of the investigation and the name of the accused, if there is one, must be indicated to witnesses before the examination.
(2) If so required, further questions are to be asked in order to clarify and complete the statement and to establish the grounds on which a witness's knowledge is based. Witnesses who have been aggrieved by the offence are, in particular, to be given the opportunity to make submissions concerning the effects which it had on them.
(3) Section 136a applies accordingly to the examination of a witness.

Section 70
Consequences of undue refusal to testify or take oath

(1) Witnesses who, without having a legal reason therefor, refuse to testify or to take an oath are charged with the costs caused by such refusal. At the same time an administrative fine is to be imposed on them and, if the fine cannot be recovered, an order made for arrest for disobedience to court orders.
(2) Detention may also be ordered to force a witness to testify; such detention does not, however, extend beyond the termination of those particular proceedings, nor beyond a period of six months.
(3) The judge in the preliminary investigation and any commissioned or requested judge also has the authority to order such measures.
(4) Where these measures have been exhausted, they may not be repeated in the same proceedings or in other proceedings if the same offence is the subject of the proceedings.

Section 71
Compensation of witnesses

Witnesses are compensated pursuant to the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz*).

Division 7
Experts and inspection

Section 72
Application of provisions concerning witnesses to experts

The provisions of Division 6 concerning witnesses apply accordingly to experts, unless otherwise provided under the following sections.

Section 73
Selection of experts

(1) It is for the judge to select the experts to be consulted and to determine their number. The judge must, as a rule, agree with them on a time limit within which their opinions may be rendered.
(2) If experts are publicly appointed for certain kinds of opinions, other persons are, as a rule, to be selected only if special circumstances so require.

Section 74
Challenge of experts

(1) Experts may be challenged for the same reasons that judges may be challenged. However, the fact that an expert was examined as a witness cannot be a ground for challenge.
(2) The public prosecution office, the private prosecutor and the accused have a right of challenge. The appointed experts are to be made known to the persons entitled to challenge, unless special circumstances present an obstacle thereto.
(3) The ground for challenge must be substantiated; the taking of an oath to substantiate a challenge is precluded.

Section 75
Experts' obligation to render opinion

(1) Persons appointed as experts must comply with the appointment if they have been publicly appointed to render opinions of the required kind or if they publicly and commercially practise the science, art or trade the knowledge of which is a prerequisite for rendering an opinion, or if they have been publicly appointed or authorised to exercise such profession.
(2) The obligation to render an opinion is also incumbent upon any person who has stated their willingness to do so before the court.

Section 76
Experts' privilege of refusal to render opinion

(1) Experts may refuse to render an opinion for the same reasons for which witnesses may refuse to testify. Experts may also be released from their obligation to render an opinion for other reasons.
(2) The special provisions of civil service law apply to the examination of judges, civil servants and other persons in the public service as experts. Members of the Federal Government or of a *Land* government are subject to the special provisions applicable to them.

Section 77
Experts' failure to appear in court or undue refusal to render opinion

(1) Experts who are obliged to render an opinion who fail to appear or refuse to appear in court are charged with the costs caused by their failure or refusal to appear. An administrative fine is imposed at the same time. In the case of repeated disobedience, the administrative fine may be assessed a second time in addition to the costs.
(2) Experts who are obliged to render an opinion who refuse to agree upon a reasonable time limit pursuant to section 73 (1) sentence 2 or who fail to observe the time limit agreed upon may have an administrative fine imposed on them. The assessment of an administrative fine must be preceded by a warning and the setting of an extension to the time limit. In the case of repeated failure to observe the time limit, the administrative fine may be assessed again.

Section 78
Judicial direction of experts' activity

The judge guides an expert's participation insofar as he or she deems this necessary.

Section 79
Administration of oath to experts

(1) Experts may be placed under oath at the discretion of the court.
(2) The oath is to be taken after the opinion has been rendered; it contains the assurance that the expert has rendered his or her opinion impartially and to the best of his or her knowledge and belief.
(3) If the expert has been sworn generally to render opinions of the kind concerned, a reference to that oath is sufficient.

Section 80
Preparation of opinion through further clarification

(1) Experts may, upon request, be given further details in order to be able to prepare their opinion by means of examining witnesses or the accused.
(2) They may, for the same purpose, be permitted to inspect the files, to be present at the examination of witnesses or of the accused, and to address questions to them directly.

Section 80a
Preparation of opinion during preliminary investigation

If it is to be expected that an order will be made for the accused's placement in a psychiatric hospital, in an addiction treatment facility or in preventive detention, then experts are, as a rule, already to be given the opportunity during the preliminary investigation to prepare the opinion to be rendered at the main hearing.

Section 81
Placement of accused during preparation of opinion

(1) When preparing an opinion on the accused's mental condition the court may, after hearing an expert and defence counsel, order that the accused be taken to a public psychiatric hospital and placed under observation there.
(2) The court makes the order pursuant to subsection (1) only if the accused is strongly suspected of having committed the offence. The court may not make such an order if it is disproportionate to the importance of the matter or to the penalty or measure of reform and prevention to be expected.
(3) In the preparatory proceedings, it is for the court which would be competent to open the main proceedings to decide.
(4) An immediate complaint against the order is admissible. It has suspensive effect.
(5) The period of placement in a psychiatric hospital pursuant to subsection (1) may not exceed a total of six weeks.

Section 81a
Physical examination of accused; permissible physical interventions

(1) A physical examination of the accused may be ordered for the purposes of establishing facts which are of relevance for the proceedings. For this purpose, the taking of blood samples and other bodily intrusions which are effected by a physician in accordance with the rules of medical science for the purpose of examination are admissible without the consent of the accused, provided no detriment to his or her health is to be expected.

(2) The authority to give such order is vested in the judge and, if a delay would endanger the success of the examination, also in the public prosecution office and its investigators (section 152 of the Courts Constitution Act). In derogation from sentence 1, the taking of blood samples does not require a judicial order if certain facts give rise to the suspicion that one of the offences under section 315a (1) no. 1 and (2) and (3), section 315c (1) no. 1 (a) and (2) and (3) or section 316 of the Criminal Code has been committed.
(3) Blood samples or other cell tissue taken from the accused may be used only for the purposes of the criminal proceedings for which they were taken or in other criminal proceedings pending; they must be destroyed without delay as soon as they are no longer required for such purposes.

Section 81b
Photographs and fingerprints of accused

(1) Photographs and fingerprints of the accused may be taken, even against his or her will, and measurements may be made of the accused and other similar measures taken with regard to him or her insofar as is required for the purposes of conducting the criminal proceedings or for the purposes of the police records department.
(2) Apart from the cases under subsection (1), fingerprints of the accused are to be taken, even against his or her will, for the creation of a data record pursuant to Article 5 (1) (b) of Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1), as amended by Regulation (EU) 2019/818 (OJ L 135, 22.5.2019, p. 85), insofar as

1. the accused is a third-country national within the meaning of Article 3 no. 7 of Regulation (EU) 2019/816,
2. the accused has been sentenced by final decision to a term of imprisonment or to a youth penalty or a final order has been made against him or her for only a measure of reform and prevention involving deprivation of liberty,
3. no fingerprints of the accused are available which were taken in the context of the criminal proceedings and
4. the corresponding entry in the Federal Central Criminal Register has not yet been deleted.

If, based on certain facts and considering the circumstances of the individual case, there is a risk that the accused will evade this measure, then, in derogation from sentence 1 no. 2, the fingerprints may already be taken before the decision enters into force.
(3) For the creation of a data record pursuant to Article 5 (1) (b) of Regulation (EU) 2019/816, fingerprints taken in accordance with subsection (1) for the purpose of conducting the criminal proceedings and fingerprints taken in accordance with subsection (2) or under section 163b (1) sentence 3 are to be transmitted to the Federal Criminal Police Office.

(4) For the creation of a data record pursuant to Article 5 (1) (b) of Regulation (EU) 2019/816, the Federal Criminal Police Office may process fingerprints which have been recorded in accordance with subsections (1) and (2) and under section 163b (1) sentence 3 and which have been transmitted to it. The storage of fingerprints taken in accordance with subsection (1) for the purpose of conducting criminal proceedings and fingerprints taken in accordance with subsection (2) sentence 2 and under section 163b (1) sentence 3 which goes beyond their processing in accordance with sentence 1 is inadmissible until the decision has entered into force. Processing in accordance with sentence 1 is also inadmissible if

1. the accused has been acquitted by final decision,
2. the proceedings have been terminated not only provisionally or
3. no final order is made against the accused for only a measure of reform and prevention involving deprivation of liberty.

Sentence 3 applies accordingly in the cases under subsection (2) sentence 2 if the accused has been sentenced by final decision to a penalty other than a term of imprisonment or a youth penalty. If processing of the fingerprints is inadmissible under sentence 3 or 4, they are to be deleted.
(5) Sections 481 to 485 apply to processing for purposes other than the creation of a data record pursuant to Article 5 (1) (b) of Regulation (EU) 2019/816. However, the processing of fingerprints taken in accordance with subsection (2) sentence 2 is not admissible until the decision has become final and processing for the purpose of the creation of a data record is not inadmissible under subsection (4) sentence 3 or 4. The remaining provisions concerning the processing of fingerprints taken in accordance with subsection (1) or (2) or under section 163b remain unaffected.

Section 81c
Examination of other persons

(1) Persons other than the accused who may be called as witnesses may be examined without their consent only insofar as establishing the truth involves ascertaining whether their body shows a particular trace or consequence of an offence.
(2) Examinations to ascertain descent and the taking of blood samples from persons other than the accused are admissible without such persons' consent, provided that no detriment to their health is to be expected and the measure is indispensable for establishing the truth. The examinations and the taking of blood samples may only ever be carried out by a physician.
(3) Examinations or the taking of blood samples may be refused for the same reasons as testimony may be refused. If minors, owing to a lack intellectual maturity, or if minors or persons placed in care, owing to mental illness or disability, do not have sufficient understanding of the importance of their right of refusal, it is for their statutory representative to decide; section 52 (2) sentence 2 and (3) applies accordingly. If the statutory representative is precluded from taking a decision (section 52 (2) sentence 2) or is prevented from taking a decision in time for other reasons and the immediate examination or taking of blood samples appears necessary to secure evidence, such measures are admissible only upon special order by the court and, if the court cannot be reached in time, by the public prosecution office. The decision ordering the measures is not contestable. The

evidence furnished pursuant to sentence 3 may be used in further proceedings only with the consent of the statutory representative authorised to give such consent.
(4) Measures under subsections (1) and (2) are inadmissible if, on evaluation of the circumstances as a whole, the person concerned cannot reasonably be expected to undergo such measures.
(5) The authority to give such order is vested in the court and, if a delay would endanger the success of the examination, also in the public prosecution office and its investigators (section 152 of the Courts Constitution Act); subsection (3) sentence 3 remains unaffected. Section 81a (3) applies accordingly.
(6) Section 70 applies accordingly to cases where the person concerned refuses to undergo an examination. Direct force may be used only upon special order of the judge. The order presupposes either that the person concerned insists upon the refusal despite the imposition of an administrative fine or that there are exigent circumstances.

Section 81d
Physical examination by persons of same sex

(1) If the physical examination can violate the sense of shame of the person to be examined, it is carried out by a person of the same sex or by a female or a male physician. Where there is a legitimate interest, a request that a physician of a particular sex be appointed to perform the examination is, as a rule, to be granted. Upon the request of the person concerned, a trusted person is, as a rule, to be admitted. The person concerned is to be instructed as to the provisions of sentences 2 and 3.
(2) This provision also applies where the person concerned consents to the examination.

Section 81e
Molecular and genetic analysis

(1) Material obtained by means of measures under section 81a (1) or section 81c may be subjected to molecular and genetic analysis in order to establish a person's DNA profile, descent and sex, and these data may be matched with reference material insofar as this is necessary to establish the facts. Other determinations may not be made; examinations designed to make such determinations are inadmissible.
(2) Examinations which are admissible pursuant to subsection (1) may also be carried out on material which has been found, secured or seized. If it is not known from whom the trace material originates, determinations may in addition be made regarding the colour of the person's eyes, hair and skin and regarding the person's age. Subsection (1) sentence 2 and section 81a (3) half-sentence 1 apply accordingly. Section 81f (1) applies accordingly if the identity of the person from whom the material was taken is known.

Section 81f
Procedure for molecular and genetic analysis

(1) Without the written consent of the person concerned, examinations pursuant to section 81e (1) may be ordered only by the court and, in exigent circumstances, by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). A person who consents is to be instructed as to the purpose for which the data to be obtained will be used.
(2) The written order only appoints experts to carry out the examinations pursuant to section 81e who are publicly appointed, who are obliged under the Obligations Act

(*Verpflichtungsgesetz*) or who are publicly appointed and who are not members of the authority conducting the investigations or who belong to an organisational unit of such authority which, both in terms of its organisation and its area of work, is separate from the official agency conducting the investigations. The experts take technical and organisational steps to ensure that no inadmissible molecular and genetic analyses can be carried out and that no unauthorised third parties have access to information concerning the analyses. The material to be analysed is to be given to the expert with no indication of the name, address or date or month of birth of the individual concerned. If the expert is not a public agency, the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1; L 314, 22.11.2016, p. 72; L 127, 23.5.2018, p. 2) and of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) apply, even if personal data are not automatically processed and the data are not stored or are not to be stored in a file system.

Section 81g
DNA profiling

(1) If the accused person is suspected of having committed an offence of substantial significance or a crime against sexual self-determination, then for the purposes of establishing identity in future criminal proceedings cell tissue may be collected from him or her and subjected to molecular and genetic analysis for the purpose of establishing the accused person's DNA profile or sex if the nature of the offence or the way it was committed, the personality of the accused or other information provides grounds for assuming that criminal proceedings will be conducted against him or her in the future in respect of a criminal offence of substantial significance. If the person concerned habitually commits other offences, this may be deemed to be equivalent to an offence of substantial significance by reference to the level of the injustice done.
(2) The cell tissue collected may be used only for the molecular and genetic analysis referred to in subsection (1); it must be destroyed without delay once it is no longer required for that purpose. Information other than that required in order to establish the accused person's DNA profile or sex may not be ascertained during the examination; tests to establish such information are inadmissible.
(3) Without the written consent of the accused, the collection of cell tissue may be ordered only by the court and, in exigent circumstances, by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). Without the written consent of the accused, the molecular and genetic analysis of cell tissue may be ordered only by the court. Persons who are to give their consent are to be instructed as to the purpose for which the data to be obtained will be used. Section 81f (2) applies accordingly. In its written reasons the court must specify, in relation to the particular case concerned,

1. the determining facts relevant to ascertaining the severity of the offence,
2. the information giving rise to the assumption that the accused will be the subject of criminal proceedings in the future and
3. an evaluation of the relevant circumstances in each case.

(4) Subsections (1) to (3) apply accordingly if the person concerned has been convicted of the offence with binding effect or was not convicted merely on the grounds that

1. lack of criminal responsibility has been proved or cannot be ruled out,
2. he or she is unfit to stand trial on the grounds of insanity or
3. lack of criminal responsibility has been proved or cannot be ruled out (section 3 of the Youth Courts Act (*Jugendgerichtsgesetz*)),

and the corresponding entry in the Federal Central Criminal Register or the Youth Register has not yet been deleted.
(5) The data collected may be stored at the Federal Criminal Police Office and used in accordance with the Federal Criminal Police Office Act (*Bundeskriminalamtgesetz*). The same applies

1. subject to the conditions of subsection (1) to the data obtained pursuant to section 81e (1) in respect of an accused person and
2. to the data obtained pursuant to section 81e (2) sentence 1.

The data may be transmitted only for the purposes of criminal proceedings, to avert a danger and to provide international mutual assistance in respect thereof. In the case under sentence 2 no. 1, the accused is to be informed without delay that the data have been stored and is to be instructed that he or she may apply for a court decision.

Section 81h
Serial DNA screening

(1) If certain facts give rise to the suspicion that a serious criminal offence against life, physical integrity, personal liberty or sexual self-determination has been committed, then, with their written consent, persons who manifest certain significant features which may be assumed to apply to the offender

1. may have cell tissue collected from them,
2. may have such cell tissue subjected to a molecular and genetic analysis to establish their sex and DNA profile and
3. may have the DNA profile established automatically matched against the DNA profiles of trace material,

insofar as this is necessary in order to ascertain whether the trace material originated from such persons or from their relatives in the direct line or in the collateral line up to the third degree and the measure is not disproportionate to the severity of the offence, in particular in view of the number of persons affected by the measure.
(2) Any measure under subsection (1) requires a court order. Such order is made in writing. The order designates the persons concerned by reference to certain significant features and states reasons. No prior hearing of the persons concerned is required. The decision ordering the measure is not contestable.
(3) Section 81f (2) applies accordingly to implementation of the measure. The cell tissue collected must be destroyed without delay as soon as it is no longer needed for the purposes of the analysis referred to in subsection (1). Insofar as the data

relating to the DNA profiles established by the measure are no longer needed to investigate the facts, they must be deleted without delay. The fact of the destruction and deletion are to be documented.
(4) The persons concerned are to be instructed in writing that the measure may only be implemented with their consent. Before giving their consent, they are also to be notified in writing that

1. the cell tissue collected is to be used exclusively to establish a person's DNA profile, descent and sex and that it will be destroyed without delay as soon as it is no longer required for this purpose,
2. the test result will be automatically matched against the DNA profiles of trace material to establish whether the trace material originates from them or from their relatives in the direct line or collaterally up to the third degree,
3. the result of the matching can be used to the detriment of the person concerned or a person related to him or her in the direct line or collaterally up to the third degree and
4. the DNA profiles established are not stored by the Federal Criminal Police Office for the purposes of establishing identity in future criminal proceedings.

Section 82
Form of opinion in preliminary investigation

In the preliminary investigation the judge decides whether experts are to render their opinion in writing or orally.

Section 83
Order for rendering of new opinion

(1) The judge may order that a new opinion be rendered by the same or by other experts if he or she 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 rendering his or her opinion.
(3) In important cases, the opinion of a specialist authority may be obtained.

Section 84
Compensation of experts

Experts are compensated pursuant to the Judicial Remuneration and Compensation Act.

Section 85
Expert witnesses

The provisions concerning evidence by witnesses apply where experienced persons need to be examined to prove past facts or conditions the observation of which required special professional knowledge.

Section 86
Judicial inspection

If a judicial inspection takes place, the facts as found must be stated in the record and such record is to include information regarding any missing traces or signs whose presence could have been expected given the special nature of the case.

Section 87
Post-mortem, autopsy, exhumation

(1) A post-mortem examination is carried out by a member of the public prosecution office, upon application by the public prosecution office also by the judge, with a physician being called in as an expert. The physician is not called in if this is evidently unnecessary for the clarification of the facts.
(2) An autopsy is performed by two physicians. One of them must be a court physician or the head of a public forensic or pathology institute or a physician of the institute entrusted with this task with specialist knowledge of forensic medicine. The physician who treated the deceased person during the illness which directly preceded his or her death is not to be entrusted with performing the autopsy. However, that physician may be asked to attend the autopsy to give information relating to the deceased's medical history. The public prosecution office may attend the autopsy. Upon application by the public prosecution office, the autopsy is to be carried out in the judge's presence.
(3) It is admissible, for the purpose of examination or autopsy, to exhume a corpse which has been interred.
(4) The autopsy and exhumation of an interred corpse is ordered by a judge; the public prosecution office is authorised to order such action if a delay would endanger the success of the investigation. Where exhumation is ordered, notification of a relative of the deceased person is to be ordered at the same time if the relative can be located without particular difficulty and such notification does not jeopardise the purpose of the investigation.

Section 88
Identification of deceased before autopsy

(1) The identity of the deceased person is, as a rule, to be established before autopsy. In particular, persons who knew the deceased person may be questioned to this end and forensic identification measures taken. Cell tissue may be removed and subjected to a molecular and genetic analysis for the purpose of establishing identity and sex; section 81f (2) applies accordingly to the molecular and genetic analysis.
(2) If there is an accused, the corpse is, as a rule, to be shown to him or her for the purpose of identification.

Section 89
Extent of autopsy

Insofar as the condition of the corpse permits it, the autopsy always includes the opening of the head, the chest cavity and the abdomen.

Section 90
Autopsy of newborn

If an autopsy is performed on a newborn child, the examination is in particular also directed at answering the question of whether the newborn was alive after or during birth and whether the newborn was mature or at least capable of continuing life outside the womb.

Section 91
Examination of corpse upon suspicion of poisoning

(1) If poisoning is suspected, the suspicious substances found in the corpse or elsewhere are to be examined by a chemist or by a specialist authority appointed for such examination.

(2) An order may be made for this examination to be performed with the assistance or under the direction of a physician.

Section 92
Opinions upon suspicion of counterfeiting of money or official stamps

(1) If counterfeiting of money or official stamps is suspected, the money or official stamps are, if necessary, to be submitted to the authority which issues genuine money or genuine official stamps of that kind. The opinion of this authority is to be obtained as to the falsity or falsification and concerning the probable method of counterfeiting.
(2) If money or official stamps of a foreign currency are involved, the opinion of a German authority may be sought in lieu of the opinion of the respective foreign authority.

Section 93
Handwriting analysis

Experts may be called in to conduct a handwriting comparison to ascertain the authenticity or falsity of written papers and to ascertain their author.

Division 8
Investigation measures

Section 94
Securing and seizure of objects for evidentiary purposes

(1) Objects which may be of importance, as evidence, for the investigation are to be taken into custody or otherwise secured.
(2) Such objects are to be seized if they are in the custody of a person and are not surrendered voluntarily.
(3) Subsections (1) and (2) also apply to driving licences which are to be confiscated.
(4) The surrender of movable property is governed by sections 111n and 111o.

Section 95
Obligation to surrender

(1) Persons who have an object of the above-mentioned kind in their custody are obliged to produce it and to surrender it upon request.
(2) In the case of non-compliance, the administrative measures and means of compulsion set out in section 70 may be used against such persons. This does not apply to persons who are entitled to refuse to testify.

Section 95a
Deferring notification of accused; prohibition of disclosure

(1) Upon the making of a court order or the confirmation of the seizure of an object which a person who is not an accused has in their custody, notification of the accused affected by the seizure may be deferred for as long as it would jeopardise the purpose of the investigation where

1. certain facts give rise to the suspicion that the accused has, as an offender or participant, committed an offence of substantial significance in the individual case as well, in particular an offence as designated in section 100a (2), is attempting to commit such an offence in cases in which there is criminal liability for attempt or has, by means of an offence, prepared such an offence and

2. the establishment of the facts or determination of the whereabouts of the accused would otherwise be much more difficult or offer no prospect of success.

(2) Only the court is permitted to order deferral of notification of the accused in accordance with subsection (1). The deferral is to be limited to no more than six months. The court may extend the order by no more than three months in each instance if the conditions for the order continue to exist.
(3) If, within three days following the non-judicial seizure of an object which a person who is not a suspect has in their custody, an application is made for court confirmation of the seizure and the deferral of notification of the accused in accordance with subsection (1), then the instruction of the accused affected by the seizure to be made in accordance with section 98 (2) sentence 5 may be dispensed with. In proceedings under section 98 (2), the court need not first hear the accused (section 33 (3)).
(4) Any notification of the accused which has been deferred in accordance with subsection (1) is made as soon as is possible without jeopardising the purpose of the investigation. Mention is to be made in the notification of the option of retroactive legal protection pursuant to subsection (5) and of the applicable time limit.
(5) Even after the end of any deferral pursuant to subsection (1), the accused may, for up to two weeks after receiving notification pursuant to subsection (4), apply to the court competent for ordering the measure for a review of the lawfulness of the seizure, the nature and manner of its enforcement and the deferral of notification. An immediate complaint is admissible against the court's decision. Where public charges have been preferred and the defendant has been notified, the court seized of the matter decides upon the application in the concluding decision.
(6) If deferral of notification of the accused is ordered in accordance with subsection (1), then after evaluating all the facts and circumstances and weighing the interests of the parties to the proceedings in the individual case, the court may at the same time order that the person concerned may not, for the duration of the deferral, disclose to the accused and third parties the fact of the seizure and of a search being conducted prior to the seizure under sections 103 and 110 or of the order of surrender under section 95. Subsection (2) applies accordingly, with the proviso that in exigent circumstances the public prosecution office and its investigators (section 152 of the Courts Constitution Act) may also make the order referred to in sentence 1 if the instruction is dispensed with in accordance with subsection (3) and an application is made for the court's confirmation of the seizure and the deferral of notification of the accused. If the public prosecution office or its investigators make such an order, an application is to be made within three days for the court's confirmation.
(7) In the case of a breach of the prohibition of disclosure under subsection (6), section 95 (2) applies accordingly.

Section 96
Papers in official custody

The submission or surrender of files or other papers which are in the official custody of authorities or public officials may not be requested if their highest service authority declares that publication of the content of such files or papers would be detrimental to the welfare of the Federation or of one of the *Länder*. Sentence 1 applies accordingly to files and other papers held in the custody of a Member of the

Bundestag or of a *Land* parliament or of an employee of a federal or *Land* parliamentary group if the authority responsible for granting authorisation to give testimony has made the relevant declaration.

Section 97
Prohibition of seizure

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

1. written correspondence between the accused and those persons who, under section 52 or section 53 (1) sentence 1 nos. 1 to 3b, may refuse to testify;
2. notes made by the persons referred to in section 53 (1) sentence 1 nos. 1 to 3b concerning confidential information confided to them by the accused or concerning other circumstances covered by the right to refuse to testify;
3. other objects, including the findings of medical examinations, which are covered by the right of the persons referred to in section 53 (1) sentence 1 nos. 1 to 3b to refuse to testify.

(2) These restrictions only apply if these objects are in the custody of a person entitled to refuse to testify, unless the object concerned is an electronic health card as defined in section 291a of the Fifth Book of the Social Code (*Sozialgesetzbuch V*). The restrictions on seizure do not apply if certain facts give rise to the suspicion that the person entitled to refuse to testify participated in the offence or in handling stolen data, aiding after the fact, obstructing prosecution or punishment, or handling stolen goods, or if the objects concerned were derived from an offence or have been used or are intended for use in committing an offence or if they emanate from an offence.
(3) Subsections (1) and (2) apply accordingly insofar as those persons who are involved, pursuant to section 53a (1) sentence 1, in the professional activity of the persons referred to in section 53 (1) sentence 1 nos. 1 to 3b have the right to refuse to testify.
(4) The seizure of objects is inadmissible insofar as they are covered by the right of the persons referred to in section 53 (1) sentence 1 no. 4 to refuse to testify. This protection from seizure also extends to objects which have been entrusted by the persons referred to in section 53 (1) sentence 1 no. 4 to the persons involved in their professional activity pursuant to section 53a (1) sentence 1. Sentence 1 applies accordingly insofar as the persons who are involved, pursuant to section 53a (1) sentence 1, in the professional activity of those persons referred to in section 53 (1) sentence 1 no. 4 are entitled to refuse to testify.
(5) The seizure of manifested content (section 11 (3) of the Criminal Code) in the custody of persons referred to in section 53 (1) sentence 1 no. 5 or of the editorial office, the publishing house, the printing works or the broadcasting company is inadmissible insofar as they are covered by the right of such persons to refuse to testify. Subsection (2) sentence 2 and section 160a (4) sentence 2 apply accordingly, the provision on participation in subsection (2) sentence 2, however, only where the particular facts give rise to a strong suspicion of participation; in these cases, too, seizure is only admissible, however, where it is not disproportionate to the importance of the case having regard to the basic rights arising out of Article 5 (1) sentence 2 of the Basic Law (*Grundgesetz*) and the investigation of the factual circumstances or the establishment of the whereabouts

of the offender would otherwise offer no prospect of success or would be much more difficult.

Section 98
Procedure for seizure

(1) Seizure may be ordered only by the court and, in exigent circumstances, by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). Seizure pursuant to section 97 (5) sentence 2 on the premises of an editorial office, publishing house, printing works or broadcasting company may be ordered only by the court.
(2) An official who has seized an object without a court order is, as a rule, to apply for court confirmation within three days if neither the person concerned nor an adult relative was present at the time of seizure or if the person concerned and, if he or she was absent, an adult relative of that person expressly objected to the seizure. The person concerned may at any time apply for a court decision. The competence of the court is determined by section 162. The person concerned may also submit the application to the local court in whose district the seizure took place; the latter then forwards the application to the competent court. The person concerned is to be instructed as to his or her rights.
(3) If, after public charges have been preferred, the public prosecution office or one of its investigators has effected seizure, the court is to be notified of the seizure within three days; the objects seized are to be put at its disposal.
(4) If it is necessary to effect seizure in an official building or an installation or facility of the Federal Armed Forces which is not open to the general public, the superior authority of the Federal Armed Forces is to 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 carried out in places which are inhabited exclusively by persons who are not members of the Federal Armed Forces.

Section 98a
Dragnet investigation

(1) Notwithstanding sections 94, 110 and 161, if there are sufficient factual indications to show that an offence of substantial significance has been committed

1. relating to the illegal trade in narcotics or weapons or the counterfeiting of money or official stamps,
2. relating to national security (sections 74a and 120 of the Courts Constitution Act),
3. relating to offences constituting a public danger,
4. relating to the endangering of life or limb, sexual self-determination or personal liberty,
5. on a commercial or habitual basis or
6. by a member of a gang or in some other organised way,

personal data relating to individuals who manifest certain significant features which may be presumed to apply to the offender may be automatically matched against other data in order to exclude individuals who are not under suspicion or to identify individuals who manifest other significant features relevant to the investigations. This measure may be ordered only if other means of establishing the facts or

determining the offender's whereabouts would offer much less prospect of success or would be much more difficult.
(2) For the purposes of subsection (1), the storing agency extracts from the database the data required for matching purposes and transmits them to the prosecuting authorities.
(3) Insofar as isolating the data for transmission from other data requires disproportionate effort, the other data are, upon order, also to be transmitted. Their use is not admissible.
(4) Upon request by the public prosecution office, the storing agency assists the agency effecting the data match.
(5) Section 95 (2) applies accordingly.

Section 98b
Procedure for dragnet investigation

(1) Matching and transmission of data may be ordered only by the court and, in exigent circumstances, also by the public prosecution office. Where the public prosecution office has made the order, it requests court confirmation without delay. The order becomes ineffective if it is not confirmed by the court within three working days. The order must be made in writing. It must state the name of the person obliged to transmit the data and must be limited to the data and matching features required for the particular case. The transmission of data may not be ordered where special rules on use, being provisions under federal law or under the relevant *Land* law, present an obstacle to their use. Sections 96, 97 and 98 (1) sentence 2 apply accordingly.
(2) Administrative measures and means of compulsion (section 95 (2)) may be ordered only by the court and, in exigent circumstances, also by the public prosecution office; the imposition of detention is reserved to the court.
(3) Where data were transmitted on data media, these are to be returned without delay once the data matching has been completed. Personal data transferred to other data media must be deleted without delay once they are no longer required for the criminal proceedings.
(4) Upon completion of a measure under section 98a, the agency responsible for monitoring compliance with data protection rules by public bodies is to be notified.

Section 98c
Automated data matching with available data

In order to investigate an offence or to determine the whereabouts of a person sought in connection with criminal proceedings, personal data from criminal proceedings may be automatically matched with other data stored for the purposes of criminal prosecution or enforcement of sentence, or in order to avert a danger. Special rules on use presenting an obstacle thereto, being provisions under federal law or under the corresponding *Land* law, remain unaffected.

Section 99
Seizure of postal items and request for information

(1) Seizure of postal items and telegrams addressed to the accused which are held in the custody of persons or enterprises providing or collaborating in the provision of postal or telecommunications services on a commercial basis is admissible. Seizure of postal items and telegrams is also admissible where known facts support the conclusion that they derived from the accused or are intended for him or her and that their content is of relevance to the investigation.

(2) Under the conditions of subsection (1), it is also admissible to request information from persons or enterprises providing or collaborating in the provision of postal services on a commercial basis concerning postal items which are addressed to, derive from or are intended for the accused. The information encompasses only those data which are gathered on the basis of legal provisions outside of the scope of criminal law, insofar as they concern the following:

1. the names and addresses of senders, recipients and, insofar as they are not one and the same, of those persons who posted or took delivery of the postal item in question,
2. the type of postal service used,
3. the dimensions and weight of the postal item in question,
4. the tracking number of the postal item in question assigned by the postal service provider and, if the recipient uses a pick-up station with self-service lockers, their personal PostNumber,
5. information regarding the times and places relating to the entire shipment process and
6. photographs of the postal item which were made for the purposes of providing the postal service.

Information concerning the content of the postal item may be requested over and above the aforementioned only if the persons or enterprises designated in sentence 1 have learned thereof by lawful means. The information referred to in sentences 2 and 3 must also be provided in relation to those postal items which are not or not yet in their custody.

Section 100
Procedure for seizure of postal items and request for information

(1) Only the court and, in exigent circumstances, the public prosecution office are authorised to order measures under section 99.
(2) Orders made by the public prosecution office in accordance with subsection (1), even if they have not yet resulted in delivery being made in accordance with section 99 (1) or in the provision of information in accordance with section 99 (2), become ineffective if they are not confirmed by the court within three working days.
(3) The court has the authority to open the delivered postal items. The court may transfer this authority to the public prosecution office insofar as this is necessary so as not to endanger the success of the investigation by delay. The transfer is not contestable; it may be revoked at any time. As long as no order has been made pursuant to sentence 2, the public prosecution office immediately forwards the delivered postal items to the court, leaving any unopened postal items sealed.
(4) It is for the court competent pursuant to section 98 to decide on an order made by the public prosecution office under section 99. The court which ordered or confirmed the seizure decides whether to open an item which has been delivered.
(5) Postal items in respect of which no order for opening has been made are to be forwarded to the intended recipient without delay. The same applies insofar as there is no necessity to retain the postal items once opened.

(6) Such part of a retained postal item as it does not appear expedient to withhold for the purposes of the investigation is to be transmitted to the intended recipient in the form of a copy.

Section 100a
Telecommunications surveillance

(1) Telecommunications may be intercepted and recorded even without the knowledge of the persons concerned if

1. certain facts give rise to the suspicion that a person has, either as an offender or participant, committed a serious crime of the kind referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an offence by committing another offence,
2. the offence is one of particular severity in the individual case as well and
3. other means of establishing the facts or determining the accused's whereabouts would be much more difficult or would offer no prospect of success.

Telecommunications may also be intercepted and recorded in such a manner that technical means are used to interfere with the information technology systems used by the person concerned if this is necessary to enable interception and recording in unencrypted form in particular. The content and the circumstances of the communication stored in the person concerned's information technology systems may be intercepted and recorded if they could also have been intercepted and recorded in encrypted form during ongoing transmission processes in the public telecommunications network.

(2) Serious crimes for the purposes of subsection (1) no. 1 are

1. under the Criminal Code:
   a) offences against peace, high treason, endangering the democratic state under the rule of law, treason and endangering external security under sections 80a to 82, 84 to 86, 87 to 89a, section 89c (1) to (4) and sections 94 to 100a,
   b) taking of bribes by and giving of bribes to elected officials under section 108e,
   c) offences against national defence under sections 109d to 109h,
   d) offences against public order under section 127 (3) and (4) and sections 129 to 130,
   e) counterfeiting of money and official stamps under sections 146 and 151, in each case also in conjunction with section 152, and section 152a (3) and section 152b (1) to (4),
   f) offences against sexual self-determination in cases under sections 176, 176c, 176d and, under the conditions of section 177 (6) sentence 2 no. 2, in cases under section 177,

g) dissemination, procurement and possession of child and youth pornographic content under section 184b and section 184c (2),

h) murder under specific aggravating circumstances (*Mord*) and murder (*Totschlag*) under sections 211 and 212,

i) offences against personal liberty under section 232, section 232a (1) to (5), section 232b, section 233 (2), sections 233a, 234, 234a, 239a and 239b,

j) gang theft under section 244 (1) no. 2, theft by burglary of dwellings under section 244 (4) and aggravated gang theft under section 244a,

k) robbery or extortion under sections 249 to 255,

l) commercial handling of stolen goods, handling as a member of a gang and commercial handling as a member of a gang under sections 260 and 260a,

m) money laundering under section 261 if the prior offence is one of the serious crimes referred to in nos. 1 to 11,

n) fraud and computer fraud under the conditions of section 263 (3) sentence 2 and in the case under section 263 (5), in each case also in conjunction with section 263a (2),

o) subsidy fraud under the conditions of section 264 (2) sentence 2 and, in the case under section 264 (3), in conjunction with section 263 (5),

p) sports betting fraud and manipulation of professional sports competitions under the conditions of section 265e sentence 2,

q) withholding and misappropriation of wages or salaries under the conditions of section 266a (4) sentence 2 no. 4,

r) offences involving forgery of documents under the conditions of section 267 (3) sentence 2 and in the case under section 267 (4), in each case also in conjunction with section 268 (5) or section 269 (3), and under section 275 (2) and section 276 (2),

s) bankruptcy under the conditions of section 283a sentence 2,

t) offences against competition under section 298 and, under the conditions of section 300 sentence 2, under section 299,

u) offences constituting a public danger in the cases under sections 306 to 306c, section 307 (1) to (3), section 308 (1) to (3), section 309 (1) to (4), section 310 (1), sections 313 and 314, section 315 (3), section 315b (3), and sections 361a and 361c,

v) taking and giving of a bribe under sections 332 and 334;

2. under the Fiscal Code (*Abgabenordnung*):

a) tax evasion under the conditions of section 370 (3) sentence 2 no. 1 if the offender acts as a member of a gang whose purpose is the continued

commission of offences under section 370 (1) or under the conditions of section 370 (3) sentence 2 no. 5,

b) commercial, violent and gang smuggling under section 373,

c) handling goods obtained by tax evasion as defined in section 374 (2);

3. under the Anti-Doping Act (*Anti-Doping-Gesetz*):

offences under section 4 (4) no. 2 (b);

4. under the Asylum Act (*Asylgesetz*):

a) inducement to submit fraudulent applications for asylum under section 84 (3),

b) commercial and organised incitement to submit fraudulent applications for asylum under section 84a;

5. under the Residence Act:

a) smuggling foreigners and persons to whom the Free Movement Act/EU (*Freizügigkeitsgesetz/EU*) applies into the federal territory under section 96 (1), (2) and (4),

b) smuggling foreigners into the federal territory resulting in death and smuggling for gain and as organised gangs under section 97;

5a. under the Explosives Precursors Act (*Ausgangsstoffgesetz*):

offences under section 13 (3);

6. under the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*):

intentional offences under sections 17 and 18;

7. under the Narcotics Act (*Betäubungsmittelgesetz*):

a) offences under one of the provisions referred to in section 29 (3) sentence 2 no. 1, subject to the conditions set out therein,

b) offences under section 29a, section 30 (1) nos. 1, 2 and 4, and sections 30a and 30b;

8. under the Precursors Control Act (*Grundstoffüberwachungsgesetz*):

offences under section 19 (1), subject to the conditions of section 19 (3) sentence 2;

9. under the War Weapons Control Act (*Gesetz über die Kontrolle von Kriegswaffen*):

a) offences under section 19 (1) to (3), section 20 (1) and (2), and section 20a (1) to (3), each also in conjunction with section 21,

b) offences under section 22a (1) to (3);

9a. under the New Psychoactive Substances Act (*Neue-psychoaktive-Stoffe-Gesetz*):

offences under section 4 (3) no. 1 (a);

10. under the Code of Crimes against International Law (*Völkerstrafgesetzbuch*):
    a) genocide under section 6,
    b) crimes against humanity under section 7,
    c) war crimes under sections 8 to 12,
    d) crimes of aggression under section 13;
11. under the Weapons Act (*Waffengesetz*):
    a) offences under section 51 (1) to (3),
    b) offences under section 52 (1) no. 1 and no. 2 (c) and (d), and section 52 (5) and (6).

(3) Such order may be made only against the accused or against persons in respect of whom it may be assumed, on the basis of certain facts, that they are receiving or transmitting messages intended for or originating from the accused, or that the accused is using their telephone connection or information technology system.
(4) On the basis of the order for the interception or recording of telecommunications, all those providing or collaborating in the provision of telecommunications services on a commercial basis are required to enable the court, the public prosecution office and its investigators (section 152 of the Courts Constitution Act) to take these measures and to provide the necessary information without delay. Whether and to what extent precautionary measures are to be taken in this respect follows from the Telecommunications Act (*Telekommunikationsgesetz*) and from the Telecommunications Interception Ordinance (*Telekommunikations-Überwachungsverordnung*) issued thereunder. Section 95 (2) applies accordingly.
(5) In the case of measures under subsection (1) sentences 2 and 3, it must be ensured that technical means are in place so that

1. only the following can be intercepted and recorded:
    a) ongoing telecommunications (subsection (1) sentence 2) or
    b) the content and circumstances of the communication which could also have been intercepted and recorded from the date on which the order was made pursuant to section 100e (1) during ongoing transmission processes in the public telecommunications network (subsection (1) sentence 3);
2. only those changes are made to the information technology system which are essential in order to capture the data and
3. the changes made are automatically reversed once the measure is concluded, insofar as this is technically possible.

The means used must provide protection, using methods reflecting the state of the art, against unauthorised access. Copied data must be protected, using methods reflecting the state of the art, against modification, unauthorised deletion and authorised inspection.
(6) A record is to be made of the following each time technical means are used:

1. the designation of the technical means and the time of their use,
2. information required to identify the information technology system and changes made which are not only transient,
3. information enabling the identification of the data captured and
4. the unit implementing the measure.

Section 100b
Covert remote search of information technology systems

(1) Technical means may be used even without the knowledge of the person concerned to gain covert access to an information technology system used by the person concerned and to extract data from that system ('covert remote search of information technology systems') if

1. certain facts give rise to the suspicion that a person has, either as an offender or participant, committed an especially serious crime as referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence,
2. the offence is one of particular severity in the individual case as well and
3. other means of establishing the facts or determining the accused's whereabouts would be significantly more difficult or offer no prospect of success.

(2) Particularly serious crimes within the meaning of subsection (1) no. 1 are

1. under the Criminal Code:
   a) offences of high treason, endangering the democratic state under the rule of law, treason and endangering external security under sections 81, 82, 89a, section 89c (1) to (4), under section 94, section 95 (3) and section 96 (1), in each case also in conjunction with section 97b, and under section 97a, section 98 (1) sentence 2, section 99 (2), section 100 and section 100a (4),
   b) operating criminal trading platforms on the internet in the cases under section 127 (3) and (4) insofar as the purpose of the trading platform on the internet is to facilitate or promote the especially serious crimes designated in letters (a) and (c) to (o) and in nos. 2 to 10,
   c) forming criminal organisations under section 129 (1) in conjunction with subsection (5) sentence 3 and forming terrorist organisations under section 129a (1), (2) and (4) and (5) sentence 1 alternative 1, in each case also in conjunction with section 129b (1),
   d) counterfeiting of money and official stamps under sections 146 and 151, in each case also in conjunction with section 152, and under section 152a (3) and section 152b (1) to (4),
   e) crimes against sexual self-determination in the cases under section 176 (1) and sections 176c, 176d and, under the conditions of section 177 (6) sentence 2 no. 2, in the cases under section 177,

f) dissemination, procurement and possession of child pornographic content in the cases under section 184b (1) sentence 1 and (2),

g) murder under specific aggravating circumstances and murder under sections 211 and 212,

h) offences against personal liberty in the cases under section 232 (2) and (3), section 232a (1), (3), (4) and (5) half-sentence 2, section 232b (1) and (3) and (4) in conjunction with section 232a (4) and (5) half-sentence 2, section 233 (2), section 233a (1), (3) and (4) half-sentence 2, sections 234 and 234a (1) and (2) and sections 239a and 239b,

i) gang theft under section 244 (1) no. 2 and aggravated gang theft under section 244a,

j) aggravated robbery and robbery resulting in death under section 250 (1) or (2) and section 251,

k) extortion with use of force and threats under section 255 and an especially serious case of extortion under section 253 under the conditions of section 253 (4) sentence 2,

l) commercial handling of stolen goods, handling as a member of a gang and commercial handling as a member of a gang under sections 260 and 260a,

m) an especially serious case of money laundering under section 261 under the conditions of section 261 (5) sentence 2 if the prior offence is one of the especially serious crimes referred to in nos. 1 to 7;

n) computer fraud in the cases under section 263a (2) in conjunction with section 263 (5);

o) an especially serious case of taking and giving of a bribe under section 335 (1) under the conditions of section 335 (2) nos. 1 to 3;

2. under the Asylum Act:

a) inducement to submit fraudulent applications for asylum under section 84 (3),

b) commercial and organised incitement to submit fraudulent applications for asylum under section 84a (1);

3. under the Residence Act:

a) smuggling of foreigners into the federal territory under section 96 (2),

b) smuggling of foreigners into the federal territory resulting in death and smuggling for gain and as an organised gang under section 97;

4. under the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*):

a) offences under section 17 (1), (2) and (3), in each case also in conjunction with (6) or (7),

b) offences under section 18 (7) and (8), in each case also in conjunction with (10);

5. under the Narcotics Act:

a) an especially serious case of an offence under section 29 (1) sentence 1 no. 1, 5, 6, 10, 11 or 13 and (3), subject to the conditions of section 29 (3) sentence 2 no. 1,

b) an offence under section 29a, section 30 (1) nos. 1, 2 and 4 or section 30a;

6. under the War Weapons Control Act:

a) an offence under section 19 (2) or section 20 (1), in each case also in conjunction with section 21;

b) an especially serious case of an offence under section 22a (1) in conjunction with (2);

7. under the Precursors Control Act:

offences under section 19 (3);

8. under the New Psychoactive Substances Act:

offences under section 4 (3) no. 1;

9. under the Code of Crimes against International Law:

a) genocide under section 6,

b) crimes against humanity under section 7,

c) war crimes under sections 8 to 12,

d) crimes of aggression under section 13;

10. under the Weapons Act:

a) an especially serious case of an offence under section 51 (1) in conjunction with (2),

b) an especially serious case of an offence under section 52 (1) no. 1 in conjunction with (5).

(3) The measure may be directed only against the accused. Interference with the information technology systems of other persons is permissible only where it is to be assumed, on the basis of certain facts, that

1. the accused designated in the order made pursuant to section 100e (3) uses the other person’s information technology systems and

2. the interference with the accused’s information technology systems alone will not lead to the establishment of the facts or to the determination of the whereabouts of a co-accused.

The measure may be taken even if it unavoidably affects other persons.

(4) Section 100a (5) and (6) applies accordingly, with the exception of (5) sentence 1 no. 1.

Section 100c
Acoustic surveillance of private premises

(1) Private speech on private premises may be intercepted and recorded using technical means even without the knowledge of the person concerned if

1. certain facts give rise to the suspicion that a person has, either as an offender or participant, committed an especially serious crime as referred to in section 100b (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence,
2. the offence is one of particular severity in the individual case as well,
3. on the basis of factual indications it may be assumed that the surveillance will result in the recording of statements by the accused which would be of significance in establishing the facts or determining the whereabouts of a co-accused and
4. other means of establishing the facts or determining a co-accused's whereabouts would be disproportionately more difficult or would offer no prospect of success.

(2) The measure may be directed only against the accused and may be implemented only on the accused's private premises. The measure is admissible on other persons' private premises only if it can be assumed, on the basis of certain facts, that

1. the accused named in the order made pursuant to section 100e (3) is present on those premises and
2. applying the measure on the accused's premises alone will not lead to the establishment of the facts or to the determination of a co-accused person's whereabouts.

The measure may be taken even if it unavoidably affects other persons.

Section 100d
Core area of private conduct of life; persons authorised to refuse to give evidence

(1) If there are factual indications for assuming that a measure under sections 100a to 100c will only lead to findings in the core area of the private conduct of life, the measure is inadmissible.
(2) Findings in the core area of the private conduct of life which are made on the basis of a measure under sections 100a to 100c may not be used. Recordings of such findings must be deleted without delay. The fact that such findings were made and their deletion are to be documented.
(3) Where possible in the case of measures under section 100b, technical means are to be employed to ensure that data concerning the core area of the private conduct of life are not captured. Findings made on the basis of measures under section 100b which concern the core area of the private conduct of life must be deleted without delay or submitted to the court ordering the measure by the public prosecution office for a decision as to their usability and deletion. The court's

decision concerning the usability of the data is binding in respect of the further proceedings.
(4) Measures pursuant to section 100c may be ordered only if on the basis of factual indications it may be assumed that statements concerning the core area of the private conduct of life will not be covered by the surveillance. The interception and recording is to be interrupted without delay if during the surveillance indications arise that statements concerning the core area of the private conduct of life are being recorded. Where a measure has been interrupted, it may be recommenced subject to the conditions of sentence 1. In cases of doubt, the public prosecution office must seek a decision from the court without delay concerning the interruption or continuation of the measure; section 100e (5) applies accordingly. If it is considered a possibility that the use of findings already made pursuant to subsection (2) will be prohibited, the public prosecution office must also apply to the court for a decision without delay. Subsection (3) sentence 3 applies accordingly.
(5) In the cases under section 53, measures under sections 100b and 100c are inadmissible; if during or after implementation of the measure it becomes apparent that a case under section 53 exists, then subsection (2) applies accordingly. In the cases under sections 52 and 53a, information acquired through measures under sections 100b and 100c may be used only if, taking into consideration the significance of the underlying relationship of trust, this is not disproportionate to the interest in establishing the facts or determining the whereabouts of an accused person. Section 160a (4) applies accordingly.

Section 100e
Procedure for measures under sections 100a to 100c

(1) Measures under section 100a may be ordered by the court only upon the application of the public prosecution office. In exigent circumstances, the public prosecution office may also make the order. An order issued by the public prosecution office becomes ineffective if it is not confirmed by the court within three working days. The order is to be limited to a maximum duration of three months. An extension of no more than three months in each case is admissible if, taking into account the information obtained in the course of the investigation, the conditions for the order continue to exist.
(2) Measures pursuant to sections 100b and 100c may be ordered only upon the application of the public prosecution office by the division of the regional court stipulated in section 74a (4) of the Courts Constitution Act in the district in which the public prosecution office is located. In exigent circumstances, the order may also be made by the presiding judge. The order becomes ineffective unless it is confirmed by the criminal division within three working days. The order is to be limited to a maximum duration of one month. An extension of the measure for subsequent periods of no more than one month is admissible provided the conditions for the measure continue to exist, taking into account the information obtained in the course of the investigation. If the duration of the order has been extended for a total period of six months, the higher regional court decides on any further extension orders.
(3) The order must be given in writing. The operative part of the order must indicate

1. the name and address of the person against whom the measure is directed, where known,
2. the alleged offence on the basis of which the measure is being ordered,

3. the type, extent, duration and end point of the measure,
4. the type of information to be obtained by carrying out the measure and its relevance for the proceedings,
5. in the case of measures under section 100a, the telephone number or another identifier of the connection to be intercepted or the end device, insofar as certain facts do not lead to the assumption that it is assigned to another end device; in the case under section 100a (1) sentences 2 and 3, as precise a designation as possible of the information technology system to be interfered with,
6. in the case of measures under section 100b, as precise a designation as possible of the information technology system from which data are to be captured,
7. in the case of measures under section 100c, the private premises or rooms to be surveilled.

(4) The reasons for the ordering or extension of measures under sections 100a to 100c must specify the requirements and main considerations underlying the decision. In particular, the following must be stated in relation to each individual case:

1. the particular facts on which the suspicion is based,
2. the essential considerations concerning the necessity for and proportionality of the measure,
3. the factual indications as stated in section 100d (4) sentence 1 in the case of measures under section 100c.

(5) If the conditions on which the order was based are no longer met, the measures taken on the basis of the order must be terminated without delay. The court which made the order is to be informed about the results of the measure following its termination. In the case of measures under sections 100b and 100c, the court ordering the measure is also to be informed about the course of the measure. If the conditions for the order no longer exist, the court orders the termination of the measures, unless termination has already been initiated by the public prosecution office. Termination of a measure under sections 100b and 100c may also be ordered by the presiding judge.
(6) Personal data which have been obtained and are usable on the basis of measures under sections 100b and 100c may be used for other purposes subject to the following conditions:

1. The data may be used in other criminal proceedings without the consent of the persons being kept under surveillance only for the purposes of investigating an offence in respect of which measures under section 100b or 100c could be ordered or to establish the whereabouts of a person accused of such an offence.
2. The use of the data, even such data as are acquired pursuant to section 100d (5) sentence 1 half-sentence 2 for the purposes of averting danger, is only admissible to avert an existing danger of death in an individual case or

to avert an imminent danger to the life or liberty of a person or to the security or existence of the state or to objects of significant value which serve to supply the population, are of culturally outstanding value or are referred to in section 305 of the Criminal Code. The data may also be used to avert an imminent danger to other significant assets in individual cases. If the data are no longer required for the purposes of averting the danger or for a pre-judicial or judicial review of the measures implemented to avert the danger, recordings of such data are to be deleted without delay by the authority responsible for averting the danger. The fact of the deletion is to be placed on record. If deletion is postponed merely for the purposes of a pre-judicial or judicial review, the data may be used solely for this purpose; access is to be denied for any use for other purposes.

3. If usable personal data have been obtained by means of a relevant police measure, such data may not be used in criminal proceedings without the consent of the person under surveillance by virtue of such measure, except for the purpose of investigating an offence in respect of which measures under section 100b or 100c could be ordered or to determine the whereabouts of a person accused of such offence.

Section 100f
Acoustic surveillance outside of private premises

(1) Words spoken in a non-public context outside of private premises may be intercepted and recorded by technical means even without the knowledge of the persons concerned if certain facts give rise to the suspicion that a person has, either as an offender or participant, committed one of the offences referred to in section 100a (2), which may in an individual case also be a serious crime or, in cases where there is criminal liability for attempt, has attempted to commit such an offence and other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or would be much more difficult.
(2) The measure may only be directed against an accused person. Such a measure may only be ordered against other persons if it is to be assumed, on the basis of certain facts, that they are in contact with an accused or that such contact will be established, the measure will result in the establishment of the facts or the determination of an accused's whereabouts and other means of establishing the facts or determining an accused's whereabouts would offer no prospect of success or would be much more difficult.
(3) The measure may be taken even if it unavoidably affects third parties.
(4) Section 100d (1) and (2) and section 100e (1), (3) and (5) sentence 1 apply accordingly.

Section 100g
Traffic data capture

(1) If certain facts give rise to the suspicion that a person has, either as an offender or participant,

1. committed an offence of substantial significance in the individual case as well, in particular one of the offences referred to in section 100a (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an offence by committing another offence or

2. committed an offence by means of telecommunications,

then traffic data (sections 9 and 12 of the Telecommunications and Telemedia Data Protection Act (*Telekommunikations-Telemedien-Datenschutz-Gesetz*) and section 2a (1) of the Act on the Establishment of a Federal Agency for Digital Radio in Security Authorities and Organisations (*Gesetz über die Errichtung einer Bundesanstalt für den Digitalfunk der Behörden und Organisationen mit Sicherheitsaufgaben*)) may be captured insofar as this is necessary to establish the facts and capturing the data stands in appropriate relation to the importance of the matter. In the case under sentence 1 no. 2, the measure is permissible only if other means of establishing the facts would offer no prospect of success. The capture of stored (historical) location data pursuant to this subsection is permissible only under the conditions of subsection (2). In all other cases, the capture of location data is permissible only in respect of traffic data arising in the future or in real time and only in the case under sentence 1 no. 1 insofar as they are necessary to establish the facts or to determine the accused's whereabouts.
(2) If certain facts give rise to the suspicion that someone has, as an offender or participant, committed one of the especially serious crimes designated in sentence 2 or, in cases where there is criminal liability for attempt, has attempted to commit such a crime and the act weighs particularly heavily in the individual case as well, then traffic data stored in accordance with section 176 of the Telecommunications Act may be captured insofar as establishing the facts or determining the accused's whereabouts would be considerably more difficult in some other way or would offer no prospect of success and the data capture stands in appropriate relation to the importance of the matter. Particularly serious crimes within the meaning of sentence 1 are

1. under the Criminal Code:

   a) offences of high treason, endangering the democratic state under the rule of law, treason and endangering external security under sections 81, 82 and 89a, section 94, section 95 (3) and section 96 (1), in each case also in conjunction with section 97b, and under section 97a, section 98 (1) sentence 2, section 99 (2), section 100 and section 100a (4),

   b) especially serious cases of breach of the peace under section 125a and operating criminal trading platforms on the internet in the cases under section 127 (3) and (4),

   c) forming criminal organisations under section 129 (1) in conjunction with (5) sentence 3 and forming terrorist organisations under section 129a (1), (2), (4), (5) sentence 1 alternative 1, in each case also in conjunction with section 129b (1),

   d) offences against sexual self-determination in the cases under sections 176, 176c, 176d and, under the conditions of section 177 (6) sentence 2 no. 2, in the cases under section 177,

   e) dissemination, procurement and possession of child and youth pornographic content in the cases under section 184b (1) sentence 1, (2) and (3) and section 184c (2),

f) murder under specific aggravating circumstances and murder under sections 211 and 212,

g) offences against personal liberty in the cases under section 234, section 234a (1) and (2), sections 239a and 239b, forced prostitution and forced labour under section 232a (3) or (4) or (5) half-sentence 2, section 232b (3) or (4) in conjunction with section 232a (4) or (5) half-sentence 2 and exploitation involving deprivation of liberty under section 233a (3) or (4) half-sentence 2,

h) theft by burglary of dwellings under section 244 (4), aggravated gang theft under section 244a (1), aggravated robbery under section 250 (1) or (2), robbery resulting in death under section 251, extortion with use of force or threat of force under section 255 and an especially serious case of extortion under section 253 under the conditions of section 253 (4) sentence 2, commercial handling of stolen goods under section 260a (1), an especially serious case of money laundering under section 261 under the conditions of section 261 (5) sentence 2 if the prior offence is one of the especially serious crimes referred to in nos. 1 to 8,

i) offences constituting a public danger in the cases under sections 306 to 306c, section 307 (1) to (3), section 308 (1) to (3), section 309 (1) to (4), section 310 (1), sections 313 and 314, section 315 (3), section 315b (3) and sections 316a and 316c;

2. under the Residence Act:

a) smuggling of foreigners into the federal territory under section 96 (2),

b) smuggling of foreigners into the federal territory resulting in death or smuggling for gain and as an organised gang under section 97;

3. under the Foreign Trade and Payments Act:

offences under section 17 (1) to (3) and section 18 (7) and (8);

4. under the Narcotics Act:

a) an especially serious case of an offence under section 29 (1) sentence 1 no. 1, 5, 6, 10, 11 or 13 or (3), subject to the conditions of section 29 (3) sentence 2 no. 1,

b) an offence under section 29a, section 30 (1) nos. 1, 2 and 4 or section 30a;

5. under the Precursors Control Act:

an offence under section 19 (1) under the conditions of section 19 (3) sentence 2;

6. under the War Weapons Control Act:

a) an offence under section 19 (2) or section 20 (1), in each case also in conjunction with section 21,

b) an especially serious case of an offence under section 22a (1) in conjunction with (2);

7. under the Code of Crimes against International Law:

a) genocide under section 6,

b) crimes against humanity under section 7,

c) war crimes under sections 8 to 12,

d) crimes of aggression under section 13;

8. under the Weapons Act:

a) an especially serious case of an offence under section 51 (1) in conjunction with (2),

b) an especially serious case of an offence under section 52 (1) no. 1 in conjunction with (5).

(3) The capture of all traffic data acquired from a radio cell (radio cell inquiry) is permissible only

1. if the conditions of subsection (1) sentence 1 no. 1 are met,

2. insofar as the data capture stands in appropriate relationship to the importance of the matter and

3. insofar as other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or would be much more difficult.

Recourse may be taken to traffic data stored pursuant to section 176 of the Telecommunications Act for the purposes of a radio cell inquiry only under the conditions of subsection (2).
(4) Traffic data capture pursuant to subsection (2), also in conjunction with subsection (3) sentence 2, which is directed against one of the persons referred to in section 53 (1) sentence 1 nos. 1 to 5 and which will presumably produce findings about which that person is likely to be able to refuse to give evidence is inadmissible. Information which is nonetheless obtained may not be used. Recordings thereof must be deleted without delay. The fact that the recordings were obtained and deleted is to be placed on record. Sentences 2 to 4 apply accordingly where an investigatory measure which is not directed against one of the persons referred to in section 53 (1) sentence 1 nos. 1 to 5 produces findings concerning that person about which the person is likely to be able to refuse to give evidence. Section 160a (3) and (4) applies accordingly.
(5) If the telecommunications traffic data are not captured by the telecommunications services provider, then general provisions apply after conclusion of the communication process.

Section 100h
Other measures outside of private premises

(1) Even without the knowledge of the persons concerned

1. photographs or other images may be taken or

2. other special technical devices intended specifically for surveillance purposes may be used

outside of private premises where other means of establishing the facts or determining an accused's whereabouts would offer less prospect of success or would be more difficult. A measure under sentence 1 no. 2 is admissible only if the subject of the enquiry is an offence of substantial significance.
(2) The measures may only be directed against an accused person. In respect of other persons,

1. measures under subsection (1) no. 1 are admissible only if other means of establishing the facts or determining an accused's whereabouts would offer much less prospect of success or would be much more difficult;

2. measures under subsection (1) no. 2 are admissible only if it is to be assumed, on the basis of certain facts, that they are in contact with an accused person or that such contact will be established, the measure will result in the establishment of the facts or the determination of an accused's whereabouts and other means would offer no prospect of success or would be much more difficult.

(3) The measures may be taken even if they unavoidably affect third parties.
(4) Section 100d (1) and (2) applies accordingly.

Section 100i
Technical investigation measures in respect of mobile terminals

(1) If certain facts give rise to the suspicion that a person has, either as an offender or participant, committed an offence of substantial significance, in the individual case as well, in particular one of the offences referred to in section 100a (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an offence by committing another offence, then technical means may be used to determine

1. the device ID of a mobile end terminal and the card number of the card used therein and

2. the location of a mobile end terminal,

insofar as this is necessary to establish the facts or determine the whereabouts of the accused person.
(2) Personal data concerning third parties may be collected in the course of such measures only if, for technical reasons, this is unavoidable to achieve the objectives of subsection (1). Such data may not be used for any purpose beyond the data match done to locate the device ID and card number sought, and the data must be deleted without delay once the measure has been completed.
(3) Section 100a (3) and section 100e (1) sentences 1 to 3, (3) sentence 1 and (5) sentence 1 apply accordingly. The order is to be limited to a maximum period of six months. An extension of no more than six months in each case is admissible if the conditions of subsection (1) continue to exist.

Section 100j
Subscriber data request

(1) Insofar as it is necessary to establish the facts or determine the whereabouts of an accused person, information may be requested

1. on subscriber data pursuant to section 3 no. 6 of the Telecommunications Act and on data collected pursuant to section 172 of the Telecommunications Act (section 174 (1) sentence 1 of the Telecommunications Act) from the person who, on a commercial basis, provides or collaborates in the provision of telecommunications services and
2. on subscriber data pursuant to section 2 (2) no. 2 of the Telecommunications and Telemedia Data Protection Act (section 22 (1) sentence 1 of the Telecommunications and Telemedia Data Protection Act) from the person who, on a commercial basis, makes available for use or provides access for the purpose of the use of their own or others' telemedia.

If the request for information under sentence 1 no. 1 refers to data by means of which access to terminal equipment or to storage media installed in such terminal equipment or physically separate therefrom are protected (section 174 (1) sentence 2 of the Telecommunications Act), then information may only be requested if the statutory requirements for the use of such data are met. If the request for information under sentence 1 no. 2 refers to passwords collected in the form of subscriber data or other data which are used to provide protection against access to end devices or to storage devices which are used in or kept separate from such end devices (section 23 of the Telecommunications and Telemedia Data Protection Act), then a request for information may only be made if the statutory conditions for their use in the prosecution of an especially serious crime under section 100b (2) no. 1 (a), (c), (e), (f), (g), (h) or (m), or no. 3 (b) alternative 1 or no. 5, 6, 9 or 10 are met.
(2) The information referred to in subsection (1) may also be requested by reference to an Internet Protocol address assigned to a specific time (section 174 (1) sentence 3, section 177 (1) no. 3 of the Telecommunications Act) and section 22 (1) sentence 3 and sentence 4 of the Telecommunications and Telemedia Data Protection Act). The fulfilment of the conditions for the request for information under sentence 1 is to be documented.
(3) Requests for information as referred to in subsection (1) sentences 2 and 3 may be ordered by the court only upon application by the public prosecution office. In the case of a request for information being made in accordance with subsection (1) sentence 2, the order may, in exigent circumstances, also be made by the public prosecution office or its investigators (section 152 of the Courts Constitution Act). In this case, a court decision is to be sought without delay. Sentences 1 to 3 do not apply to requests for information made in accordance with subsection (1) sentence 2 if the data subject already has or must have knowledge of the request for information or if the use of the data has already been permitted by a court decision. The fact that the conditions of sentence 4 are met is to be placed on record.
(4) In the cases under subsection (1) sentences 2 and 3 and subsection (2), the data subject is to be notified of the request for information. Notification is to be made insofar as and as soon as it can be effected without thwarting the purpose of the information. It is to be dispensed with where overriding interests meriting protection of third parties or of the data subject himself or herself constitute an obstacle thereto. Where notification is deferred pursuant to sentence 2 or dispensed with pursuant to sentence 3, the reasons therefor are to be placed on record.
(5) Based on a request for information pursuant to subsection (1) or (2), any person providing or collaborating in the provision of telecommunications services or

telemedia services on a commercial basis is required to transmit, without delay, the data required for the provision of the information. Section 95 (2) applies accordingly.

Section 100k
Capture of usage data in respect of telemedia services

(1) Where certain facts give rise to the suspicion that a person, as an offender or participant, has committed an offence of substantial significance in the individual case as well, in particular an offence as designated in section 100a (2), is attempting to commit such an offence in cases in which there is criminal liability for attempt or has, by means of an offence, prepared such an offence, then usage data may be captured from persons who, on a commercial basis, make available for use or provide access for the purpose of the use of their own or others' telemedia (section 2 (2) no. 3 of the Telecommunications and Telemedia Data Protection Act) insofar as this is necessary to establish the facts and the data capture stands in an appropriate relation to the importance of the matter. The capture of stored (retrograde) location data is admissible only under the conditions of section 100g (2). In all other cases, the capture of location data is admissible only in relation to future usage data or in real time insofar as they are needed to establish the facts or to determine the accused's whereabouts.
(2) If the offence is not covered by subsection (1), usage data may also be captured where certain facts give rise to the suspicion that someone has, as an offender or participant, committed one of the following offences using telemedia and the establishment of the facts by other means would offer no prospect of success:

1. under the Criminal Code:
   a) use of the symbols of unconstitutional organisations under section 86a,
   b) giving of instructions to commit a serious violent offence endangering the state under section 91,
   c) public incitement to commit offences under section 111,
   d) offences against public order under sections 126, 131 and 140,
   e) revilement of religious faiths and religious and ideological communities under section 166,
   f) dissemination, procurement and possession of child pornographic content under section 184b,
   g) insult, malicious gossip and defamation under sections 185 to 187 and defiling the memory of the dead under section 189,
   h) violation of the privacy of the personal and private sphere under sections 201a, 202a and 202c,
   i) stalking under section 238,
   j) threatening the commission of a serious criminal offence under section 241,
   k) preparing computer fraud under section 263a (3),

l) data manipulation and computer sabotage under sections 303a and 303b (1);

2. under the Copyright Act (*Urheberrechtsgesetz*): offences under sections 106 to 108b;

3. under the Federal Data Protection Act: offences under section 42.

Sentence 1 does not apply to the collection of location data.
(3) In derogation from subsections (1) and (2), the public prosecution office may request information on the data captured in accordance with section 2 (2) no. 3 (a) of the Telecommunications and Telemedia Data Protection Act solely for the purpose of identifying the user if it is already aware of the content of the use of the telemedia service.
(4) The capture of usage data in accordance with subsections (1) and (2) is admissible only if certain facts justify the assumption that the data subject is using the telemedia service which the person against whom the order is directed makes available for use or provides access to for the purpose of such use on a commercial basis.
(5) If the usage data or the content of the use of a telemedia service are not captured from a service provider which makes telemedia available for use on a commercial basis, then, following conclusion of the communication activity, the capture is governed by general statutory provisions.

Section 101
Procedural rules for undercover measures

(1) Unless otherwise provided, measures under sections 98a, 99, 100a to 100f, 100h, 100i, 110a and 163d to 163g are subject to the following regulations.
(2) Decisions and other documentation concerning measures under sections 100b, 100c and 100f, section 100h (1) no. 2 and section 110a are deposited at the public prosecution office. They are added to the files only if the conditions concerning notification under subsection (5) are met.
(3) Personal data which were collected by means of measures under subsection (1) are to be labelled accordingly. Following transfer of the data to another agency, the labelling is to be maintained by such agency.
(4) The following persons are to be notified of measures under subsection (1):

1. in the case under section 98a, the persons concerned in respect of whom further investigations were carried out following evaluation of the data,

2. in the case under section 99, the sender and the addressee of the postal item,

3. in the case under section 100a, the participants in the telecommunications under surveillance,

4. in the case under section 100b, the person targeted and other persons significantly affected thereby,

5. in the case under section 100c,

   a) the accused person against whom the measure was directed,

   b) other persons under surveillance,

c) persons who owned or lived on the private premises under surveillance at the time the measure was effected,

6. in the case under section 100f, the person targeted and other persons significantly affected thereby,
7. in the case under section 100h (1), the person targeted and other persons significantly affected thereby,
8. in the case under section 100i, the person targeted,
9. in the case under section 110a,
   a) the person targeted,
   b) persons significantly affected thereby,
   c) persons whose private premises which are not generally accessible to the public were entered by the undercover investigator,
10. in the case under section 163d, the data subjects in respect of whom further investigations were carried out following evaluation of the data,
11. in the case under section 163e, the person targeted and the person whose personal data were reported,
12. in the case under section 163f, the person targeted and other persons significantly affected thereby,
13. in the case under section 163g, the person targeted.

Mention is to be made in the notification of the option of retroactive legal protection pursuant to subsection (7) and of the applicable time limit. Notification is not given where overriding interests of a person concerned meriting protection constitute an obstacle thereto. Furthermore, notification of a person referred to in sentence 1 no. 2 and no. 3 who was not the target of the measure may be dispensed with if such person was only tangentially affected by the measure and it may be assumed that the person has no interest in being notified. Inquiries to determine the identity of one of the persons referred to in sentence 1 are only to be made if this appears necessary, taking into account the degree of invasiveness of the measure in respect of the person concerned, the effort associated with establishing their identity and the resulting detriment for such person or other persons.

(5) Notification is given as soon as it can be effected without endangering the purpose of the investigation, the life, physical integrity and personal liberty of another or significant assets, in the case under section 110a including the possibility of the continued use of the undercover investigator. If notification pursuant to sentence 1 is deferred, the reasons therefor are to be placed on record.

(6) If notification is deferred pursuant to subsection (5) and has not been given within 12 months after completion of the measure, any further deferral of notification is subject to the approval of the court. The court decides upon the duration of any further deferrals. The court may consent to notification being permanently dispensed with if there is a probability bordering on certainty that the requirements for notification will not be fulfilled, even in the future. If several measures have been taken within a short period of time, the time period referred to in sentence 1 begins

to run upon conclusion of the last measure. In the case of measures under sections 100b and 100c, the time period referred to in sentence 1 is six months.
(7) Court decisions pursuant to subsection (6) are taken by the court competent to order the measure. In all other cases, the court situated where the competent public prosecution office is located is competent. Even after completion of the measure and for up to two weeks following their notification, the persons referred to in subsection (4) sentence 1 may apply to the court competent pursuant to sentence 1 for a review of the lawfulness of the measure and of the manner and means of its implementation. An immediate complaint against the decision is admissible. If public charges have been preferred and the defendant has been notified, the court seized of the matter decides upon the application in its concluding decision.
(8) Personal data acquired by means of the measure which are no longer necessary for the purposes of criminal prosecution or a possible court review of the measure must be deleted without delay. The fact of the deletion is to be placed on record. Insofar as deletion of the data has been deferred merely for the purposes of a possible court review of the measure, the data may not be used for any other purpose without the consent of the data subjects; processing of the data is to be restricted accordingly.

Section 101a
Court decision; labelling and analysis of data; notification requirements in respect of traffic and usage data

(1) In the case of traffic data capture pursuant to section 100g, section 100a (3) and (4) and section 100e apply accordingly, with the proviso that

1. the operative part of the decision pursuant to section 100e (3) sentence 2 must also clearly designate the data to be transferred and the period during which they are to be transferred,

2. the person obliged to provide information pursuant to section 100a (4) sentence 1 must also give notification of which of the data he or she transferred were stored pursuant to section 176 of the Telecommunications Act.

In the cases under section 100g (2), also in conjunction with section 100g (3) sentence 2, in derogation from sentence 1, section 100e (1) sentence 2 does not apply. In the case of radio cell inquiries pursuant to section 100g (3), in derogation from section 100e (3) sentence 2 no. 5, a designation of the telecommunications which is strictly limited as to space and time and a sufficiently precise designation suffices.
(1a) When capturing and providing information on a telemedia service's usage data in accordance with section 100k, section 100a (3) and (4) applies accordingly, when capturing usage data in accordance with section 100k (1) and (2), also section 100e (1) and (3) to (5), with the proviso that in the operative part of the order under section 100e (3) sentence 2 the telephone number (section 100e (3) sentence 2 no. 5) is, where possible, replaced by a unique identifier relating to the data subject's user account or else as precise a description as possible of the telemedia service to which the request for information refers.
(2) If a measure under section 100g or section 100k (1) or (2) is ordered or extended, the reasons must in particular present, in respect of the individual case, the essential considerations taken into account when assessing the necessity for

and appropriateness of the measure, including as regards the extent of the data to be captured and the period for which they are to be captured.
(3) Personal data which were captured by means of measures under section 100g or section 100k (1) or (2) must be labelled accordingly and analysed without delay. The labelling must clearly indicate whether the data were stored in accordance with section 176 of the Telecommunications Act. After transmission to another agency, the receiving agency is to retain the original labelling. Section 101 (8) applies accordingly as regards the deletion of personal data.
(4) Usable personal data which have been captured by means of measures under section 100g (2), also in conjunction with section 100g (1) sentence 3 or (3) sentence 2, may be used without the consent of the persons involved in the telecommunications concerned only for the following other purposes and only in accordance with the following provisions:

1. in other criminal proceedings to investigate an offence on the basis of which a measure under section 100g (2), also in conjunction with section 100g (1) sentence 3 or (3) sentence 2, could be ordered or to establish the whereabouts of a person accused of such an offence,

2. transmission for the purposes of averting a concrete threat to life, limb or a person's liberty or to the existence of the Federation or one of the *Länder* (section 177 (1) no. 2 of the Telecommunications Act).

The transmitting agency places the fact of the data transmission and its purpose on record. If the data referred to in sentence 1 no. 2 are no longer needed to avert the danger or are no longer needed for a pre-judicial or judicial review of the measures taken to avert the danger, the agency responsible for averting the danger must delete any recordings of these data without delay. The fact of the deletion is to be placed on record. Where the deletion has only been postponed for the purpose of a possible pre-judicial or judicial review, the data may only be used for this purpose; they are to be blocked for uses for other purposes.
(5) If usable personal data which were stored pursuant to section 176 of the Telecommunications Act have been acquired through a relevant measure under police law, they may be used in criminal proceedings without the consent of the persons involved in the telecommunications concerned only to investigate an offence on the basis of which a measure under section 100g (2), also in conjunction with (3) sentence 2, could be ordered or to establish the whereabouts of a person accused of such an offence.
(6) Those involved in the telecommunications concerned and the users concerned of the telemedia services are to be informed of the fact that the traffic data are being captured pursuant to section 100g or that the usage data are being captured pursuant to section 100k (1) and (2). Section 101 (4) sentences 2 to 5 and (5) to (7) applies accordingly, with the proviso that

1. an order is required from the competent court if notification is not given pursuant to section 101 (4) sentence 3;

2. in derogation from section 101 (6) sentence 1, an order is always required from the competent court if notification pursuant to section 101 (5) sentence 1 is postponed, and the first postponement is to be limited to a period of a maximum of 12 months.

(7) In the cases under section 100k (3), the data subject is to be notified of the fact that information was provided. Notification takes place insofar as and as soon as it can be effected without thwarting the purpose for which the information was provided. It does not take place if the overriding interests of third parties or of the data subject worth protecting pose an obstacle thereto. If the notification in accordance with sentence 2 is deferred or is dispensed with in accordance with sentence 3, the reasons therefor are to be documented.

Section 101b
Statistics; reporting requirements

(1) By 30 June of each year following the reporting year in question, the *Länder* and the Federal Public Prosecutor General must submit to the Federal Office of Justice a report detailing those measures ordered within their remit under sections 100a, 100b, 100c, 100g and 100k (1) and (2). The Federal Office of Justice produces a summary of the measures ordered nationwide during the reporting year and publishes it on the internet. Before publication on the internet, the Federal Government must submit to the Bundestag a report detailing those measures ordered pursuant to section 100c in the previous calendar year.
(2) The summaries of measures taken pursuant to section 100a must include the following information:

1. the number of proceedings in which measures were ordered pursuant to section 100a (1);
2. the number of orders to intercept telecommunications pursuant to section 100a (1), distinguishing between initial and follow-up orders;
3. in each case, the underlying offence by reference to the categories listed in section 100a (2);
4. the number of proceedings in which interference with an information technology system used by the person concerned pursuant to section 100a (1) sentences 2 and 3
   a) was ordered by court decision and
   b) was actually carried out.

(3) The summaries of measures taken pursuant to section 100b must include the following information:

1. the number of proceedings in which measures were ordered pursuant to section 100b (1);
2. the number of orders to intercept telecommunications pursuant to section 100b (1), distinguishing between initial and follow-up orders;
3. in each case, the underlying offence by reference to the categories listed in section 100b (2);
4. the number of proceedings in which interference with an information technology system used by the person concerned was actually carried out.

(4) The reports concerning measures taken pursuant to section 100c must include the following information:

1. the number of proceedings in which measures were ordered pursuant to section 100c (1);
2. in each case, the underlying offence by reference to the categories listed in section 100b (2);
3. whether the proceedings are related to the prosecution of organised crime;
4. the number of premises under surveillance in each of the proceedings, distinguishing between private premises and other premises and between premises belonging to the accused and premises belonging to third parties;
5. the number of persons under surveillance in each of the proceedings, indicating whether or not they were accused persons;
6. the duration of each individual surveillance measure, indicating the duration of the order, the length of the extension of the order and the duration of the interception;
7. how frequently a measure under section 100d (4) and under section 100e (5) was interrupted or discontinued;
8. whether the persons concerned were informed (section 101 (4) to (6)) or, if not, the grounds for not informing them;
9. whether the surveillance measure produced results which are or may be expected to be of relevance to the proceedings;
10. whether the surveillance measure produced results which are or may be expected to be of relevance to other criminal proceedings;
11. where the surveillance measure failed to produce any relevant results: the reasons for this, distinguishing between technical and other reasons;
12. the costs of the measure, distinguishing between costs in respect of translation services and other costs.

(5) The summaries of measures taken pursuant to section 100g must include the following information:

1. differentiated according to measures taken pursuant to section 100g (1), (2) and (3):
   a) the number of proceedings in which such measures were carried out,
   b) the number of initial orders for such measures,
   c) the number of follow-up orders for such measures;
2. broken down by the number of past weeks for which the traffic data capture was ordered, in each case from the date of the order:
   a) the number of orders made pursuant to section 100g (1),
   b) the number of orders made pursuant to section 100g (2),
   c) the number of orders made pursuant to section 100g (3),

d) the number of orders which were partially unsuccessful because some of the requested data were not available,

e) the number of orders which were unsuccessful because no data were available.

(6) The summaries of measures taken pursuant to section 100k are to include the following information differentiated according to the measures under subsections (1) and (2):

1. the number of proceedings in which measures were ordered;
2. the number of orders, differentiated by initial and follow-up orders;
3. broken down by the number of weeks which have passed for which the capture of usage data was ordered, in each case calculated from the date of the order:

   a) the number of orders which were partially unsuccessful because some of the requested data were not available,

   b) the number of orders which were unsuccessful because no data were available.

Section 102
Search of accused's premises and person

A body search, a search of the property and of the private and other premises of a person who, as an offender or participant, is suspected of committing an offence or of handling stolen data or is suspected of aiding after the fact or of obstructing prosecution or punishment or of handling stolen goods may be made for the purpose of his or her apprehension and in cases where it may be presumed that the search will lead to the discovery of evidence.

Section 103
Search of other persons' premises

(1) Searches in respect of other persons are admissible only for the purpose of apprehending the accused or to follow up the traces of an offence or to seize certain objects and only if certain facts support the conclusion that the person, trace or object sought is located on the premises to be searched. For the purposes of apprehending an accused who is strongly suspected of having committed an offence under section 89a or section 89c (1) to (4) of the Criminal Code or under section 129a, also in conjunction with section 129b (1) of the Criminal Code, or one of the offences designated in such provision, a search of private and other premises is also admissible if they are located in a building in which it may be assumed, on the basis of certain facts, that the accused is located.
(2) The restrictions of subsection (1) sentence 1 do not apply to premises where the accused was apprehended or which he or she entered whilst being pursued.

Section 104
Night-time search

(1) Private premises, business premises and enclosed property may be searched during the night only in the following cases:

1. when pursuing a person caught in the act,

2. in exigent circumstances,

3. where certain facts give rise to the suspicion that an electronic storage medium will be accessed during the search which is considered as possible evidence and if, without the night-time search, the analysis of the electronic storage medium, in particular in unencrypted form, would be without prospect of success or considerably more difficult or

4. for the purpose of re-apprehending an escaped prisoner.

(2) This restriction does not apply to premises which are accessible at night to anyone or which are known to the police as places where offenders shelter or gather, as depots of property obtained through offences, or as hiding places for gambling, illegal trafficking in narcotics or weapons, or prostitution.
(3) 'Night-time' means the hours between 9 pm and 6 am.

Section 105
Procedure for searches

(1) Searches may be ordered only by the judge and, in exigent circumstances, also by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). Searches pursuant to section 103 (1) sentence 2 are ordered by the judge; in exigent circumstances, the public prosecution office is authorised to order such searches.
(2) If private premises, business premises or enclosed property are to be searched in the absence of the judge or public prosecutor, a municipal official or two members of the community in the district in which the search is carried out are to be called in, if possible, to assist. The persons called in as members of the community may not be police officers or the public prosecution office's investigators.
(3) If it is necessary to carry out a search in an official building or in an installation or facility of the Federal Armed Forces which is not open to the general public, the superior authority of the Federal Armed Forces is to be requested to carry out such a search. The requesting agency is entitled to participate. No such request is necessary if the search is to be carried out on premises which are inhabited exclusively by persons who are not members of the Federal Armed Forces.

Section 106
Calling in occupant of premises to be searched

(1) The occupant of the premises or the possessor of the objects to be searched may be present during the search. If the occupant is absent, his or her representative, an adult relative, a person living in his or her household or a neighbour is, if possible, to be called in to assist.
(2) In the cases under section 103 (1), the purpose of the search is to be made known to the occupant or to the person called in to assist in his or her absence before the search begins. This provision does not apply to the occupants of the premises indicated in section 104 (2).

Section 107
Notification of reason for search; inventory

Upon conclusion of the search, the person affected thereby is, upon request, to be given written notification indicating the reason for the search (sections 102 and 103) and, in the case under section 102, the offence. Upon request, said person is also to

be given a list of the objects which were taken into custody or seized; if nothing suspicious was found, however, said person is to be given a certificate to that effect.

Section 108
Seizure of other objects

(1) If objects which indicate that another offence has been committed are found during a search, they are to be provisionally seized even though they are not connected with the ongoing investigation. The public prosecution office is to be informed thereof. Sentence 1 does not apply to searches carried out pursuant to section 103 (1) sentence 2.
(2) If objects as defined in subsection (1) sentence 1 which relate to the termination of a patient's pregnancy are found on the premises of a physician, their use for evidential purposes in criminal proceedings against the patient is inadmissible in respect of an offence under section 218 of the Criminal Code.
(3) If objects as defined in subsection (1) sentence 1 are found on the premises of a person indicated in section 53 (1) sentence 1 no. 5, such objects being covered by the right of the person indicated to refuse to testify, the object is only admissible as evidence in criminal proceedings insofar as the subject of these criminal proceedings is an offence which is punishable by a minimum sentence of imprisonment of at least five years and is not an offence under section 353b of the Criminal Code.

Section 109
Marking of seized objects

Objects taken into custody or seized must be precisely recorded and, in order to prevent mistakes arising, marked with an official seal or in some other appropriate manner.

Section 110
Examination of identity papers and electronic storage media

(1) The public prosecution office and, if it so orders, its investigators (section 152 of the Courts Constitution Act) have the authority to examine identity papers belonging to the person affected by the search.
(2) In all other respects, officials are authorised to examine identity papers found by them only if the holder permits such examination. Otherwise, they are required to deliver any identity papers the examination of which they deem necessary to the public prosecution office in an envelope, which is to be sealed with the official seal in the presence of the holder.
(3) The examination of electronic storage media in accordance with the provisions of subsections (1) and (2) on the premises of the person affected by the search is permitted. Such an examination may also be extended to cover physically separate storage media insofar as they are accessible from the electronic storage medium if there is a concern that the data sought would otherwise be lost. Data which may be of significance for the investigation may be secured.
(4) Where identity papers are taken away for examination or data are provisionally secured, sections 95a and 98 (2) apply accordingly.

Section 110a
Undercover investigators

(1) Undercover investigators may be used to investigate offences if there are sufficient factual indications showing that an offence of substantial significance has been committed

1. in the sphere of the illegal trade in drugs or weapons, counterfeiting of money or official stamps,
2. in the sphere of state security (sections 74a and 120 of the Courts Constitution Act),
3. on a commercial or habitual basis or
4. by a member of a gang or in some other organised way.

Undercover investigators may also be used to investigate serious criminal offences if certain facts substantiate the risk of repetition. Their use is admissible only if other means of investigating the serious criminal offence would offer no prospect of success or would be much more difficult. Undercover investigators may also be used to investigate serious criminal offences if the special significance of the offence makes the operation necessary and other measures offer no prospect of success. Section 100d (1) and (2) applies accordingly.
(2) 'Undercover investigators' means police officers who carry out investigations using a changed and lasting identity (legend) which is conferred on them. They may take part in legal transactions using their legend.
(3) Where it is indispensable for building up or maintaining a legend, relevant documents may be drawn up, altered and used.

Section 110b
Procedure for deployment of undercover investigators

(1) The use of an undercover investigator is admissible only after the consent of the public prosecution office has been obtained. In exigent circumstances and if the decision of the public prosecution office cannot be obtained in time, such decision is to be obtained without delay; the measure must be terminated if the public prosecution office does not give its consent within three working days. Consent is to be given in writing and for a specified period. Extensions are admissible provided the conditions for the use of undercover investigators continue to apply.
(2) Use of undercover investigators

1. concerning a specific accused or
2. which involve the undercover investigator entering private premises which are not generally accessible

requires the consent of the court. In exigent circumstances, the consent of the public prosecution office suffices. If the public prosecution office's decision cannot be obtained in time, such decision is to be obtained without delay. The measure must be terminated if the court does not give its consent within three working days. Subsection (1) sentences 3 and 4 applies accordingly.
(3) The identity of the undercover investigator may be kept secret even after the operation has ended. The public prosecution office and the court responsible for the decision as to whether to consent to the use of the undercover investigator may require their identity to be revealed to them. In all other cases, maintaining the secrecy of identity in criminal proceedings is admissible pursuant to section 96, in particular if there is reason to fear that revealing their identity would endanger the

life, limb or liberty of the undercover investigator or of another person or would jeopardise the continued use of the undercover investigator.

Section 110c
Powers of undercover investigators

Undercover investigators are permitted to enter private premises using their legend with the consent of the entitled person. Such consent may not be obtained by any pretence of a right of access extending beyond the use of the legend. In all other respects, the undercover investigator's powers are governed by this statute and by other legal provisions.

Section 110d
Special procedure for operations to investigate offences under sections 176e and 184b Criminal Code

Operations in the course of which actions within the meaning of section 176e (1) and (3) or section 184b (1) sentence 1 nos. 1, 2 and 4 and sentence 2 of the Criminal Code are carried out in accordance with section 176e (5) or section 184b (6) of the Criminal Code require the consent of the court. The application therefor must state that the involved police officers have undergone comprehensive preparation for the operation. In exigent circumstances, the consent of the public prosecution office suffices. The measure must be terminated if the court does not give its consent within three working days. Consent must be given in writing and for a specified time. An extension is permissible for as long as the conditions for the operation continue to exist.

Section 111
Setting up of checkpoints at public places

(1) If certain facts give rise to the suspicion that an offence under section 89a or section 89c (1) to (4) of the Criminal Code or under section 129a, also in conjunction with section 129b (1), of the Criminal Code, one of the offences designated in such provision or an offence under section 250 (1) no. 1 of the Criminal Code has been committed, then checkpoints may be set up on public roads, squares and at other publicly accessible places where facts justify the assumption that this measure may lead to the apprehension of the offender or to the securing of evidence which may serve clarification of the offence. At checkpoints, all persons are obliged to establish their identity and to subject themselves or objects found on them to a search.
(2) The order to set up a checkpoint is made by a judge; in exigent circumstances, the public prosecution office and its investigators (section 152 of the Courts Constitution Act) are authorised to make such order.
(3) Section 106 (2) sentence 1, section 107 sentence 2 half-sentence 1, sections 108 and 109, section 110 (1) and (2), and sections 163b and 163c apply accordingly to the search and establishment of identity pursuant to subsection (1).

Section 111a
Provisional disqualification from driving

(1) If there are cogent reasons to believe that the accused will be disqualified from driving (section 69 of the Criminal Code), the judge may make an order provisionally disqualifying the accused from driving. Certain types of motor vehicles may be exempted from provisional disqualification from driving if special circumstances justify the assumption that the purpose of the measure will not be jeopardised thereby.

(2) The provisional disqualification from driving is to be revoked if the reason for it no longer applies or if the court does not disqualify the accused from driving in the judgment.
(3) The provisional disqualification from driving has the effect of an order or confirmation of seizure of the driving licence issued by a German authority. This also applies if the driving licence was issued by an authority of a Member State of the European Union or of another Contracting Party to the Agreement on the European Economic Area if the holder is ordinarily resident in Germany.
(4) If a driving licence has been seized because it may be disqualified pursuant to section 69 (3) sentence 2 of the Criminal Code and if a judicial decision concerning seizure is required, the latter is to be replaced by the decision on provisional disqualification.
(5) A driving licence which has been taken into custody, secured or seized because it may be disqualified pursuant to section 69 (3) sentence 2 of the Criminal Code is to be returned to the accused if the judge refuses to provisionally disqualify the accused from driving on account of the absence of the conditions of subsection (1) or the judge revokes the withdrawal, or if the court does not disqualify the accused from driving in the judgment. However, if a driving ban is imposed in the judgment pursuant to section 44 of the Criminal Code, the return of the driving licence may be postponed if the accused does not protest.
(6) Provisional disqualification from driving is be endorsed on foreign driving licences other than those referred to in subsection (3) sentence 2. The driving licence may be seized pending such endorsement (section 94 (3), section 98).

Section 111b
Seizure to secure confiscation or rendering unusable of object

(1) If it is reasonable to assume that the conditions for the confiscation or rendering unusable of an object are met, the object may be seized to secure enforcement. If there are cogent reasons justifying this assumption, such seizure is, as a rule, to be ordered. Section 94 (3) remains unaffected.
(2) Sections 102 to 110 apply accordingly.

Section 111c
Enforcement of seizure

(1) The seizure of movable property is enforced by taking the property into custody. It may also be indicated by marking with a seal or in some other manner.
(2) The seizure of a claim or another property right which is not subject to the provisions governing compulsory enforcement against immovable property is to be enforced by way of attachment. The provisions of the Code of Civil Procedure governing compulsory enforcement in respect of claims and other property rights apply analogously. The request in respect of making the declarations referred to in section 840 (1) of the Code of Civil Procedure is to be included in the order of attachment.
(3) The seizure of land or of a right which is subject to the provisions governing compulsory enforcement against immovable property is to be enforced by making an entry in the Land Registry. The provisions of the Act on Enforced Auction and Receivership (*Gesetz über die Zwangsversteigerung und Zwangsverwaltung*) governing the scope of the seizure in the case of forced sale apply accordingly.
(4) The seizure of a ship, a ship construction or an aircraft is to be enforced pursuant to subsection (1). If the property has been entered in the Register of Ships,

the Register of Ship Constructions or in the Register of Liens on Aircraft, an entry in respect of the seizure is to be made in the relevant register. Registrable ship constructions or aircraft may be registered for entry to that end; the provisions governing applications by persons entitled to request entry in the register by virtue of an executory title apply accordingly in this case.

Section 111d
Effect of enforcement of seizure; return of movable property

(1) The enforcement of seizure of an object has the same effect as the prohibition of disposal within the meaning of section 136 of the Civil Code (*Bürgerliches Gesetzbuch*). The effect of the seizure is not affected by the opening of insolvency proceedings against the person concerned's assets; measures taken pursuant to section 111c cannot be contested in such proceedings.
(2) The seized movable property may be returned to the person concerned upon payment of a sum of money equal to the value of the asset. The sum paid takes the place of the asset. It may also be surrendered to the person concerned, subject to revocation at any time, for his or her further use until the conclusion of the proceedings; the measure can be made dependent on the person concerned providing security or complying with certain conditions.
(3) Seized cash may be deposited or paid into a bank account held by the judicial authorities. The right to repayment arising upon the cash being paid into an account stands in lieu of the cash.

Section 111e
Asset seizure to secure confiscation of equivalent sum of money

(1) If it is reasonable to assume that the conditions for confiscation of the equivalent sum of money are met, seizure of the person concerned's movable and immovable assets may be ordered to secure enforcement. If there are cogent reasons justifying this assumption, such asset seizure is, as a rule, to be ordered.
(2) Asset seizure may also be ordered to secure enforcement of a fine and the anticipated costs of the criminal proceedings where a judgment or summary penalty order has been made against the accused.
(3) Seizure is not effected to secure the costs of enforcement.
(4) The claim to be secured, including the amount of money, must be designated in the order. In addition, the order must indicate a sum of money which the person concerned may deposit in order to avert enforcement of and demand the setting aside of the seizure; section 108 (1) of the Code of Civil Procedure applies accordingly.
(5) Sections 102 to 110 apply accordingly.
(6) The possibility of issuing an order pursuant to section 324 of the Fiscal Code poses no obstacle to the issuing of an order pursuant to subsection (1).

Section 111f
Enforcement of asset seizure

(1) Asset seizure in respect of movable property, of a claim or another property right which is not subject to compulsory enforcement against immovable property is enforced by way of attachment. Sections 928 and 930 of the Code of Civil Procedure apply analogously. Section 111c (2) sentence 3 applies accordingly.
(2) Asset seizure in respect of land or of a right which is governed by the provisions on compulsory enforcement against immovable property is enforced by entering a

debt-securing mortgage. Sections 928 and 932 of the Code of Civil Procedure apply analogously.
(3) Asset seizure in respect of a ship, a ship under construction or an aircraft is enforced pursuant to subsection (1). If the property has been entered in the Register of Ships, the Register of Ship Constructions or in the Register of Liens on Aircraft, sections 928 and 931 of the Code of Civil Procedure apply analogously.
(4) In the cases under subsection (2) and subsection (3) sentence 2, an entry is also made regarding the prohibition of disposal pursuant to section 111h (1) sentence 1 in conjunction with section 136 of the Civil Code.

Section 111g
Setting aside of enforcement of asset seizure

(1) If the person concerned deposits the sum of money determined in accordance with section 111e (4), the asset seizure measure is set aside.
(2) If the seizure was ordered by virtue of a fine or the anticipated costs of the criminal proceedings, asset seizure measures are to be set aside upon application by the defendant if the attached item is needed to pay the costs of the defendant's defence, his or her own maintenance or the maintenance of his or her family.

Section 111h
Effect of enforcement of asset seizure

(1) Enforcement of asset seizure in respect of an object has the same effect as the prohibition of disposal within the meaning of section 136 of the Civil Code. Section 80 (2) sentence 2 of the Insolvency Code (*Insolvenzordnung*) applies to the security interest arising upon enforcement of asset seizure.
(2) Compulsory enforcement in respect of objects secured by way of enforcing asset seizure pursuant to section 111f is not admissible for the duration of the enforcement of seizure. Enforcement of an order in accordance with section 324 of the Fiscal Code remains unaffected insofar as the right of seizure arose by virtue of an offence.

Section 111i
Insolvency proceedings

(1) If every person has become entitled, by virtue of the offence, to claim the sum of money equal to the value of that which was obtained and if insolvency proceedings have been opened against the debtor's assets, the security interest referred to in section 111h (1) in respect of the object or the proceeds generated by its realisation expires as soon as it forms part of the insolvency estate. The security interest does not expire in respect of objects located in a state in which the opening of the insolvency proceedings is not recognised. Sentences 1 and 2 apply accordingly to a lien in respect of the security deposited pursuant to section 111g (1).
(2) If there are several entitled persons within the meaning of subsection (1) sentence 1 and either the value of the object secured by means of enforcing the asset seizure or the proceeds generated by its realisation are not sufficient to satisfy their claims, then the public prosecution office files a request to open insolvency proceedings against the debtor's assets. The public prosecution office does not file such a request to open insolvency proceedings if there is justified reason to doubt that the insolvency proceedings will be opened on the basis of such request.
(3) If a surplus remains following the final distribution, the state acquires a lien up to the amount of the attached assets over the debtor's claim to surrender of such

surplus. The insolvency administrator surrenders the amount of the surplus to the public prosecution office.

Section 111j
Procedure for ordering seizure and asset seizure

(1) Seizure and asset seizure are ordered by the court. In exigent circumstances, the order may also be made by the public prosecution office. Under the conditions of sentence 2, the public prosecution office's investigators (section 152 of the Courts Constitution Act) are also competent to seize movable property.
(2) Where the public prosecution office has ordered seizure or asset seizure, it applies to the court for confirmation of the order within one week. This does not apply where the seizure of movable property has been ordered. In all cases, the person concerned may apply for a court decision. The competence of the court is governed by section 162.

Section 111k
Procedure for enforcing seizure and asset seizure

(1) Seizure and asset seizure are enforced by the public prosecution office. The requisite entries to be made in the Land Registry and in the registers designated in section 111c (4) and the applications referred to in section 111c (4) are effected upon the request of the public prosecution office. Where such asset seizure is to be enforced pursuant to the provisions governing the attachment of movable property, this may be done by the authority designated in section 2 of the Act on the Recovery of Claims of the Judicial Authorities (*Justizbeitreibungsgesetz*), by the court bailiff, the public prosecution office or its investigators (section 152 of the Courts Constitution Act). The seizure of movable property may also be enforced by the public prosecution office's investigators (section 152 of the Courts Constitution Act). Section 98 (4) applies accordingly.
(2) Section 37 (1) applies to service, subject to the proviso that the task of enforcing the order may also be delegated to the public prosecution office's investigators (section 152 of the Courts Constitution Act). Sections 173 and 175 of the Code of Civil Procedure apply accordingly as regards service to a financial institution authorised to conduct business in Germany.
(3) The person concerned may apply for a decision from the court competent in accordance with section 162 in respect of measures taken in the course of enforcing the seizure or asset seizure.

Section 111l
Notification requirements

(1) The public prosecution office gives notice of the enforcement of seizure or of asset seizure to the person who has become entitled to the return of that which was obtained or to payment of the sum of money equal to the value of that which was obtained by virtue of the offence.
(2) In the case of seizure of movable property, such notification must include a reference to the regulatory content of provisions governing the procedure for surrender under sections 111n and 111o.
(3) In the case of enforcement of asset seizure, the public prosecution office at the same time invites the entitled party to declare whether he or she wishes to claim the sum of money equal to the value of that which was obtained by virtue of the offence and the amount thereof. Notification must include a reference to the regulatory

content of section 111h (2) and of the procedure pursuant to section 111i (2), section 459h (2) and section 459k.
(4) Notification may be made by means of publication once in the Federal Gazette if notification of each individual would involve disproportionate effort. Notification may also be published in some other suitable manner. The same applies if it is not known who has become entitled to the return of that which was obtained or to payment of the sum of money equal to the value of that which was obtained by virtue of the offence, or if the entitled party's whereabouts are not known. Personal data may be published only if it is essential that they be published to safeguard the entitled party's rights. After completion of the relevant measures, the public prosecution office must have the notification deleted.

Section 111m
Management of seized or attached items

(1) The public prosecution office is responsible for managing items which have been seized pursuant to section 111c or attached by way of asset seizure pursuant to section 111f. It may delegate such administrative tasks to its investigators (section 152 of the Courts Constitution Act) or to a court bailiff. In appropriate cases, these tasks may also be delegated to another person.
(2) The person concerned may apply for a decision from the court competent pursuant to section 162 against measures taken in the course of performing the tasks referred to in subsection (1).

Section 111n
Surrender of movable property

(1) If movable property which has been seized or otherwise secured pursuant to section 94 or which has been seized pursuant to section 111c (1) is no longer required for the purposes of the criminal proceedings, it is surrendered to the last person having possession of it.
(2) In derogation from subsection (1), the object is surrendered to the person who has been directly deprived of it by the offence if that person is known.
(3) If the claim of a third party stands in the way of the object being surrendered in accordance with subsection (1) or (2), the property is surrendered to the third party if that third party is known.
(4) Such surrender is effected only if the conditions therefor are manifestly met.

Section 111o
Procedure for surrender

(1) In the preparatory proceedings and after final conclusion of the proceedings, the decision in respect of the surrender of movable objects lies with the public prosecution office, in all other cases with the court seized of the matter.
(2) The persons concerned may apply to the court competent pursuant to section 162 for a decision against a direction issued by the public prosecution office.

Section 111p
Emergency sale

(1) An object which has been seized pursuant to section 111c or attached pursuant to section 111f may be sold if there is a danger of its deterioration or of its suffering a significant loss in value, or if its storage, maintenance or upkeep gives rise to significant costs or difficulties (emergency sale). The proceeds of sale take the place of the object sold.

(2) The emergency sale is ordered by the public prosecution office. Its investigators (section 152 of the Courts Constitution Act) have this authority if there is a danger of the object deteriorating before a decision can be obtained from the public prosecution office.
(3) The persons affected by the seizure or attachment are, as a rule, to be heard before the order is made. The order and the time and place of the sale are to be made known to them insofar as this appears feasible.
(4) The public prosecution office is responsible for conducting the emergency sale. The public prosecution office may delegate this task to its investigators (section 152 of the Courts Constitution Act). In all other respects, the provisions of the Code of Civil Procedure concerning the realisation of objects apply analogously to the emergency sale.
(5) The person concerned may apply to the court competent pursuant to section 162 for a decision against the emergency sale and its enforcement. The court, in exigent cases the presiding judge, may order the suspension of the sale.

Section 111q
Seizure of manifested content and equipment

(1) The seizure of manifested content (section 11 (3) of the Criminal Code) or of equipment within the meaning of section 74d of the Criminal Code may not be ordered pursuant to section 111b (1) if its prejudicial consequences, in particular jeopardising the public interest in prompt dissemination, are manifestly disproportionate to the importance of the matter.
(2) Severable parts of the manifested content which do not contain anything of a criminal nature are to be excluded from seizure. Further limitations on the seizure may be included in the order.
(3) The seizure may be averted if the person concerned excludes from reproduction or dissemination that part of the content giving rise to the seizure.
(4) It is for the court to order the seizure of periodically printed manifested content (section 11 (3) of the Criminal Code) or of the equipment used or intended for its production within the meaning of section 74d of the Criminal Code. Seizure of other printed manifested content (section 11 (3) of the Criminal Code) or of the equipment used or intended for its production within the meaning of section 74d of the Criminal Code may also, in exigent circumstances, be ordered by the public prosecution office. The order made by the public prosecution office becomes ineffective if it is not confirmed by the court within three days. The precise content giving rise to the seizure must be designated in the order for seizure.
(5) Seizure in accordance with subsection (4) is to be set aside if public charges have not been preferred or independent confiscation has not been applied for within two months. If the time limit set in sentence 1 is not sufficient owing to the particular scope of the investigations, the court may, upon application by the public prosecution office, extend the time limit by another two months. The application may be repeated once. Prior to the preferment of public charges or prior to an application for independent confiscation, the seizure is to be set aside upon application therefor by the public prosecution office.

Division 9
Arrest and provisional arrest

Section 112
Conditions for remand detention; grounds for arrest

(1) Remand detention may be ordered against an accused person if he or she is strongly suspected of having committed the offence and there is a ground for arrest. It may not be ordered if it is disproportionate to the significance of the case or to the penalty or measure of reform and prevention likely to be imposed.
(2) A ground for arrest exists if, on the basis of certain facts,

1. it is established that the accused is at large or in hiding,
2. considering the circumstances of the individual case, there is a risk that the accused will evade the criminal proceedings (risk of flight) or
3. the accused's conduct gives rise to the strong suspicion that he or she will
   a) destroy, alter, remove, suppress or falsify evidence or
   b) improperly influence the co-accused, witnesses or experts or
   c) cause others to do so

   and if, therefore, the danger exists that establishment of the truth will be made more difficult (risk of the suppression of evidence).

(3) Remand detention may also be ordered against an accused who is strongly suspected pursuant to section 308 (1) to (3) of the Criminal Code of having committed an offence under section 6 (1) no. 1 or section 13 (1) of the Code of Crimes against International Law or section 129a (1) or (2), also in conjunction with section 129b (1), or under section 176c, 176d, 211, 212, 226, 306b or 306c of the Criminal Code or insofar as the life or limb of another has been endangered by the offence, even if there are no grounds for arrest pursuant to subsection (2).

Section 112a
Danger of recidivism as ground for arrest

(1) A ground for arrest also exists if the accused is strongly suspected of

1. having committed an offence under sections 174, 174a, 176 to 176d, 177, 178, 184b (2) or under section 238 (2) and (3) of the Criminal Code or
2. having repeatedly or continually committed an offence which seriously undermines the legal order under section 89a, section 89c (1) to (4), section 125a, sections 224 to 227, sections 243, 244, 249 to 255 or section 260, section 263, sections 306 to 306c or section 316a of the Criminal Code or under section 29 (1) sentence 1 no. 1 or no. 10 or (3), section 29a (1), section 30 (1), section 30a (1) of the Narcotics Act, or under section 4 (3) no. 1 (a) of the New Psychoactive Substances Act

and certain facts substantiate the risk that prior to final conviction he or she will commit further serious crimes of the same nature or will continue the offence, detention is required to avert the imminent danger and, in the cases under no. 2, imprisonment for a term exceeding one year is expected to be imposed. When assessing the strong suspicion of the accused's having committed an offence within the meaning of sentence 1 no. 2, consideration is also to be given to offences which are or have been the subject of other, including finally concluded, proceedings.
(2) Subsection (1) does not apply if the conditions for issuing a warrant of arrest under section 112 are met and the conditions for the suspension of enforcement of the warrant of arrest under section 116 (1) and (2) are not met.

Section 113
Remand detention for less serious offences

(1) If the offence is punishable only by imprisonment for a term not exceeding six months or a fine of no more than 180 daily rates, then remand detention may not be ordered on the ground of a risk of the suppression of evidence.
(2) In such cases, remand detention may be imposed on the ground of a risk of flight only if the accused

1. has previously evaded the proceedings against him or her or has made preparations for flight,
2. has no permanent residence or residence within the territorial scope of this statute or
3. cannot establish his or her identity.

Section 114
Warrant of arrest

(1) Remand detention is imposed by the judge in a written warrant of arrest.
(2) The warrant of arrest must indicate

1. the accused,
2. the offence of which the accused is strongly suspected, the time and place of its commission, the statutory elements of the offence and the penal provisions to be applied,
3. the ground for arrest and
4. the facts disclosing the strong suspicion of the offence and the ground for arrest, unless disclosure endangers national security.

(3) If it appears that section 112 (1) sentence 2 is applicable or if the accused invokes that provision, the grounds for not applying it must be stated.

Section 114a
Issuance of warrant of arrest; translations

A copy of the warrant of arrest is to be handed over to the accused at the time of his or her arrest; if the accused does not have a sufficient command of the German language, then, in addition, a translation in a language he or she understands is to be provided. If it is not possible for a copy and, where necessary, a translation to be handed over to the accused, he or she must be informed without delay, in a language he or she understands, of the grounds for arrest and of the accusations levied against him or her. In that case, the copy of the warrant of arrest and, where necessary, a translation are subsequently to be handed over to the accused without delay.

Section 114b
Instruction of arrested accused

(1) Arrested accused are to be instructed as to their rights without delay and in writing in a language they understand. If written instruction is clearly insufficient, oral instruction is also to be given. The same procedure applies accordingly if it is not possible to give instruction in writing; however, written instruction is, as a rule, to be given subsequently insofar as this can reasonably be done. The accused must, as a

rule, confirm in writing that instruction was given; if the accused refuses, this is to be documented.
(2) In the instruction pursuant to subsection (1) accused persons are to be advised that they

1. are, without delay, at the latest on the day after their apprehension, to be brought before the court which is to examine them and decide on their further detention,
2. have the right to reply to the accusation or to remain silent,
3. may request that evidence be taken in their defence,
4. may at any time, including before their examination, consult with defence counsel of their own choice; they are to be provided with information which assists them in contacting defence counsel; reference is thereby to be made to emergency legal services,

4a. may, in the cases under section 140, request the appointment of court-appointed defence counsel in accordance with the provisions of section 141 (1) and section 142 (1); reference is thereby to be made to the fact that they may be obliged to pay costs as required by section 465,

5. have the right to demand an examination by a female or male physician of their own choice,
6. may notify a relative or a person trusted by them, provided the purpose of the investigation is not significantly endangered thereby,
7. may, in accordance with the provisions of section 147 (4), apply to inspect the files and, under supervision, to view items of evidence in official custody if they have no defence counsel and
8. may, if remand detention is continued after they are brought before the competent judge,
   a) lodge a complaint against the warrant of arrest or apply for a review of detention (section 117 (1) and (2)) and an oral hearing (section 118 (1) and (2)),
   b) in the event of inadmissibility of the complaint, make an application for a court decision pursuant to section 119 (5) and
   c) make an application for a court decision pursuant to section 119a (1) against official decisions and measures in the enforcement of remand detention.

The accused is to be advised of defence counsel's right to inspect the files under section 147. An accused who does not have a sufficient command of the German language is to be advised in a language he or she understands that he or she may, in accordance with the provisions of section 187 (1) to (3) of the Courts Constitution Act, demand that an interpreter or a translator be called in free of charge for the entire criminal proceedings; a hearing or speech impaired accused is to be instructed as to the right to choose under section 186 (1) and (2) of the Courts Constitution Act. Foreign nationals are to be advised that they may demand

notification of the consular representation of their home state and have messages communicated to the same.

Section 114c
Notification of relatives

(1) Arrested accused are to be given the opportunity without delay to notify a relative or a person trusted by them, provided the purpose of the investigation is not significantly endangered thereby.
(2) If detention is enforced against an arrested accused after he or she is brought before the court, the court orders that one of the arrested accused's relatives or a person trusted by him or her be notified without delay. The same duty exists in respect of every further decision on the continuation of detention.

Section 114d
Information communicated to penal institution

(1) The court communicates a copy of the warrant of arrest along with the request for admission to the penal institution competent for the accused. In addition, it informs the penal institution of

1. the public prosecution office in charge of the proceedings and the court competent pursuant to section 126,
2. the persons notified pursuant to section 114c,
3. decisions and other measures under section 119 (1) and (2),
4. other decisions given in the proceedings, insofar as this is necessary for the performance of the duties of the penal institution,
5. dates set down for the main hearing and information following therefrom which is necessary for the performance of the duties of the penal institution,
6. the time of the entry into force of the judgment and
7. other personal data of the accused which the penal institution requires in the performance of its duties, especially data concerning the accused's personality and other relevant criminal proceedings.

Sentences 1 and 2 apply accordingly in the event of changes in the communicated facts. Communications are dispensed with insofar as the facts have already otherwise become known to the penal institution.
(2) The public prosecution office supports the court in the performance of its duties under subsection (1) and, in particular, communicates ex officio to the penal institution the data referred to in subsection (1) sentence 2 no. 7 and decisions and other measures it has taken pursuant to section 119 (1) and (2). The public prosecution office also transmits a copy of the bill of indictment to the penal institution and communicates the fact of the preferment of charges to the court competent pursuant to section 126 (1).

Section 114e
Information passed on by penal institution

The penal institution communicates ex officio to the court and to the public prosecution office information obtained during the enforcement of remand detention insofar as such information, in the opinion of the penal institution, is of importance for the performance of the recipient's duties and it has not already otherwise

become known to them. Other rights of the penal institution to communicate information to the court and to the public prosecution office remain unaffected.

Section 115
Appearance before competent judge

(1) If the accused is apprehended on the basis of a warrant of arrest, he or she is to be brought before the competent court without delay.
(2) The court is required to examine the accused concerning the subject of the accusation without delay following his or her arrest and no later than on the following day.
(3) During the examination, the incriminating circumstances are to be pointed out to the accused and the accused is to be informed of the right to reply to the accusation or to remain silent. The accused is to be given the opportunity to remove grounds for suspicion and arrest and to present those facts which speak in his or her favour.
(4) If remand detention is continued, the accused is to be informed of the right of complaint and of other legal remedies (section 117 (1) and (2), section 118 (1) and (2), section 119 (5), section 119a (1)). Section 304 (4) and (5) remains unaffected.

Section 115a
Appearance before judge at nearest local court

(1) If the accused cannot be brought before the competent court at the latest on the day after being apprehended, then he or she is to be brought before the nearest local court without delay, no later than the day following apprehension.
(2) Once the accused has been brought before it, the court is required to examine him or her without delay, no later than the following day. Section 115 (3) applies at this examination, to the extent possible. If it transpires in the course of the examination that the warrant of arrest has been revoked, that an application for its revocation has been made by the public prosecution office (section 120 (3)) or that the person apprehended is not the person designated in the warrant of arrest, the apprehended person is to be released. If the apprehended person raises other objections to the warrant of arrest or its enforcement which are not manifestly unfounded or if the court has doubts regarding the continuation of detention, it informs the competent court and the competent public prosecution office without delay, using the fastest means available in the circumstances; the competent court is required without delay to review whether the warrant of arrest is to be revoked or its enforcement suspended.
(3) If the accused is not released, he or she is, upon request, to be brought before the competent court for examination in accordance with section 115. The accused is to be informed of this right and instructed pursuant to section 115 (4).

Section 116
Suspension of enforcement of warrant of arrest

(1) The judge suspends enforcement of a warrant of arrest which is justified merely by a risk of flight if there is a sufficiently substantiated expectation that the purpose of remand detention may also be achieved by less severe measures. The following measures, in particular, may be considered:

1. the direction to report at certain times to the judge, the prosecuting authority or to a specific office to be designated by them,
2. the direction not to leave one’s place of residence or stay or a certain area without the permission of the judge or the prosecuting authority,

3. the direction not to leave one's private premises except under the supervision of a designated person,

4. the provision of security by the accused or another person.

(2) The judge may also suspend enforcement of a warrant of arrest which is justified on account of the risk of suppression of evidence if less severe measures sufficiently give rise to the expectation that they will considerably reduce the risk of the suppression of evidence. In particular, a direction not to have contact with co-accused persons, witnesses or experts may be considered.
(3) The judge may suspend enforcement of a warrant of arrest issued in accordance with section 112a if there are sufficient grounds to assume that the accused will comply with certain directions and that the purpose of detention will be fulfilled thereby.
(4) In the cases under subsections (1) to (3), the judge must order enforcement of the warrant of arrest if

1. the accused grossly contravenes the duties and restrictions imposed upon him or her,

2. the accused makes preparations for flight, remains absent without sufficient excuse upon proper summons to appear or shows in any other manner that the trust placed in him or her was not justified or

3. new circumstances have arisen which necessitate the arrest.

Section 116a
Suspension upon provision of security

(1) Security is to be provided by depositing cash, securities, pledges or a guarantee issued by suitable persons. Any diverging provisions in a statutory instrument issued under the Act on Payments to and from Courts and Judicial Authorities (*Gesetz über den Zahlungsverkehr mit Gerichten und Justizbehörden*) remain unaffected.
(2) The judge determines the amount and type of security at his or her discretion.
(3) An accused person who is not resident within the territorial scope of this statute and applies for suspension of enforcement of the warrant of arrest upon provision of security is obliged to authorise a person residing within the district of the competent court to receive service on his or her behalf.

Section 116b
Relationship between remand detention and other measures involving deprivation of liberty

Enforcement of remand detention precedes the enforcement of detention pending extradition, provisional detention pending extradition, detention pending deportation and detention pending exit from the federal territory. Enforcement of other measures involving deprivation of liberty precede the enforcement of remand detention, unless the court rules otherwise because the purpose of remand detention so requires.

Section 117
Review of detention

(1) As long as an accused is in remand detention, he or she may at any time apply for a court hearing as to whether the warrant of arrest is to be revoked or its enforcement suspended in accordance with section 116 (review of detention).

(2) A complaint is inadmissible if an application has been made for a review of detention. The right of complaint against the decision on the application remains unaffected.
(3) The judge may order specific investigations which may be important for the subsequent decision concerning continuation of remand detention and may conduct a further review after completion of such investigations.
(4) (repealed)
(5) (repealed)

Section 118
Procedure for review of detention

(1) In the case of a review of detention being carried out, a decision is given after an oral hearing upon application by the accused or ex officio at the court's discretion.
(2) If a complaint has been lodged against the warrant of arrest, then, upon application by the accused or ex officio, a decision may also be given in the complaint proceedings after an oral hearing.
(3) If remand detention has been upheld following an oral hearing, the accused has the right to a further oral hearing only if remand detention has continued for at least three months and at least two months of remand detention have elapsed since the last oral hearing.
(4) No right to an oral hearing exists as long as the main hearing is in process or after a judgment has been pronounced which imposes a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty.
(5) The oral hearing is to be held without delay; unless the accused consents thereto, it may not be scheduled more than two weeks after receipt of the application.

Section 118a
Oral hearing for review of remand detention

(1) The public prosecution office, the accused and defence counsel are to be notified of the place and time of the oral hearing.
(2) The accused is to be brought to the hearing, unless he or she has waived the right to be present at the hearing or unless great distance or sickness of the accused or other insurmountable obstacles prevent his or her being brought to the hearing. The court may order that, under the conditions of sentence 1, the oral hearing is to be conducted in such a way that the accused is located somewhere other than the court and the hearing is simultaneously transmitted audio-visually to the place where the accused is located and to the courtroom. If the accused is not brought to the oral hearing and if the procedure pursuant to sentence 2 is not followed, defence counsel must safeguard the accused's rights at the hearing.
(3) The parties present are to be heard during the oral hearing. The court determines the type and extent of evidence to be taken. A record is to be drawn up of the hearing; sections 271 to 273 apply accordingly.
(4) The decision is to be pronounced at the end of the oral hearing. If this is not possible, the decision is to be given within one week at the latest.

Section 118b
Application of provisions concerning appellate remedies

Sections 297 to 300 and section 302 (2) apply accordingly to applications for a review of detention (section 117 (1)) and to applications for an oral hearing.

Section 119
Restrictions during remand detention relating to grounds for arrest

(1) Insofar as necessary to avert the risk of flight, suppression of evidence or repetition (sections 112 and 112a), restrictions may be imposed upon a detained accused. In particular, an order may be made that

1. visitation and telecommunications are subject to permission,
2. visitation, telecommunications, correspondence and parcels are to be monitored,
3. the handing over of items during visitation is subject to permission,
4. the accused is to be separated from individual or all other detainees,
5. the accused's placement and presence on premises shared with other detainees is to be restricted or ruled out.

The orders are made by the court. If its order cannot be obtained in time, the public prosecution office or the penal institution may make a provisional order. The order must be submitted to the court for approval within three working days, unless it has in the meantime ceased to be operative. The accused is to be informed of any orders made. The order referred to in sentence 2 no. 2 must include the authorisation to terminate visitation and telecommunications and to hold correspondence and parcels.
(2) Implementation of the order is incumbent upon the authority making the order. The court may revocably transfer the implementation of orders to the public prosecution office, which may avail itself of the services of its investigators and the penal institution in effecting such implementation. The transfer is not contestable.
(3) Where the surveillance of telecommunications has been ordered pursuant to subsection (1) sentence 2 no. 2, the persons with whom the accused is communicating are to be informed of the intended surveillance immediately after the connection has been established. The information may be given by the accused himself or herself. The accused is to be advised in good time prior to the commencement of telecommunications of the duty to so inform.
(4) Sections 148 and 148a remain unaffected. They apply accordingly to communications between the accused and

1. the probation office competent for the accused's case,
2. the authority competent for supervision of the accused's conduct,
3. the court assistance agency competent for the accused's case,
4. the Bundestag and the *Länder* parliaments,
5. the Federal Constitutional Court and the *Land* constitutional court competent for the accused's case,
6. the *Land* ombudsman competent for the accused's case,
7. the Federal Commissioner for Data Protection and Freedom of Information, the agencies of the *Länder* competent for the monitoring of compliance with data protection provisions in the *Länder* and the supervisory authorities pursuant to section 40 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 Data Protection Supervisor,
12. the European Ombudsman,
13. the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
14. the European Commission against Racism and Intolerance,
15. the United Nations Human Rights Committee,
16. the United Nations Committee on the Elimination of Racial Discrimination and the United Nations Committee on the Elimination of Discrimination against Women,
17. the United Nations Committee against Torture, its Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the corresponding national preventive mechanisms,
18. the persons mentioned in section 53 (1) sentence 1 nos. 1 and 4 in regard to the content specified therein,
19. unless the court orders otherwise,
    a) the prison advisory boards and
    b) the consular representation of the accused's home state.

The measures necessary to determine the existence of the conditions of sentences 1 and 2 are taken by the authority competent pursuant to subsection (2).
(5) An application for a court decision may be made against decisions or other measures taken pursuant to this provision, unless the legal remedy of complaint is admissible. The application does not have suspensive effect. The court may, however, make provisional orders.
(6) Subsections (1) to (5) also apply where another measure involving deprivation of liberty (section 116b) is enforced against an accused in respect of whom remand detention has been ordered. In this case as well, the competence of the court is governed by section 126.

Section 119a
Court decision on measure taken by enforcing authority

(1) An application for a court decision may be made against an official decision or measure in the enforcement of remand detention. An application for a court decision may also be made if an official decision applied for in the enforcement of remand detention is not given within three weeks.
(2) The application for a court decision does not have suspensive effect. The court may, however, make provisional orders.
(3) The authority competent for the decision or measure relating to enforcement may also file a complaint against the decision of the court.

Section 120
Revocation of warrant of arrest

(1) The warrant of arrest is to be revoked as soon as the conditions for remand detention no longer apply or if continued remand detention is disproportionate to the importance of the case or to the anticipated penalty or measure of reform and prevention. 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 terminated other than provisionally.
(2) The accused's release may not be delayed by the fact that an appellate remedy is being sought.
(3) The warrant of arrest is also to be revoked if the public prosecution office makes the relevant application before public charges have been preferred. The public prosecution office may order the release of the accused simultaneously with such application.

Section 121
Continuation of remand detention beyond six months

(1) As long as a judgment has not been given imposing a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty, then remand detention for one and the same offence exceeding a period of six months may be enforced only if the particular difficulty or the unusual extent of the investigations or some other important reason do not yet admit pronouncement of judgment and justify continuation of remand detention.
(2) In the cases under subsection (1), the warrant of arrest is to be revoked upon expiry of the six-month period, unless enforcement of the warrant of arrest is suspended pursuant to section 116 or the higher regional court orders remand detention to continue.
(3) If the case file is submitted to the higher regional court prior to the expiry of the time limit referred to in subsection (2), the running of the time limit is suspended pending that court's decision. If the main proceedings commenced prior to the expiry of the time limit, the running of the time limit is suspended until pronouncement of judgment. If the main proceedings are suspended and the case file is forwarded to the higher regional court without delay upon suspension of the proceedings, the running of the time limit is likewise suspended pending that court's decision.
(4) In cases over which a criminal division has jurisdiction pursuant to section 74a of the Courts Constitution Act, the decision is given by the higher regional court competent pursuant to section 120 or 120a of the Courts Constitution Act. In cases over which a higher regional court has jurisdiction pursuant to section 120 of the Courts Constitution Act, the Federal Court of Justice decides instead.

Section 122
Special review of detention by higher regional court

(1) In the cases under section 121, the competent court submits the files via the public prosecution office to the higher regional court for decision if it deems the continuation of remand detention necessary or if the public prosecution office so requests.
(2) The accused and his or her defence counsel are to be heard prior to the decision. The higher regional court may decide on the continuation of remand detention after an oral hearing; in that case, section 118a applies accordingly.

(3) If the higher regional court orders continuation of remand detention, section 114 (2) no. 4 applies accordingly. In respect of the further review of remand detention (section 117 (1)), the higher regional court has jurisdiction until a judgment is given imposing a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty. It may refer the review of remand detention to the court having jurisdiction pursuant to the general provisions for a period not exceeding three months. In the cases under section 118 (1), the higher regional court decides on an application for an oral hearing at its discretion.
(4) Reviews of whether the conditions of section 121 (1) are met are also reserved for the higher regional court in the further course of the proceedings. This review must be repeated no later than every three months.
(5) The higher regional court may suspend enforcement of the warrant of arrest in accordance with section 116.
(6) If more than one accused person is in remand detention in the same case, the higher regional court may decide on the continuation of remand detention 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 Court of Justice has jurisdiction, it decides instead of the higher regional court.

Section 122a
Maximum duration of remand detention in case of danger of recidivism

In the cases under section 121 (1), enforcement of remand detention may not be maintained for longer than one year if it is based on the grounds for arrest under section 112a.

Section 123
Revocation of measures to suspend enforcement of detention

(1) A measure serving to suspend enforcement of detention (section 116) is to be revoked if

1. the warrant of arrest has been revoked or
2. remand detention or imprisonment or a measure of reform and prevention involving deprivation of liberty is being enforced.

(2) A security not yet forfeited is discharged under the same conditions.
(3) Anyone who has provided security for the accused may bring about its discharge either by causing the accused to appear within a time limit to be set by the court or by reporting facts which warrant a suspicion that the accused intends to flee and doing so early enough to allow for the accused to be arrested.

Section 124
Forfeiture of security paid

(1) A security not yet discharged is forfeited to the Treasury if the accused evades the investigation or the commencement of imprisonment or the measure of reform and prevention involving deprivation of liberty.
(2) Prior to the decision, the accused and the person who has provided security for the accused is to be requested to make a statement. They are entitled only to lodge an immediate complaint against the decision. Before a decision is given concerning the complaint, these persons and the public prosecution office are to be given the

opportunity to support their applications orally and to discuss the investigations which were made.
(3) In respect of the person who has provided security for the accused, the decision declaring forfeiture has the effect of a final judgment passed by a civil court judge and declared provisionally enforceable. After expiry of the time limit for lodging a complaint, the decision takes binding effect as a final civil judgment.

Section 125
Competence for issuance of warrant of arrest

(1) Prior to the preferment of public charges, it is for the judge at the local court within whose district venue is vested or where the accused is residing to issue the warrant of arrest upon application by the public prosecution office or, if a public prosecutor cannot be reached and there are exigent circumstances, ex officio.
(2) After public charges have been preferred, the warrant of arrest is issued by the court seized of the case and, if an appeal on points of law has been filed, by the court whose judgment is being contested. In urgent cases, the presiding judge may also issue the warrant of arrest.

Section 126
Competence for further court decisions

(1) Prior to the preferment of public charges, the court which issued the warrant of arrest is competent in respect of further court decisions and measures relating to remand detention, suspension of its enforcement (section 116), its enforcement (section 116b) and applications pursuant to section 119a. If the warrant of arrest has been issued by a court hearing the complaint, jurisdiction rests with the court which gave the preceding decision. If the preparatory proceedings are conducted at another place or if remand detention is enforced at another place, the court may, upon application by the public prosecution office, transfer its jurisdiction to the local court competent for that other place. If that place is divided into more than one court district, the *Land* government issues a statutory instrument determining which local court is to be competent. The *Land* government may delegate this authorisation to the *Land* department of justice.
(2) After public charges have been preferred, the court seized of the case has jurisdiction. During proceedings on an appeal on points of law, the court whose judgment is being contested has jurisdiction. Individual measures, in particular those under section 119, are ordered by the presiding judge. In urgent cases, the presiding judge may also revoke the warrant of arrest or suspend its enforcement (section 116) if the public prosecution office consents thereto; otherwise, the decision of the court must be obtained without delay.
(3) The court hearing the appeal on points of law may revoke the warrant of arrest if it quashes the contested judgment and in arriving at this decision it is evident that the conditions of section 120 (1) are met.
(4) Sections 121 and 122 remain unaffected.
(5) Where, pursuant to the legislation of the *Länder* concerning the enforcement of remand detention, a measure requires a prior court order or the approval of the court, competence lies with the local court in whose district the measure is to be enforced. Where a *Land* maintains a facility for the purpose of enforcing remand detention on the territory of another *Land*, the *Länder* concerned may agree that competence lies with the local court in whose district the supervisory authority

responsible for that facility has its seat. Section 121b of the Prison Act (*Strafvollzugsgesetz*) applies accordingly to the proceedings.

Section 126a
Provisional placement

(1) If there are cogent reasons to believe that someone has committed an unlawful act whilst lacking criminal responsibility or whilst in a state of diminished responsibility (sections 20 and 21 of the Criminal Code) and that that person's placement in a psychiatric hospital or in an addiction treatment facility will be ordered, the court may make an order for placement directing that said person be provisionally placed in one of these institutions if public safety so requires.
(2) Sections 114 to 115a, section 116 (3) and (4), and sections 117 to 119a, 123, 125 and 126 apply accordingly with respect to provisional placement. Sections 121 and 122 apply accordingly, subject to the proviso that the higher regional court is required to review whether the conditions for provisional placement continue to apply.
(3) The order for placement must be revoked if the conditions for provisional placement no longer apply or if the court does not, in its judgment, order placement in a psychiatric hospital or in an addiction treatment facility. Release may not be delayed by the fact that appellate remedies have been sought. Section 120 (3) applies accordingly.
(4) If the person committed has a statutory representative or a legal representative as defined in section 1831 (5) and section 1820 (2) no. 2 of the Civil Code, the latter is also to be notified of any decisions pursuant to subsections (1) to (3).

Section 127
Provisional arrest

(1) If a person is caught in the act or is being pursued, any person is authorised to arrest him or her provisionally, even without judicial order, if there is reason to suspect flight or if his or her identity cannot be immediately established. The establishment of a person's identity by the public prosecution office or by police officers is governed by section 163b (1).
(2) In exigent circumstances, the public prosecution office and police officers are also authorised to make a provisional arrest if the conditions for issuance of a warrant of arrest or of an order for placement are met.
(3) In the case of an offence which can be prosecuted upon application only, provisional arrest is also admissible where no application has yet been filed. This applies accordingly if an offence may be prosecuted only with authorisation or upon request to prosecute.
(4) Sections 114a to 114c apply accordingly to provisional arrest by the public prosecution office and by police officers.

Section 127a
Exemption from order for or continuation of provisional arrest

(1) If the accused has no permanent residence or residence within the territorial scope of this statute and if the conditions for a warrant of arrest are met only on account of a risk of flight, the court may dispense with ordering or continuing his or her arrest if

1. it is not expected that a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty will be ordered on account of the offence and

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

(2) Section 116a (1) and (3) applies accordingly.

Section 127b
Provisional arrest and warrant of arrest in accelerated proceedings

(1) The public prosecution office and police officers are also authorised to provisionally arrest a person caught in the act or being pursued

1. if it is probable that an immediate decision will be taken in accelerated proceedings and

2. if, on the basis of certain facts, it is to be feared that the arrested person will fail to appear at the main hearing.

Sections 114a to 114c apply accordingly.
(2) A warrant of arrest (section 128 (2) sentence 2) may be issued on the grounds set out in subsection (1) against an individual who is strongly suspected of having committed the offence only if it is to be expected that the main hearing will be held within one week after the arrest. The warrant of arrest is to be limited to a maximum period of one week, running from the day of the arrest.
(3) The decision to issue the warrant of arrest is, as a rule, given by the judge responsible for conducting the accelerated proceedings.

Section 128
Appearance following provisional arrest

(1) The arrested person is, without delay, to be brought before the judge of the local court in whose district the arrest was made, at the latest on the day after the arrest, unless the arrested person has been released. The judge examines the person brought before him or her in accordance with section 115 (3).
(2) If the judge does not consider the arrest justified or considers that the reasons therefor no longer apply, he or she orders release. Otherwise, the judge issues a warrant of arrest or an order for placement upon application by the public prosecution office or, if the public prosecutor cannot be reached, ex officio. Section 115 (4) applies accordingly.

Section 129
Appearance following provisional arrest after preferment of public charges

If public charges have already been preferred against the arrested person, he or she is to be brought before the competent court either immediately or upon the direction of the judge before whom he or she was first brought; this court decides, at the latest on the day after the arrest, on the arrested person’s release, detention or provisional placement.

Section 130
Warrant of arrest prior to filing request to prosecute

If, on account of a suspected offence which may be prosecuted only upon request, a warrant of arrest is issued before the request is filed, the person entitled to file such a request or, if there are several such entitled persons, then at least one of them is

to be immediately informed of the issuance of the warrant of arrest and notified that the warrant of arrest will be revoked if the request is not filed within a time limit to be determined by the judge, which may not, as a rule, exceed one week. If no request to prosecute is filed within this time limit, the warrant of arrest is to be revoked. This applies accordingly if an offence may be prosecuted only upon authorisation or upon a request to prosecute. Section 120 (3) applies.

Division 9a
Further measures to secure criminal prosecution and enforcement of sentence

Section 131
Alert for arrest

(1) The judge or the public prosecution office and, in exigent circumstances, its investigators (section 152 of the Courts Constitution Act) may issue an alert for arrest on the basis of a warrant for arrest or an order for placement.
(2) If the conditions are met for a warrant of arrest or an order for placement the issuance of which cannot be awaited without endangering the success of the investigations, the public prosecution office and its investigators (section 152 of the Courts Constitution Act) may order measures under subsection (1) if this is necessary for a provisional arrest. The decision on the issuance of a warrant of arrest or an order for placement is to be obtained without delay and at the latest within one week.
(3) In the case of an offence of substantial significance, the judge and the public prosecution office may, in the cases under subsections (1) and (2), also order public searches if other means of determining the accused's whereabouts would offer much less prospect of success or would be much more difficult. In exigent circumstances and if the judge or the public prosecution office cannot be reached in time, the public prosecution office's investigators (section 152 of the Courts Constitution Act) are also entitled to exercise this power, subject to the same conditions. In the cases under sentence 2, the decision of the public prosecution office must be obtained without delay. The order becomes ineffective if it is not confirmed within 24 hours.
(4) The accused is to be named and, where necessary, described as accurately as possible; an image may be attached. The offence of which the accused is suspected, the place and time of its commission, and circumstances which may be relevant for the accused's apprehension may be indicated.
(5) Sections 115 and 115a apply accordingly.

Section 131a
Alert to determine whereabouts

(1) An alert may be issued requiring the determination of the whereabouts of an accused or of a witness if his or her whereabouts are not known.
(2) Subsection (1) also applies to alerts referring to the accused insofar as they are necessary to secure a driving licence, to carry out identification measures, to conduct a DNA analysis or to establish the accused's identity.
(3) A public search may also be ordered in the case of an offence of substantial significance on the basis of an alert requiring determination of the whereabouts of an accused or of a witness if the accused is strongly suspected of having committed the offence and where other means of determining his or her whereabouts would offer much less prospect of success or would be much more difficult.

(4) Section 131 (4) applies accordingly. When determining the whereabouts of a witness it is to be made clear that the person sought is not the accused. No public search is carried out if overriding interests of the witness meriting protection present an obstacle thereto. Images of the witness may be used only if other means of determining his or her whereabouts would offer no prospect of success or would be much more difficult.
(5) The alerts referred to in subsections (1) and (2) may be issued in all search instruments used by the prosecuting authorities.

Section 131b
Publication of images of accused or witness

(1) The publication of images of an accused who is suspected of having committed an offence of substantial significance is also admissible if investigating an offence, in particular establishing the identity of an unknown offender, by other means would offer much less prospect of success or would be much more difficult.
(2) The publication of images of a witness and references to the criminal proceedings underlying such publication are also admissible if investigating an offence of substantial significance, in particular establishing the identity of the witness, by other means would offer no prospect of success or would be much more difficult. The publication must make it clear that the person in the image is not an accused person.
(3) Section 131 (4) sentence 1 half-sentence 1 and sentence 2 applies accordingly.

Section 131c
Order for and confirmation of searches

(1) Searches pursuant to section 131a (3) and section 131b may be ordered only by the judge and, in exigent circumstances, also by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). Searches pursuant to section 131a (1) and (2) must be ordered by the public prosecution office; in exigent circumstances, they may also be ordered by its investigators (section 152 of the Courts Constitution Act).
(2) In cases of continuous publication in electronic media and in cases of repeated publication on television and in periodically printed matter, the order made by the public prosecution office and its investigators (section 152 of the Courts Constitution Act) pursuant to subsection (1) sentence 1 becomes ineffective if it is not confirmed by a judge within one week. In all other cases, search orders made by the public prosecution office’s investigators (section 152 of the Courts Constitution Act) become ineffective if they are not confirmed by the public prosecution office within one week.

Section 132
Provision of security; authorised recipient

(1) If an accused who is strongly suspected of having committed an offence has no permanent residence or residence within the territorial scope of this statute and the conditions for a warrant of arrest are not met, an order may be made so as to ensure that criminal proceedings are conducted to the effect that the accused

1. provide adequate security for the anticipated fine and the costs of the proceedings and
2. authorise a person residing within the district of the competent court to accept service.

Section 116a (1) applies accordingly.
(2) This order may be made only by the judge and, in exigent circumstances, also by the public prosecution office and its investigators (section 152 of the Courts Constitution Act).
(3) If the accused fails to comply with the order, means of transportation and other objects which the accused is carrying and which belong to him or her may be seized. Sections 94 and 98 apply accordingly.

Division 9b
Provisional disqualification from exercising profession

Section 132a
Order for and revocation of provisional disqualification from exercising profession

(1) If there are cogent reasons to believe that disqualification from exercising a profession will be ordered (section 70 of the Criminal Code), the judge may make an order provisionally prohibiting the accused from exercising his or her profession, branch of profession, trade or branch of trade. Section 70 (3) of the Criminal Code applies accordingly.
(2) The provisional disqualification from exercising a profession is to be revoked if the reason therefor no longer exists or if the court does not order disqualification from exercising a profession in the judgment.

Division 10
Examination of accused

Section 133
Summons

(1) The accused is to be summoned in writing to the examination.
(2) The summons may include a warning that the accused will be brought before the court in the case of non-compliance.

Section 134
Appearance before judge

(1) An order may be made that the accused be brought before the judge immediately if reasons exist which would justify the issuance of a warrant of arrest.
(2) The order must contain a precise designation of the accused and must indicate both the offence with which the accused is charged and the reason for his or her being brought before the court.

Section 135
Immediate examination

The accused is to be brought before the judge without delay and examined by the judge. The accused may not be kept in custody by virtue of the order for longer than the end of that day which follows the day on which he or she was first brought before the court.

Section 136
Examination

(1) At the commencement of the examination, the accused is to be informed of the offence with which he or she is charged and of the applicable criminal law provisions. The accused is to be advised that the law grants him or her the right to respond to the charges or not to make any statement on the charges and the right, at any stage, even prior to the examination, to consult defence counsel of his or her

choice. If the accused wishes to consult defence counsel prior to the examination, he or she is to be provided with information which makes it easier for him or her to be able to contact such defence counsel. Reference is thereby to be made to any emergency legal services which are available. The accused is, further, to be advised that he or she may request evidence to be taken in his or her defence and, under the conditions of section 140, to request the appointment of court-appointed defence counsel in accordance with section 141 (1) and section 142 (1); in the latter case, reference is to be made to the obligation to pay costs as referred to in section 465. In appropriate cases, the accused is also, as a rule, to be informed that he or she may make a written statement and of the possibility of victim–offender mediation.
(2) The examination is to give the accused the opportunity to dispel the grounds for suspecting him or her and to assert the facts which speak in his or her favour.
(3) At the examination of the accused, consideration is also to be given to ascertaining his or her personal situation.
(4) A video and audio recording may be made of the examination of the accused. Such a recording is to be made

1. if the proceedings relate to intentional killing and neither external circumstances nor the special urgency of the examination poses an obstacle to the recording or
2. if the interests meriting protection of accused persons who discernibly have reduced mental capacity or a serious mental disability can be better protected by making the recording.

Section 58a (2) applies accordingly.
(5) Section 58b applies accordingly.

Section 136a
Prohibited examination methods; prohibited evidence

(1) The accused's freedom to form and express a will may not be impaired by ill-treatment, induced fatigue, physical intervention on the body, the administration of drugs, torture, by means of deception or hypnosis. Compulsion may be used only insofar as this is permitted by criminal procedure law. Threatening the accused with measures not permitted under the provisions of criminal procedure law and holding out the prospect of an advantage not envisaged by statute are prohibited.
(2) Measures which impair the accused's memory or his or her capacity to understand the wrongfulness of an act are not permitted.
(3) The prohibitions under subsections (1) and (2) apply irrespective of the accused's consent. Statements which were obtained in breach of this prohibition may not be used, even if the accused consents to their use.

Division 11
Defence

Section 137
Accused's right to assistance of defence counsel

(1) Accused persons may avail themselves of the assistance of defence counsel at any stage of the proceedings. No more than three defence counsel may be chosen.
(2) If an accused has a statutory representative, the latter may also engage defence counsel independently. Subsection (1) sentence 2 applies accordingly.

Section 138
Own choice of defence counsel

(1) Lawyers (*Rechtsanwälte*) and professors of law at German institutions of higher education as defined in the Framework Act for Higher Education (*Hochschulrahmengesetz*) who are qualified to hold judicial office may be engaged as defence counsel.
(2) Other persons may be engaged only with the approval of the court. In cases where the assistance of defence counsel is mandatory and the person chosen is not amongst the persons who may be appointed as defence counsel, such person may additionally be admitted as counsel of the accused's choice only together with one who may be so appointed.
(3) If witnesses, private prosecutors, private accessory prosecutors, persons entitled to private accessory prosecution and aggrieved persons are permitted to avail themselves of the assistance of a lawyer or representation by a lawyer, they are also permitted, in accordance with subsection (1) and subsection (2) sentence 1, to select the other persons designated therein.

Section 138a
Exclusion of defence counsel

(1) Defence counsel is to be excluded from participating in proceedings if he or she is strongly suspected or suspected to a degree justifying the opening of the main proceedings

1. of being involved in the offence which constitutes the subject of investigation,
2. of abusing communications with an accused who is not at liberty for the purpose of committing offences or seriously endangering the security of a penal institution or
3. of having committed an act which, in the event of the accused's conviction, would constitute handling stolen data, aiding after the fact, obstruction of prosecution or punishment, or handling stolen goods.

(2) Defence counsel is also to be excluded from participating in proceedings the subject of which is an offence under section 129a, also in conjunction with section 129b (1), of the Criminal Code if certain facts give rise to the suspicion that defence counsel has committed or is committing one of the acts designated in subsection (1) nos. 1 and 2.
(3) The exclusion must be revoked

1. as soon as its conditions are no longer met, not, however, for the sole reason that the accused has been released,
2. if defence counsel is acquitted in main proceedings which were opened on account of the facts leading to exclusion or if a culpable breach of professional duties in relation to these facts is not determined in a judgment handed down by a disciplinary court,
3. if, within one year after exclusion, main criminal proceedings or professional disciplinary proceedings have not been opened or a summary penalty order has not been made on the basis of the facts leading to exclusion.

An exclusion which is to be revoked in accordance with no. 3 may be maintained for a limited time, at the most, however, for one more year if the particular difficulty or the particular scope of the case or another important reason does not yet permit a decision to be taken on the opening of the main proceedings.
(4) As long as defence counsel is excluded, he or she may also not defend the accused in other proceedings governed by statute. Defence counsel may not visit an accused who is not at liberty in order to discuss other matters.
(5) As long as defence counsel is excluded, he or she may also not defend other accused persons in the same proceedings or in other proceedings if such proceedings are based on an offence under section 129a, also in conjunction with section 129b (1), of the Criminal Code and where exclusion was ordered during proceedings which were also based on such an offence. Subsection (4) applies accordingly.

Section 138b
Exclusion of defence counsel in case of danger to national security

Defence counsel is also to be excluded from participating in proceedings the subject of which is one of the offences designated in section 74a (1) no. 3 and section 120 (1) no. 3 of the Courts Constitution Act or breach of the duties under section 138 of the Criminal Code concerning the offences of high treason or endangering external security under sections 94 to 96, 97a and 100 of the Criminal Code if, in view of certain facts, there is reason to believe that his or her participation would endanger the security of the Federal Republic of Germany. Section 138a (3) sentence 1 no. 1 applies accordingly.

Section 138c
Competence for decision on exclusion of defence counsel

(1) Decisions under sections 138a and 138b are given by the higher regional court. If the Federal Public Prosecutor General is conducting the investigations in the preparatory proceedings or if the proceedings are pending before the Federal Court of Justice, it is for the Federal Court of Justice to decide. If the proceedings are pending before a panel of the higher regional court or of the Federal Court of Justice, another panel decides.
(2) After public charges have been preferred and until final conclusion of the proceedings, the court which is competent pursuant to subsection (1) decides, upon submission by the court before which the proceedings are pending and otherwise upon application by the public prosecution office. The submission is made upon application by the public prosecution office or ex officio through the intervention of the public prosecution office. If defence counsel who is a member of a bar association is to be excluded, a copy of the public prosecution office's application pursuant to sentence 1 or the submission by the court is to be communicated to the president of the competent bar association. The latter may make submissions in the proceedings.
(3) The court before which the proceedings are pending may order suspension of the rights of defence counsel under sections 147 and 148 pending an order on exclusion by the court competent under subsection (1); it may also order suspension of such rights with respect to the cases designated in section 138a (4) and (5). Prior to the preferment of public charges and subsequent to final conclusion of the proceedings, the order under sentence 1 is given by the court which is required to decide on the exclusion of defence counsel. The order takes the form of an

incontestable decision. The court is required to appoint, for the duration of the order, another defence counsel to exercise the rights under sections 147 and 148. Section 142 (5) to (7) applies accordingly.
(4) If the court before which the proceedings are pending makes a submission pursuant to subsection (2) during the main hearing, it must simultaneously interrupt or suspend the main hearing until a decision is given by the court competent pursuant to subsection (1). The main hearing may be interrupted for no more than 30 days.
(5) If defence counsel, on his or her own initiative or at the request of the accused, withdraws from participating in the proceedings after an application for his or her exclusion has been filed pursuant to subsection (2) or the matter has been submitted to the court competent to decide, this court may continue the exclusion proceedings with the aim of determining whether the participation of defence counsel who has withdrawn is admissible in the proceedings. The determination of inadmissibility is equivalent to exclusion within the meaning of sections 138a, 138b and 138d.
(6) If defence counsel has been excluded from participating in the proceedings, costs caused by the suspension can be imposed on him or her. The decision on this is taken by the court before which the proceedings are pending.

Section 138d
Procedure for exclusion of defence counsel

(1) A decision on the exclusion of defence counsel is given after an oral hearing.
(2) Defence counsel is to be summoned to the oral hearing. The time limit for the summons is one week; it may be reduced to three days. The public prosecution office, the accused and, in the cases under section 138c (2) sentence 3, the president of the bar association are to be notified of the date of the oral hearing.
(3) The oral hearing may be held without defence counsel if he or she has been properly summoned and attention has been drawn in the summons to the fact that the oral hearing may be conducted in his or her absence.
(4) Those parties who are present at the oral hearing are to be heard. Section 247a (2) sentence 1 and sentence 3 applies accordingly to the hearing of the president of the bar association. The extent to which evidence is taken is determined by the court at its duty-bound discretion. A record must be drawn up of the hearing; sections 271 to 273 apply accordingly.
(5) The decision is to be pronounced at the end of the oral hearing. If this is not possible, the decision is to be given within one week at the latest.
(6) An immediate complaint is admissible against a decision excluding defence counsel for the reasons designated in section 138a or concerning a case referred to in section 138b. The president of the bar association is not entitled to lodge a complaint. A decision rejecting the exclusion of defence counsel pursuant to section 138a is not contestable.

Section 139
Transferral of defence to trainee lawyer

A lawyer engaged as defence counsel may, with the consent of the person who selected him or her, entrust the defence to a person who has undergone legal training and who has passed the first examination for the judicial service and has been employed within the judicial service for at least one year and three months.

Section 140
Mandatory defence

(1) The assistance of defence counsel is mandatory if

1. it is expected that the main hearing at first instance will be held at a higher regional court, regional court or court with lay judges (*Schöffengericht*);
2. the accused is charged with a serious criminal offence;
3. the proceedings may result in an order prohibiting the exercise of a profession;
4. the accused is to be brought before a judge in accordance with section 115, 115a, 128 (1) or 129 for a decision concerning detention or provisional placement;
5. the accused is in an institution based on a judicial order or with the approval of a judge;
6. placement of the accused pursuant to section 81 is being considered for the purpose of preparing an opinion on his or her mental condition;
7. it is expected that proceedings for preventive detention will be conducted;
8. the previous defence counsel is excluded from participating in the proceedings by decision;
9. a lawyer has been assigned to the aggrieved person pursuant to section 397a and section 406h (3) and (4);
10. it appears necessary in order to safeguard the accused's rights in the case of examination by a judge that defence counsel be involved owing to the significance of the examination;
11. the application for appointment is made by an accused person with a visual, hearing or speech impairment.

(2) The assistance of defence counsel is also mandatory if the assistance of defence counsel appears necessary owing to the severity of the offence, the severity of the anticipated legal consequence or owing to the difficult factual or legal situation, or if it is evident that the accused is unable to defend himself or herself.
(3) (repealed)

Section 141
Time point for appointment of court-appointed defence counsel

(1) In cases of mandatory defence, court-appointed defence counsel is without delay appointed for persons who have been accused of an alleged offence and who do not yet have defence counsel if they have explicitly made an application therefor after receiving instruction. A decision on the application is to be taken at the latest before examining an accused person or before an identity parade involving an accused person.
(2) Regardless of whether or not an application is made, court-appointed defence counsel is appointed to an accused person who do not yet have defence counsel in the case of mandatory defence as soon as

1. the accused person is to be brought before a court for a decision concerning detention or provisional placement;
2. it becomes known that the person accused of an alleged offence is in an institution based on a judicial order or judicial authorisation;
3. it becomes apparent, in the course of the preliminary investigation, that the accused is unable to defend himself or herself, in particular in the context of an examination or an identity parade, or
4. the accused person is required under section 201 to make a statement on the bill of indictment; if it does not transpire until a later date that the participation of defence counsel is necessary, defence counsel is appointed immediately.

If, in the cases under sentence 1 no. 1, the accused is brought before the court for a decision on the issuing of a warrant of arrest pursuant to section 127b (2) or on the enforcement of a warrant of arrest pursuant to section 230 (2) or section 329 (3), then court-appointed defence counsel is only appointed if the accused person has explicitly made a request therefor after receiving instruction. In the cases under sentence 1 no. 2 and no. 3, the appointment may be dispensed with if the court plans to terminate the proceedings shortly thereafter and no other investigatory acts are to be taken other than obtaining information from registers or consulting judgments or files.

Section 141a
Examinations and identity parades prior to appointment of defence counsel

During the preliminary investigation, examinations of the accused or identity parades with the accused may, in derogation from section 141 (2) and, if the accused has given his or her explicit consent thereto, also in derogation from section 141 (1), be conducted where

1. this is urgently necessary to avert a present danger to life, limb or a person’s liberty or
2. it appears imperative to avert a significant threat to criminal proceedings.

The right of the accused to consult defence counsel of his or her choice at any point in time, even prior the examination, remains unaffected.

Section 142
Competence and appointment procedure

(1) Prior to the preferment of charges, an application by an accused person pursuant to section 141 (1) sentence 1 is to be made with the authorities, the police or the public prosecution office. The public prosecution office without delay submits the application together with a statement to the court for a decision, unless it proceeds in accordance with subsection (4). After the preferment of charges, the accused’s application is to be made to the court which is competent under subsection (3) no. 3.
(2) If court-appointed defence counsel needs to be appointed for the accused in the preliminary investigation pursuant to section 141 (2) sentence 1 nos. 1 to 3, the public prosecution office without delay makes the application to have court-appointed defence counsel appointed for the accused, unless it proceeds in accordance with subsection (4).

(3) The decision on the appointment is taken by

1. the local court in whose district the public prosecution office or its relevant office has its seat, or the court competent pursuant to section 162 (1) sentence 3;
2. the court before which the accused is to be brought in the cases under section 140 (1) no. 4;
3. the judge presiding over the court seized of the case after the preferment of charges.

(4) In the case of special urgency, the public prosecution office may also take the decision on the appointment. It without delay, within one week after taking its decision at the latest, applies for the court's confirmation of the appointment or rejection of the accused's application. The accused may at any time apply for a court decision.
(5) Prior to the appointment of court-appointed defence counsel, the accused is to be given the opportunity to name defence counsel within a time limit to be specified. Section 136 (1) sentences 3 and 4 applies accordingly. Defence counsel designated by the accused within the time limit is to be appointed, unless there is an important reason for not doing so; an important reason exists where the designated defence counsel is not available or is not available in time.
(6) If court-appointed defence counsel whom the accused has not designated is to be appointed, then one is chosen from the Central Register of the Federal Bar Association (section 31 of the Federal Code for Lawyers). Either a specialist lawyer (*Fachanwalt*) for criminal law or another lawyer who has indicated his or her interest vis-à-vis the bar association in acting as court-appointed defence counsel and is suitable for acting as defence counsel is, as a rule, to be chosen from amongst the lawyers listed in the Central Register.
(7) Court decisions on the appointment of court-appointed defence counsel are contestable by means of an immediate complaint. Such an immediate complaint is ruled out if the accused is in a position to make an application pursuant to section 143a (2) sentence 1 no. 1.

Section 143
Duration and revocation of appointment

(1) The appointment of court-appointed defence counsel ends upon conclusion of the criminal proceedings or upon a final decision being rendered, including in proceedings in accordance with section 423 or section 460.
(2) The appointment may be revoked if mandatory defence is no longer necessary. In the cases under section 140 (1) no. 5, this only applies if the accused is released from the institution at least two weeks prior to the commencement of the main hearing. If the deprivation of liberty in the cases under section 140 (1) no. 5 is based on a warrant of arrest issued pursuant to section 127b (2), 230 (2) or 329 (3), the appointment is, as a rule, to be revoked upon the revocation or suspension of enforcement of the warrant of arrest, by the time the main hearing is concluded at the latest. In the cases under section 140 (1) no. 4, the appointment is, as a rule, to be revoked following the end of the accused's appearance in court if he or she is released.
(3) An immediate complaint is permissible against decisions in accordance with subsection (2).

Section 143a
Appointment of new defence counsel

(1) The appointment of court-appointed defence counsel is to be revoked if the accused chooses another defence counsel and the new defence counsel has agreed to this choice. This does not apply if it is feared that the new defence counsel plans to resign the mandate shortly thereafter and will apply to be appointed as court-appointed defence counsel, or if it is necessary to uphold the appointment for the reasons set out in section 144.
(2) The appointment of court-appointed defence counsel is to be revoked and new court-appointed defence counsel is to be appointed

1. if an accused for whom another defence counsel was appointed other than the one designated by him or her within the time limit set out in section 142 (5) sentence 1 or who was only given a short time to choose defence counsel applies, within three weeks after the court decision on the appointment is made known, to have defence counsel appointed other than the one designated by him or her, and there is no important reason not to do so;

2. if court-appointed defence counsel appointed on the occasion of the accused being brought before the nearest judge pursuant to section 115a applies for the revocation of his or her appointment for an important reason, in particular on account of having to travel an unreasonable distance to where the accused will be staying; the application is to be made without delay after the proceedings have ended pursuant to section 15a or

3. if the relationship of trust between defence counsel and the accused has been permanently destroyed or the accused’s reasonable defence cannot be guaranteed for another reason.

In the cases under nos. 2 and 3, section 142 (5) and (6) applies accordingly.
(3) The appointment of previously appointed court-appointed defence counsel is to be revoked when the case goes to an appeal on points of law, and new court-appointed defence counsel designated by the accused is to be appointed if said accused applies therefor within one week at the latest after the commencement of the time period for stating grounds for the appeal on law and there is no important reason not to appoint the designated defence counsel. The application must be made to the court whose decision is being contested.
(4) Decisions pursuant to subsections (1) to (3) are contestable by means of an immediate complaint.

Section 144
Additional court-appointed defence counsel

(1) In cases of mandatory defence, up to two additional court-appointed defence counsel may be appointed for the accused in addition to defence counsel whom the accused has chosen himself or herself or in addition to defence counsel appointed in accordance with section 141 if this is necessary to ensure the swift conduct of proceedings, in particular on account of their scope or difficulty.
(2) The appointment of additional defence counsel is to be revoked as soon as his or her involvement is no longer necessary for the swift conduct of the proceedings. Section 142 (5) to (7) sentence 1 applies accordingly.

Section 145
Court-appointed defence counsel's failure or refusal to appear

(1) If, in a case where defence is mandatory, defence counsel fails to appear at the main hearing, leaves at an inappropriate time or refuses to carry on the defence, the presiding judge must immediately appoint another defence counsel for the defendant. However, the court may also decide to suspend the hearing.
(2) If mandatory defence counsel is appointed only during the course of the main hearing, the court may decide to suspend the main hearing.
(3) The hearing must be interrupted or suspended if the newly appointed defence counsel declares that he or she does not have the time needed to prepare the defence.
(4) If a suspension becomes necessary through the fault of defence counsel, he or she is to be charged with the costs incurred.

Section 145a
Service on defence counsel

(1) Defence counsel of choice whose power of attorney has been documented and court-appointed defence counsel are considered authorised to receive notifications and other communications on behalf of the accused. To document the power of attorney it is sufficient for defence counsel to transmit a copy of the power of attorney. A request may be made for subsequent submission of the original of the power of attorney; a time limit may be imposed in that regard.
(2) A summons for the accused may be served on defence counsel only if he or she is expressly authorised to receive summonses by documented power of attorney. Section 116a (3) remains unaffected.
(3) If a decision is served on defence counsel pursuant to subsection (1), the accused is to be informed thereof; defence counsel is to be provided with a copy of the decision at the same time. If a decision is served on the accused, defence counsel is to be simultaneously informed thereof even if the files contain no power of attorney; he or she is also to be provided with a copy of the decision.

Section 146
Prohibition of joint defence counsel

Defence counsel may not appear for more than one person accused of the same offence. Nor may defence counsel appear in a single set of proceedings for more than one person accused of different offences.

Section 146a
Rejection of accused's own choice of defence counsel

(1) If a person has been chosen as defence counsel although the conditions of section 137 (1) sentence 2 or of section 146 are met, he or she is to be rejected as defence counsel as soon as this becomes evident; the same applies if the conditions of section 146 are met after defence counsel has been chosen. If, in the cases under section 137 (1) sentence 2, more than one defence counsel gives notification of their mandate and if this means that the maximum number of counsel has been exceeded, they are all to be rejected. The decision to reject defence counsel is to be taken by the court before which the proceedings are pending or which would be competent to hear the main proceedings.
(2) Acts done by defence counsel prior to their being rejected are not ineffective merely on account of the conditions of section 137 (1) sentence 2 or of section 146 being met.

Section 147
Right to inspect files, right of inspection; accused's right to information

(1) Defence counsel is authorised to inspect those files which are available to the court or which would have to be submitted to the court if charges were preferred and to view items of evidence in official custody.
(2) If the fact that the investigations have been concluded has not yet been recorded in the file, defence counsel may be refused inspection of the files or of individual parts of the files and the viewing of items of evidence in official custody insofar as this may jeopardise the purpose of the investigation. If the conditions of sentence 1 are met and if the accused is in remand detention or if, in the case of provisional arrest, this has been requested, information of relevance for the assessment of the lawfulness of such deprivation of liberty is to be made available to defence counsel in suitable form; to this extent inspection of the files is, as a rule, to be granted.
(3) At no stage of the proceedings may defence counsel be refused inspection of records drawn up of the examination of the accused or of such judicial investigatory acts to which defence counsel was or ought to have been admitted, nor may he or she be refused inspection of expert opinions.
(4) An accused who has no defence counsel is authorised, applying subsections (1) to (3) accordingly, to inspect the files and to view, under supervision, items of evidence in official custody insofar as the purpose of the investigation even in other criminal proceedings cannot be endangered thereby and the overriding interests of third parties meriting protection do not constitute an obstacle thereto. If the files are not kept in electronic form, instead of granting inspection of the files, copies of the files may be made available to the accused.
(5) The public prosecution office decides whether to grant inspection of the files in preparatory proceedings and after final conclusion of the proceedings; in all other cases, the presiding judge of the court seized of the case is competent to decide. If the public prosecution office refuses inspection of the files after noting the termination of the investigations in the file, if it refuses inspection pursuant to subsection (3) or if the accused is not at liberty, a decision by the court competent pursuant to section 162 may be applied for. Sections 297 to 300, 302, 306 to 309, 311a and 473a apply accordingly. These decisions are given without reasons if their disclosure could jeopardise the purpose of the investigation.
(6) If the reason for refusing inspection of the files has not already ceased to exist, the public prosecution office revokes the order no later than upon conclusion of the investigations. Defence counsel or an accused who has no defence counsel is to be notified as soon as he or she once again has the unrestricted right to inspect the files.
(7) (repealed)

Section 148
Accused's communications with defence counsel

(1) The accused is entitled to communicate with defence counsel in writing and orally even when he or she is not at liberty.
(2) If an accused who is not at liberty is strongly suspected of having committed an offence under section 129a, also in conjunction with section 129b (1), of the Criminal Code, the court as a rule orders that in communications with defence counsel any papers or other items are to be rejected 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 for an offence under section 129a, also in conjunction with

section 129b (1), of the Criminal Code, the decision is given by the court which would be competent to issue a warrant of arrest. If the written correspondence referred to in sentence 1 is subject to surveillance, then fixtures which rule out the possibility of papers and other items being handed over are to be put in place during conversations with defence counsel.

Section 148a
Implementation of surveillance measures

(1) The judge of the local court in whose district the penal institution is located is competent as regards the implementation of surveillance measures under section 148 (2). If a report of an offence is to be made pursuant to section 138 of the Criminal Code, papers or other items which indicate that there is an obligation to report an offence are to be provisionally taken into custody; the provisions concerning seizure remain unaffected.
(2) A judge who is entrusted with implementing surveillance measures may not be or become seized of the subject of the investigation. The judge must keep secret any knowledge obtained during surveillance; section 138 of the Criminal Code remains unaffected.

Section 149
Admission of assisting counsel

(1) The spouse or life partner of a defendant is to be admitted to the main hearing to give assistance in the defence and is to be heard upon his or her request. The time and place of the main hearing are to be communicated to him or her in time.
(2) The same rule applies to a defendant's statutory representative.
(3) In the preliminary investigation, the decision whether to admit such assistance is left to the judge's discretion.

Section 150
(repealed)

Book 2
Proceedings at first instance

Division 1
Public charges

Section 151
Principle of indictment

The opening of a judicial investigation is conditional upon the preferment of charges.

Section 152
Indicting authority; principle of mandatory prosecution

(1) The public prosecution office is authorised to prefer public charges.
(2) Unless otherwise provided by law, the public prosecution office is obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications.

Section 152a
Provisions of *Land* law governing prosecution of elected representatives

The law of a *Land* concerning the conditions under which a criminal prosecution may be instituted or continued against members of a legislative body also applies to the other *Länder* of the Federal Republic of Germany and to the Federation.

Section 153
Non-prosecution of petty offences

(1) Where a less serious criminal offence (*Vergehen*) is the subject of the proceedings, the public prosecution office may dispense with prosecution with the consent of the court competent to open the main proceedings if the offender's guilt is considered to be minor and there is no public interest in the prosecution. The consent of the court is not required in the case of a less serious criminal offence which is not subject to an increased minimum sentence and if the consequences ensuing from the offence are minor.
(2) If charges have already been preferred, the court, with the consent of the public prosecution office and the indicted accused, may terminate the proceedings at any stage thereof under the conditions of subsection (1). The consent of the indicted accused is not required if the main hearing cannot be conducted for the reasons stated in section 205 or is conducted in his or her absence in the cases under section 231 (2) and sections 232 and 233. The decision is given by way of an order. The order is not contestable.

Section 153a
Non-prosecution subject to imposition of conditions and directions

(1) In a case involving a less serious criminal offence, the public prosecution office, with the consent of the accused and of the court competent to order the opening of the main proceedings, may dispense with the preferment of public charges and concurrently impose conditions on and issue directions to the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle thereto. In particular, the following conditions and instructions may be considered:

1. rendering of a specified service in order to make reparations for damage caused by the offence,
2. payment of a sum of money to a non-profit-making institution or to the Treasury,
3. rendering of some other service of a non-profit-making nature,
4. compliance with duties to pay a specified amount of maintenance,
5. making of a serious attempt to reach a mediated agreement with the aggrieved person (victim–offender mediation), thereby trying to make reparation for the offence, in full or to a predominant extent, or striving therefor,
6. participation in a social skills training course,
7. participation in a supplementary course pursuant to section 2b (2) sentence 2 or a driving aptitude course pursuant to section 4a of the Road Transportation Act (*Straßenverkehrsgesetz*) or
8. undergoing psychiatric, psychotherapeutic or sociotherapeutic care and treatment (therapy order).

The public prosecution office sets a time limit within which the accused is to comply with the conditions and directions and which, in the cases under sentence 2 nos. 1 to 3, 5 and 7, is to be a maximum of six months and, in the cases under sentence 2

nos. 4, 6 and 8, a maximum of one year. The public prosecution office may subsequently revoke the conditions and directions and may extend the time limit once for a period of three months; with the consent of the accused it may also subsequently impose or change conditions and directions. If the accused complies with the conditions and directions, the offence can no longer be prosecuted as a less serious criminal offence. If the accused fails to comply with the conditions and directions, no compensation is given for any contribution made towards compliance. Section 153 (1) sentence 2 applies accordingly in the cases under sentence 2 nos. 1 to 6. Section 246a (2) applies accordingly.
(2) Where public charges have already been preferred, the court may, with the consent of the public prosecution office and of the indicted accused, provisionally terminate the proceedings and concurrently impose the conditions on and issue directions to the indicted accused as referred to in subsection (1) sentences 1 and 2. Subsection (1) sentences 3 to 6 and 8 applies accordingly. The decision under sentence 1 is made by way of an order. The order is not contestable. Sentence 4 also applies to a finding that conditions and directions imposed pursuant to sentence 1 have been complied with.
(3) The running of the period of limitation is suspended for the duration of the time period set for compliance with the conditions and directions.
(4) In the case under subsection (1) sentence 2 no. 6, also in conjunction with subsection (2), section 155b applies accordingly, subject to the proviso that personal data from the criminal proceedings which do not concern the accused may only be transmitted to the agency in charge of conducting the social skills training course to the extent the data subjects have consented to such transmission. Sentence 1 applies accordingly if a direction to participate in a social skills training course is given pursuant to other criminal law provisions.

Section 153b
Non-prosecution where imposition of penalty may be dispensed with

(1) If the conditions under which the court could dispense with imposing a penalty are met, the public prosecution office may, with the consent of the court which would have jurisdiction over the main hearing, dispense with the preferment of public charges.
(2) If charges have already been preferred, the court may, with the consent of the public prosecution office and of the indicted accused, terminate proceedings at any time prior to commencement of the main hearing.

Section 153c
Non-prosecution of offences committed abroad

(1) The public prosecution office may dispense with prosecuting offences

1. which have been committed outside the territorial scope of this statute or which a participant to an act committed outside the territorial scope of this statute has committed within the territorial scope thereof,
2. which a foreign national committed in Germany on a foreign ship or aircraft,
3. if, in the cases under sections 129 and 129a, in each case also in conjunction with section 129b (1), of the Criminal Code, an organisation does not, or does not mainly, exist in Germany and the participatory acts committed in Germany are of lesser importance or are limited to mere membership.

Offences for which there is criminal liability under the Code of Crimes against International Law are subject to section 153f.
(2) The public prosecution office may dispense with prosecuting an offence if a sentence has already been enforced against the accused abroad in respect of that offence and the sentence which is to be expected in Germany would be negligible after taking the foreign sentence into account or if the accused has already been acquitted abroad by a final judgment in respect of the offence.
(3) The public prosecution office may also dispense with prosecuting offences committed within the territorial scope of this statute but through an act committed outside that territorial scope if the conduct of proceedings would pose the risk of serious detriment to the Federal Republic of Germany or if other public interests of overriding importance present an obstacle to prosecution.
(4) If charges have already been preferred, the public prosecution office may, in the cases under subsection (1) nos. 1 and 2 and under subsection (3), withdraw the charges at any stage of the proceedings and terminate the proceedings if the conduct of proceedings would pose the risk of serious detriment to the Federal Republic of Germany or if other public interests of overriding importance present an obstacle to prosecution.
(5) If offences of the kind designated in section 74a (1) nos. 2 to 6 and in section 120 (1) nos. 2 to 7 of the Courts Constitution Act are the subject of the proceedings, such powers are vested in the Federal Public Prosecutor General.

Section 153d
Non-prosecution of offences against national security owing to overriding public interests

(1) The Federal Public Prosecutor General may dispense with prosecuting offences of the kind designated in section 74a (1) nos. 2 to 6 and in section 120 (1) nos. 2 to 7 of the Courts Constitution Act if the conduct of proceedings would pose a risk of serious detriment to the Federal Republic of Germany or if other overriding public interests present an obstacle to prosecution.
(2) If charges have already been preferred, the Federal Public Prosecutor General may withdraw the charges under the conditions of subsection (1) at any stage of the proceedings and may terminate the proceedings.

Section 153e
Non-prosecution of offences against national security for active remorse (*tätige Reue*)

(1) If offences of the kind designated in section 74a (1) nos. 2 to 4 and in section 120 (1) nos. 2 to 7 of the Courts Constitution Act are the subject of the proceedings, the Federal Public Prosecutor General, with the consent of the higher regional court competent pursuant to section 120 of the Courts Constitution Act, may dispense with prosecuting such an offence if the offender, subsequently to the offence and before he or she has learned of the discovery thereof, contributed towards averting a danger to the existence or the security of the Federal Republic of Germany or its constitutional order. The same applies if the offender has made such contribution by disclosing to an agency after the offence such knowledge as he or she had with respect to activities involving high treason, endangering the democratic state under the rule of law, treason and endangering external security.
(2) If charges have already been preferred, the higher regional court competent pursuant to section 120 of the Courts Constitution Act may, with the consent of the

Federal Public Prosecutor General, terminate the proceedings if the conditions of subsection (1) are met.

Section 153f
Non-prosecution of offences under Code of Crimes against International Law

(1) The public prosecution office may dispense with prosecuting an act for which there is criminal liability pursuant to sections 6 to 15 of the Code of Crimes against International Law in the cases under section 153c (1) nos. 1 and 2 if the accused is not resident in Germany and is not expected to so reside. If, in the cases under section 153c (1) no. 1, the accused is a German national, however, this applies only if the offence is being prosecuted before an international court of justice or by a state on whose territory the offence was committed or a citizen of which was injured by the offence.
(2) The public prosecution office may in particular dispense with prosecuting an offence for which there is criminal liability pursuant to sections 6 to 12, 14 and 15 of the Code of Crimes against International Law in the cases under section 153c (1) nos. 1 and 2 if

1. no German national is suspected of having committed the offence,
2. the offence was not committed against a German national,
3. no suspect is or is expected to be staying in Germany,
4. the offence is being prosecuted by an international court of justice or by a state on whose territory the offence was committed, a citizen of which is either suspected of the offence or was injured by the offence.

The same applies if a foreigner who is accused of an offence which was committed abroad is resident in Germany but the requirements of sentence 1 nos. 2 and 4 are met and transfer to an international court of justice or extradition to the prosecuting state is admissible and envisaged.
(3) If, in the cases under subsection (1) or (2), public charges have already been preferred, the public prosecution office may, at any stage of the proceedings, withdraw the charges and terminate the proceedings.

Section 154
Partial termination upon commission of several offences

(1) The public prosecution office may dispense with prosecuting an offence

1. if the penalty or the measure of reform and prevention in which the prosecution may result is not particularly significant in addition to a penalty or measure of reform and prevention which has been imposed with binding effect upon the accused for another offence or which he or she can expect for another offence or
2. beyond that, if a judgment is not to be expected for such offence within a reasonable time and if a penalty or measure of reform and prevention which was imposed with binding effect upon the accused or which the accused can expect for another offence appears sufficient to have an influence on the offender and to defend the legal order.

(2) If public charges have already been preferred, the court may, upon the application of the public prosecution office, provisionally terminate the proceedings at any stage.
(3) If the proceedings were provisionally terminated on account of a penalty or measure of reform and prevention already imposed with binding effect for another offence, the proceedings may be resumed, unless barred by limitation in the meantime, if the penalty or measure of reform and prevention imposed with binding effect is subsequently not enforced.
(4) If the proceedings were provisionally terminated on account of a penalty or measure of reform and prevention which is to be expected for another offence, the proceedings may be resumed, unless barred by limitation in the meantime, within three months after the judgment imposed for the other offence has entered into force.
(5) If the court has provisionally terminated the proceedings, a court order is required for their resumption.

Section 154a
Limitation of prosecution

(1) If individual severable parts of an offence or individual violations amongst several violations of law committed as a result of the same offence are not particularly significant

1. for a penalty or measure of reform and prevention to be expected or
2. in addition to a penalty or measure of reform and prevention which has been imposed with binding effect upon the accused for another offence or which he or she can expect to be imposed for another offence,

then prosecution may be limited to the other parts of the offence or the other violations of the law. Section 154 (1) no. 2 applies accordingly. The fact of the limitation is to be placed on record.
(2) After the bill of indictment has been filed, the court, with the consent of the public prosecution office, may introduce this limitation at any stage of the proceedings.
(3) The court may at any stage of the proceedings reintroduce into the proceedings those parts of the offence or violations of the law which were not considered. An application by the public prosecution office for reintroduction is to be granted. If parts of an offence which were not considered are reintroduced, section 265 (4) applies accordingly.

Section 154b
Non-prosecution in case of extradition and expulsion

(1) The preferment of public charges may be dispensed with if the accused is extradited to a foreign government on account of the offence.
(2) The same applies if the accused is to be extradited to a foreign government or transferred to an international criminal court of justice on account of another offence and the penalty or the measure of reform and prevention which may result from the domestic prosecution is negligible in comparison to the penalty or measure of reform and prevention which has been imposed on him or her with binding effect abroad or which is expected to be imposed abroad.
(3) The preferment of public charges may also be dispensed with if the accused is deported or removed from or refused entry to the territorial scope of this federal statute.

(4) If, in the cases under subsections (1) to (3), public charges have already been preferred, the court is required, upon application by the public prosecution office, provisionally to terminate the proceedings. Section 154 (3) to (5) applies accordingly, subject to the proviso that the time limit in subsection (4) is one year.

Section 154c
Non-prosecution of victim of coercion (*Nötigung*) or extortion

(1) If coercion or extortion (sections 240 and 253 of the Criminal Code) was committed by issuing a threat to disclose an offence, the public prosecution office may dispense with prosecuting the offence the disclosure of which was threatened, unless expiation is imperative owing to the severity of the offence.
(2) If the victim of coercion, extortion or of human trafficking (sections 240, 253 and 232 of the Criminal Code) reports such an offence (section 158) and if, as a result, a less serious criminal offence committed by the victim comes to light, the public prosecution office may dispense with prosecution of the less serious criminal offence, unless expiation is imperative owing to the severity of the offence.

Section 154d
Prosecution following prior civil-law or administrative-law issue

If the preferment of public charges for a less serious criminal offence depends on the evaluation of a question which must be determined according to civil law or administrative law, the public prosecution office may set a time limit to decide the question in civil proceedings or in administrative proceedings. The person who reported the offence is to be notified thereof. After this time limit has expired without any result, the public prosecution office may terminate the proceedings.

Section 154e
Non-prosecution of casting of false suspicion or insult

(1) Public charges are not, as rule, to be preferred for the casting of false suspicion or for insult (sections 164 and 185 to 188 of the Criminal Code) as long as criminal or disciplinary proceedings are pending in respect of the reported or alleged offence.
(2) If public charges have already been preferred or a private prosecution has been filed, the court terminates the proceedings until the criminal or disciplinary proceedings in respect of the reported or alleged offence are concluded.
(3) Pending the conclusion of the criminal or disciplinary proceedings in respect of the reported or alleged offence, the period of limitation does not run in respect of prosecution for casting false suspicion or insult.

Section 154f
Termination in case of temporary obstacles

If the absence of the accused or some other personal impediment prevents the opening or conduct of the main proceedings for a considerable time and if public charges have not yet been preferred, the public prosecution office may provisionally terminate the proceedings after it has clarified the facts as far as possible and it has secured the evidence insofar as necessary.

Section 155
Scope of judicial investigation and decision

(1) The investigation and decision extend only to the offence specified and to the persons accused in the charges.

(2) Within these limits, the courts are authorised and obliged to act independently; in particular, they are not bound by the parties' applications when applying criminal law.

Section 155a
Victim–offender mediation

At every stage of the proceedings the public prosecution office and the court are, as a rule, to examine whether it is possible to reach a mediated agreement between the accused and the aggrieved person. In appropriate cases, they are to work towards such mediation. A case may not be assumed to be appropriate against the express will of the aggrieved person.

Section 155b
Conduct of victim–offender mediation

(1) For the purposes of victim–offender mediation or restitution, the public prosecution office and the court may transmit the necessary personal data ex officio or upon application by an agency which they have commissioned to carry out the mediation. The commissioned agency may be granted inspection of the files insofar as the provision of information would require disproportionate effort. A non-public agency is to be informed that the transmitted information may be used solely for the purposes of the victim–offender mediation or for restitution.
(2) The commissioned agency may process the personal data transmitted pursuant to subsection (1) only to the extent that this is necessary to carry out the victim–offender mediation or the restitution and provided that the data subject's interests meriting protection do not present an obstacle thereto. The commissioned agency may process personal data only to the extent that this is necessary to carry out the victim–offender mediation or the restitution and the data subject has consented thereto. Upon conclusion of their activity they are to report to the public prosecution office or the court to the necessary extent.
(3) If the commissioned agency is not a public agency, the provisions of Regulation (EU) 2016/679 and of the Federal Data Protection Act apply even if the personal data are not automatically processed and are not or will not be stored in a file system.
(4) Documentation containing the personal data referred to in subsection (2) sentences 1 and 2 must be destroyed by the commissioned agency upon expiry of one year following conclusion of the criminal proceedings. The public prosecution office or the court informs the commissioned agency ex officio and without delay of the time when proceedings are concluded.

Section 156
Withdrawal of charges

Public charges may not be withdrawn after the opening of the main proceedings.

Section 157
Meaning of 'indicted accused' and 'defendant'

Within the meaning of this statute, the 'indicted accused' is an accused person against whom public charges have been preferred, and the 'defendant' is an accused person or indicted accused in respect of whom a decision has been taken to open the main proceedings.

Division 2
Preparation of public charges

Section 158
Report of offence; request to prosecute

(1) An offence may be reported orally or in writing to and a request to prosecute may be filed orally or in writing with the public prosecution office, the police authorities and police officers, and with the local courts. An offence which is reported orally must be recorded in writing. Upon application, the aggrieved person is to be provided with written confirmation of receipt of the report. Such confirmation as a rule includes a short summary of the aggrieved person's statements regarding the time and place of commission of the offence, and of the type of offence reported. Issuance of such confirmation may be refused if the purpose of the investigation, including in relation to other criminal proceedings, appears to be jeopardised.
(2) In the case of offences which may be prosecuted only upon request, the request must be made in writing or orally for the record to a court or to the public prosecution office; if the request is made to another authority, it must be made in writing.
(3) If an aggrieved person resident in Germany reports an offence committed in another Member State of the European Union, the public prosecution office is required, upon the request of the aggrieved person, to transmit the report to the competent prosecuting authority of the other Member State if the offence is not subject to German criminal law or if prosecution of the offence is dispensed with pursuant to section 153c (1) sentence 1 no. 1, also in conjunction with section 153f. Transmission may be dispensed with if

1. the offence and the circumstances of relevance for its prosecution are already known to the competent foreign authority or
2. the injustice done by means of the offence is minor and it would have been possible for the aggrieved person to report the offence abroad.

(4) If the aggrieved person does not speak German, he or she is to be provided with the necessary assistance in order to be able to report the offence in a language which he or she speaks. In such cases, the written confirmation of the report referred to in subsection (1) sentences 3 and 4 is, upon application, to be translated into a language the aggrieved person understands; subsection (1) sentence 5 remains unaffected.

Section 159
Obligation to report finding of corpse and suspicion of unnatural death

(1) If there are indications that a person has died an unnatural death or if the corpse of an unknown person is found, the police and local authorities are obliged to inform the public prosecution office or the local court thereof without delay.
(2) The written permission of the public prosecution office is required for burial.

Section 160
Obligation to clarify facts

(1) As soon as the public prosecution office obtains knowledge of a suspected offence, either through a report of an offence or by other means, it is required to investigate the facts in order to decide whether public charges are to be preferred.
(2) The public prosecution office is required to ascertain both incriminating and exonerating circumstances and to ensure that evidence the loss of which is to be feared is taken.
(3) The investigations conducted by the public prosecution office are, as a rule, also to encompass those circumstances which are important for the determination of the

legal consequences of the act. To that end, it may avail itself of the services of the court assistance agency.
(4) A measure is inadmissible if special provisions regulating its application, being provisions under federal law or under the corresponding *Land* law, present an obstacle thereto.

Section 160a
Measures directed at persons entitled to refuse testimony on professional grounds

(1) An investigation measure directed at a person designated in section 53 (1) sentence 1 no. 1, 2 or 4, a lawyer or a non-lawyer provider of legal services who has been admitted to a bar association is inadmissible if it is expected to produce information in respect of which such person would have the right to refuse to testify. Any information which is obtained nonetheless may not be used. Any recording of such information is to be deleted without delay. The fact that the information was obtained and deleted is to be placed on record. If information about a person referred to in sentence 1 is obtained through an investigation measure which is not aimed at such person and in respect of which such person may refuse to testify, then sentences 2 to 4 apply accordingly.
(2) Insofar as a person designated in section 53 (1) sentence 1 nos. 3 to 3b or no. 5 would be affected by an investigation measure and it is to be expected that information would thereby be obtained in respect of which the person would have the right to refuse to testify, particular consideration is to be given thereto when examining proportionality; if the proceedings do not concern an offence of substantial significance, then, in principle, no overriding interest in prosecuting the offence is to be presumed. Insofar as is expedient, the measure should be dispensed with or, to the extent possible for this type of measure, restricted. Sentence 1 applies accordingly to the use of information for evidential purposes. Sentences 1 to 3 do not apply to lawyers and non-lawyer providers of legal services who have been admitted to a bar association.
(3) Subsections (1) and (2) apply accordingly insofar as the persons designated in section 53a would have the right to refuse to testify.
(4) Subsections (1) to (3) do not apply if certain facts give rise to the suspicion that the person who is entitled to refuse to testify participated in the offence or in handling stolen data, aiding after the fact, obstruction of prosecution or punishment, or handling stolen goods. If the offence may be prosecuted only upon request or only upon authorisation, sentence 1 applies in the cases under section 53 (1) sentence 1 no. 5 as soon as and insofar as the request to prosecute has been filed or the authorisation granted.
(5) Section 97, section 100d (5) and section 100g (4) remain unaffected.

Section 160b
Discussion of status of proceedings with parties

The public prosecution office may discuss the status of the proceedings with the parties to the proceedings, insofar as this appears suitable to expedite the proceedings. The essential content of this discussion is to be placed on record.

Section 161
Public prosecution office's general investigatory powers

(1) For the purpose indicated in section 160 (1) to (3), the public prosecution office is entitled to request information from all the authorities and to make investigations of any kind, either itself or through the police authorities and police officers, provided

there are no other statutory provisions specifically regulating their powers. The police authorities and police officers are obliged to comply with the request or order of the public prosecution office and are entitled, in such cases, to request information from all the authorities.
(2) Insofar as this statute expressly stipulates that personal data must be deleted, section 58 (3) of the Federal Data Protection Act does not apply.
(3) If measures under this statute are admissible only if the commission of particular offences is suspected, personal data which have been obtained as a result of a corresponding measure taken pursuant to another statute may be used as evidence in criminal proceedings without the consent of the person affected by the measure only to investigate one of the offences in respect of which such a measure could have been ordered to investigate the offence pursuant to this statute. Section 100e (6) no. 3 remains unaffected.
(4) Personal data obtained on or from private premises by technical means for the purpose of personal protection during covert investigations under police law may be used as evidence, having regard to the principle of proportionality (Article 13 (5) of the Basic Law), only after determination of the lawfulness of the measure by the local court (section 162 (1)) in whose district the authority making the order is located; in exigent circumstances, a judicial decision is to be sought without delay.

Section 161a
Examination of witnesses and experts by public prosecution office

(1) Witnesses and experts are obliged to appear before the public prosecution office upon being summoned and to make a statement on the subject matter or to render their opinion. Unless otherwise provided, the provisions of Part 1 Divisions 6 and 7 concerning witnesses and experts apply accordingly. The judge reserves the right to examine witnesses and experts under oath.
(2) If a witness or expert fails or refuses to appear without justification, the public prosecution office has the authority to take the measures provided in sections 51, 70 and 77. However, the court competent pursuant to section 162 reserves the right to impose detention.
(3) A decision from the court competent pursuant to section 162 may be sought against decisions of the public prosecution office pursuant to subsection (2) sentence 1. The same applies where the public prosecution office has taken decisions within the meaning of section 68b. Sections 297 to 300, 302, 306 to 309, 311a and 473a each apply accordingly. Court decisions as referred to in sentences 1 and 2 are not contestable.
(4) If the public prosecution office requests another public prosecution office to examine a witness or expert, the powers under subsection (2) sentence 1 are also vested in the requested public prosecution office.
(5) Section 185 (1) and (2) of the Courts Constitution Act applies accordingly.

Section 162
Investigating judge

(1) If the public prosecution office considers a judicial investigation to be necessary, then, prior to the preferment of public charges, it submits its applications to the local court in the district of which it is located or in which the branch of the public prosecution office submitting the application is located. If the public prosecution office additionally considers it necessary that a warrant of arrest be issued or an order for placement be made, it may also, without prejudice to sections 125 and

126a, submit such an application before the court designated in sentence 1. The local court in the district of which the investigation procedures are to be carried out are competent to undertake examinations and inspections if the public prosecution office submits its application to such court in order to expedite proceedings or to avoid inconvenience to the persons concerned.
(2) The court is required to examine whether, given the circumstances of the case, the investigation applied for is permitted by law.
(3) After the preferment of public charges, the court seized of the matter is the competent court. During proceedings on an appeal on points of law, the court whose judgment is being contested is the competent court. After final conclusion of the proceedings, subsections (1) and (2) apply accordingly. Following an application for the reopening of proceedings, the court competent to decide in the reopened proceedings is the competent court.

Section 163
Role of police in preliminary investigation

(1) The authorities and officers of the police force are required to investigate offences and to take all measures which may not be deferred in order to prevent the concealment of facts. To this end, they are authorised to request and, in exigent circumstances, to demand information from all authorities, and to conduct investigations of any kind, insofar as there are no other statutory provisions which specifically regulate their powers.
(2) The authorities and officers of the police force transmit their records to the public prosecution office without delay. If it appears necessary that a judicial investigation be performed promptly, transmission directly to the local court is possible.
(3) Upon being summoned by the public prosecution office's investigators, witnesses are obliged to appear in court and make a statement on the subject matter if the summons was issued on the public prosecution office's behalf. Unless otherwise provided, the provisions of Book 1 Part 6 apply accordingly. The court reserves the right to examine witnesses under oath.
(4) The public prosecution office decides

1. whether a person has the status of witness or whether he or she has the right to refuse to testify or provide information if there are doubts as to these matters or such doubts arise in the course of the examination,
2. whether a person is permitted, pursuant to section 68 (3) sentence 1, not to provide personal details or only concerning a previous identity,
3. whether to assign counsel to a witness pursuant to section 68b (2) and
4. whether to impose one of the measures provided for under sections 51 and 70 in the event of a witness's non-appearance in court without justification or refusal to give testimony without justification; the court competent pursuant to section 162 is entitled to determine the sentence of imprisonment.

In all other respects, the person conducting the examination takes all necessary decisions.
(5) An application may be made for a court decision by the court competent pursuant to section 162 against decisions taken by police officers pursuant to section 68b (1) sentence 3 and against decisions taken by the public prosecution office pursuant to subsection (4) sentence 1 nos. 3 and 4. Sections 297 to 300, 302,

306 to 309, 311a and 473a apply accordingly. Court decisions as referred to in sentence 1 are not contestable.
(6) Section 52 (3) and section 55 (2) apply accordingly to instruction given to experts by police officers. In the cases under section 81c (3) sentences 1 and 2, section 52 (3) also applies accordingly to examinations by police officers.
(7) Section 185 (1) and (2) of the Courts Constitution Act applies analogously.

Section 163a
Examination of accused

(1) The accused is to be examined prior to conclusion of the investigations at the latest, unless the proceedings are terminated. In simple matters it is sufficient to give the accused the opportunity to respond in writing.
(2) If the accused applies for evidence to be taken in his or her defence, such evidence is to be taken if it is of importance.
(3) The accused is obliged to appear before the public prosecution office if summoned. Sections 133 to 136a and section 168c (1) and (5) apply accordingly. Upon application, the court competent pursuant to section 162 decides on the lawfulness of the accused being made to appear. Sections 297 to 300, 302, 306 to 309, 311a and 473a apply accordingly. The decision of the court is not contestable.
(4) The accused is to be informed of the offence with which he or she is charged when being examined by police officers. In all other respects, section 136 (1) sentences 2 to 6, (2) to (5) and section 136a apply to the examination of the accused by police officers. Section 168c (1) and (5) applies accordingly to defence counsel.
(5) Sections 186 and 187 (1) to (3) and section 189 (4) of the Courts Constitution Act apply accordingly.

Section 163b
Measures to establish identity

(1) If someone is suspected of having committed an offence, the public prosecution office and police officers may take the measures necessary to establish their identity; section 163a (4) sentence 1 applies accordingly. The suspect may be kept in custody if his or her identity cannot be established by other means or only with considerable difficulty. Under the conditions of sentence 2, it is admissible to search the suspect and the objects found on him or her and to carry out measures for identification purposes.
(2) If and so far as it is necessary to investigate an offence, the identity of a person who is not suspected of an offence may also be established; section 69 (1) sentence 2 applies accordingly. Measures of the kind designated in subsection (1) sentence 2 may not be taken if they are disproportionate to the importance of the matter; measures of the kind designated in subsection (1) sentence 3 may not be taken against the will of the person concerned.

Section 163c
Deprivation of liberty to establish identity

(1) A person affected by a measure under section 163b may not under any circumstances be kept in custody longer than is necessary to establish his or her identity. The arrested person is to be brought without delay before the judge at the local court in the district of which he or she has been apprehended for the purpose of deciding on the admissibility and continuation of the deprivation of liberty, unless

it would presumably take longer to obtain a decision from the judge than it would to establish his or her identity. Sections 114a to 114c apply accordingly.
(2) Deprivation of liberty for the purpose of establishing identity may not exceed a total of 12 hours.
(3) Once identity has been established, the documentation prepared in connection with the establishment must be destroyed in the cases under section 163b (2).

Section 163d
Storage and matching of data obtained at checkpoints

(1) If certain facts give rise to the suspicion that

1. an offence under section 111 or
2. an offence under section 100a (2) nos. 6 to 9 and 11

has been committed, the data concerning the identity of persons obtained at a checkpoint by the border police, in the case under no. 1 also data obtained at checkpoints pursuant to section 111, and the circumstances which may be important for investigating the offence or for apprehending the offender may be stored in a file system if facts justify the assumption that the evaluation of the data may lead to the apprehension of the offender or to the investigation of the offence and the measure is not disproportionate to the importance of the matter. This also applies where, in the case under sentence 1, passports and identity cards are automatically machine-read. The data may only be transmitted to prosecuting authorities.
(2) Measures of the kind designated in subsection (1) may be ordered only by the judge, in exigent circumstances also by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). If the public prosecution office or one of its investigators has made the order, the public prosecution office without delay applies for judicial confirmation of such order. Section 100e (1) sentence 3 applies accordingly.
(3) The order is given in writing. It must describe the person whose data are to be stored as precisely as possible, by making reference to particular features or characteristics in the light of the information available about the suspect or suspects at the time of the order. The order must specify the nature and duration of the measures. It is to be limited to a particular area and to a maximum period of three months. One extension of no more than three further months is admissible if the conditions of subsection (1) continue to exist.
(4) If the conditions for issuance of the order no longer apply or if the purpose of the measures set out in the order has been fulfilled, the measures are to be terminated without delay. The personal data obtained by means of the measures must be deleted without delay as soon as they are not or no longer required for the criminal proceedings; storage of the data exceeding the duration of the measures (subsection (3)) by more than three months is inadmissible. The public prosecution office is to be notified of the deletion.
(5) (repealed)

Section 163e
Order for observation during police checks

(1) An order may be made for police observation during police checks allowing for personal identification data to be taken if there are sufficient factual indications showing that an offence of substantial significance has been committed. The order may be directed only against the accused person and only where other means of

establishing the facts or determining the offender's whereabouts would offer much less prospect of success or would be much more difficult. The measure is admissible against other persons if it can be assumed, on the basis of certain facts, that they are linked to the offender or that such a link is being established, that the measure will lead to the establishment of the facts or to the determination of the offender's whereabouts and using other means would offer much less prospect of success or would be much more difficult.
(2) The license plate number of a motor vehicle or the identification number or external marking of a watercraft, an aircraft or a container may be included in the notice if the vehicle, watercraft or aircraft is registered in the name of a person in respect of whom a notice has been issued pursuant to subsection (1) or if the vehicle, watercraft, aircraft or container is being used by that person or by another person whose identity is yet unknown and who is suspected of having committed an offence of substantial significance.
(3) Should such a person be encountered, personal data about an individual accompanying the person referred to in the notice or about a person operating a vehicle, watercraft or an aircraft included in the notice pursuant to subsection (2) or about a person using a container included in the notice pursuant to subsection (2) may also be communicated.
(4) The order for police observation may only be given by the court. In exigent circumstances, the order may also be made by the public prosecution office. If the public prosecution office has made the order, it without delay applies for court confirmation. Section 100e (1) sentence 3 applies accordingly. The order must be limited to a maximum of one year. It may be extended by no more than three months in each case, insofar as the conditions for making the order continue to apply.

Section 163f
Longer-term observation

(1) If there are sufficient factual indications showing that an offence of substantial significance has been committed, then an order may be made for the planned observation of the accused (longer-term observation) which is

1. to last for a continuous period exceeding 24 hours or
2. to take place on more than two days.

The measure may be ordered only if other means of establishing the facts or determining the offender's whereabouts would offer much less prospect of success or would be much more difficult. The measure is admissible against other persons if it can be assumed, on the basis of certain facts, that they are linked to the offender or that such a link is being established, that the measure will lead to the establishment of the facts or determination of the offender's whereabouts and using other means would offer much less prospect of success or would be much more difficult.
(2) The measure may be taken even if it unavoidably affects third parties. Section 100d (1) and (2) applies accordingly.
(3) Such measures may be ordered only by the court and, in exigent circumstances, also by the public prosecution office and its investigators (section 152 of the Courts Constitution Act). An order made by the public prosecution office or one of its investigators becomes ineffective if it is not confirmed by the court within three

working days. Section 100e (1) sentences 4 and 5 and (3) sentence 1 applies accordingly.
(4) (repealed)

Section 163g
Automatic vehicle number plate capture

(1) It is permitted, within a limited local area in vehicular traffic in public places, without the knowledge of the persons concerned to automatically capture, by technical means, vehicle number plates and the place, date, time and direction of travel if there are sufficient factual indications suggesting that a criminal offence of substantial significance has been committed which justifies the assumption that this measure can lead to the establishment of the accused's identity or whereabouts. The automatic data capture may only be effected temporarily and within a limited local area.
(2) An automatic data match may be conducted between the vehicle number plates captured in accordance with subsection (1) and the number plates of vehicles

1. which are licensed to the accused or are used by the accused or
2. which are licensed to persons other than the accused or are used by them if, on the basis of specific facts, it is to be assumed that they are in contact with the accused or such contact is being established and the establishment of the accused's whereabouts by another means would have considerably less prospect of success or would be considerably more difficult.

The automatic data match is to be effected immediately after the automatic data capture in accordance with subsection (1). In the event of a match, the correspondence between the number plates captured in accordance with subsection (1) and the other number plates as designated in sentence 1 is immediately to be checked manually. If there is no match or the manual check does not confirm the match, the data captured in accordance with subsection (1) are to be immediately deleted without trace.
(3) The order for the measures under subsections (1) and (2) is made in writing by the public prosecution office. It must state that the conditions for the taking of the measures are met and must precisely describe those number plates with which the data captured automatically in accordance with subsection (2) sentence 1 are to be matched. The limitation of the local area in vehicular traffic in public places (subsection (1) sentence 1) is to be specified and the order is to be time limited. In exigent circumstances, the order may also be made orally and by the public prosecution office's investigators (section 152 of the Courts Constitution Act); in such cases the written descriptions referred to in sentences 2 and 3 are to be subsequently submitted within three days by the person making the order.
(4) Where the conditions for the order are no longer met or the purpose of the measures has been achieved, the measures are to be terminated without delay.

Section 164
Arrest of persons disrupting official activities

Officials directing official activities on the ground are authorised to apprehend persons who intentionally disturb their official activities or oppose orders given by them within the scope of their authority and are authorised to have them kept in custody until completion of their official activities, but not beyond the next day.

Section 165
Judicial investigatory acts in exigent circumstances

In exigent circumstances, the judge may, even without an application, undertake the necessary investigatory acts if a public prosecutor is not available.

Section 166
Accused's applications to take evidence during judicial examination

(1) If the accused is examined by a judge and if during this examination he or she applies for certain exonerating evidence to be taken, the judge is required, insofar as he or she considers it of importance, to take such evidence if loss of evidence is to be feared or if the taking of the evidence may justify the accused's release.
(2) If the evidence is to be taken in another district, the judge may request the judge in that district to take this evidence.

Section 167
Further directions issued by public prosecution office

In the cases under sections 165 and 166, the authority to give further directions lies with the public prosecution office.

Section 168
Record of judicial investigatory acts

A record is to be made of each judicial investigatory act. A registry clerk is to be called in to make such record; the judge may dispense with this if he or she does not consider the presence of a recording clerk to be necessary. In urgent cases, the judge may call in a person to be sworn in as recording clerk. The record is to be signed by the judge and, if one has been called in, by the recording clerk.

Section 168a
Form of record; recordings

(1) The record must indicate the place and date of the hearing and the names of the persons who were involved and participated and must state whether the essential procedural formalities were observed. Section 68 (2) and (3) remains unaffected.
(2) The record may be made during the hearing or after its conclusion in the form of a verbatim rendition of the hearing (verbatim record) or in the form of a summary of its content (record of content). A recording may be made of the hearing in the form of a word-for-word recording or in the form of a summary of its content (summary recording). Proof of inaccuracy of the record on the basis of the recording is admissible.
(3) If the record is made during the hearing or if a recording is made of the hearing in the form of a summary of its content, then that part of the record or summary recording which concerns the persons participating in the hearing is to be displayed on a screen, read out, played back or submitted for inspection for the purpose of their approval, unless they dispense with this.
(4) If the record is made after conclusion of the hearing, then that part of the record which concerns the persons participating in the hearing is to be transmitted to them for the purpose of their approval, unless they dispense with this.
(5) If the record is made following conclusion of the hearing by means of a verbatim transcript of a recording, the person who produced the transcript or who reviewed a machine-generated transcript adds his or her name and makes the addendum that he or she confirms the accuracy of the transcript.
(6) The form of the record and of the recording, the approval of the record or of a summary recording, any objections and any waiver of the right to submission for the

purpose of approval are to be noted in the record or otherwise documented. Recordings are to be added to the files, retained with the files at the registry or stored in another manner. They may be erased once the proceedings have been concluded with binding effect or have been otherwise terminated; section 58a (2) sentence 2 and section 136 (4) sentence 3 remain unaffected. The manner of retention or storage and the erasure are to be documented.

Section 168b
Record of investigating authorities' investigatory acts

(1) The result of investigatory acts by the investigating authorities is to be placed on record.
(2) The examination of the accused, witnesses and experts is, as a rule, to be recorded pursuant to section 168a insofar as this can be done without considerably delaying the investigations. If no record is made of the accused's examination, the fact that his or her defence counsel participated in the examination is to be placed on record.
(3) Instruction given to the accused prior to his or her examination as required by section 163a and instruction given prior to an identity parade as required by section 58 (2) sentence 5 is to be documented. This also applies to the accused's decision to consult defence counsel of his or her own choice prior to his or her examination and to the accused's consent in accordance with section 141a sentence 1.

Section 168c
Right to be present during judicial examination

(1) The public prosecutor and defence counsel are permitted to be present during the judicial examination of the accused. Following the examination, they are to be given the opportunity to comment or to ask the accused questions. Questions or statements which are inappropriate or of no relevance to the matter may be rejected.
(2) The public prosecutor, accused and defence counsel are permitted to be present during the judicial examination of a witness or an expert. Following the examination they are to be given the opportunity to comment or to ask the examined person questions. Questions or statements which are inappropriate or of no relevance to the matter may be rejected. Section 241a applies accordingly.
(3) The judge may exclude an accused from being present at the hearing if his or her presence would jeopardise the purpose of the investigation. This in particular applies if it is to be feared that a witness will not tell the truth in the presence of the accused.
(4) If an accused who is not at liberty has defence counsel, he or she is entitled to be present only at those hearings which are held at the court of the place where he or she is in custody.
(5) The persons entitled to be present are to be given prior notice of the dates set down for the hearings. In the cases under subsection (2), notification is dispensed with insofar as it would endanger the success of the investigation. Persons entitled to be present do not have the right to request a change of the date set down for a hearing if they are prevented from being present.

Section 168d
Right to be present during judicial inspection

(1) The public prosecutor, the accused and defence counsel are permitted to be present at the hearing when a judicial inspection is made. Section 168c (3) sentence 1, (4) and (5) applies accordingly.
(2) If experts are consulted at the judicial inspection, the accused may request that the experts to be proposed by him or her for the main hearing be summoned to the hearing and, if the judge rejects the application, the accused may have them summoned himself or herself. The experts named by the accused are permitted to participate in the inspection and the required investigation if the activity of the experts appointed by the judge is not impeded thereby.

Section 168e
Separate examination of witnesses

If there is an imminent risk of serious detriment to a witness's wellbeing in the event of his or her being examined in the presence of persons entitled to be present and if that risk cannot be averted in some other way, the judge must, as a rule, examine the witness separately from those entitled to be present. There is to be simultaneous audio-visual transmission of the examination to the latter. The rights of participation of those entitled to be present otherwise remain unaffected. Sections 58a and 241a apply accordingly. The decision referred to in sentence 1 is not contestable.

Section 169
Investigating judges at higher regional court and Federal Court of Justice

(1) In cases under the jurisdiction of a higher regional court as the court of first instance pursuant to section 120 or 120b of the Courts Constitution Act, the duties incumbent upon the judge at the local court in preparatory proceedings may also be performed by investigating judges of that higher regional court. If the Federal Public Prosecutor General is conducting the investigations, the investigating judges at the Federal Court of Justice take their place.
(2) The investigating judge at the higher regional court competent for a case may also order investigatory acts even if they are not to be performed in the district of such court.

Section 169a
Note of conclusion of investigations

If the public prosecution office is considering preferring public charges, it makes a note in the files that the investigations have been concluded.

Section 170
Decision to prefer public charges

(1) If the investigations offer sufficient reason to prefer public charges, the public prosecution office prefers them by submitting a bill of indictment to the competent court.
(2) Otherwise, the public prosecution office terminates the proceedings. The public prosecutor notifies the accused thereof if he or she was examined as such or a warrant of arrest was issued against him or her; the same applies if the accused requested such notice or if there is a particular interest in the notification.

Section 171
Order terminating proceedings

If the public prosecution office does not grant an application to prefer public charges or if, after conclusion of the investigations, it orders the proceedings to be terminated, it is required to notify the applicant, indicating the reasons. If the

applicant is also the aggrieved person, the order must indicate the possibility of contesting the decision and the time limit provided therefor (section 172 (1)). Section 187 (1) sentence 1 and (2) of the Courts Constitution Act applies accordingly to aggrieved persons who would be entitled to join a public prosecution as private accessory prosecutor pursuant to section 395, insofar as they request a translation.

Section 172
Complaint by aggrieved person; proceedings to compel public charges

(1) If the applicant is also the aggrieved person, he or she is entitled to lodge a complaint against the notification made pursuant to section 171 with the official with supervisory authority over the public prosecution office within two weeks after receipt of such notification. On the filing of the complaint with the public prosecution office, the time limit is deemed to have been observed. Time does not start to run if no instruction was given pursuant to section 171 sentence 2.
(2) The applicant may, within one month after receipt of notification, apply for a court decision in respect of the dismissal of the complaint by the superior official of the public prosecution office. The accused is to be instructed as to this right and as to the form such application takes; the time limit does not run if no instruction has been given. The application is inadmissible if the sole subject of the proceedings is an offence which can be prosecuted by the aggrieved person by way of a private prosecution or if the public prosecution office has dispensed with preferring public charges in accordance with section 153 (1), section 153a (1) sentences 1 and 7, or section 153b (1); the same applies in the cases under sections 153c to 154 (1) and those under sections 154b and 154c.
(3) The application for a court decision must indicate both the facts which are intended to substantiate the preferment of public charges and the evidence. The application must be signed by a lawyer; legal aid is governed by the same provisions as apply in civil litigation. The application must be submitted to the court competent to decide.
(4) The higher regional court is competent to decide on the application. Sections 120 and 120b of the Courts Constitution Act apply analogously.

Section 173
Court procedure after filing of application

(1) Upon the request of the court, the public prosecution office is required to submit to the court the records of the hearings conducted so far.
(2) The court may inform the accused of the application, setting a time limit for making a statement in reply.
(3) The court may order investigations to prepare its decision and may entrust such investigations to a commissioned or requested judge.

Section 174
Dismissal of application

(1) If there are insufficient grounds to prefer public charges, the court dismisses the application and notifies the applicant, the public prosecution office and the accused of the dismissal.
(2) Once the application has been dismissed, public charges may be preferred only on the basis of new facts or evidence.

Section 175
Order for preferment of public charges

If, after hearing the accused, the court considers the application to be well-founded, it orders the preferment of public charges. This order is carried out by the public prosecution office.

Section 176
Applicant's provision of security

(1) Prior to deciding on the application, the court may make an order requiring the applicant to provide security for the costs which are likely to be incurred by the Treasury and the accused in respect of the proceedings on the application. Security is to be provided by depositing cash, shares or bonds. Any diverging provisions in a statutory instrument issued under the Act on Payments to and from Courts and Judicial Authorities remain unaffected. The court, at its discretion, determines the amount of security to be provided. At the same time, the court specifies a time limit within which the security is to be provided.
(2) If the security is not provided within the time limit specified, the court declares the application withdrawn.

Section 177
Costs

The costs resulting from the proceedings on the application are to be imposed on the applicant in the cases under section 174 and section 176 (2).

Division 3
(repealed)

Division 4
Decision on opening of main proceedings

Section 198
(repealed)

Section 199
Decision on opening of main proceedings

(1) The court which is competent for the main hearing decides whether main proceedings are to be opened or whether proceedings are to be provisionally terminated.
(2) The bill of indictment contains the application to open the main proceedings. The file is submitted to the court together with the bill of indictment.

Section 200
Content of bill of indictment

(1) The bill of indictment must indicate the indicted accused, the offence with which the accused is charged, the time and place of its commission, its statutory elements and the criminal provisions which are to be applied (the charges). The evidence, the court before which the main hearing is to be held and defence counsel must also be indicated. When witnesses are designated, their full address is not to be indicated but only their place of residence or the place where they are staying. In the cases under section 68 (1) sentence 3 and (2) sentence 1, it is sufficient to indicate the witness's name. If reference is made to a witness whose identity is not to be revealed either in full or in part, this fact is to be indicated; the same applies accordingly to the confidentiality of the witness's place of residence or whereabouts.
(2) The bill of indictment also sets out the relevant results of the investigations. This may be dispensed with if the charges are preferred before a criminal court judge.

Section 201
Communication of bill of indictment

(1) The presiding judge communicates the bill of indictment to the indicted accused and at the same time summons him or her to state, within a time limit to be set, whether he or she wishes to apply for individual evidence to be taken before the decision to open main proceedings or whether he or she wishes to raise objections to the opening of main proceedings. The bill of indictment is also communicated to a private accessory prosecutor and to a person entitled to private accessory prosecution who has applied therefor; section 145a (1) and (3) applies accordingly.
(2) The court decides on the applications and objections. The decision is not contestable.

Section 202
Order for taking of additional evidence

Before the court decides on the opening of the main proceedings, it may order individual evidence to be taken to help to investigate the case. The order is not contestable.

Section 202a
Discussion of status of proceedings with parties

If the court is considering opening main proceedings, it may discuss the status of the proceedings with the parties insofar as this appears suitable to expedite the proceedings. The essential content of this discussion is to be placed on record.

Section 203
Decision to open main proceedings

The court decides to open main proceedings if, in the light of the results of the preparatory proceedings, there appear to be sufficient grounds to suspect that the indicted accused has committed an offence.

Section 204
Decision not to open main proceedings

(1) If the court decides not to open main proceedings, the order must show whether its decision is based on factual or on legal grounds.
(2) The order is to be notified to the indicted accused.

Section 205
Termination owing to temporary obstacles

The court may make an order provisionally terminating the proceedings if the absence of the indicted accused or some other personal impediment prevents the main hearing being held for a considerable time. The presiding judge secures the evidence, insofar as this is necessary.

Section 206
Applications not binding on court

The court is not bound in the formulation of its decision by the public prosecution office’s applications.

Section 206a
Termination owing to impediments

(1) If a procedural impediment arises after the main proceedings have been opened, the court may terminate the proceedings by an order made outside the main hearing.

(2) The order is contestable by immediate complaint.

Section 206b
Termination following legislative amendment

If a provision under criminal law which is applicable at the time at which the offence was committed is amended prior to the decision and if pending criminal court proceedings concern an offence which was punishable under the former law but which is no longer punishable under the new law, the court terminates the proceedings by an order made outside the main hearing. The order is contestable by immediate complaint.

Section 207
Content of order opening main proceedings

(1) In the order by which the main proceedings are opened, the court admits the charges for the main hearing and designates the court before which the main hearing is to take place.
(2) The court specifies in the order the amendments subject to which it admits the charges for the main hearing if

1. charges have been preferred for more than one offence and the opening of the main proceedings is refused in regard to some of them,
2. prosecution is to be limited in accordance with section 154a to individual severable parts of an offence or such parts are to be reintroduced into the proceedings,
3. a different legal assessment of the act is reached than in the bill of indictment or
4. prosecution is limited in accordance with section 154a to individual of several violations of the law committed by means of the same offence or such violations of law are reintroduced into the proceedings.

(3) In the cases under subsection (2) nos. 1 and 2, the public prosecution office submits a new bill of indictment corresponding to the order. Presentation of the relevant results of investigations may be dispensed with.
(4) The court at the same time decides ex officio whether remand detention or provisional placement is to be ordered or continued.

Section 208
(repealed)

Section 209
Competence to open proceedings

(1) If the court with which the bill of indictment has been filed considers the jurisdiction of a court of lower rank in its district to be established, it opens the main proceedings before such court.
(2) If the court with which the bill of indictment has been filed considers the jurisdiction of a court of higher rank to whose district it belongs to be established, it submits the files through the public prosecution office to such court for decision.

Section 209a
Special functional jurisdictions

For the purposes of section 4 (2), section 209 and section 210 (2), the following are deemed equivalent to courts of higher rank:

1. the special criminal divisions pursuant to section 74 (2) and sections 74a and 74c of the Courts Constitution Act within their district vis-à-vis the general criminal divisions and amongst themselves in the order designated in section 74e of the Courts Constitution Act and

2. the youth courts vis-à-vis the courts competent for general criminal matters of the same rank when it comes to decisions on whether cases are to be tried before the youth courts

   a) under section 33 (1), section 103 (2) sentence 1 and section 107 of the Youth Courts Act or

   b) as youth protection matters (section 26 (1) sentence 1, section 74b sentence 1 of the Courts Constitution Act).

Section 210
Appellate remedies against order opening or refusing to open proceedings

(1) The defendant cannot contest the order by which the main proceedings were opened.
(2) The public prosecution office is entitled to lodge an immediate complaint against an order refusing the opening of the main proceedings or an order by which, in deviation from the application of the public prosecution office, the proceedings have been referred to a court of lower rank.
(3) If the court hearing the complaint allows the complaint, it may at the same time decide that the main hearing is to be held before another chamber of the court which made the order pursuant to subsection (2) or by a neighbouring court of the same rank and in the same *Land*. In proceedings in which a higher regional court has decided in the first instance, the Federal Court of Justice may decide that the main hearing is to be held before another panel of the same court.

Section 211
Resumption following refusal to open main proceedings

If the opening of the main proceedings was refused by an order which is no longer contestable, the action may be resumed only on the basis of new facts or evidence.

Division 5
Preparation of main hearing

Section 212
Discussion of status of proceedings with parties

Section 202a applies accordingly after the main proceedings have been opened.

Section 213
Setting of date for main hearing

(1) The date for the main hearing is set down by a presiding judge.
(2) In particularly extensive first-instance proceedings before the regional court or higher regional court in which the main hearing will presumably last more than 10 days, the presiding judge as a rule coordinates the course of the main hearing with defence counsel, the public prosecution office and representatives of the private accessory prosecutor before setting the date for the main hearing.

Section 214
Summonses issued by presiding judge; gathering of evidence

(1) The presiding judge orders the summonses required for the main hearing. At the same time, the presiding judge orders the notifications of the date of the hearing required pursuant to section 397 (2) sentence 3, section 406d (1) and section 406h (2) sentence 2; section 406d (4) applies accordingly. The court registry ensures that the summonses are issued and notifications dispatched.
(2) If it is to be expected that the main hearing will continue over a long period, the presiding judge as a rule orders that all or individual witnesses and expert witnesses be summoned to appear on a date later than the beginning of the main hearing.
(3) The public prosecution office is entitled to summon additional persons directly.
(4) The public prosecution office ensures that the objects serving as evidence are produced. This may also be done by the court.

Section 215
Service of order opening main proceedings

The order concerning the opening of the main proceedings is to be served on the defendant at the latest with the summons. In the cases under section 207 (3), this applies accordingly to a bill of indictment subsequently submitted.

Section 216
Summoning of defendant

(1) A defendant who is at liberty is summoned in writing and warned that he or she will be arrested and brought before the court if he or she fails to appear without excuse. In the cases under section 232, the warning may be omitted.
(2) A defendant who is not at liberty is summoned pursuant to section 35 and notified of the date of the main hearing. The defendant is thereby to be asked what applications, if any, are to be made for his or her defence at the main hearing.

Section 217
Time limit for summons

(1) A period of at least one week must elapse between service of the summons (section 216) and the day of the main hearing.
(2) If this time limit has not been observed, the defendant may request suspension of the hearing at any time prior to commencement of his or her examination on the charges.
(3) The defendant may waive observance of this time limit.

Section 218
Summoning of defence counsel

Court-appointed defence counsel is always to be summoned in addition to the defendant; defence counsel of choice is to be summoned if the court was notified of such choice. Section 217 applies accordingly.

Section 219
Defendant’s applications to take evidence

(1) The accused must submit any applications to take evidence to the presiding judge. The accused is to be notified of the direction made following this request.
(2) If the defendant’s applications concerning evidence are granted, they are to be communicated to the public prosecution office.

Section 220
Direct summons by defendant

(1) If the presiding judge rejects the application to summon a person, the defendant may have that person summoned directly. The defendant is authorised to do so even without a previous application.
(2) A person directly summoned is obliged to appear only if, at the time of the summons, the statutory reimbursement for travel expenses and absence from work is offered to him or her in cash or is proved to have been deposited at the registry.
(3) If it transpires at the main hearing that the examination of a person directly summoned was useful for the purpose of clarifying the matter, the court is, upon application, required to order the granting of statutory reimbursement from the Treasury to such person.

Section 221
Ex officio gathering of evidence

The presiding judge may also ex officio order the production of further items serving as evidence.

Section 222
Naming of witnesses and expert witnesses

(1) The court is required to provide the public prosecution office and the defendant with the names of the summoned witnesses and expert witnesses in good time. If the public prosecution office makes use of its right under section 214 (3), it is to provide the court and the defendant with the names of the summoned witnesses and experts in good time. Section 200 (1) sentences 3 to 5 applies analogously.
(2) The defendant is required to provide the court and the public prosecution office, in good time, with the names of the witnesses and experts directly summoned by him or her or to be brought to the main hearing, indicating their full address.

Section 222a
Notification of composition of court

(1) If the main hearing at first instance is held before a regional court or a higher regional court, the composition of the court is to be communicated no later than on commencement of the main hearing, indicating the presiding judge and the additional judges and additional lay judges called in to assist. The presiding judge may make an order communicating the composition prior to the main hearing; the notification is to be served. If the composition, as communicated, changes, this is to be indicated no later than on commencement of the main hearing.
(2) If the notification about the composition or about a change in the composition of the court is served less than one week prior to the commencement of the main hearing or did not become known until the main hearing had already commenced, then the court may, upon application by the defendant, defence counsel or the public prosecution office, interrupt the main hearing to examine the composition if this is requested at the latest prior to the commencement of the examination of the first defendant on the charges and it becomes apparent that the main hearing could be completed before the end of the time period referred to in section 222b (1) sentence 1.
(3) The documentation which determines the composition may be inspected on behalf of the defendant only by his or her defence counsel or by a lawyer, on behalf of the private accessory prosecutor only by a lawyer.

Section 222b
Objections to composition of court

(1) Where the composition of the court was communicated pursuant to section 222a, an objection that the court's composition does not comply with the rules may be raised only within one week after service of notification of the composition or, if service has not been made, after the court's composition becomes known. The facts on the basis of which the composition is alleged to be contrary to the rules must be indicated. All the objections are to be raised at the same time. If made outside the main hearing, the objection is to be made in writing; section 345 (2) applies accordingly, and section 390 (2) applies accordingly in respect of the private accessory prosecutor.
(2) The court decides on the objection in the composition required for decisions made outside the main hearing. If it considers the objection to be well-founded, it declares itself not to be properly composed. If an objection results in a change in the composition of the court, section 222a does not apply to the new composition.
(3) If the court considers the objection to be unfounded, it is to be submitted to the appellate court within three days at the latest. The decision of the appellate court is given without an oral hearing. The parties are first to be given the opportunity to comment. If the appellate court considers the objection to be well-founded, it determines that the court's composition does not comply with the rules.

Section 223
Examination by commissioned or requested judges

(1) The court may order that a witness or an expert be examined by a commissioned or requested judge if illness or infirmity or other insurmountable impediments prevent him or her from appearing at the main hearing for a longer or indefinite period of time.
(2) The same rule applies where a witness or an expert cannot reasonably be expected to appear owing to the great distance involved.
(3) (repealed)

Section 224
Notification of parties of date of hearing

(1) The public prosecution office, the defendant and defence counsel are to be notified in advance of the dates set down for the examination; their presence at the examination is not required. Notification may be dispensed with if it would endanger the success of the investigation. The record made thereof is to be submitted to the public prosecution office and defence counsel.
(2) If a defendant who is not at liberty has defence counsel, he or she is entitled to be present only at those court hearings which are held in the court at the place where he or she is in custody.

Section 225
Judicial inspection by commissioned or requested judges

The provisions of section 224 apply if a judicial inspection is to be made in preparation of the main hearing.

Section 225a
Change of jurisdiction prior to main hearing

(1) If a court, prior to the commencement of a main hearing, considers the substantive jurisdiction of a court of higher rank to be established, it submits the files to this court via the public prosecution office; section 209a no. 2 (a) applies

accordingly. The court to which the matter has been referred makes an order indicating whether it accepts the case.
(2) If the files are submitted to a court of higher rank by a criminal court judge or by a court with lay judges, the defendant may request the taking of specific evidence within a certain time limit to be determined at the time of submission. The presiding judge at the court to which the case has been referred decides on the application.
(3) The defendant and the court before which the main hearing is to be held are to be named in the order accepting the case. Section 207 (2) nos. 2 to 4, (3) and (4) applies accordingly. Contestability of the order is governed by section 210.
(4) The procedure described in subsections (1) to (3) also applies if the court, prior to the commencement of the main hearing, considers an objection raised by the defendant pursuant to section 6a to be well-founded and a special criminal division which has priority pursuant to section 74e of the Courts Constitution Act has jurisdiction. If the court which considers the jurisdiction of another criminal division to be established has priority over the latter pursuant to section 74e of the Courts Constitution Act, it refers the case to that chamber with binding effect; contestability of the decision on the referral is governed by section 210.

Division 6
Main hearing

Section 226
Uninterrupted presence

(1) The main hearing is conducted in the uninterrupted presence of those persons called upon to reach a judgment and of the public prosecution office and a registry clerk.
(2) Criminal court judges may dispense with the requirement that a registry clerk attend the main hearing. The decision is not contestable.

Section 227
More than one public prosecutor and defence counsel

More than one official of the public prosecution office and more than one defence counsel may participate in the main hearing and share their respective duties.

Section 228
Suspension and interruption

(1) The decision to suspend a main hearing or to interrupt a main hearing pursuant to section 229 (2) is given by the court. The presiding judge is competent to order brief interruptions.
(2) Notwithstanding section 145, if defence counsel is hindered from appearing, this does not entitle the defendant to request the suspension of the hearing.
(3) If the time limit set in accordance with section 217 (1) has not been complied with, the presiding judge is, as a rule, to inform the defendant of the right to request suspension of the hearing.

Section 229
Maximum period of interruption

(1) A main hearing may be interrupted for a period of no more than three weeks.
(2) A main hearing may also be interrupted for a period of no more than one month if it has been conducted for at least 10 days prior thereto.
(3) If a main hearing has already been conducted for at least 10 days, the running of the time limits referred to in subsections (1) and (2) is suspended for as long as

1. a defendant or a person called to give judgment is unable to attend the main hearing owing to illness or
2. a person called to give judgment is unable to attend the main hearing owing to statutory maternity leave or parental leave, up to a maximum of two months. The time periods referred to in subsections (1) and (2) expire no earlier than 10 days after the suspension has ended. The commencement and end point of the suspension is determined by the court in an incontestable decision.

(4) If the main hearing has not been resumed at the latest by the day following expiry of the time limit referred to in the previous subsections, the main hearing is to recommence. If the day following expiry of the time limit is a Sunday, a general public holiday or a Saturday, the main hearing may be resumed on the next working day.
(5) If a temporary technical fault prevents the court from continuing the main hearing on the day following expiry of the time limit designated in the previous subsections or, in the case under subsection (4) sentence 2, on the next working day, then in derogation from subsection (4) sentence 1 it is permissible to resume the main hearing immediately after the technical fault has been eliminated, at the latest, though, 10 days following expiry of the time limit. The determination that a technical fault within the meaning of sentence 1 exists is made by the court by incontestable decision.

Section 230
Defendant's failure to appear

(1) No main hearing is held against a defendant who fails to appear.
(2) If insufficient excuse has been provided for the defendant's failure to appear, an order is made to bring the defendant before the court or a warrant of arrest is to be issued insofar as this is necessary in order to conduct the main hearing.

Section 231
Defendant's duty to be present

(1) A defendant who has appeared may not leave the hearing. The presiding judge may take appropriate measures to prevent the defendant from leaving; the judge may also have the defendant kept in custody during any interruption of the hearing.
(2) If the defendant nevertheless leaves or fails to appear when an interrupted main hearing is resumed, it may be concluded in his or her absence if the defendant has already been examined on the charges, the court does not consider the defendant's further presence to be necessary and the defendant was informed in the summons that the main hearing may, in such cases, be concluded in his or her absence.

Section 231a
Bringing about of unfitness to stand trial with intent

(1) If the defendant has intentionally and culpably brought about a condition which precludes his or her fitness to stand trial and if, as a result, said defendant knowingly prevents the proper conduct or continuation of the main hearing in his or her presence, then if the defendant has not yet been examined on the charges, the main hearing is to be conducted or continued in his or her absence, unless the court considers his or her presence to be indispensable. The procedure described in sentence 1 only applies where the defendant has, after proceedings have been

opened, had the opportunity to make a statement on the charges before the court or a commissioned judge.
(2) As soon as the defendant is again fit to stand trial, the presiding judge must inform him or her of the essential content of the proceedings during his or her absence, unless pronouncement of judgment has commenced.
(3) It is for the court to decide, after hearing a physician as an expert, whether to hold the hearing in the absence of a defendant pursuant to subsection (1). The decision may already be given prior to the beginning of the main hearing. An immediate complaint against the decision is admissible; it has suspensive effect. A main hearing which has already commenced is to be interrupted until a decision on the immediate complaint is made; the interruption may last no more than 30 days even if the conditions of section 229 (2) are not met.
(4) Defence counsel is to be appointed for a defendant who is not represented by defence counsel as soon as a hearing in the absence of the defendant is being considered in accordance with subsection (1).

Section 231b
Continuation after defendant's removal to maintain public order

(1) If the defendant is removed from the courtroom for disorderly conduct or arrested for disobedience to court orders (section 177 of the Courts Constitution Act), the hearing may be conducted in his or her absence if the court does not consider the defendant's further presence to be indispensable and as long as it is to be feared that the defendant's presence would be seriously detrimental to the progress of the main hearing. In any event, the defendant is to be given the opportunity to make a statement on the charges.
(2) As soon as the defendant is allowed back into the courtroom, the procedure described in section 231a (2) applies.

Section 231c
Leave of absence of individual defendants and court-appointed defence counsel

If the main hearing is held in respect of more than one defendant, the court may order that individual defendants, in the case of mandatory defence also their defence counsel, be permitted, upon application, to be absent from individual parts of the hearing, unless these parts of the hearing concern them. The order must indicate those parts of the hearing for which such permission is given. Permission may be revoked at any time.

Section 232
Conduct of hearing despite defendant's failure to appear

(1) The main hearing may be held in the defendant's absence if he or she was properly summoned and the summons referred to the fact that the hearing may take place in his or her absence and if only a fine of no more than 180 daily rates, a warning with sentence reserved, a driving ban, confiscation, destruction or rendering unusable of an object, or a combination thereof is to be expected. An increased penalty or a measure of reform and prevention may not be imposed in the defendant's absence. Disqualification from driving is admissible if the defendant was informed about this possibility in the summons.
(2) The main hearing does not take place without the defendant if the summons was effected by publication.
(3) A record of a judicial examination of the defendant is read out at the main hearing.

(4) A judgment given in the defendant's absence must be served on him or her personally, together with reasons for the judgment, unless it is served on his or her defence counsel pursuant to section 145a (1).

Section 233
Defendant's release from obligation to appear

(1) The defendant may, upon application, be released from the obligation to appear at the main hearing if only imprisonment for a term not exceeding six months, a fine not exceeding 180 daily rates, a warning with sentence reserved, a driving ban, confiscation, destruction or rendering unusable of an object, or a combination thereof is expected to be imposed. An increased penalty or a measure of reform and prevention may not be imposed in the defendant's absence. Disqualification from driving is admissible.
(2) Defendants who are released from the obligation to appear at the main hearing are to be examined on the charges by a commissioned or requested judge. In this connection, they are to be advised of the legal consequences which are admissible at the hearing in their absence and asked whether they uphold their application to be released from the obligation to appear at the main hearing. In lieu of a request or a commission referred to in sentence 1, the court may also conduct the examination on the charges outside the main hearing in such a way that the defendant is located somewhere other than the court and the examination is simultaneously transmitted audio-visually to the place where the defendant is located and to the courtroom.
(3) The public prosecution office and defence counsel are to be informed of the date set down for the examination; their presence at the examination is not required. The record of the examination is read out at the main hearing.

Section 234
Representation of absent defendant

If the main hearing can be held in the defendant's absence, he or she is entitled to be represented by defence counsel with a documented power of attorney.

Section 234a
Rights of defence counsel representing absent defendant

If the main hearing is held in the defendant's absence, it is sufficient for the information required under section 265 (1) and (2) to be given to defence counsel; the defendant's consent pursuant to section 245 (1) sentence 2 and pursuant to section 251 (1) no. 1 and (2) no. 3 is not required if defence counsel takes part in the main hearing.

Section 235
Restoration of status quo ante in case of hearing in defendant's absence

If the main hearing was held in the defendant's absence pursuant to section 232, the defendant may apply for restoration of the status quo ante in respect of the judgment within one week after its service subject to the same conditions as apply in the case of failure to comply with a time limit; the defendant may at any time request restoration of the status quo ante if he or she did not obtain knowledge of the summons to the main hearing. The defendant is to be instructed of this right when the judgment is served on him or her.

Section 236
Order for defendant to appear in person

The court at all times has the power to order that the defendant appear in person and to enforce this by an order to bring the defendant before the court or by a warrant of arrest.

Section 237
Joinder of several criminal cases

If there is a connection between more than one criminal case pending before the same court, the court may order that they be joined for the purpose of being heard together, even if this connection is not the one specified in section 3.

Section 238
Conduct of hearing

(1) The presiding judge conducts the hearing, examines the defendant and takes the evidence.
(2) It is for the court to decide on an objection by a party to the proceedings that an order by the presiding judge relating to the conduct of the hearing is inadmissible.

Section 239
Cross-examination

(1) The presiding judge is required to leave the examination of witnesses and experts named by the public prosecution office and by the defendant to the public prosecution office and defence counsel upon concurring application by both. Witnesses and experts named by the public prosecution office are first to be examined by the public prosecution office; those named by the defendant are first to be examined by defence counsel.
(2) After this examination, the presiding judge is also required to ask the witnesses and experts such questions as he or she deems necessary for the further clarification of the case.

Section 240
Right to ask questions

(1) The presiding judge must permit the associate judges, upon request, to address questions to the defendant, witnesses and experts.
(2) The presiding judge must give similar permission to the public prosecution office, to the defendant, defence counsel and to the lay judges. Direct questioning of a defendant by a co-defendant is inadmissible.

Section 241
Presiding judge's right to reject questions

(1) A person who abuses the right under section 239 (1) to examine a witness can be deprived of this right by the presiding judge.
(2) In the cases under section 239 (1) and section 240 (2), the presiding judge may reject inappropriate or irrelevant questions.

Section 241a
Examination of underage witnesses by presiding judge

(1) The examination of witnesses under 18 years of age is conducted solely by the presiding judge.
(2) The persons referred to in section 240 (1) and (2) sentence 1 may request the presiding judge to ask the witnesses further questions. The presiding judge may permit these persons to put questions to witnesses directly if, according to his or her duty-bound discretion, no detriment to the wellbeing of the witness is to be expected.

(3) Section 241 (2) applies accordingly.

Section 242
Decision on admissibility of questions

It is for the court to decide in the case of doubt as to the admissibility of a question.

Section 243
Course of main hearing

(1) The main hearing begins with the case being called up. The presiding judge determines whether the defendant and defence counsel are present and whether the evidence has been produced and, in particular, whether the summoned witnesses and experts are present.
(2) The witnesses leave the courtroom. The presiding judge examines the defendant on his or her personal situation.
(3) Thereupon, the public prosecutor reads out the charges. In the cases under section 207 (3), the public prosecutor bases these on the new bill of indictment. In the cases under section 207 (2) no. 3, the public prosecutor reads out the charges and submits the legal assessment on which the decision to open the main hearing was based; he or she may, in addition, express an own divergent legal opinion. In the cases under section 207 (2) no. 4, the public prosecutor takes into account any amendments ordered by the court when admitting the case for a main hearing.
(4) The presiding judge states whether discussions pursuant to sections 202a and 212 have taken place, whether their subject matter has been the possibility of a negotiated agreement (section 257c) and, if so, their essential content. This duty also obtains in the further course of the main hearing, insofar as changes have occurred in regard to the information given at the commencement of the main hearing.
(5) The defendant is then to be informed that he or she may choose to respond to the charges or not to make any statement on the charges. If the defendant is prepared to respond, he or she is to be examined on the charges in accordance with section 136 (2). Upon application, in particularly extensive first-instance proceedings before a regional court or higher regional court in which the main hearing will presumably last more than 10 days, defence counsel is to be given the opportunity to make a statement on the defendant's behalf before the defendant's examination; this statement may not anticipate the closing speech. The presiding judge may require that defence counsel submit any further statement in writing if otherwise the course of proceedings would be significantly delayed; section 249 (2) sentence 1 applies accordingly. The defendant's previous convictions are to be disclosed only insofar as they are relevant to the decision. It is for the presiding judge to determine when such convictions are to be disclosed.

Section 244
Taking of evidence; inquisitorial system; rejection of applications to take evidence

(1) The examination of the defendant is followed by the taking of evidence.
(2) To establish the truth, the court ex officio extends the taking of evidence to all facts and means of proof which are relevant to the decision.
(3) An 'application to take evidence' within the meaning of this statute means that the applicant has earnestly requested that evidence about a precisely alleged concrete fact concerning the question of guilt or relating to legal consequences be taken by means of a precisely designated piece of evidence and the application indicates why that designated piece of evidence is purported to be able to prove the

alleged fact. An application to take evidence is to be rejected if the taking of such evidence is inadmissible. In all other cases, an application to take evidence may be rejected only

1. if the taking of such evidence is superfluous because the matter is common knowledge,
2. if the fact to be proved is irrelevant to the decision,
3. if the fact to be proved has already been proved,
4. if the evidence is wholly inappropriate,
5. if the evidence is unobtainable or
6. if an important allegation which is intended to offer proof in exoneration of the defendant may be treated as if the alleged fact were true.

(4) Unless otherwise provided, an application to take evidence by examining an expert may also be rejected if the court itself possesses the necessary specialist knowledge. The hearing of another expert may even be refused if the opposite of the alleged fact has already been proved by the first expert opinion; this rule does not apply to cases where the professional competence of the first expert is in doubt, if his or her opinion is based on incorrect factual suppositions, if the opinion contains contradictions or if the new expert has means of research at his or her disposal which appear to be superior to the ones of an earlier expert.
(5) An application to take evidence by inspection may be rejected if the court, according to its duty-bound discretion, does not deem the inspection to be necessary to establish the truth. Applications to take evidence by examining a witness may be rejected under the same condition if the witness has to be summoned from abroad. An application for the taking of evidence by reading out a source document may be rejected if, according to the court's duty-bound discretion, there is no reason to doubt that it corresponds in terms of content to the transmitted document.
(6) An application to take evidence is rejected by court order. Rejection as per sentence 1 is not required if the taking of evidence can provide nothing which is of expedience in the applicant's favour, the applicant is aware of that fact and he or she intends to use the application to protract proceedings; the intent to protract proceedings poses no obstacle to the pursuit of other goals which are extraneous to the proceedings. After concluding the ex officio taking of evidence, the presiding judge may determine an appropriate period for the submission of applications to take evidence. A decision on applications to take evidence submitted after the end of the period determined may be given in the judgment; this does not apply if it was not possible to submit an application to take evidence before the expiry of the period determined. If an application to take evidence is submitted after the end of the period determined, the facts which made it impossible to meet the deadline must be substantiated in the application.

Section 245
Extent of taking of evidence; evidence produced

(1) The taking of evidence is to be extended to all witnesses and experts who were summoned by the court and who appeared and to the other evidence produced by the court or the public prosecution office pursuant to section 214 (4), unless the

taking of evidence is inadmissible. The taking of certain evidence may be dispensed with if the public prosecution office, defence counsel and the defendant consent thereto.
(2) The court is obliged to extend the taking of evidence to the witnesses or experts who appeared upon being summoned by the defendant or the public prosecution office and to other evidence produced only if an application to take evidence is submitted. The application is to be rejected if the taking of evidence is inadmissible. In all other respects, it may be rejected only if the fact for which evidence is to be furnished has already been proved or is common knowledge, if there is no connection between the fact and the matter being adjudicated or if the evidence is completely unsuitable.

Section 246
Rejection of applications to take evidence submitted out of time

(1) The taking of evidence may not be refused on the grounds that the evidence or the fact which is to be proved was submitted too late.
(2) Until such time as all the evidence has been taken, the applicant's opponent may, however, apply for suspension of the main hearing for the purpose of gathering information if a witness or an expert who is to be examined was named so late by the opponent or a fact which is to be proved was submitted so late that the opponent lacked the time needed to gather information.
(3) The public prosecution office and the defendant have the same right in respect of witnesses and experts summoned at the direction of the presiding judge or the court.
(4) The decision on such applications is taken by the court at its discretion.

Section 246a
Examination of expert before taking decision on placement

(1) If the order for or reservation of the defendant's placement in a psychiatric hospital or in preventive detention is being considered, an expert is to be examined at the main hearing on the defendant's condition and treatment prospects. The same applies if the court is considering placing the defendant in an addiction treatment facility.
(2) Where charges have been preferred in respect of an offence to the detriment of a minor under section 181b of the Criminal Code and if the issuing of directions pursuant to section 153a (1) sentence 2 no. 8 of this statute or pursuant to section 56c (2) no. 6, section 59a (2) sentence 1 no. 5 or section 68b (2) sentence 2 of the Criminal Code is possible to the effect that the defendant is to receive psychiatric, psychotherapeutic or socio-therapeutic care and treatment (therapy direction), an expert is, as a rule, to be examined on the defendant's condition and his or her treatment prospects insofar as this is necessary to determine whether the defendant needs such care and treatment.
(3) If the expert has not previously examined the defendant, he or she is, as a rule, to be given the opportunity to do so before the main hearing.

Section 247
Defendant's removal from courtroom during examination of co-defendants and witnesses

The court may order that the defendant leave the courtroom during an examination if it is to be feared that a co-defendant or a witness will not tell the truth when examined in the defendant's presence. The same applies if, on examination of a

person under 18 years of age as a witness in the defendant's presence, considerable detriment to the wellbeing of such witness is to be feared or if an examination of another person as a witness in the defendant's presence poses an imminent risk of serious detriment to that person's health. The defendant's removal may be ordered for the duration of discussions concerning the defendant's condition and treatment prospects if serious detriment to the defendant's health is to be feared. As soon as the defendant is brought back into the courtroom, the presiding judge is required to inform him or her of the essential content of the proceedings, including the testimony given, during his or her absence.

Section 247a
Order for witness examination via audio-visual means

(1) If there is an imminent risk of serious detriment to the wellbeing of a witness who is to be examined in the presence of those attending the main hearing, the court may order that the witness remain in another place during the examination; such an order is also admissible under the conditions of section 251 (2) insofar as this is necessary to establish the truth. The decision is not contestable. Simultaneous audio-visual transmission of the testimony is to be provided in the courtroom. The testimony is, as a rule, to be recorded if there is a concern that the witness will not be available for examination at a future main hearing and the recording is necessary to establish the truth. Section 58a (2) applies accordingly.
(2) The court may order that the examination of an expert be conducted in such a manner that the expert is located somewhere other than the court and the examination is simultaneously transmitted audio-visually to the place where the expert is located and to the courtroom. This does not apply in the cases under section 246a. The decision pursuant to sentence 1 is not contestable.

Section 248
Discharge of witnesses and experts

Witnesses and experts who have been examined may leave the court with the permission or upon the instruction of the presiding judge. The public prosecution office and the defendant are to be heard first.

Section 249
Furnishing of documentary evidence by reading out of documents; taking cognisance of wording of documents

(1) Documents are to be read out at the main hearing for the purpose of the taking of evidence as to their content. Electronic documents are deemed to be documents provided that they can be read out.
(2) Except in the cases under sections 253 and 254, the reading out may be dispensed with if the judges and the lay judges have taken cognisance of the wording of the document and the other parties have had the opportunity to do so. If the public prosecutor, the defendant or defence counsel objects without delay to the presiding judge's order to proceed in accordance with sentence 1, it is for the court to decide. The presiding judge's order, the findings as to the taking cognisance and the opportunity to do so, and an objection, are to be added to the record.

Section 250
Principle of examination in person

If the proof of a fact is based on an observation made by a person, such person is to be examined at the main hearing. The examination may not be substituted by reading out the record of a previous examination or reading out a statement.

Section 251
Furnishing of documentary evidence by reading out of records

(1) Examination of a witness, expert or co-accused may be substituted by reading out a record of another examination or of a document containing a statement originating from him or her

1. if the defendant has defence counsel and the public prosecutor, defence counsel and defendant consent thereto;
2. if the reading out merely serves to confirm the defendant's confession and both a defendant who has no defence counsel and the public prosecutor consent thereto;
3. if the witness, expert or co-accused has died or cannot be examined by the court for another reason within a foreseeable period of time;
4. insofar as the record or the document concerns the presence or the amount of asset loss.

(2) Examination of a witness, expert or co-accused may also be substituted by reading out the record of his or her previous examination by a judge if

1. illness, infirmity or other insurmountable impediments prevent the witness, expert or co-accused from appearing at the main hearing for a longer or indefinite period;
2. the witness or expert cannot, having regard to the importance of his or her statement, reasonably be expected to appear at the main hearing owing to the great distance involved;
3. the public prosecutor, defence counsel and the accused consent to the reading out.

(3) If the reading out is to serve purposes other than directly reaching a judgment, in particular preparing a decision as to whether an individual is to be summoned and examined, then records and documents may otherwise be read out, too.
(4) In the cases under subsections (1) and (2), the court decides whether the reading out is to be ordered. The reason for the reading out is to be indicated. If the record of a judicial examination is read out, it must be stated whether the person concerned was examined under oath. If not, an oath must be subsequently administered if the court deems this necessary and an oath can still be administered.

Section 252
Prohibition of reading out of records following witness's refusal to testify

A statement made by a witness examined prior to the main hearing who does not make use of the right to refuse to testify until the main hearing may not be read out.

Section 253
Reading out of records to refresh memory

(1) If a witness or an expert states that he or she can no longer remember a fact, the pertinent part of the record of a previous examination may be read out to refresh his or her memory.

(2) The same procedure may be followed if a contradiction to the previous statement arises during the examination and it cannot otherwise be established or eliminated without the main hearing being interrupted.

Section 254
Reading out of judge's record following confession or in case of contradictions

(1) Statements made by the defendant which are contained in a judicial record or in an audio-visual recording of an examination may be read out or played back for the purpose of taking evidence regarding a confession.
(2) The same procedure may be followed if a contradiction to the previous statement arises during the examination and it cannot otherwise be established or eliminated without the main hearing being interrupted.

Section 255
Record of statements read out

In the cases under sections 253 and 254, upon application by the public prosecution office or by the defendant, the reading out and the reason therefor is to be stated in the record.

Section 255a
Showing of audio-visual recording of witness examination

(1) The provisions relating to the reading out of a record of an examination pursuant to sections 251, 252, 253 and 255 apply accordingly to the showing of an audio-visual recording of a witness examination.
(2) In proceedings relating to offences against sexual self-determination (sections 174 to 184k of the Criminal Code) or against life (sections 211 to 222 of the Criminal Code) or to ill-treatment of persons in one's charge (section 225 of the Criminal Code) or relating to offences against personal liberty under sections 232 to 233a of the Criminal Code, the examination of a witness under 18 years of age may be substituted by the showing of an audio-visual recording of his or her previous judicial examination if the defendant and his or her defence counsel were given the opportunity to participate in such examination, and if the witness of whose examination an audio-visual recording was made in accordance with section 58a (1) sentence 3 did not object, directly after the recorded examination, to the showing of the recording in the main hearing as a substitute for his or her examination. This also applies to witnesses who have been aggrieved by one of these offences and were under 18 years of age at the time of the offence or to witnesses who have been aggrieved by an offence against sexual self-determination (sections 174 to 184k of the Criminal Code). When taking its decision the court is also required to consider the interests of the witness meriting protection and to give the reason for showing the recording. Supplementary witness examination is admissible.

Section 256
Reading out of statements by public authorities and experts

(1) The following may be read out:

1. statements containing a certificate or an opinion made by
   a) public authorities,
   b) experts who have been sworn generally to render opinions of the relevant kind and

c) physicians of the court medical services, excluding certificates of conduct,

2. medical certificates concerning physical injuries, regardless of the alleged offence,

3. medical reports on the taking of blood samples,

4. expert opinions with regard to the evaluation of a log book, the determination of a person's blood group or blood alcohol content, including its conversion,

5. records and statements made by prosecuting authorities as contained in a document relating to investigatory acts, insofar as their subject is not a witness examination and

6. proof of conversion and entries made in the files in accordance with section 32e (3).

(2) If the opinion of another specialist authority has been obtained, the court may request the authority to appoint one of its staff to present the opinion at the main hearing and to designate such person to the court.

Section 257
Questioning of defendant and right to make statement after taking of evidence

(1) After each co-defendant has been examined and after evidence has been taken in each individual case, the defendant is, as a rule, to be asked whether he or she has anything to add.
(2) Upon request, the public prosecutor and defence counsel are also to be given the opportunity to make their statements after the examination of the defendant and after evidence has been taken in each individual case.
(3) The statements may not anticipate the closing speech.

Section 257a
Form of applications and proposals regarding questions of procedure

The court may require parties to the proceedings to file applications and proposals regarding questions of procedure in written form. This does not apply to the applications referred to in section 258. Section 249 applies accordingly.

Section 257b
Discussion of status of proceedings with parties

At the main hearing the court may discuss the status of the proceedings with the parties insofar as this appears suited to expediting the proceedings.

Section 257c
Negotiated agreement

(1) In suitable cases, the court may reach an agreement with the parties on the further course and outcome of the proceedings in accordance with the following subsections. Section 244 (2) remains unaffected.
(2) The subject matter of this agreement may only comprise the legal consequences which could form the content of the judgment and of the associated court orders, other procedural measures relating to the course of the underlying adjudication proceedings and the conduct of the parties during the proceedings. A confession is, as a rule, to form an integral part of each negotiated agreement. The verdict of guilty and measures of reform and prevention may not be the subject of a negotiated agreement.

(3) The court announces what the content of the negotiated agreement could be. It may, on free evaluation of all the circumstances of the case and general sentencing considerations, also indicate an upper and lower sentence limit. The parties are to be given the opportunity to make submissions. The negotiated agreement comes into existence if the defendant and the public prosecution office agree to the court's proposal.
(4) The court ceases to be bound by a negotiated agreement if legally or factually relevant circumstances have been overlooked or have arisen and the court is therefore then convinced that the prospective sentencing range is no longer appropriate to the severity of the offence or the degree of guilt. The same applies if the defendant's further conduct in the proceedings does not correspond to that upon which the court's prediction was based. The defendant's confession may not be used in such cases. The court is to give notification of any deviation without delay.
(5) The defendant is to be instructed as to the conditions for and consequences of the court deviating from the prospective outcome pursuant to subsection (4).

Section 258
Closing speeches; right to have last word

(1) After the taking of evidence has been concluded, the public prosecutor and, thereafter, the defendant are to be given the opportunity to present their arguments and to file applications.
(2) The public prosecutor has the right to reply; the defendant has the last word.
(3) Even if defence counsel has spoken for him or her, the defendant is to be asked whether he or she has anything to add to his or her defence.

Section 259
Interpreters

(1) A defendant who does not speak the language of the court must at least be informed by an interpreter of the applications made in the closing speeches by the public prosecutor and defence counsel.
(2) The same applies, in accordance with the provisions of section 186 of the Courts Constitution Act, to a hearing or speech impaired defendant.

Section 260
Judgment

(1) The main hearing closes with the pronouncement of judgment following the deliberations.
(2) If an order is made prohibiting the exercise of a profession, the profession, branch of profession, trade or branch of trade the exercise of which is prohibited must be specified in the judgment.
(3) Termination of the proceedings is to be pronounced in the judgment if there is a procedural impediment.
(4) The operative part of the judgment must indicate the legal designation of the offence of which the defendant has been convicted. If an offence has a statutory title, then that is, as a rule, to be used for the legal designation of the offence. If a fine is imposed, the number and the amount of daily rates are to be included in the operative part of the judgment. If a decision on preventive detention is reserved, the sentence or the measure of reform and prevention is suspended on probation, the defendant has been warned with sentence reserved or if imposing a penalty is dispensed with, this is to be indicated in the operative part of the judgment. In all

other respects, 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 are to be listed according to section, subsection, number and letter, together with the designation of the relevant statute. If, in the case of a conviction imposing a sentence of imprisonment or an aggregate sentence of imprisonment not exceeding two years, the offence or, if there is more than one offence, the predominant offences, having regard to their importance, were committed on the basis of a drug addiction, reference is also to be made to section 17 (2) of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz*).

Section 261
Principle of judge's free evaluation of evidence

It is for the court to decide on the result of the taking of evidence at its discretion and conviction based on the entire content of the hearing.

Section 262
Decisions on preliminary civil-law issues

(1) If criminal liability for an act is dependent on the evaluation of a legal relationship under civil law, the criminal court also decides on the basis of the provisions applicable to procedure and evidence in criminal cases.
(2) The court is, however, entitled to suspend the investigation and to set a time limit within which one of the parties is to bring a civil action or to await the judgment of the civil court.

Section 263
Vote

(1) A two-thirds majority of the votes is required for any decision against a defendant which concerns the question of guilt and the legal consequences of the offence.
(2) The question of guilt also covers such circumstances as are specially provided by criminal law to rule out, diminish or increase criminal liability.
(3) The question of guilt does not cover those conditions which apply to the period of limitations.

Section 264
Subject matter of judgment

(1) The subject of adjudication is the offence as specified in the bill of indictment and as it presents itself in the light of the outcome of the hearing.
(2) The court is not bound by the evaluation of the offence which formed the basis of the order opening the main proceedings.

Section 265
Change in legal reference or facts

(1) The defendant may not be sentenced on the basis of a provision of criminal law other than the one referred to in the charges admitted by the court without first having his or her attention specifically drawn to the change in the legal reference and without having been afforded the opportunity to defend himself or herself.
(2) The same procedure must be followed if

1. special circumstances which increase criminal liability or justify an order imposing a measure, an additional penalty or an incidental legal consequence do not emerge until the hearing,

2. the court wishes to deviate from a provisional assessment of the factual or legal situation which was submitted in the course of the hearing or

3. it is necessary to make reference to a new situation in order to be able to sufficiently defend the defendant.

(3) The main hearing is to be suspended upon the defendant's application if, alleging insufficient preparation for defence, the defendant contests newly discovered circumstances which admit the application of a more severe criminal provision against him or her than the one which is referred to in the charges admitted by the court or which forms part of the circumstances indicated in subsection (2) no. 1.
(4) Where, as a result of a change in circumstances, it appears reasonable to do so in order to adequately prepare the charges or the defence, the court suspends the main hearing upon an application or ex officio.

Section 265a
Questioning of accused before conditions or directions

If the imposition of conditions or issuing of directions (sections 56b and 56c and section 59a (2) of the Criminal Code) is considered as a possibility, the defendant is to be asked, in appropriate cases, whether he or she will make efforts towards atonement for the wrong committed or will give undertakings in respect of his or her future conduct. If the issuing of a direction to the effect that the defendant undergo curative or addiction treatment or take up residence in a suitable home or institution is considered as a possibility, the defendant is to be asked whether he or she consents thereto.

Section 266
Supplementary charges

(1) If, at the main hearing, the public prosecutor adds new charges in respect of further offences committed by the defendant, the court may make an order including them in the proceedings if it has jurisdiction and the defendant consents thereto.
(2) The supplementary charges may be preferred orally. Their content corresponds to section 200 (1). They must be included in the record. The presiding judge is to give the defendant the opportunity to defend himself or herself.
(3) The hearing is interrupted if the presiding judge deems it necessary or if the defendant applies therefor and the application is not manifestly vexatious or solely dilatory. The defendant is to be instructed of the right to apply for an interruption.

Section 267
Reasons for judgment

(1) If the defendant is convicted, the reasons for the judgment must specify the facts deemed to be proved and establishing the statutory elements of the offence. Insofar as evidence is inferred from other facts, these facts are, as a rule, also to be specified. Reference may be made, as regards details, to images which are included in the files.
(2) If the Criminal Code makes provision for special circumstances under which criminal liability is ruled out, diminished or increased and these were asserted at the hearing, then the reasons for the judgment must state whether or not such circumstances were deemed to have been established.
(3) The criminal judgment must further specify in its reasons the criminal provision which was applied and must set out the circumstances which were decisive in

determining the penalty. If criminal law makes mitigation dependent on the existence of a less serious case, the reasons for the judgment must indicate why these circumstances are deemed to exist or are denied contrary to an application filed at the hearing; this applies accordingly to the imposition of a sentence of imprisonment in the cases under section 47 of the Criminal Code. The judgment must also indicate in its reasons why an especially serious case is deemed not to exist if the conditions generally applying to such a case under criminal law are met; if these conditions are not met but an especially serious case is nonetheless deemed to exist, sentence 2 applies accordingly. The reasons for the judgment must further indicate the grounds for suspending the sentence on probation or for not doing so contrary to an application filed at the hearing; this applies accordingly to a warning with sentence reserved and to dispensing with imposing a penalty. If a negotiated agreement (section 257c) has preceded the judgment, this must also be indicated in the reasons for the judgment.
(4) If all parties entitled to an appellate remedy waive their right of appellate remedy or if no appellate remedy is sought within the given time limit, the proven facts establishing the statutory elements of the offence and the criminal provision applied must be indicated; in the case of judgments imposing only a fine or a fine plus a driving ban or disqualification from driving and, in connection therewith, confiscation of the driving licence or, in the case of warnings with sentence reserved, reference may be made to charges admitted, to the charges pursuant to section 418 (3) sentence 2 or to the summary penalty order or to the application for a summary penalty order. Subsection (3) sentence 5 applies accordingly. The further content of the reasons for the judgment is determined by the court, taking into consideration, at its discretion, the circumstances of the individual case. The reasons for the judgment may be supplemented within the time limit provided for in section 275 (1) sentence 2 if restoration of the status quo ante is granted in respect of the failure to observe the time limit for seeking an appellate remedy.
(5) If the defendant is acquitted, the reasons for the judgment must indicate whether the defendant’s guilt was deemed not proved or whether and on what basis the act deemed proved was considered not to give rise to criminal liability. If all parties entitled to an appellate remedy waive their right of appellate remedy or if no appellate remedy is sought within the given time limit, it is only necessary to state whether it was for factual or legal reasons that the offence with which the defendant was charged was not established. Subsection (4) sentence 4 applies.
(6) The reasons for the judgment must also indicate why a measure of reform and prevention was ordered, a decision on preventive detention was reserved or was not ordered or was reserved contrary to an application filed at the hearing. If the accused has not been disqualified from driving or no period of disqualification from driving has been imposed in accordance with section 69a (1) sentence 3 of the Criminal Code although such measure was considered a possibility given the nature of the offence, the reasons for the judgment must always indicate why such measure was not ordered.

Section 268
Pronouncement of judgment

(1) Judgment is pronounced in the name of the people.
(2) Judgment is pronounced by reading out the operative part of the judgment and disclosing the reasons for the judgment. Reasons for the judgment are disclosed by their being read out or by oral communication of their essential content. When

deciding whether the reasons for the judgment are to be read out or whether their essential content is to be communicated orally and, in the event of oral communication, of the essential content of the reasons for the judgment, consideration is, as a rule, to be given to the interests meriting protection of parties to the proceedings, of witnesses or of aggrieved persons. The reading out of the operative part of the judgment must in each case be preceded by communication of the reasons for the judgment.
(3) Judgment is, as a rule, to be pronounced at the end of the hearing. It must be pronounced no later than two weeks thereafter, or else the main hearing is to be recommenced. Section 229 (3), (4) sentence 2 and (5) applies accordingly.

Section 268a
Suspension of enforcement of sentences or measures of reform and prevention on probation

(1) If a judgment provides for the suspension of a sentence on probation or if the defendant is given a warning with sentence reserved, the court gives the decisions designated in sections 56a to 56d and 59a of the Criminal Code in an order; the decision is to be pronounced together with the judgment.
(2) Subsection (1) applies accordingly if, in the judgment, a measure of reform and prevention has been suspended on probation or if, in addition to the sentence, supervision of conduct is ordered and the court gives decisions pursuant to sections 68a to 68c of the Criminal Code.
(3) The presiding judge instructs the defendant as to the meaning of the suspension of the sentence or of the measure on probation, of the warning with sentence reserved or of the supervision of conduct, of the length of the probation period or of supervision of conduct, of conditions and directions, and of the possibility of a revocation of the suspension on probation or imposition of a sentence reserved (section 56f (1), section 59b, section 67g (1) of the Criminal Code). If the court issues the defendant with directions pursuant to section 68b (1) of the Criminal Code, the presiding judge also informs him or her that a penalty pursuant to section 145a of the Criminal Code is also possible. The direction is, as a rule, to be issued following pronouncement of the order pursuant to subsection (1) or (2). If placement in a psychiatric hospital is suspended on probation, the presiding judge may dispense with the notification regarding the possibility of a revocation of suspension.

Section 268b
Order for continuation of remand detention

When passing judgment, the court decides ex officio on the continuation of remand detention or provisional placement. The order is to be pronounced together with the judgment.

Section 268c
Instruction prior to imposition of driving ban

If a driving ban is ordered in the judgment, the presiding judge instructs the defendant as to when the ban commences (section 44 (3) sentence 1 of the Criminal Code). This instruction is given following pronouncement of judgment. If the judgment is pronounced in the defendant’s absence, he or she is to be instructed in writing.

Section 268d
Instruction in case of preventive detention reserved

If the judgment orders preventive detention reserved pursuant to section 66a (1) or (2) of the Criminal Code, the presiding judge instructs the defendant as to the meaning of the reservation and of the period of time for which the reservation applies.

Section 269
Prohibition of referral if court of lower rank has jurisdiction

The court may not decline jurisdiction on the grounds that the case ought to be brought before a court of lower rank.

Section 270
Referral if court of higher rank has jurisdiction

(1) If, after commencing a main hearing, a court deems a court of higher rank to have substantive jurisdiction, it makes an order referring the case to the competent court; section 209a no. 2 (a) applies accordingly. The same procedure applies if the court considers a timely objection by the defendant pursuant to section 6a to be well-founded.
(2) In the order, the court names the defendant and the offence as designated in section 200 (1) sentence 1.
(3) The order has the effect of an order opening the main proceedings. Contestability of the order is governed by section 210.
(4) If the order referring the case to a higher court was made by a criminal court judge or a court with lay judges, the defendant may apply, within a time limit to be determined when the order is given, for certain evidence to be taken prior to the main hearing. It is for the judge presiding over the court to which the case has been referred to decide on the application.

Section 271
Record of main hearing

(1) A record is to be made of the main hearing and signed by the presiding judge and, insofar as he or she was present during the main hearing, by the registry clerk. The date of its completion is to be stated therein or documented in the files.
(2) If the presiding judge is prevented from signing, the most senior associate judge in age signs for him or her. If the presiding judge is the only judge of the court, the signature of the registry clerk suffices if the former is prevented from signing.

Section 272
Content of record of main hearing

The record of the main hearing includes

1. the place and the date of the hearing;
2. the names of the professional judges and lay judges, of the official of the public prosecution office, of the registry clerk of the court registry and of the interpreter called in to assist;
3. the designation of the offence in the charges;
4. the names of the defendants, their defence counsel, the private prosecutors, the private accessory prosecutors, the entitled parties pursuant to section 403, the other persons involved, the statutory representatives, the legal representatives and the persons rendering assistance;

5. the information that the hearing is being held in public or that the public has been excluded.

Section 273
Additional content of record

(1) The record must indicate the course and the results of the main hearing in essence and must indicate that all essential formalities have been observed, including a designation of the documents read out or the documents the reading out of which was dispensed with pursuant to section 249 (2), and the applications filed during the course of the hearing, the decisions given and the operative part of the judgment. The record must also include the course and content, in essence, of a discussion pursuant to section 257b.
(1a) The record must also indicate, in essence, the course, content and outcome of a negotiated agreement pursuant to section 257c. The same applies to the observance of the information and instruction requirements set out in section 243 (4), section 257c (4) sentence 4 and section 257 (5). If no agreement was negotiated, this must also be noted in the record.
(2) The essential results of examinations at the main hearing before a criminal court judge and in a court with lay judges is also to be included in the record; this does not apply if all those entitled to an appellate remedy have waived their right of appellate remedy or if no appellate remedy has been sought within the given time limit. The presiding judge may order that instead of recording the essential results of individual examinations an audio recording of individual examinations in order of sequence is to be added to the files. Section 58a (2) sentences 1 and 3 to 6 applies accordingly.
(3) If it is important that an occurrence at the main hearing or the wording of a testimony or of a statement be registered, the presiding judge is to make an order, ex officio or upon application by one of the parties to the hearing, that a complete record be drawn up and that it be read out. If the presiding judge refuses to make the order, then, upon application by one of the parties to the hearing, it is for the court to decide. It is to be noted in the record that the reading out took place and that approval was given or which objections were raised.
(4) The judgment may not be served until the record has been drawn up.

Section 274
Probative value of record

Observance of the formalities stipulated for the main hearing can be proved only by means of the record. Only proof of forgery is admissible in respect of the content of that part of the record which relates to these formalities.

Section 275
Time limit for issue of judgment copy and form of judgment

(1) If the judgment, including reasons, has not yet been fully incorporated into the record, it is to be placed on file without delay. This must be done no later than five weeks after pronouncement; this time limit is extended by two weeks if the main hearing lasted longer than three days and, if the main hearing lasted longer than 10 days, by another two weeks for every 10 days of the main hearing or part thereof. Once the time limit has expired, the reasons for the judgment may no longer be amended. The time limit may be exceeded only if and as long as the court has been prevented from observing it owing to a circumstance which cannot be anticipated or averted in the particular case. The date on which the judgment is added to the files and the date of any amendment of the reasons must be placed on record.

(2) The judgment is to be signed by the judges who participated in the decision. If a judge is prevented from adding his or her signature, this fact and the reason therefor are to be noted under the judgment by the presiding judge and, if he or she is prevented from doing so, by the most senior associate judge. The signatures of the lay judges are not required.
(3) The date of the sitting and the names of the judges, of the lay judges, of the official of the public prosecution office, of defence counsel and of the registry clerk who took part in the sitting are to be included in the judgment.
(4) (repealed)

Division 7
Decision on order for preventive detention reserved in judgment or subsequent order for preventive detention

Section 275a
Institution of proceedings; main hearing; order for placement

(1) If preventive detention has been reserved in the judgment (section 66a of the Criminal Code), the enforcing authority sends the files in good time to the public prosecution office of the competent court. The public prosecution office hands over the files to the presiding judge of the court in time for a decision to be given within the time limit set out in subsection (5). Where placement in a psychiatric hospital has been declared disposed of pursuant to section 67d (6) sentence 1 of the Criminal Code, the enforcing authority sends the files without delay to the public prosecution office at the court competent to make a subsequent order of preventive detention (section 66b of the Criminal Code). If the public prosecution office intends to apply for a subsequent order of preventive detention, it notifies the person concerned thereof. The public prosecution office must, as a rule, without delay submit its application for a subsequent order of preventive detention and hand it over to the presiding judge together with the files.
(2) Unless otherwise provided in the following, sections 213 to 275 apply accordingly to the preparation and conduct of the main hearing.
(3) After commencement of the main hearing in accordance with section 243 (1), a rapporteur reports, in the absence of the witnesses, on the results of the proceedings up to that point. The presiding judge reads out the previous judgment, insofar as it is of relevance for the decision on the reserved or subsequent order for preventive detention. Thereafter, the convicted person is examined and the evidence taken.
(4) Prior to arriving at a decision, the court obtains an expert’s opinion. If a decision is to be taken as to whether a subsequent order for preventive detention is to be made, two experts’ opinions must be obtained. The experts may not be persons who have been involved in the treatment of the convicted person in the context of imprisonment or placement.
(5) The court is, as a rule, to give a decision on the reserved order of preventive detention no later than six months before the sentence of imprisonment has been fully served.
(6) If there are cogent reasons to believe that preventive detention will be subsequently ordered, the court may make an order for placement until such time as the judgment becomes final. The court competent to decide pursuant to section 67d (6) of the Criminal Code remains responsible for the making of the order for placement up until the application for an order for subsequent preventive detention

is received by the court responsible for this decision. In the cases under section 66a of the Criminal Code, the court may make an order for placement up until the judgment becomes final if it ordered preventive detention reserved at first instance prior to the time specified in section 66a (3) sentence 1 of the Criminal Code. Sections 114 to 115a, 117 to 119a and section 126a (3) apply accordingly.

Division 8
Proceedings against absent persons

Section 276
Meaning of 'absent'

Accused persons are deemed to be absent if their whereabouts are unknown or if they are abroad and it does not appear feasible or reasonable that they can be brought before the competent court.

Sections 277 to 284
(repealed)

Section 285
Purpose of securing of evidence

(1) No main hearing is held in respect of a person who is absent. Proceedings instituted against an absent person serve the purpose of securing evidence in anticipation of his or her future presence in court.
(2) The provisions of sections 286 to 294 apply to these proceedings.

Section 286
Representation of absent persons

The accused may be represented by defence counsel. Relatives of the accused are also permitted to act as representatives, even without a power of attorney.

Section 287
Notification of absent persons

(1) Absent accused are not entitled to notifications concerning the course of the proceedings.
(2) The judge is, however, authorised to have notifications sent to an absent accused whose whereabouts are known.

Section 288
Public request to appear before court or report whereabouts

Absent persons whose whereabouts are unknown may be requested, through one or more newspapers, to appear before the court or to report their whereabouts.

Section 289
Taking of evidence by commissioned or requested judge

If the defendant's absence becomes apparent only after the main proceedings have been opened, evidence which remains to be taken is taken by a commissioned or requested judge.

Section 290
Seizure of property

(1) The property of absent defendants against whom public charges have been preferred which is located within the territorial scope of this federal statute may be seized by order of the court if there are grounds for suspicion against them which would justify issuing a warrant of arrest.

(2) There is no seizure of property for offences carrying imprisonment for a term not exceeding six months or a fine not exceeding 180 daily rates.

Section 291
Publication of seizure orders

The seizure order is to be published in the Federal Gazette and may, at the discretion of the court, also be published in some other suitable manner.

Section 292
Effect of publication

(1) Indicted accused lose the right to dispose of seized property inter vivos at the time of first publication in the Federal Gazette.
(2) The seizure order is to be communicated to the authority competent to establish a curatorship over absent persons. This authority establishes a curatorship.

Section 293
Revocation of seizure

(1) Seizure is to be revoked if the reasons therefor no longer apply.
(2) Revocation of seizure is to be made public in the same manner in which the seizure was published. If it was published in the Federal Gazette in accordance with section 291, its deletion is also to be ordered; publication of revocation of the seizure in the Federal Gazette must be deleted after expiry of one month.

Section 294
Procedure following preferment of charges

(1) In all other respects, the provisions on the opening of the main proceedings apply accordingly to proceedings following the preferment of the public charges.
(2) The order made after conclusion of these proceedings (section 199) includes a decision on the continuation or revocation of seizure.

Section 295
Safe conduct

(1) The court may grant safe conduct to an absent accused; it may attach conditions to such grant.
(2) Safe conduct entails exemption from remand detention, but only in respect of the offence for which it is granted.
(3) It expires if a sentence of imprisonment is imposed or if the accused takes steps to prepare to flee or does not fulfil the conditions under which the safe conduct was granted.

Book 3
Appellate remedies

Division 1
General provisions

Section 296
Persons entitled to file appellate remedies

(1) Both the public prosecution office and the accused are entitled to file the appellate remedies admissible against court decisions.
(2) The public prosecution office may also make use of them for the accused’s benefit.

Section 297
Filing by defence counsel

Defence counsel may file an appellate remedy on behalf of the accused, but not against the latter's express will.

Section 298
Filing by statutory representative

(1) The accused's statutory representative may make independent use of the admissible appellate remedies within the time limit which applies to the accused.
(2) The provisions applicable to the appellate remedies available to the accused apply accordingly to such appellate remedies and to the procedure therefor.

Section 299
Making of oral statements following deprivation of liberty

(1) An accused who is not at liberty may make oral statements relating to appellate remedies to be recorded by the registry of the local court in whose district the institution where he or she is detained by official order is located.
(2) As regards observance of a time limit, it is sufficient for the record to be made within the time limit.

Section 300
Incorrect designation of admissible appellate remedy

An error in the designation of an admissible appellate remedy is not prejudicial.

Section 301
Effect of appellate remedy filed by public prosecution office

An appellate remedy filed by the public prosecution office has the effect that the contested decision may be amended or revoked, also for the accused's benefit.

Section 302
Withdrawal and waiver

(1) The withdrawal of an appellate remedy and the waiver of the right to file such appellate remedy may also take effect before expiry of the time limit for filing. If a negotiated agreement (section 257c) has preceded the judgment, a waiver is precluded. An appellate remedy filed by the public prosecution office for the accused's benefit may not be withdrawn without his or her consent.
(2) Defence counsel requires express authorisation for such withdrawal.

Section 303
Requirement of opponent's consent to withdrawal

If the decision on the appellate remedy has to be given on the basis of an oral hearing, withdrawal after the beginning of the main hearing may be effected only with the consent of the opposing party. Withdrawal of the defendant's appellate remedy does not, however, require the consent of a private accessory prosecutor.

Division 2
Complaint

Section 304
Admissibility

(1) A complaint is admissible against all orders made by the courts of first instance or in proceedings on an appeal on points of fact and law and against directions given by the presiding judge, by the judge in the preliminary investigation, and by a commissioned or a requested judge, unless such orders are expressly exempted from appellate remedy by law.

(2) Witnesses, experts and other persons may also lodge a complaint against orders and directions by which they are affected.
(3) A complaint against decisions on costs or necessary expenses is admissible only if the value of the subject matter of the complaint exceeds 200 euros.
(4) No complaint is admissible against orders and directions given by the Federal Court of Justice. The same applies to orders and directions given by the higher regional courts; in cases in which the higher regional courts have jurisdiction at first instance, a complaint is, however, admissible against orders and directions

1. concerning arrest, provisional placement, placement for observation, appointment of court-appointed defence counsel or revocation thereof, seizure, search or the measures designated in section 101 (1) or section 101a (1),
2. refusing to open the main proceedings or terminating the proceedings on account of a procedural impediment,
3. ordering the main hearing in the defendant's absence (section 231a) or referring a case to a court of lower rank,
4. concerning inspection of files or
5. concerning revocation of suspension of sentence, revocation of remission of sentence and imposition of a sentence reserved (section 453 (2) sentence 3), an order for interim measures to secure revocation (section 453c), suspension of the remainder of sentence and its revocation (section 454 (3) and (4)), the reopening of proceedings (section 372 sentence 1), or confiscation or rendering unusable of an object pursuant to section 435 and section 436 (2) in conjunction with section 434 (2) and section 439.

Section 138d (6) remains unaffected.
(5) A complaint against the directions of an investigating judge at the Federal Court of Justice or a higher regional court (section 169 (1)) is admissible only if it concerns arrest, provisional placement, appointment of court-appointed defence counsel or revocation thereof, seizure, search or the measures designated in section 101 (1).

Section 305
Decisions not subject to complaint

Decisions of the adjudicating courts prior to judgment are not subject to complaint. Decisions concerning arrest, provisional placement, seizure, provisional disqualification from driving, provisional prohibition of the exercise of a profession or imposition of administrative measures and means of compulsion, and all decisions affecting third parties are exempted therefrom.

Section 305a
Complaint against order suspending sentence

(1) A complaint is admissible against an order given pursuant to section 268a (1) and (2). It may only be based on the ground that the order made was illegal.
(2) If a complaint is lodged against an order and an admissible appeal on points of law is filed against the judgment, the court hearing the appeal on points of law is also competent to decide on the complaint.

Section 306
Filing; redress proceedings

(1) A complaint is to be lodged at the court which or whose presiding judge gave the contested decision, either orally to be recorded by the registry or in writing.
(2) If the court which or the presiding judge who gave the contested decision considers the complaint to be well-founded, the court or the judge is to redress it; otherwise, the complaint is submitted immediately, at the latest within three days, to the court hearing the complaint.
(3) These provisions also apply to decisions of the judge in the preliminary investigation and of commissioned or requested judges.

Section 307
No obstacle to enforcement

(1) Lodging a complaint does not constitute an obstacle to enforcement of the contested decision.
(2) The court, the presiding judge or the judge whose decision is being contested or the court hearing the complaint may, however, order that enforcement of the contested decision be suspended.

Section 308
Powers of court hearing complaint

(1) The court hearing the complaint may not amend the contested decision to the detriment of the complainant's opponent without having communicated the complaint to him or her for submissions in response. This does not apply in the cases under section 33 (4) sentence 1.
(2) The court hearing the complaint may order investigations or conduct them itself.

Section 309
Decision

(1) The decision on the complaint is made without an oral hearing, in appropriate cases after hearing the public prosecution office.
(2) If the complaint is considered to be well-founded, the court hearing the complaint at the same time decides on the merits.

Section 310
Further complaint

(1) Orders made upon a complaint by the regional court or by the higher regional court competent pursuant to section 120 (3) of the Courts Constitution Act may be contested by further complaint insofar as they concern

1. an arrest,
2. provisional placement or
3. asset seizure pursuant to section 111e in respect of an amount exceeding 20,000 euros.

(2) In all other cases, the decision given upon a complaint is not contestable.

Section 311
Immediate complaint

(1) The following special provisions apply where an immediate complaint is filed.
(2) The complaint must be lodged within one week; the time limit begins to run upon notification (section 35) of the decision.
(3) The court is not competent to amend its own decision which is being contested by a complaint. It is, however, required to redress the complaint if it has, to the

detriment of the complainant, used facts or evidentiary conclusions in respect of which the complainant has not yet been heard and if, as a result of subsequent submissions, it considers the complaint to be well-founded.

Section 311a
Subsequent hearing of opponent

(1) If the court hearing the complaint has granted redress without having heard the complainant's opponent and if its decision is not contestable and the resulting detriment to the opponent still exists, the court is required, ex officio or upon application, to give the complainant a subsequent hearing and, upon application, to give a decision. The court hearing the complaint may amend its decision even if no application has been made.
(2) Section 307, section 308 (2) and section 309 (2) apply accordingly to the proceedings.

Division 3
Appeal on points of fact and law
(*Berufung*)

Section 312
Admissibility

An appeal on points of fact and law is admissible against the judgments of a criminal court judge and of a court with lay judges.

Section 313
Appeal on points of fact and law against minor fines and regulatory fines subject to acceptance for adjudication

(1) If the defendant has been sentenced to a fine not exceeding 15 daily rates, if, in the case of a warning, the reserved fine does not exceed 15 daily rates or if a regulatory fine has been imposed, then an appeal on fact and law is admissible only if accepted for adjudication. The same applies if the defendant has been acquitted or the proceedings terminated and the public prosecution office had applied for imposition of a fine not exceeding 30 daily rates.
(2) The appeal on fact and law is accepted for adjudication if it is not manifestly ill-founded. Otherwise, it is rejected as inadmissible.
(3) An appeal on fact and law against a judgment imposing a regulatory fine, acquitting the defendant or terminating the proceedings in respect of a regulatory offence is always accepted for adjudication if an appeal on points of law is admissible pursuant to section 79 (1) of the Regulatory Offences Act (*Ordnungswidrigkeitengesetz*) or has to be admitted pursuant to section 80 (1) and (2) of the Regulatory Offences Act. In all other cases, subsection (2) applies.

Section 314
Form and time limits

(1) An appeal on fact and law must be filed with the court of first instance either orally to be recorded by the registry or in writing, within one week after pronouncement of judgment.
(2) If judgment was pronounced in the defendant's absence, the time limit begins to run for him or her upon service thereof, with the exception of cases under section 234, section 387 (1), section 411 (2) and section 428 (1) sentence 1 if judgment was pronounced in the presence of defence counsel with a documented power of attorney.

Section 315
Appeal on points of fact and law and application for restoration of status quo ante

(1) Commencement of the time limit for filing an appeal on fact and law is not precluded by the fact that an application for restoration of the status quo ante may be made in respect of a judgment pronounced in the defendant's absence.
(2) If the defendant files an application for restoration of the status quo ante, then the appeal on fact and law is still available if it is immediately filed in time in the event of such application being rejected. Further directions with regard to the appeal on fact and law are then suspended pending the decision on the application for restoration of the status quo ante.
(3) Filing an appeal on fact and law without linking it to an application for restoration of the status quo ante is deemed to be a waiver of the latter.

Section 316
Obstacle to finality of judgment

(1) If an appeal on fact and law is filed in time, the judgment does not become final and binding so far as it is contested.
(2) If the judgment including reasons has not yet been served on the appellant, it is to be immediately served after the appellant has filed an appeal on fact and law.

Section 317
Grounds for appeal on points of fact and law

The grounds for appeal on points of fact and law may be given at the court of first instance, orally to be recorded by the registry or in a notice of complaint, within one further week after expiry of the time limit for seeking an appellate remedy or, if at that time the judgment has not yet been served, after service thereof.

Section 318
Restriction of appeal on points of fact and law

An appeal on points of fact and law may be restricted to certain points of complaint. If this was not done or no grounds at all were given, the entire judgment is deemed to be contested.

Section 319
Filing out of time

(1) If an appeal on fact and law is filed too late, the court of first instance dismisses the appeal as inadmissible.
(2) The appellant may, within one week after service of the decision, apply for a decision of the court hearing the appeal. In this case, the files are to be sent to the court hearing the appeal; this does not, however, form an obstacle to enforcement of the judgment. Section 35a applies accordingly.

Section 320
Submission of files to public prosecution office

If an appeal on fact and law was filed in time, the court registry, after expiry of the time limit for the giving of the grounds, must submit the files to the public prosecution office regardless of whether grounds were given or not. If the appeal on fact and law was filed by the public prosecution office, it serves upon the defendant the papers concerning the filing of the appeal and the grounds therefor.

Section 321
Transmission of files to court of appeal

The public prosecution office transmits the files to the public prosecution office at the court hearing the appeal. The latter passes the files to the presiding judge within one week.

Section 322
Dismissal without main hearing

(1) If the court hearing the appeal on fact and law considers that the provisions on filing the appeal have not been observed, it may make an order dismissing the appeal as inadmissible. In all other cases, it decides in the form of a judgment; section 322a remains unaffected.
(2) The order may be contested by immediate complaint.

Section 322a
Decision whether to accept appeal

The court hearing the appeal on fact and law decides by way of an order whether to accept the appeal (section 313). The decision is not contestable. No reasons need be given in an order accepting the appeal on fact and law.

Section 323
Preparation of main hearing on appeal on points of fact and law

(1) The provisions of sections 214 and 216 to 225a apply to the preparation of the main hearing. The defendant must be expressly advised in the summons of the consequences of not appearing.
(2) The summoning of the witnesses and experts examined at first instance may be dispensed with only if their repeated examination does not appear to be necessary to clarify the case. If it appears necessary, the appeal court orders that any audio recording of an examination which was added to the files pursuant to section 273 (2) sentence 2 be transcribed into a record. Whoever produced the transcript affixes a note confirming the accuracy of the transcript. The public prosecution office, defence counsel and the defendant are to be given a copy of the record. Proof that the transcript is inaccurate is admissible. The record may be read out in accordance with the provisions of section 325.
(3) New evidence is admissible.
(4) When selecting the witnesses and experts to be summoned, consideration is to be given to those persons named by the defendant in the grounds for the appeal on fact and law.

Section 324
Course of main hearing on appeal on points of fact and law

(1) After the main hearing has commenced in accordance with the provisions of section 243 (1), a rapporteur, in the absence of the witnesses, reports on the outcome of the previous proceedings. The judgment of the court of first instance is to be read out insofar as it is of relevance to the appeal on fact and law; the reasons for the judgment need not be read out if the public prosecution office, defence counsel and defendant dispense with the reading out.
(2) Thereafter, the defendant is examined and evidence taken.

Section 325
Reading out of documents

Documents may be read out when the rapporteur is giving his or her report and when evidence is being taken; records concerning statements made by the witnesses and experts examined during the main hearing at first instance may not,

apart from in the cases under sections 251 and 253, be read out without the consent of the public prosecution office and of the defendant if the witnesses or experts have been summoned again or an application to do so was made by the defendant in time prior to the main hearing.

Section 326
Closing speeches

After concluding the taking of evidence, the arguments and applications of the public prosecution office and of the defendant and his or her defence counsel are heard, with the appellant being heard first. The defendant has the last word.

Section 327
Extent of review of judgment

The judgment is subject to the court's review only to the extent contested.

Section 328
Content of judgment

(1) If the appeal on fact and law is held to be well-founded, the court hearing the appeal quashes the judgment and itself decides on the merits.
(2) If the court of first instance erroneously assumed that it had jurisdiction, the court hearing the appeal quashes the judgment and refers the case to the competent court.

Section 329
Defendant's failure to appear; representation in main hearing on appeal

(1) If, at the beginning of a main hearing, neither the defendant nor defence counsel with a documented power of attorney has appeared and if there is no sufficient excuse for their failure to appear, the court dismisses the defendant's appeal on fact and law without hearing the merits. The same procedure is to be adopted where resumption of the main hearing on that date is prevented on account of

1. defence counsel having left the hearing without sufficient excuse and no sufficient excuse having been provided for the defendant's absence or defence counsel no longer representing a defendant who is absent without sufficient excuse,
2. the defendant having left the hearing without sufficient excuse and no defence counsel with a documented power of attorney being present or
3. the defendant having intentionally and culpably brought about a situation in which he or she is unfit to stand trial and no defence counsel with a documented power of attorney being present.

The court takes a decision on whether to dismiss the case pursuant to this subsection on account of the defendant being unfit to stand trial after hearing a physician as an expert. Sentences 1 to 3 do not apply if the court hearing the appeal on fact and law holds a new hearing after the case has been referred back to it by the court hearing the appeal on points of law.
(2) If the defendant's presence is not necessary, the main hearing is held in his or her absence if the defendant is represented by defence counsel with a documented power of attorney or, in the event of the hearing being held on an appeal on fact and law filed by the public prosecution office, no sufficient excuse has been provided for his or her absence. Section 231b remains unaffected.

(3) If the main hearing on an appeal on fact and law filed by the public prosecution office cannot be concluded without the defendant or where dismissal of the appeal pursuant to subsection (1) sentence 4 is not permissible, an order is made for the defendant to appear in court or for his or her arrest if this is necessary in order to be able to conduct the main hearing.
(4) If the defendant's presence in a main hearing conducted after he or she has filed an appeal on fact and law is necessary despite being represented by defence counsel, the court summons the defendant to resume the main hearing and makes an order for him or her to appear in court. If the defendant does not appear on the date on which the main hearing is resumed without sufficient excuse and his or her presence is still required, the court dismisses the appeal. The defendant is to be instructed in the summons about the possibility of such dismissal.
(5) If subsection (2) was applied to an appeal on fact and law filed by the public prosecution office without defence counsel with a documented power of attorney being present, the presiding judge, as long as he or she has not yet begun the pronouncement of judgment, is required to notify a defendant or defence counsel with a documented power of attorney who has appeared in court of the essential content of the hearing conducted in his or her absence. In the cases under subsection (1) sentences 1 and 2, an appeal on fact and law filed by the public prosecution office may also be withdrawn without the defendant's consent, unless the conditions of subsection (1) sentence 4 are met.
(6) Where a conviction for individual offences has been overturned, the content of that part of the judgment which has been upheld must be clearly identified when the appeal on fact and law is dismissed; the penalties imposed may be combined into a new aggregate sentence by the court hearing the appeal on fact and law.
(7) The defendant may request restoration of the status quo ante under the conditions of sections 44 and 45 within one week after service of the judgment. He or she is to be instructed of this fact upon service of the judgment.

Section 330
Measures in case of appointment of statutory representative

(1) If the appeal on fact and law was filed by a statutory representative, the court also summons the defendant to the main hearing.
(2) If only the statutory representative fails to appear at the main hearing, it is to be conducted without him or her. If neither the statutory representative nor the defendant nor defence counsel with a documented power of attorney is present upon commencement of a main hearing, section 329 (1) sentence 1 applies accordingly; if only the defendant fails to appear, section 329 (2) and (3) applies accordingly.

Section 331
Prohibition of reformatio in peius

(1) Insofar as it relates to the type and degree of the legal consequences of the offence, the judgment may not be amended to the defendant's detriment if only the defendant or his or her statutory representative filed the appeal on fact and law or the public prosecution office filed an appeal on fact and law for his or her benefit.
(2) This provision does not preclude an order placing the defendant in a psychiatric hospital or in an addiction treatment facility.

Section 332
Application of provisions on main proceedings before court of first instance

In all other respects, the provisions concerning the main hearing set forth in Part 2 Division 6 apply.

Division 4
Appeal on points of law
(*Revision*)

Section 333
Admissibility

An appeal on points of law is admissible against judgments of the criminal divisions, of the criminal divisions with lay judges and against judgments of the higher regional courts pronounced at first instance.

Section 334
(repealed)

Section 335
Immediate appeal on points of law in lieu of appeal on points of fact and law

(1) A judgment against which an appeal on fact and law is admissible may be contested by an appeal on law in lieu of an appeal on fact and law.
(2) It is for that court to decide on the appeal on law which would be competent to decide if an appeal on law had been filed after an appeal on fact and law was heard.
(3) If one of the parties files an appeal on law against the judgment and another party files an appeal on fact and law, the appeal on law, if filed in time and in the prescribed form, is treated as an appeal on fact and law as long as the appeal on fact and law is not withdrawn or dismissed as inadmissible. Notices of appeal on law, including the grounds therefor, are nevertheless to be submitted in the form and within the time limit provided and to be served on the opponent (sections 344 to 347). An appeal on law against a judgment given on an appeal on fact and law is admissible pursuant to generally applicable provisions.

Section 336
Review of decisions preceding judgment

Decisions which preceded the judgment, insofar as the judgment is based on them, are also subject to review by the court hearing the appeal on law. This does not apply to decisions which have been expressly declared to be incontestable or which may be contested by immediate complaint.

Section 337
Grounds for appeal on points of law

(1) An appeal on points of law may be filed only on the ground that the judgment was based on a violation of the law.
(2) Failure to apply a legal norm or erroneous application of a legal norm constitutes a violation of the law.

Section 338
Absolute grounds for appeal on points of law

A judgment is always to be considered to be based on a violation of the law

1. if the court of decision was not composed in the prescribed form; where, pursuant to section 222a, notification of composition is required, the appeal on law may be based on a composition not being in the prescribed form only if

a) the court has taken a decision in a composition whose non-compliance with the rules has been determined in accordance with section 222b (2) sentence 2 or (3) sentence 4, or

b) the appellate court did not take a decision in accordance with section 222b (3) and

aa) the provisions governing notification have been violated,

bb) an objection made in time and in the proper form to a composition not being in the prescribed form has been disregarded or rejected, or

cc) the composition pursuant to section 222b (1) sentence 1 could not be reviewed for at least one week even though an application was made in accordance with section 222a (2);

2. if a professional judge or a lay judge barred by law from exercising judicial office participated in reaching the judgment;

3. if a professional judge or a lay judge participated in reaching the judgment after he or she was challenged for bias and the motion for challenge was either declared to be well-founded or erroneously rejected;

4. if the court erroneously assumed that it had jurisdiction;

5. if the main hearing was held in the absence of the public prosecutor or of a person whose presence is required by law;

6. if the judgment was given on the basis of an oral hearing and the provisions concerning the public nature of the proceedings were violated;

7. if the judgment contains no reasons for the decision or the reasons were not placed on the file within the time limit specified in section 275 (1) sentences 2 and 4;

8. if the defence was inadmissibly restricted by an order of the court on a question which is of importance for the decision.

Section 339
Legal norms for defendant's benefit

The violation of legal norms existing solely for the defendant's benefit may not be invoked by the public prosecution office for the purpose of quashing the judgment to the defendant's detriment.

Section 340
Appeal on points of law against judgment on appeal on points of fact and law by defendants with legal representation

If section 329 (2) was applied, defendants may not base their appeal on points of law against the judgment issued against their appeal on fact and law on the fact that it would have been necessary for them to be present at the main hearing on the appeal on fact and law.

Section 341
Form and time limits

(1) The appeal on law must be filed with the court whose judgment is being contested, either orally to be recorded by the registry or in writing, within one week after pronouncement of judgment.
(2) If the defendant was not present when judgment was pronounced, the time limit in respect of the defendant begins to run upon service of the judgment, with the exception of cases under section 234, section 329 (2), section 387 (1), section 411 (2) and section 434 (1) sentence 1 if judgment was pronounced in the presence of defence counsel with a documented power of attorney.

Section 342
Appeal on points of law and application for restoration of status quo ante

(1) Commencement of the time limit for filing an appeal on law is not precluded by the fact that an application for restoration of the status quo ante may be made in respect of a judgment pronounced in the defendant's absence.
(2) If the defendant files an application for restoration of the status quo ante, the appeal on law is available if it is immediately filed in time in the event of the application being rejected. Further disposition with regard to the appeal on law is then suspended pending the decision on the application for restoration of the status quo ante.
(3) Filing an appeal on law without linking it to an application for restoration of the status quo ante is deemed to be a waiver of the latter.

Section 343
Obstacle to finality of judgment

(1) If an appeal on law is filed in time, the judgment does not become final and binding so far as it is contested.
(2) If the judgment including reasons has not yet been served on the appellant, it is served on the appellant after he or she has filed an appeal on law.

Section 344
Grounds for appeal on points of law

(1) The appellant is required to make a statement concerning the extent to which he or she contests the judgment and is applying for it to be quashed (notices of appeal on law), and to specify the grounds therefor.
(2) The grounds must show whether the judgment is being contested on account of a violation of a legal norm concerning procedure or on account of a violation of another legal norm. In the former case, the facts containing the defect must be indicated.

Section 345
Time limit for stating grounds for appeal on law

(1) Notices of appeal on law, including the grounds for the appeal, must be submitted to the court whose judgment is being contested no later than one month after expiry of the time limit for seeking the appellate remedy. The time limit for stating the grounds for an appeal on law is extended by one month if the judgment was placed on file more than 21 weeks after pronouncement and by a further month if it was placed on file more than 35 weeks after pronouncement. If the judgment had not yet been served when the time limit for filing the appeal expired, the time limit begins to run upon service of the judgment and, in the cases under sentence 2, upon notification of the date on which it was placed on file.

(2) In the defendant's case, this may only be done in the form of a notice signed by defence counsel or by a lawyer or orally to be recorded by the court registry.

Section 346
Belated or improper filing

(1) If the appeal on law was filed too late or the notices of appeal on law were not submitted in time or not in the form prescribed in section 345 (2), the court whose judgment is being contested is to make an order dismissing the appellate remedy as inadmissible.
(2) The appellant may, within one week after service of the order, apply for a decision of the court hearing the appeal on law. In this case, the files are to be sent to the court hearing the appeal on law; this, however, does not constitute an obstacle to enforcement of the judgment. Section 35a applies accordingly.

Section 347
Service; response; submission of files to appeal court

(1) If the appeal on law was filed in time and the notices of appeal on law were submitted in time and in the prescribed form, the notice of appeal is to be served on the appellant's opponent. The opponent may submit a written response within one week. If the judgment is contested on account of an irregularity in the proceedings, the public prosecutor submits a response within this period if it is anticipated that it will facilitate the examination of the appeal on law. The defendant may also submit his or her response orally to be recorded by the court registry.
(2) The public prosecution office sends the files to the court hearing the appeal on law after receipt of the response or after expiry of the time limit.

Section 348
Lack of jurisdiction

(1) If the court to which the files are sent finds that a hearing and decision on the appellate remedy fall under the jurisdiction of another court, it is to make an order declaring that it lacks jurisdiction.
(2) This order, which must indicate the court competent to hear the appeal on law, is not contestable and is binding on the court specified therein.
(3) Transmission of the files is effected by the public prosecution office.

Section 349
Decision without main hearing

(1) The court hearing the appeal on law may make an order dismissing the appellate remedy as inadmissible if it is of the opinion that the provisions on filing an appeal on law or on submission of the notices of appeal on law have not been complied with.
(2) Upon the public prosecution office's application, for which grounds must be given, the court hearing the appeal on law may also decide in an order if it unanimously deems the appeal on law to be manifestly ill-founded.
(3) The public prosecution office informs the appellant of the application pursuant to subsection (2) and of the grounds therefor. The appellant may submit a written response to the court hearing the appeal on law within two weeks.
(4) If the court hearing the appeal on law unanimously deems the appeal filed for the defendant's benefit to be well-founded, it may set aside the contested judgment in an order.

(5) If the court hearing the appeal on law does not apply subsection (1), (2) or (4), it decides on the appellate remedy in a judgment.

Section 350
Main hearing on appeal on points of law

(1) The place and time of the main hearing are to be communicated to the defendant, his or her statutory representative, to defence counsel, to a private accessory prosecutor and to those persons who are to be notified of the date of the hearing in accordance with section 214 (1) sentence 2. If it is necessary that defence counsel participate in the main hearing, then he or she is to be summoned.
(2) The defendant may appear at the main hearing or may be represented by defence counsel with a documented power of attorney. Where it is not necessary that defence counsel participate, the main hearing may also be conducted if neither the defendant nor defence counsel is present. It is within the discretion of the court to decide whether a defendant who is not at liberty is to be ordered to appear at the main hearing.
(3) (repealed)

Section 351
Course of main hearing on appeal on points of law

(1) The main hearing begins with a report by a rapporteur.
(2) Thereafter, the arguments and applications of the public prosecution office, of the defendant and his or her defence counsel are heard, with the appellant being heard first. The defendant has the last word.

Section 352
Extent of review of judgment

(1) Only the notices of appeal on law and, insofar as the appeal is based on defects in the proceedings, only the facts specified when the notices of appeal on law were submitted are subject to review by the court hearing the appeal.
(2) Substantiation of the notices of appeal on law going beyond what is required under section 344 (2) is not necessary and, if incorrect, is not prejudicial.

Section 353
Quashing of judgment and findings

(1) The contested judgment is to be quashed insofar as the appeal on law is considered well-founded.
(2) At the same time, the findings on which the judgment is based are to be quashed insofar as they are affected by the violation of law by virtue of which the judgment is quashed.

Section 354
Own decision on merits; referral to lower court

(1) If the judgment is quashed solely because of a violation of the law occurring on its application to the findings on which the judgment was based, the court hearing the appeal on law itself decides on the merits if, without further discussion of the facts, the judgment is to take the form of an acquittal or termination of proceedings or imposition of a mandatory penalty or if, in accordance with the public prosecution office's application, the court hearing the appeal on law deems the statutory minimum sentence or dispensing with imposing a penalty to be reasonable.
(1a) In the case of a violation of the law merely in respect of the assessment of the legal consequences of the offence, the court hearing the appeal on law may

dispense with quashing the contested judgment insofar as the legal consequences imposed are appropriate. Upon application by the public prosecution office, the court hearing the appeal on law may reduce the legal consequences as appropriate.
(1b) If the court hearing the appeal on law quashes the judgment solely on account of a violation of the law in regard to its fixing of an aggregate sentence (sections 53, 54 and 55 of the Criminal Code), this may be done subject to the proviso that a subsequent court decision on the aggregate sentence is to be taken in accordance with sections 460 and 462. If the court hearing the appeal on law decides itself in respect of an individual sentence pursuant to subsection (1) or subsection (1a), then sentence 1 applies accordingly. In all other respects, subsections (1) and (1a) remain unaffected.
(2) In all other cases, the matter is to be referred back to another division or chamber of the court whose judgment is being quashed or to another court of the same rank located in the same *Land*. In proceedings in which the decision at first instance was given by a higher regional court, the case is to be referred back to a different panel of the same court.
(3) The case may be referred back to a court of lower rank if such court has jurisdiction over the criminal act still to be dealt with.

Section 354a
Decision in event of legislative amendment

The court hearing the appeal on law is also required to proceed in accordance with section 354 when quashing a judgment on the ground that at the time of the decision a legal norm applied which is different from the one which applies at the time of the contested decision.

Section 355
Referral to competent court

If a judgment is quashed because the court of previous instance erroneously assumed jurisdiction, the court hearing the appeal on law simultaneously refers the case to the competent court.

Section 356
Pronouncement of judgment

Judgment is pronounced in accordance with the provisions of section 268.

Section 356a
Violation of right to be heard when taking decision on appeal

If a court, in deciding on an appeal on points of law, has violated a party’s right to be heard in such a manner as to affect the outcome of the case, then, upon application, it makes an order restoring the proceedings to the situation applying prior to the decision. The application must be filed with the court hearing the appeal on law within one week after gaining knowledge of the violation of the right to be heard, either in writing or orally to be recorded by the court registry, and stating reasons. Prima facie evidence of the time notice was obtained must be furnished. The defendant is to be informed thereof upon notification of a judgment which was given although neither the defendant nor defence counsel with a documented power of attorney was present. Section 47 applies accordingly.

Section 357
Effect on persons convicted in same proceedings

If the judgment is quashed in favour of one defendant on account of a violation of the law occurring upon application of criminal law and if that part of the judgment which was quashed also affects other defendants who have not filed an appeal on law, then the court gives its decision as if these persons had also filed an appeal on law. Section 47 (3) applies accordingly.

Section 358
Binding effect on lower court; prohibition of reformatio in peius

(1) The court to which the case was referred for another hearing and decision must base its decision on the same legal assessment as formed the basis for quashing the judgment.
(2) The contested judgment, insofar as it relates to the type and degree of the legal consequences of the offence, may not be amended to the defendant's detriment if only the defendant or his or her statutory representative filed the appeal on law or the public prosecution office filed an appeal on law for his or her benefit. If an order for placement in a psychiatric hospital is quashed, this provision does not prevent imposition of a penalty in lieu of placement. Nor does sentence 1 present an obstacle to the making of an order placing the defendant in a psychiatric hospital or in an addiction treatment facility.

Book 4
Reopening of proceedings concluded by final judgment

Section 359
Reopening for convicted person's benefit

The reopening of proceedings concluded by a final judgment for the convicted person's benefit is admissible

1. if a document produced as genuine, to his or her detriment, at the main hearing was false or forged;
2. if a witness or expert, when giving testimony or an opinion to the convicted person's detriment, was guilty of intentional or negligent breach of the duty imposed by the oath or of intentionally making a false, unsworn statement;
3. if a judge or lay judge who participated in reaching the judgment was guilty of a culpable breach of official duties in relation to the case, unless the violation was caused by the convicted person himself or herself;
4. if a civil court judgment on which the criminal judgment is based is quashed by another final judgment;
5. if new facts or evidence were produced which, independently or in connection with the evidence previously taken, tend to support the defendant's acquittal or, upon application of a more lenient criminal provision, a lesser penalty or a fundamentally different decision on a measure of reform and prevention;
6. if the European Court of Human Rights has held that there has been a violation of the European Convention on the Protection of Human Rights and Fundamental Freedoms or of its Protocols and the judgment was based on that violation.

Section 360
No obstacle to enforcement

(1) An application for the reopening of proceedings does not constitute an obstacle to enforcement of the judgment.
(2) The court may, however, order postponement or interruption of enforcement.

Section 361
Reopening following enforcement of sentence or death of convicted person

(1) An application for the reopening of proceedings is not barred either by the fact that a full sentence has been served or by the convicted person's death.
(2) In the event of death, the deceased person's spouse, life partner, relatives in the ascending and descending line, and siblings are entitled to file the application.

Section 362
Reopening to convicted person's detriment

The reopening of proceedings concluded by final judgment to the defendant's detriment is admissible

1. if a document produced as genuine, for his or her benefit, at the main hearing was false or forged;
2. if a witness or expert, when giving testimony or an opinion for the defendant's benefit, was guilty of intentional or negligent breach of the duty imposed by oath or of intentionally making a false, unsworn statement;
3. if a judge or lay judge who participated in reaching the judgment was guilty of a culpable breach of official duties in relation to the case;
4. if the person acquitted makes a credible confession, in or out of court, that he or she committed the offence;
5. if new facts or evidence are produced which, independently or in connection with evidence which was previously taken, establish cogent reasons that the acquitted defendant will be convicted of murder under aggravating circumstances (section 211 of the Criminal Code), genocide (section 6 (1) of the Code of Crimes against International Law), a crime against humanity (section 7 (1) no. 1 and no. 2 of the Code of Crimes against International Law) or a war crime against a person (section 8 (1) no. 1 of the Code of Crimes against International Law).

Section 363
Inadmissibility

(1) Reopening of the proceedings is not admissible for the purpose of imposing another penalty on the basis of the same criminal provision.
(2) Reopening of the proceedings for the purpose of mitigating the penalty owing to diminished responsibility (section 21 of the Criminal Code) is also precluded.

Section 364
Allegation of offence

An application for the reopening of proceedings which is to be based on an allegation of an offence is admissible only if a final conviction has been made for this offence or if criminal proceedings cannot be commenced or conducted for reasons other than for lack of evidence. This does not apply in the case under section 359 no. 5.

Section 364a
Appointment of defence counsel for reopened proceedings

Upon application, the court competent to decide in reopened proceedings appoints defence counsel in the reopened proceedings to represent a convicted person who has no defence counsel if, owing to the complexity of the factual or legal situation, the participation of defence counsel is deemed necessary.

Section 364b
Appointment of defence counsel to prepare reopened proceedings

(1) Upon application, the court competent to give decisions in reopened proceedings appoints defence counsel for a convicted person who has no defence counsel, including for the purpose of preparing the proceedings to be reopened, if

1. there are sufficient factual indications that making certain inquiries will bring to light facts or evidence which may substantiate the admissibility of an application to reopen the proceedings,
2. owing to the complexity of the factual or legal position the participation of defence counsel is deemed necessary and
3. the convicted person is unable to engage defence counsel at his or her own expense without detriment to his or her own and his or her family's necessary maintenance.

If defence counsel has already been appointed for the convicted person, the court, upon application, makes an order determining that the conditions of sentence 1 nos. 1 to 3 are met.
(2) Section 117 (2) to (4) and section 118 (2) sentences 1, 2 and 4 of the Code of Civil Procedure apply accordingly to proceedings to determine whether the conditions of subsection (1) sentence 1 no. 3 are met.

Section 365
Operation of general provisions on appellate remedies regarding application

The general provisions on appellate remedies also apply to an application to reopen proceedings.

Section 366
Content and form of application

(1) The application must specify the statutory ground for reopening proceedings and the evidence therefor.
(2) The defendant and the persons specified in section 361 (2) must submit the application in the form of a written document signed by defence counsel or by a lawyer, or orally to be recorded by the court registry.

Section 367
Jurisdiction; decision without oral hearing

(1) Jurisdiction of the court to give decisions in reopened proceedings and on the application to prepare the proceedings to be reopened is governed by the special provisions of the Courts Constitution Act. The convicted person may also submit applications pursuant to sections 364a and 364b or an application to admit the reopening of the proceedings to the court whose judgment is being contested; the latter court forwards the application to the competent court.
(2) The decisions on applications made pursuant to sections 364a and 364b and the application for leave to reopen proceedings are given without an oral hearing.

Section 368
Dismissal for inadmissibility

(1) If the application is not submitted in the prescribed form or does not invoke a statutory ground for reopening proceedings or does not adduce appropriate evidence, it is to be dismissed as inadmissible.
(2) Otherwise, it is to be served on the applicant's opponent with a time limit being set for a response.

Section 369
Taking of evidence

(1) If the application is found to be admissible, the court, where necessary, commissions a judge to take the evidence adduced.
(2) It is left to the court's discretion as to whether the witnesses and experts are to be examined under oath.
(3) The public prosecution office, the defendant and defence counsel are to be allowed to be present at the examination of a witness or expert and at a judicial inspection. Section 168c (3), section 224 (1) and section 225 apply accordingly. If the defendant is not at liberty, he or she is not entitled to be present if the hearing is not held at the court of the place where he or she is in custody and if his or her assistance will not serve to clarify the matter for which evidence is being taken.
(4) After the taking of evidence has been concluded, the public prosecution office and the defendant are to be called upon to make further statements, for which a time limit is to be set.

Section 370
Decision on well-foundedness

(1) The application to reopen proceedings is rejected as unfounded without an oral hearing if the allegations made therein are not sufficiently substantiated or if, in the cases under section 359 nos. 1 and 2 or under section 362 nos. 1 and 2, the assumption that the act specified in these provisions influenced the decision can be ruled out given the circumstances which pertain.
(2) Otherwise, the court orders the reopening of the proceedings and the recommencement of the main hearing.

Section 371
Acquittal without new main hearing

(1) If the convicted person has died, the court, without recommencing the main hearing and after taking any evidence which may still be needed, either enters an acquittal or rejects the application to reopen the proceedings.
(2) In other cases, too, the court may acquit the convicted person immediately if there is already sufficient evidence for such acquittal, in the case of public charges, however, it may only do so with the consent of the public prosecution office.
(3) The acquittal is to be combined with the quashing of the original judgment. If only a measure of reform and prevention was imposed, the original judgment is quashed in lieu of entering an acquittal.
(4) Upon request by the applicant, the fact that the judgment has been quashed is to be published in the Federal Gazette and, at the court's discretion, it may also be published in some other appropriate manner.

Section 372
Immediate complaint

All decisions given by the court of first instance in connection with an application to reopen proceedings may be contested by immediate complaint. The decision of the court ordering the reopening of proceedings and recommencement of the main hearing may not be contested by the public prosecution office.

Section 373
Judgment after new main hearing; prohibition of reformatio in peius

(1) In the new main hearing, the original judgment is either to be upheld or quashed with a new decision being given on the merits.
(2) The original judgment, so far as it relates to the type and degree of the legal consequences of the offence, may not be amended to the convicted person's detriment if only the defendant or, on his or her behalf, the public prosecution office or his or her statutory representative applied to reopen the proceedings. This provision does not prevent an order being made placing the defendant in a psychiatric hospital or in an addiction treatment facility.

Section 373a
Procedure for summary penalty order

(1) The reopening of proceedings concluded by a final summary penalty order to the convicted person's detriment is also admissible if new facts or evidence have been produced which, either alone or in conjunction with earlier evidence, tend to substantiate a conviction for a serious criminal offence.
(2) In all other cases, sections 359 to 373 apply accordingly to the reopening of proceedings concluded by a final summary penalty order.

Book 5
Participation of aggrieved persons in proceedings

Division 1
Definition

Section 373b
Meaning of 'aggrieved person'

(1) Within the meaning of this statute, 'aggrieved person' means a person whose legally protected interests were interfered with or who incurred direct harm on account of an act whose commission is assumed or has been finally established.
(2) The following are equal to aggrieved persons within the meaning of subsection (1):

1. the spouse or life partner,
2. the partner living in the same household,
3. the relatives in the direct line,
4. the siblings and
5. the dependants

of a person whose death resulted directly from the act whose commission is assumed or has been finally established.

Division 2
Private prosecution

Section 374
Admissibility; persons entitled to bring private prosecution

(1) An aggrieved person may bring a private prosecution in respect of the following offences without first needing to have recourse to the public prosecution office:

1. trespass (section 123 of the Criminal Code),
2. insult (sections 185 to 189 of the Criminal Code), unless it is directed against one of the political bodies specified in section 194 (4) of the Criminal Code,
2a. violation of intimate privacy and rights of personality by taking photographs or other images (section 201a (1) and (2) of the Criminal Code),
3. violation of the privacy of correspondence (section 202 of the Criminal Code),
4. bodily harm (sections 223 and 229 of the Criminal Code),
5. coercion (section 240 (1) to (3) of the Criminal Code) or threatening commission of a serious criminal offence (section 241 (1) to (3) of the Criminal Code),
5a. taking or giving of a bribe in commercial practice (section 299 of the Criminal Code),
6. criminal damage (section 303 of the Criminal Code),
6a. an offence under section 323a of the Criminal Code if the offence, having been committed in a state of intoxication, is a less serious criminal offence as referred to in nos. 1 to 6,
7. an offence pursuant to section 16 of the Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*) and section 23 of the Act on the Protection of Trade Secrets (*Gesetz zum Schutz von Geschäftsgeheimnissen*),
8. an offence under section 142 (1) of the Patent Act (*Patentgesetz*), section 25 (1) of the Utility Models Act (*Gebrauchsmustergesetz*), section 10 (1) of the Semi-Conductor Protection Act (*Halbleiterschutzgesetz*), section 39 (1) of the Plant Variety Protection Act (*Sortenschutzgesetz*), section 143 (1), section 143a (1) and section 144 (1) and (2) of the Trade Mark Act (*Markengesetz*), section 51 (1) and section 65 (1) of the Design Act (*Designgesetz*), sections 106 to 108 and section 108b (1) and (2) of the Copyright Act and section 33 of the Act on the Copyright of Works of Fine Art and Photography (*Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie*).

(2) A person who, in addition to the aggrieved person or on his or her behalf, is entitled to file a request to prosecute may also file a private prosecution. The persons designated in section 77 (2) of the Criminal Code may also bring a private prosecution if the person with prior entitlement has filed the request to prosecute.
(3) If the aggrieved person has a statutory representative, the right to bring a private prosecution is exercised by the latter or, if the aggrieved person is a corporation, a company or another association which as such may sue in civil litigation, by the same persons who represent them in civil litigation.

Section 375
More than one person entitled to bring private prosecution

(1) If more than one person is entitled to bring a private prosecution in respect of the same offence, each such person is independent of the others when exercising this right.
(2) If, however, one of those entitled has brought a private prosecution, the others are only entitled to join the initiated proceedings at the stage they have reached at the time the declaration of joinder is made.
(3) Any decision on the merits also takes effect, for the accused's benefit, in respect of entitled persons who did not bring a private prosecution.

Section 376
Preferment of public charges in respect of offences open to private prosecution

The public prosecution office prefers public charges in respect of the offences specified in section 374 only if it is in the public interest.

Section 377
Participation of public prosecutor; assumption of prosecution

(1) Public prosecutors are not obliged to participate in private prosecution proceedings. The court submits the files to the public prosecutor if it is of the opinion that he or she ought to take over the prosecution.
(2) The public prosecution office may assume the prosecution by making an express statement at any stage of the proceedings before the judgment enters into force. Seeking an appellate remedy entails taking over the prosecution.

Section 378
Assistance for and representation of private prosecutor

A private prosecutor may be assisted by a lawyer or may be represented by a lawyer with a documented power of attorney. In the latter case, service on the private prosecutor may legally be effected on the lawyer.

Section 379
Provision of security; legal aid

(1) Private prosecutors are required to provide security for the costs which are expected to arise for the accused under the same conditions as apply to a claimant in civil litigation who, at the defendant's request, is required to provide security for the costs of litigation.
(2) Security is to be provided by depositing cash or stocks and bonds. Any diverging provisions in a statutory instrument issued under the Act on Payments to and from Courts and Judicial Authorities remain unaffected.
(3) The amount of security, the time limit for provision of security and legal aid are governed by the same provisions as apply in civil litigation.

Section 379a
Payment of advance for fees

(1) The court, as a rule, sets a time limit for payment of the advance for fees pursuant to section 16 (1) of the Court Fees Act (*Gerichtskostengesetz*), unless the private prosecutor has been granted legal aid or is exempted from paying fees; reference is, as a rule, thereby to be made to the consequences arising under subsection (3).

(2) No court action is, as a rule, required before the advance payment is made, unless a prima facie case is established that the delay would cause detriment to the private prosecutor which cannot be undone or can only be undone with difficulty.
(3) The private prosecution is dismissed once the time limit set in accordance with subsection (1) has expired with no result. The order may be contested by immediate complaint. The court which made the order quashes it ex officio if it transpires that the payment was received within the time limit set.

Section 380
Unsuccessful attempt at reconciliation as condition for admissibility

(1) Prosecution for trespass, insult, violation of the privacy of correspondence, bodily harm (sections 223 and 229 of the Criminal Code), threatening commission of a serious criminal offence and criminal damage may be brought only after reconciliation was unsuccessfully attempted by a reconciliation board to be designated by the *Land* department of justice. The same applies to an offence under section 323a of the Criminal Code if the offence, having been committed in a state of intoxication, is a less serious criminal offence as referred to in sentence 1. When bringing a private prosecution, the claimant is required to submit a certificate to prove that reconciliation has been attempted.
(2) The *Land* department of justice may stipulate that the reconciliation board may make its involvement conditional upon payment of a reasonable advance on costs.
(3) The provisions of subsections (1) and (2) do not apply if an official superior has the authority to request prosecution pursuant to section 194 (3) or section 230 (2) of the Criminal Code.
(4) If the parties do not live in the same district, an attempt at reconciliation may be dispensed with by specific order made by the *Land* department of justice.

Section 381
Preferment of charges

The charges are preferred orally to be recorded by the court registry or by submitting a bill of indictment. The charges must comply with the requirements specified in section 200 (1). The bill of indictment is to be submitted together with two copies thereof. No copies need be submitted if the bill of indictment is transmitted electronically.

Section 382
Communication of charges

If the charges have been properly preferred, the court communicates them to the accused, with a time limit being set for a response.

Section 383
Order opening or refusing to open main hearing; termination in case of minor guilt

(1) After receiving the accused’s response or after expiry of the time limit, the court decides whether to open the main proceedings or to dismiss the charges in accordance with the provisions which are applicable when charges are directly preferred by the public prosecution office. In an order opening the main proceedings, the court designates the defendant and the offence in accordance with section 200 (1) sentence 1.
(2) The court may terminate the proceedings if the offender’s guilt is minor. The proceedings may even be terminated in the course of the main hearing. The order may be contested by immediate complaint.

Section 384
Further procedure

(1) Further procedure is governed by the provisions which govern proceedings concerning preferred public charges. However, measures of reform and prevention may not be ordered.
(2) Section 243 applies, subject to the proviso that the presiding judge reads out the order opening the main proceedings.
(3) The court determines the extent to which evidence is to be taken, without prejudice to section 244 (2).
(4) The provision in section 265 (3) on the right to request suspension of the main hearing does not apply.
(5) A private prosecution cannot be heard at the same time as a public prosecution before a criminal division with lay judges.

Section 385
Status of private prosecutor; summons; inspection of files

(1) To the extent that the public prosecution office is to be called in and heard in proceedings on preferred public charges, a private prosecutor is also called in and heard in proceedings on private charges. All decisions which are brought to the attention of the public prosecution office in the former case are to be brought to the attention of the private prosecutor in the latter case.
(2) A period of at least one week must elapse between service of the summons on the private prosecutor to attend the main hearing and the day of the main hearing.
(3) A lawyer may inspect those files on behalf of a private prosecutor which are available to the court or would have to be submitted by the public prosecution office in the event of public charges being preferred, and he or she may examine evidence in official custody if the purpose of the investigation in other criminal proceedings cannot be endangered thereby and the overriding interests meriting protection of the accused or third parties do not constitute an obstacle thereto. Applying sentence 1 accordingly, private prosecutors who are not represented by a lawyer are authorised to inspect the files and to examine, under supervision, evidence in official custody. If the files are not kept in electronic form, instead of granting inspection of the files, copies of the files may be transmitted to private prosecutors who are not represented by a lawyer. Section 406e (5) applies accordingly.
(4) In the cases under sections 154a and 421, subsection (3) sentence 2 of each of those sections does not apply.
(5) In proceedings on an appeal on points of law, no application by the private prosecutor pursuant to section 349 (2) is necessary. Section 349 (3) does not apply.

Section 386
Summons of witnesses and experts

(1) The presiding judge decides which persons are to be summoned to the main hearing as witnesses or experts.
(2) The private prosecutor and the defendant have the right to summon such persons directly.

Section 387
Representation at main hearing

(1) The defendant may also be assisted by a lawyer at the main hearing or may be represented by a lawyer with a documented power of attorney.

(2) The provision in section 139 applies to the private prosecutor's lawyer and to the defendant's lawyer.
(3) The court is authorised to order that the private prosecutor and the defendant appear in person and is also authorised to have the defendant brought before the court.

Section 388
Countercharges

(1) If it was the aggrieved person who brought the private prosecution, the accused may apply, until completion of the last word (section 258 (2) half-sentence 2) at first instance, for imposition of a penalty on the private prosecutor by bringing countercharges if the accused was likewise aggrieved by the latter's commission of an offence which can form the subject of a private prosecution and which is connected with the offence giving rise to the charges.
(2) If the private prosecutor is not the aggrieved person (section 374 (2)), the accused may bring countercharges against the aggrieved person. In that case, the countercharges are to be served on the aggrieved person and he or she is to be summoned to the main hearing insofar as countercharges are not preferred at the main hearing in the presence of the aggrieved person.
(3) The decision on the countercharges is to be given at the same time as the decision on the charges.
(4) Withdrawal of the charges has no influence on the proceedings on the countercharges.

Section 389
Termination by judgment upon suspicion of public offence

(1) If, after hearing the case, the court finds that the facts which are deemed to have been established constitute an offence to which the procedure provided for under this Division does not apply, it terminates the proceedings in a judgment in which these facts must be clearly indicated.
(2) The public prosecution office is to be informed of the hearings in such cases.

Section 390
Appellate remedies available to private prosecutors

(1) The same appellate remedies are available to a private prosecutor as are available to the public prosecution office in proceedings on preferred public charges. The same applies to an application to reopen the proceedings in the cases under section 362. Section 301 applies to the private prosecutor's appellate remedy.
(2) Notices of appeal on law and applications to reopen proceedings concluded by final judgment may be filed by the private prosecutor only in a written document signed by a lawyer.
(3) Submission and transmission of the files in accordance with sections 320, 321 and 347 is made to and by the public prosecution office as in proceedings on preferred public charges. Service of the notices of appeal on fact and law and of appeal on law on the appellant's opponent is effected by the court registry.
(4) The provision of section 379a on payment of an advance for fees and the consequences of late payment applies accordingly.
(5) The provision of section 383 (2) sentences 1 and 2 on termination of proceedings in view of negligibility also applies to proceedings on an appeal on fact and law. The order is not contestable.

Section 391
Withdrawal of private prosecution; dismissal in event of defects; restoration of status quo ante

(1) A private prosecution may be withdrawn at any stage of the proceedings. After commencement of the defendant's examination at the main hearing at first instance, the withdrawal is subject to his or her consent.
(2) The private prosecution is deemed to have been withdrawn in proceedings at first instance and, where the defendant has filed an appeal on fact and law, in proceedings at second instance, if the private prosecutor neither appears at the main hearing nor is represented by a lawyer or, although the court has ordered his or her personal appearance, fails to appear at the main hearing or at another hearing, or fails to comply with a time limit set and in respect of which he or she has been warned that non-compliance will result in termination of proceedings.
(3) If the appeal on fact and law was filed by the private prosecutor, it is to be dismissed immediately in the event of the defects referred to above, without prejudice to section 301.
(4) The private prosecutor may demand restoration of the status quo ante within one week after the default, subject to the conditions of sections 44 and 45.

Section 392
Effect of withdrawal

Once withdrawn, a private prosecution cannot be brought a second time.

Section 393
Death of private prosecutor

(1) The private prosecutor's death results in termination of the proceedings.
(2) A private prosecution may, however, be continued after the private prosecutor's death by the persons entitled to bring a private prosecution pursuant to section 374 (2).
(3) The person entitled must notify the court of the continuation within two months after the private prosecutor's death; if no such notification is made, this right is lost.

Section 394
Notification of accused

The accused is to be notified of the withdrawal of the private prosecution, of the private prosecutor's death and of continuation of the private prosecution.

Division 3
Private accessory prosecution

Section 395
Right to join as private accessory prosecutor

(1) Whoever is aggrieved by an unlawful act under

1. sections 174 to 182 and sections 184i to 184k of the Criminal Code,
2. sections 211 and 212 of the Criminal Code, if it is an attempted act,
3. sections 221, 223 to 226a and 340 of the Criminal Code,
4. sections 232 to 238, section 239 (3), sections 239a and 239b and section 240 (4) of the Criminal Code,
5. section 4 of the Act on Civil Law Protection against Violent Acts and Stalking (*Gewaltschutzgesetz*),

6. section 142 of the Patent Act, section 25 of the Utility Models Act, section 10 of the Semi-Conductor Protection Act, section 39 of the Plant Variety Protection Act, sections 143 to 144 of the Trade Mark Act, sections 51 and 65 of the Design Act, sections 106 to 108b of the Copyright Act, section 33 of the Act on the Copyright of Works of Fine Art and Photography, section 16 of the Act against Unfair Competition and section 23 of the Act on the Protection of Trade Secrets

may join a public prosecution or an application in preventive detention proceedings as private accessory prosecutor.
(2) The same right is vested in persons

1. whose children, parents, siblings, spouse or life partner were killed through an unlawful act or

2. who, through an application for a court decision (section 172), have initiated the preferment of public charges.

(3) Whoever is aggrieved by another unlawful act, in particular one under sections 185 to 189, section 229, section 244 (1) no. 3 and (4), sections 249 to 255 and section 316a of the Criminal Code, may join the public prosecution as private accessory prosecutor if, for specific reasons, in particular on account of the serious consequences of the act, this is deemed necessary to safeguard their interests.
(4) Joinder is admissible at any stage of the proceedings. It may also be effected, after judgment has been given, for the purpose of seeking an appellate remedy after judgment.
(5) If prosecution is limited pursuant to section 154a, this does not affect the right to join the public prosecution as private accessory prosecutor. If the private accessory prosecutor is admitted to the proceedings, a limitation pursuant to section 154a (1) or (2) does not apply insofar as it concerns the private accessory prosecution.

Section 396
Declaration of joinder; decision on right of joinder

(1) A declaration of joinder must be submitted to the court in writing. A declaration of joinder received by the public prosecution office or the court prior to the preferment of public charges takes effect upon the preferment of public charges. In proceedings involving summary penalty orders, the joinder takes effect when a date for the main hearing has been set down (section 408 (3) sentence 2, section 411 (1)) or an application for issuance of a summary penalty order has been refused.
(2) The court decides, after hearing the public prosecution office, whether a person is entitled to join as a private accessory prosecutor. In the cases under section 395 (3), it decides, after also hearing the indicted accused, whether joinder is imperative on the grounds referred to therein; this decision is not contestable.
(3) If the court is considering terminating the proceedings pursuant to section 153 (2), section 153a (2), section 153b (2) or section 154 (2), it first decides on the entitlement to joinder.

Section 397
Rights of private accessory prosecutor

(1) Private accessory prosecutors are entitled to be present at the main hearing even if they are to be examined as a witness. Private accessory prosecutors are to be summoned to the main hearing; section 145a (2) sentence 1 and section 217 (1) and (3) apply accordingly. Private accessory prosecutors are also entitled to

challenge a judge (sections 24 and 31) or an expert (section 74), to ask questions (section 240 (2)), to object to orders made by the presiding judge (section 238 (2)) and to object to questions (section 242), to apply for evidence to be taken (section 244 (3) to (6)) and to make statements (sections 257 and 258). Unless otherwise provided by law, they are to be called in and heard to the same extent as the public prosecution office. Decisions which are notified to the public prosecution office must also be notified to private accessory prosecutors; section 145a (1) and (3) applies accordingly.
(2) Private accessory prosecutors may avail themselves of the assistance of a lawyer or may be represented by such lawyer. The lawyer is entitled to be present at the main hearing. He or she is to be notified of the date set down for the main hearing if his or her being chosen has been notified to the court or if he or she has been appointed as counsel.
(3) If a private accessory prosecutor does not speak German, then, upon application, in accordance with the provisions of section 187 (2), he or she is to receive a translation of written documentation insofar as this is necessary to exercise the rights under the law of criminal procedure.

Section 397a
Appointment of lawyer as assisting counsel; legal aid

(1) Upon application by a private accessory prosecutor, a lawyer is to be appointed as counsel if the private accessory prosecutor

1. has been aggrieved by a serious criminal offence under sections 177, 232 to 232b and 233a of the Criminal Code or by an especially serious case of a less serious criminal offence under section 177 (6) of the Criminal Code,

1a. has been aggrieved by an offence under section 184j of the Criminal Code and this offence is based on a serious criminal offence under section 177 of the Criminal Code or by an especially serious case of a less serious criminal offence under section 177 (6) of the Criminal Code,

2. has been aggrieved by an attempted unlawful act under sections 211 and 212 of the Criminal Code or is a relative of a person killed through an unlawful act within the meaning of section 395 (2) no. 1,

3. has been aggrieved by a serious criminal offence under sections 226, 226a, 234 to 235, 238 to 239b, 249, 250, 252, 255 and 316a of the Criminal Code which has caused or is expected to cause him or her serious physical or mental harm,

4. has been aggrieved by an unlawful act under sections 174 to 182, sections 184i to 184k and 225 of the Criminal Code and was under 18 years of age at the time of the act or cannot himself or herself sufficiently safeguard his or her own interests or

5. has been aggrieved by an unlawful act under sections 221, 226, 226a, 232 to 235, 237 and section 238 (2) and (3), sections 239a and 239b, section 240 (4), sections 249, 250, 252, 255 and 316a of the Criminal Code and was under 18 years of age at the time of the application or cannot himself or herself sufficiently safeguard his or her own interests.

(2) If the conditions for an appointment pursuant to subsection (1) are not met, the private accessory prosecutor is, upon application, to be granted legal aid to call in a lawyer subject to the same provisions as apply in civil litigation if the private accessory prosecutor cannot sufficiently safeguard his or her own interests or if this cannot reasonably be expected of him or her. Section 114 (1) sentence 1 half-sentence 2 and (2) and section 121 (1) to (3) of the Code of Civil Procedure do not apply.
(3) Applications pursuant to subsections (1) and (2) may already be made prior to the declaration of joinder. The presiding judge of the court seized of the case decides on the appointment of a lawyer, to which section 142 (5) sentences 1 and 3 applies accordingly, and on the granting of legal aid.

Section 397b
Joint assisting counsel for private accessory prosecutors

(1) Where several private accessory prosecutors are pursuing similar interests, the court may appoint or assign a lawyer to act as joint assisting counsel. ‘Similar interests’ generally arise in the case of there being more than one relative of a person who was killed by an unlawful act within the meaning of section 395 (2) no. 1.
(2) Before appointing or assigning a lawyer to act as joint assisting counsel, the involved private accessory prosecutors are, as a rule, to be given the opportunity to comment. Where a lawyer is appointed or called upon to assist in the capacity as joint assisting counsel in accordance with subsection (1), previous appointments or assignments are to be revoked.
(3) Where a lawyer is not appointed or assigned as joint assisting counsel because another lawyer has already been appointed or assigned in accordance with subsection (1), the court determines whether the conditions of section 397a (3) sentence 2 concerning the lawyer who was not appointed or not assigned were met.

Section 398
Course of proceedings following joinder

(1) The course of the proceedings is not stayed by joinder.
(2) A main hearing which has already been scheduled and other scheduled hearings are held on the dates set down, even if the private accessory prosecutor could not be summoned or notified at short notice.

Section 399
Notification and contestability of previous decisions

(1) Decisions which were made and brought to the attention of the public prosecution office prior to joinder need not be notified to the private accessory prosecutor, except in the cases under section 401 (1) sentence 2.
(2) Once the time limit for the public prosecution office to contest such decisions has expired, the private accessory prosecutor is not entitled to contest them either.

Section 400
Private accessory prosecutor’s right to appellate remedy

(1) A private accessory prosecutor may not contest the judgment with the objective of having another legal consequence of the offence imposed or of the defendant being sentenced for a violation of the law which does not justify joinder by the private accessory prosecutor.

(2) A private accessory prosecutor has the right to lodge an immediate complaint against the order refusing to open the main proceedings or terminating the proceedings pursuant to sections 206a and 206b insofar as the order concerns the offence on the basis of which the private accessory prosecutor is entitled to joinder. In all other respects, the order terminating the proceedings cannot be contested by the private accessory prosecutor.

Section 401
Appellate remedy available to private accessory prosecutor

(1) Private accessory prosecutors may avail themselves of an appellate remedy independently of the public prosecution office. If joinder for the purpose of filing an appellate remedy occurs after pronouncement of judgment, the contested judgment is to be immediately served on the private accessory prosecutor. The time limit for stating the grounds for an appellate remedy begins to run upon expiry of the time limit to be observed by the public prosecution office for filing an appellate remedy or, if the judgment has not yet been served on the private accessory prosecutor, upon service of the judgment on him or her, even if a decision has not yet been given on the private accessory prosecutor's entitlement to joinder.
(2) If the private accessory prosecutor was present at the main hearing or was represented by a lawyer, the time limit for filing an appellate remedy begins to run for him or her upon pronouncement of judgment, even if the private accessory prosecutor was no longer present or represented when judgment was pronounced; he or she may not claim restoration of the status quo ante in respect of non-observance of the time limit on the ground that he or she was not instructed as to the right to appellate remedy. If the private accessory prosecutor was not present or represented at all at the main hearing, the time limit begins to run when the operative part of the judgment is served on the private accessory prosecutor.
(3) If only the private accessory prosecutor has filed an appeal on fact and law, such appeal is to be immediately dismissed, notwithstanding the provision in section 301, if neither the private accessory prosecutor nor a lawyer representing him or her appeared at the commencement of a main hearing. The private accessory prosecutor may, within one week after his or her non-appearance in court, demand restoration of the status quo ante under the conditions of sections 44 and 45.
(4) Further action in the case is incumbent upon the public prosecution office if the contested decision is quashed by virtue of an appellate remedy filed by the private accessory prosecutor alone.

Section 402
Revocation of declaration of joinder; death of private accessory prosecutor

A declaration of joinder becomes ineffective through revocation and upon the death of the private accessory prosecutor.

Division 4
Adhesion proceedings

Section 403
Assertion of rights in adhesion proceedings

The aggrieved person or his or her heir may, in the criminal proceedings, bring a property claim against the accused arising out of the offence if the claim falls under the jurisdiction of the ordinary courts and is not yet pending before another court, in

proceedings before the local court irrespective of the value of the matter in dispute. Other persons who have asserted such a claim have the same right.

Section 404
Application; legal aid

(1) The application asserting the claim may be made in writing or orally to be recorded by the registry clerk or orally at the main hearing before the closing speeches begin. The application must specify the subject of and the grounds for the claim and must, as a rule, set forth the evidence. If the application is not made at the main hearing, it is to be served on the accused.
(2) Making an application has the same effect as bringing an action in civil litigation. The effect is produced upon receipt of the application by the court.
(3) If the application is made before the main hearing begins, the applicant is notified of the place and time of the main hearing. The applicant, the applicant's statutory representative, and the spouse or life partner of the person entitled to make the application may participate in the main hearing.
(4) The application may be withdrawn at any time prior to pronouncement of judgment.
(5) The applicant and the indicted accused are, upon application, to be granted legal aid under the same provisions as apply in civil litigation as soon as public charges have been preferred. Section 121 (2) of the Code of Civil Procedure applies, with the proviso that if the indicted accused has defence counsel, the latter is, as a rule, to be assigned to him or her; if the applicant avails himself or herself of the assistance of a lawyer in the main proceedings, the latter is to be assigned to the applicant. The court seized of the case is competent to decide; the decision is not contestable.

Section 405
Settlement

(1) Upon application by those entitled to assert a claim pursuant to section 403 and the aggrieved person or his or her heir and by the accused, the court includes in the court record a settlement in respect of the claims arising out of the offence. Upon unanimous application by the persons referred to in sentence 1, the court is, as a rule, to make a proposal for a settlement.
(2) The court of civil jurisdiction in whose district the criminal court of first instance is located has jurisdiction to decide upon objections to the legal effect of the settlement.

Section 406
Decision on application in criminal judgment; dispensing with decision

(1) The court grants the application in the judgment in which the accused is pronounced guilty of an offence or in which a measure of reform and prevention is ordered in respect of such offence insofar as the application is based on such offence. The decision may be limited to the ground for or a part of the asserted claim; section 318 of the Code of Civil Procedure applies accordingly. The court dispenses with a decision if the application is inadmissible or insofar as it appears unfounded. In all other cases, the court may dispense with a decision only if the application is not suited to being dealt with in criminal proceedings even after taking into account the legitimate interests of the applicant. An application will in particular be unsuited to being dealt with in criminal proceedings if its further examination, even where a decision is only considered possible on the ground for or a part of the

asserted claim, would considerably protract the proceedings. If the applicant has asserted a claim in respect of damages for bodily harm (section 253 (2) of the Civil Code), a decision may only be dispensed with in accordance with sentence 3.
(2) If the accused acknowledges, in full or in part, the claim asserted against him or her by the applicant, the accused is to be sentenced in pursuance of the acknowledgement.
(3) The decision on the application is equivalent to a judgment in civil litigation. The court declares the decision to be provisionally enforceable; sections 708 to 712 and sections 714 and 716 of the Code of Civil Procedure apply accordingly. Insofar as the claim has not been awarded, it may be asserted elsewhere. If a final judgment has been given on the ground for the claim, the hearing concerning the amount takes place before the competent civil court pursuant to section 304 (2) of the Code of Civil Procedure.
(4) The applicant is to be provided with a copy of the judgment with reasons, or an excerpt thereof.
(5) If the court is considering dispensing with a decision on the application, it informs the parties to the proceedings thereof as soon as possible. As soon as the court considers, after hearing the applicant, that the conditions for a decision on the application are not met, it makes an order dispensing with a decision on the claim.

Section 406a
Appellate remedies

(1) An immediate complaint against the order dispensing with a decision on the application pursuant to section 406 (5) sentence 2 is admissible if the application was made prior to commencement of the main hearing and as long as proceedings have not been concluded by a final decision at that instance. In all other cases, the applicant is not entitled to an appellate remedy.
(2) If the court grants the application, the defendant may contest the decision by an appellate remedy which would otherwise be admissible even without contesting that part of the judgment which concerns the offence. In this case, the decision on the appellate remedy may be given in an order at a sitting held in camera. If the admissible appellate remedy is an appeal on fact and law, then, upon an application by the defendant or the applicant, an oral hearing of the parties is held.
(3) If the conviction is quashed and the defendant is found not guilty of an offence and no measure of reform and prevention is ordered against him or her in respect of the decision on which the application was founded, the decision granting the application is to be quashed. This applies even if the judgment has not been contested in this respect.

Section 406b
Enforcement

Enforcement is governed by the provisions which apply to the enforcement of judgments and settlements in civil litigation. The court of civil jurisdiction in whose district the criminal court of first instance is located has jurisdiction over proceedings pursuant to sections 323, 731, 767, 768 and 887 to 890 of the Code of Civil Procedure. Objections which concern the claim established in the judgment are admissible only to the extent that the reasons on which they are based arose after conclusion of the main hearing at first instance and, if the court hearing the appeal on fact and law has given its decision, after conclusion of the main hearing on the appeal on fact and law.

Section 406c
Reopening of proceedings

(1) The defendant may limit the application for the reopening of proceedings for the purpose of obtaining an essentially different decision on the claim. The court then decides in an order without a new main hearing.
(2) Section 406a (3) applies accordingly if the application to reopen the proceedings is directed only against that part of the judgment which concerns the offence.

Division 5
Other rights of aggrieved persons

Section 406d
Notification of status of proceedings

(1) To the extent that it concerns them, aggrieved persons are to be notified, upon application, of

1. the termination of the proceedings,
2. the place and time of the main hearing and the charges brought against the defendant,
3. the outcome of the court proceedings.

Aggrieved persons who do not speak German are to be notified, upon application, of the place and time of the main hearing in a language they understand.
(2) Upon application, aggrieved persons are to be notified as to whether

1. the convicted person has been directed to refrain from making contact or associating with them;
2. measures involving deprivation of liberty have been ordered or terminated in respect of the accused or the convicted person or a relaxation of the conditions of detention or leave has been granted for the first time if he or she can show a legitimate interest and if there is no overriding interest meriting protection of the person concerned in precluding the notification; in the cases of section 395 (1) nos. 1 to 5 and in the cases of section 395 (3) in which an aggrieved person was admitted as private accessory prosecutor, there is no requirement to show a legitimate interest;
3. the accused or the convicted person has evaded a measure involving deprivation of liberty by fleeing and what measures, if any, have been taken as a result to protect them;
4. the convicted person is again granted a relaxation of the conditions of detention or leave if a legitimate interest can be shown or is evident and if there is no overriding interest meriting protection on the part of the convicted person in excluding the notification.

Such notification is given by whoever made the decision relating to the accused or the convicted person; in cases under sentence 1 no. 3, notification is given by the competent public prosecution office.
(3) Aggrieved persons are to be instructed about the rights to information arising from subsection (2) sentence 1 after the pronouncement of judgment or termination of proceedings. When reporting an offence, aggrieved persons are also to be instructed as to the rights to information arising from subsection (2) sentence 1 nos.

2 and 3 if it is to be expected that remand detention will be ordered against the accused.
(4) Notification need not be furnished if delivery is not possible at the address provided by an aggrieved person. If the aggrieved person has selected a lawyer as counsel, if counsel has been assigned to the aggrieved person or if the aggrieved person is legally represented by such counsel, section 145a applies accordingly.

Section 406e
Inspection of files

(1) A lawyer may, on the aggrieved person's behalf, inspect the files which are available to the court or the files which would need to be submitted if public charges were preferred and may view items of evidence in official custody if he or she can show a legitimate interest therein. In the cases under section 395, there is no requirement to show a legitimate interest.
(2) Inspection of the files is to be refused if overriding interests meriting protection, either on the part of the accused or of other persons, constitute an obstacle thereto. It may be refused if the purpose of the investigation, including in other criminal proceedings, appears to be jeopardised. It may also be refused if the proceedings would be considerably delayed thereby, unless, in the cases under section 395, the public prosecution office has noted in the files that the investigations have been concluded.
(3) Applying subsections (1) and (2) accordingly, aggrieved persons who are not represented by a lawyer are authorised to inspect the files and, under supervision, to view items of evidence in official custody. If the files are not kept in electronic form, then instead of being granted inspection of the files aggrieved persons may be sent copies of the files. Section 480 (1) sentences 3 and 4 applies accordingly.
(4) Subsections (1) to (3) also apply to the persons referred to in section 403 sentence 2.
(5) It is for the public prosecution office to decide whether to grant inspection of the files in preparatory proceedings and after final conclusion of the proceedings, in all other cases, the presiding judge of the court seized of the case gives this decision. An application may be made for a decision by the court competent pursuant to section 162 appealing against the decision made by the public prosecution office pursuant to sentence 1. Sections 297 to 300, 302, 306 to 309, 311a and 473a apply accordingly. The court's decision is not contestable as long as the investigations have not yet been concluded. These decisions are given without reasons if their disclosure could jeopardise the purpose of the investigation.

Section 406f
Assistance for aggrieved persons

(1) Aggrieved persons may avail themselves of the assistance of a lawyer or may be represented by such lawyer. An assisting lawyer who appears at the aggrieved person's examination is permitted to be present.
(2) At the examination of aggrieved persons, a person whom they trust who has appeared at the examination is permitted, at their request, to be present, except where this could jeopardise the purpose of the investigation. It is for the person conducting the examination to decide; the decision is not contestable. The reasons for denying the request are to be placed on record.

Section 406g
Psychosocial assistance in legal proceedings

(1) Aggrieved persons may avail themselves of psychosocial assistance in legal proceedings. The person providing psychosocial assistance is permitted to be present during an aggrieved person's examination and, when accompanying an aggrieved person, during the main hearing.
(2) The principles of psychosocial assistance in criminal proceedings, and the standards of qualification and the remuneration of individuals providing psychosocial assistance are based on the Act on Psychosocial Assistance in Criminal Proceedings (*Gesetz über die psychosoziale Prozessbegleitung*) of 21 December 2015 (Federal Law Gazette I, p. 2525, 2529), as amended.
(3) Under the conditions of section 397a (1) nos. 4 and 5, a person is to be appointed to provide psychosocial assistance upon application by the aggrieved person. Under the conditions of section 397a (1) nos. 1 to 3, a person may be appointed to provide psychosocial assistance upon application by the aggrieved person if the particular vulnerability of the aggrieved person so requires. Such appointment is free of charge for the aggrieved person. Section 142 (5) sentences 1 and 3 applies accordingly to the appointment. In the preliminary investigation, it is for the court competent pursuant to section 162 to decide.
(4) A person providing psychosocial assistance in criminal proceedings who has not been appointed may be prohibited from being present during the examination of the aggrieved person if his or her presence could jeopardise the purpose of the investigation. It is for the person conducting the examination to decide; the decision is not contestable. The grounds for denial are to be placed on record.

Section 406h
Assisting counsel for aggrieved persons entitled to private accessory prosecution

(1) Persons who are entitled to join the proceedings as a private accessory prosecutor pursuant to section 395 may avail themselves of the assistance of a lawyer or may be represented by a lawyer, even prior to the preferment of public charges and without declaration of joinder. They are entitled to be present at the main hearing even if they are to be examined as witnesses. If there is doubt as to whether a person is entitled to private accessory prosecution, it is for the court to decide, after hearing the person and the public prosecution office, whether the person is entitled to be present; the decision is not contestable.
(2) The lawyer of a person entitled to private accessory prosecution is entitled to be present at the main hearing; subsection (1) sentence 3 applies accordingly. The lawyer is to be notified of the date set down for the main hearing if the court has been informed of his or her having been selected or if he or she has been appointed as counsel. Sentences 1 and 2 apply accordingly in the case of judicial examinations and judicial inspections, unless the presence or notification of the lawyer could jeopardise the purpose of the investigation. Following judicial examinations, counsel is to be given the opportunity to comment or to ask the examined person questions. Questions or statements which are inappropriate or of no relevance to the matter may be rejected. Section 241a applies accordingly.
(3) Section 397a applies accordingly to

1. the appointment of a lawyer and
2. the granting of legal aid to call in a lawyer.

In the preparatory proceedings, it is for the court competent pursuant to section 162 to decide.

(4) Upon application by the person entitled to join the proceedings as a private accessory prosecutor, a lawyer may, in the cases under section 397a (2), be temporarily appointed as counsel if

1. this is necessary for special reasons,
2. the assistance of counsel is urgently required and
3. the granting of legal aid appears to be possible but a decision cannot be expected to be given in time.

Section 142 (5) sentences 1 and 3 and section 162 apply accordingly to the appointment. The appointment ends if no application for legal aid is filed within a time limit to be determined by the judge or if legal aid is refused.

Section 406i
Notification of aggrieved persons of rights in criminal proceedings

(1) Aggrieved persons are to be notified as early as possible, as a rule in writing and as far as possible in a language they understand, of their rights in criminal proceedings which follow from sections 406d to 406h, in particular they are also to be informed of the following:

1. They may report an offence or file a request to prosecute pursuant to section 158.
2. They may join the public prosecution as a private accessory prosecutor subject to the conditions of sections 395 and 396 or section 80 (3) of the Youth Courts Act and thereby
   a) apply, pursuant to section 397a, for legal assistance for themselves or to have legal aid granted for calling in such legal assistance,
   b) assert a claim for interpretation and translation in criminal proceedings pursuant to section 397 (3) and sections 185 and 187 of the Courts Constitution Act.
3. They may assert a property claim arising from the offence in the criminal proceedings in accordance with the provisions of sections 403 to 406c and section 81 of the Youth Courts Act.
4. They may, if they were examined by the public prosecution office or the court as witnesses, assert a claim for compensation in accordance with the provisions of the Judicial Remuneration and Compensation Act.
5. They may obtain restitution by way of victim–offender mediation pursuant to section 155a.

(2) If there are indications that the aggrieved person is particularly vulnerable, the aggrieved person is, as a rule, to be made aware at a suitable stage of the proceedings of those provisions which serve to protect him or her, in particular of section 68a (1), sections 247 and 247a, section 171b and section 172 no. 1a of the Courts Constitution Act.
(3) Aggrieved persons who are minors and their representatives are also to be made aware at a suitable stage of the proceedings of those provisions which serve to

protect them, in particular section 58a and section 255a (2), if application of these provisions is considered a possibility, and of section 241a.

Section 406j
Notification of aggrieved persons of rights outside criminal proceedings

Aggrieved persons are to be notified as early as possible, as a rule in writing and as far as possible in a language they understand, of the following rights which they have outside of criminal proceedings:

1. They may assert a property claim arising from the offence under civil law, unless such a claim is asserted in the criminal proceedings in accordance with the provisions of sections 403 to 406c and section 81 of the Youth Courts Act and they may thereby apply to have legal aid granted for calling in legal assistance.
2. They may apply for the making of orders against the accused in accordance with the provisions of the Act on Civil Law Protection against Violent Acts and Stalking.
3. They may assert a claim to social compensation in accordance with the provisions of Book Fourteen of the Social Code (*Sozialgesetzbuch Vierzehntes Buch*).
4. They may, where applicable, assert claims to compensation in accordance with the administrative provisions of the Federation or of the *Länder*.
5. They may obtain support and assistance from victim support facilities, for example
   a) advice,
   b) provision with or allocation of accommodation in a shelter or
   c) the offer of therapeutic services, such as medical or psychological support, or other available psychosocial support.

Section 406k
Further information

(1) The information referred to in sections 406i and 406j must, as a rule, include details as to

1. whom the aggrieved persons can turn to in order to avail themselves of the options described above and
2. who provides the services described above, where applicable.

(2) The relevant instruction need not be given if it is apparent that the conditions for a specific entitlement are not met in a specific case. There is no duty to provide written information to aggrieved persons who have not provided an address to which documents can be served.

Section 406l
Rights of aggrieved persons' relatives and heirs

Section 406i (1) and sections 406j and 406k also apply to the relatives and heirs of aggrieved persons to the extent that they possess the relevant rights.

Book 6
Special types of procedure

Division 1
Procedure for summary penalty orders

Section 407
Admissibility

(1) In proceedings before a criminal court judge and in proceedings within the jurisdiction of a court with lay judges, the legal consequences of an offence may, in the case of less serious criminal offences, be imposed, upon written application by the public prosecution office, in a written summary penalty order without a main hearing. The public prosecution office files such application if it does not consider a main hearing to be necessary given the outcome of the investigations. The application must refer to specific legal consequences. The application constitutes the preferment of public charges.
(2) A summary penalty order may impose only the following legal consequences, either on their own or in combination:

1. a fine, warning with sentence reserved, driving ban, confiscation, destruction of and rendering unusable of an object, announcement of the conviction and imposition of a regulatory fine against a legal entity or an association,
2. disqualification from driving if the period of disqualification does not exceed two years,
2a. prohibition of the keeping or care of, trade in or other professional contact with animals of any kind or of a certain kind for a period of between one and three years and
3. dispensing with imposing a penalty.

If the indicted accused has defence counsel, imprisonment for a term not exceeding one year may also be imposed, provided its enforcement is suspended on probation.
(3) The court is not required to give the indicted accused a prior hearing (section 33 (3)).

Section 408
Judicial decisions on application for summary penalty order

(1) If the presiding judge of a court with lay judges considers the criminal court judge to have jurisdiction, he or she refers the case, via the public prosecution office, to a criminal court judge; the decision is binding on the criminal court judge, and the public prosecution office is entitled to lodge an immediate complaint. If the criminal court judge considers a court with lay judges to have jurisdiction, he or she submits the files, via the public prosecution office, to the presiding judge of such court with lay judges for a decision.
(2) If the judge does not consider that there are sufficient grounds to suspect the indicted accused of having committed an offence, he or she refuses to make a summary penalty order. The decision is equivalent to an order refusing to open the main proceedings (section 204, section 210 (2) and section 211).
(3) The judge must comply with the application of the public prosecution office if he or she has no reservations about issuing the summary penalty order. The judge must set down a date for the main hearing if he or she has reservations about

deciding the case without a main hearing, if he or she wishes to deviate from the legal assessment in the application to issue the summary penalty order, or if he or she wishes to impose a legal consequence other than that applied for and the public prosecution office insists on its application. In addition to the summons, the defendant is to be provided with a copy of the application to issue a summary penalty order, not including the legal consequence applied for.

Section 408a
Application for summary penalty order after opening of main proceedings

(1) Where the main proceedings have already been opened, then in proceedings before a criminal court judge and before a court with lay judges the public prosecution office may apply for issuance of a summary penalty order if the conditions of section 407 (1) sentences 1 and 2 are met and if the defendant's failure to appear or his or her absence or another important reason constitutes an obstacle to the main hearing being conducted. The public prosecutor may make the application orally at the main hearing; the essential content of the application for issuance of a summary penalty order must be included in the record of the sitting. Section 407 (1) sentence 4 and section 408 do not apply.
(2) The judge is to grant the application if the conditions of section 408 (3) sentence 1 are met. In other cases, the judge is to refuse the application in an incontestable decision and continue the main proceedings.

Section 408b
Appointment of defence counsel following application for sentence of imprisonment

If the judge is considering granting the public prosecution office's application to issue a summary penalty order with the legal consequence set out in section 407 (2) sentence 2, he or she appoints court-appointed defence counsel for the indicted accused if said accused does not yet have defence counsel.

Section 409
Content of summary penalty order

(1) A summary penalty order contains

1. the personal details of the defendant and of any other persons involved,
2. the name of defence counsel,
3. the designation of the offence with which the defendant is charged, the time and place of commission, and the designation of the statutory elements of the offence,
4. the applicable provisions by section, subsection, number, letter and designation of the statute,
5. the evidence,
6. the legal consequences imposed,
7. instruction as to the possibility of filing an objection and the relevant time limit and form of the objection, and an indication that the summary penalty order becomes effective and enforceable unless an objection is lodged against it pursuant to section 410.

If the defendant is given a sentence of imprisonment, a warning with sentence reserved or a driving ban, he or she is to be instructed in accordance with section

268a (3) or section 268c sentence 1. Section 267 (6) sentence 2 applies accordingly.
(2) The summary penalty order is also to be communicated to the defendant's statutory representative.

Section 410
Objection; form of and time limit for objection; finality of judgment

(1) The defendant may lodge an objection against a summary penalty order at the court which issued it, either in writing or orally to be recorded by the registry, within two weeks following service of the summary penalty order. Sections 297 to 300 and section 302 (1) sentence 1 and (2) apply accordingly.
(2) The objection may be limited to certain points of complaint.
(3) If objections to the summary penalty order are not lodged in time, the order is equivalent to a judgment which has entered into force.

Section 411
Dismissal for inadmissibility; date of main hearing

(1) If an objection is lodged too late or is otherwise inadmissible, it is dismissed in an order without a main hearing; an immediate complaint is admissible against the order. Otherwise, a date is set down for the main hearing. If the defendant has limited the complaint to the amount of the daily rates in respect of a fine imposed, the court may, with the consent of the accused, defence counsel and the public prosecution office, decide in an order without a main hearing; no deviation from the sentence imposed in the summary penalty order is permissible to the defendant's detriment; an immediate complaint is admissible in respect of the order.
(2) The defendant may be represented at the main hearing by defence counsel with a documented power of attorney. Section 420 applies.
(3) The complaint and the objection may be withdrawn at any time prior to pronouncement of judgment by the court of first instance. Section 303 applies accordingly. If the summary penalty order was made in proceedings pursuant to section 408a, the complaint cannot be withdrawn.
(4) If an objection has been lodged, the court is not bound by the decision contained in the summary penalty order when giving its judgment.

Section 412
Defendant's failure to appear; dismissal of objection

Section 329 (1), (3), (6) and (7) applies accordingly. If the statutory representative has lodged an objection, section 330 also applies accordingly.

Division 2
Preventive detention proceedings

Section 413
Admissibility

If the public prosecution office does not conduct criminal proceedings owing to the offender's lack of criminal responsibility or unfitness to stand trial, it may file an application for an order imposing measures of reform and prevention and for confiscation as an incidental legal consequence if this is admissible by virtue of a statute and the order is to be anticipated in the light of the outcome of the investigations (preventive detention proceedings).

Section 414
Procedure; application

(1) The provisions governing criminal proceedings apply analogously to preventive detention proceedings, unless otherwise provided.
(2) The application is equivalent to public charges. Instead of a bill of indictment, a written application is submitted which must comply with the requirements made of a bill of indictment. The application must indicate the measure of reform and prevention for which the public prosecution office is applying. If the judgment does not impose a measure of reform and prevention, the application is to be refused.
(3) An expert is, as a rule, to be given the opportunity in the preliminary investigation to prepare the opinion to be rendered at the main hearing.

Section 415
Main hearing without accused

(1) If the accused's appearance in court in preventive detention proceedings is impossible owing to his or her condition or is inappropriate for reasons of public order or security, the court may conduct the main hearing without the accused being present.
(2) In this case, the accused is to be examined prior to the main hearing by a commissioned judge and an expert who is called in. The public prosecution office, the accused, defence counsel and statutory representative are to be informed of the date set for the examination. It is not necessary for the public prosecutor, defence counsel and statutory representative to be present.
(3) If the accused's condition so requires or if the proper conduct of the main hearing is otherwise not possible, then after examination of the accused on the charges the court may conduct the main hearing in preventive detention proceedings even if the accused is not or is only temporarily present.
(4) If a main hearing takes place without the accused, previous statements made by the accused which are contained in a judicial record may be read out. The record of any prior examination pursuant to subsection (2) sentence 1 is to be read out.
(5) An expert is to be examined at the main hearing concerning the accused's condition. If the expert has not previously examined the accused, he or she is, as a rule, to be given the opportunity to conduct an examination prior to the main hearing.

Section 416
Transition to criminal proceedings

(1) If, in the course of the preventive detention proceedings, the accused's criminal responsibility becomes apparent after the main proceedings have been opened and if the court has no jurisdiction over the criminal proceedings, it makes an order declaring that it lacks jurisdiction and refers the matter to the competent court. Section 270 (2) and (3) applies accordingly.
(2) If, in the course of the preventive detention proceedings, the accused's criminal responsibility becomes apparent after the main proceedings have been opened and if the court also has jurisdiction over the criminal proceedings, the accused is to be informed of the new legal situation and is to be given the opportunity to defend himself or herself. If the accused claims that he or she has not sufficiently prepared the defence, the main hearing is to be suspended upon the accused's application. If the main hearing was held in the accused's absence pursuant to section 415, those parts of the main hearing during which the accused was not present are to be repeated.
(3) Subsections (1) and (2) apply accordingly if, in the course of the preventive detention proceedings, it becomes apparent after the main proceedings have been

opened that the accused is fit to stand trial and that the preventive detention proceedings are being conducted owing to the accused's unfitness to stand trial.

Division 2a
Accelerated proceedings

Section 417
Admissibility

In proceedings before a criminal court judge and a court with lay judges, the public prosecution office files an application, in writing or orally, for a decision to be taken in accelerated proceedings if, given the simple factual situation or the clarity of the evidence, the case is suited to an immediate hearing.

Section 418
Conduct of main hearing

(1) If the public prosecution office files the application, the main hearing is held immediately or at short notice without a decision to open main proceedings being required. No more than six weeks are, as a rule, to lie between receipt of the application by the court and commencement of the main hearing.
(2) The accused is to be summoned only if he or she does not appear at the main hearing of his or her own volition or is not brought before the court. The accused is to be informed in the summons of the charges against him or her. The time limit for the summons is 24 hours.
(3) There is no requirement to file a bill of indictment. If no bill of indictment is filed, the charges are preferred orally at the beginning of the main hearing and their essential content is included in the record made of the sitting. Section 408a applies accordingly.
(4) If imprisonment for a term of at least six months is expected to be imposed, defence counsel is appointed for an accused who does not yet have defence counsel for the accelerated proceedings before the local court.

Section 419
Court decision; sentence

(1) The criminal court judge or the court with lay judges is to grant the application if the case is suitable to be heard under this procedure. Imprisonment for a term exceeding one year or a measure of reform and prevention may not be imposed in such proceedings. Disqualification from driving is admissible.
(2) Adjudication may also be refused in the main hearing until such time as judgment is pronounced. The decision is not contestable.
(3) If adjudication is refused, the court decides to open main proceedings if there are sufficient grounds to suspect the indicted accused of having committed an offence (section 203); if main proceedings are not opened and adjudication is refused, submission of a new bill of indictment may be dispensed with.

Section 420
Taking of evidence

(1) The examination of a witness, expert or co-accused may be substituted by reading out the record drawn up of an earlier examination and of documents containing statements made by them.
(2) Statements made by public authorities and other agencies about their own observations, investigations and findings made in an official context and about those

made by their staff may be read out, even in cases where the conditions of section 256 are not met.
(3) The procedure pursuant to subsections (1) and (2) requires the consent of the defendant, his or her defence counsel and the public prosecution office insofar as they are present at the main hearing.
(4) In proceedings before a criminal court judge, the latter, notwithstanding section 244 (2), determines the extent to which evidence is to be taken.

Division 3
Procedure for confiscation and asset seizure

Section 421
Exemption from confiscation

(1) The court may, with the public prosecution office's consent, dispense with confiscation if

1. the value of that which was obtained is negligible,
2. confiscation pursuant to sections 74 and 74c of the Criminal Code is of no consequence given the anticipated penalty or measure of reform and prevention or
3. the confiscation aspect of the proceedings would involve disproportionate effort or the process of obtaining a decision on the other legal consequences of the offence would be unreasonably difficult.

(2) The court may order reintroduction at any stage of the proceedings. It must grant an application made therefor by the public prosecution office. Section 265 applies accordingly.
(3) In the course of preparatory proceedings, the public prosecution office may limit the procedure to the other legal consequences. The fact of the limitation is to be placed on record.

Section 422
Separation of confiscation proceedings

If the process of obtaining a decision on confiscation pursuant to sections 73 to 73c of the Criminal Code would unreasonably impede or delay the taking of a decision on the other legal consequences of the offence, the court may separate the confiscation proceedings from the other proceedings. The court may order joinder at any stage of the proceedings.

Section 423
Confiscation following separation

(1) If the court separates the proceedings pursuant to section 422, it takes its decision on the confiscation once the judgment in the main action has become final. The court is bound by the decision in the main action and by the finding of facts on which that decision was based.
(2) The decision in respect of confiscation is, as a rule, to be taken no later than six months after the judgment in the main action becomes final.
(3) The court gives its decision by way of an order. The decision may be challenged by an immediate complaint.
(4) In derogation from subsection (3), the court may order that the decision be given by way of a judgment delivered following an oral hearing. The court must make the order pursuant to sentence 1 if the public prosecution office or the party against

whom the confiscation is made applies therefor. Sections 324 and 427 to 431 apply accordingly; the provisions governing the main hearing also apply accordingly.

Section 424
Parties to confiscation proceedings in criminal proceedings

(1) If the confiscation order is made against a person who is not an accused, the court orders that said person become a party to the confiscation aspect of the criminal proceedings (party to confiscation proceedings (*Einziehungsbeteiligter*)).
(2) Such an order is not made if the person who would be named therein has declared in writing to the court or public prosecution office or has stated for the record or in writing to another authority that no objections are to be raised in respect of the confiscation of the object. If the order had already been made when such declaration was made, the order is revoked.
(3) Such an order may be made up until pronouncement of the confiscation and, where an admissible appeal on fact and law has been filed, up until conclusion of the closing speeches in the appeal proceedings.
(4) The decision to order participation in the proceedings is not contestable. An immediate complaint is admissible if participation in the proceedings is refused.
(5) Participation in the proceedings does not suspend continuation of the proceedings.

Section 425
Exemption from participation in proceedings

(1) In the cases under sections 74a and 74b of the Criminal Code, the court may dispense with ordering that a person become a party to the proceedings if it can be assumed, on the basis of specific facts, that such order cannot be enforced.
(2) Subsection (1) applies accordingly if

1. a party, association or institution outside the territorial scope of this statute which is pursuing an action directed against the existence or security of the Federal Republic of Germany or against any of the constitutional principles designated in section 92 (2) of the Criminal Code would have to be involved and
2. it is to be assumed, in the light of the circumstances, that such party, association or institution, or one of its intermediaries, made the object available to promote such action.

Before taking the decision as to whether to confiscate the asset, and where feasible, the holder of the object or the person entitled to dispose of the right is to be heard.

Section 426
Hearing of possible parties to confiscation proceedings in preparatory proceedings

(1) If evidence comes to light during the preparatory proceedings which suggests that a person is considered to be a possible party to confiscation proceedings, that person is to be heard. This only applies if it appears feasible that the hearing can be held. Section 425 (2) applies accordingly.
(2) If the person who is considered to be a possible party to confiscation proceedings declares that he or she wishes to object to the confiscation, those provisions governing the examination of the accused apply accordingly in the event of his or her examination if it is considered possible that he or she may become a party to the proceedings.

Section 427
Powers of parties to confiscation proceedings in main proceedings

(1) Upon the opening of the main proceedings, a party to confiscation proceedings has the same rights as a defendant, unless otherwise provided by this statute. In accelerated proceedings, this applies from the beginning of the main hearing, in proceedings for a summary penalty order from the issuance of such an order.
(2) The court may order that a party to confiscation proceedings appear in person for the purpose of clarifying the facts. If such a person has been ordered to appear in person and fails to appear without sufficient excuse, the court may order that he or she be brought before it if a summons has been served on him or her which draws attention to this possibility.

Section 428
Representation of parties to confiscation proceedings

(1) A party to confiscation proceedings may, at any stage of the proceedings, be represented by a lawyer with a documented power of attorney. The provisions of sections 137 to 139, 145a to 149 and 218 which apply to the defence apply accordingly.
(2) Upon application or ex officio, the presiding judge appoints a lawyer to a party to confiscation proceedings if the lawyer's involvement is deemed necessary on account of the factual or legal situation complexity of the confiscation or if it is apparent that the party to confiscation proceedings cannot exercise his or her rights himself or herself. An application made by a party to confiscation proceedings who has a visual, hearing or language impairment is to be complied with.
(3) Subsection (1) applies accordingly in the preparatory proceedings.

Section 429
Notification of date of main hearing

(1) Notification of the date set down for the main hearing is to be served on a party to confiscation proceedings; section 40 applies accordingly.
(2) Where a party to confiscation proceedings is a party to the proceedings, then in addition to being notified of the date set down for the main hearing he or she is also to be furnished with the bill of indictment and, in the cases under section 207 (2), with the decision to initiate proceedings.
(3) At the same time, the party to confiscation proceedings is to be advised of the fact that

1. the hearing may also be conducted in his or her absence,
2. he or she may be represented by a lawyer with a documented power of attorney and
3. the decision given on the confiscation applies to him or her as well.

Section 430
Status in main hearing

(1) If a party to confiscation proceedings fails to appear at the main hearing despite having been properly notified of the date of the hearing, the main hearing may be conducted in his or her absence; section 235 does not apply. The same applies if the party to confiscation proceedings leaves the main hearing or does not return once the interrupted main hearing is resumed.

(2) Section 244 (3) sentence 2 and (4) to (6) does not apply to applications made by the party to confiscation proceedings to take evidence regarding the question of the defendant's guilt.
(3) If the court orders the confiscation of an object pursuant to section 74b (1) of the Criminal Code without it being possible to grant compensation pursuant to section 74b (2) of the Criminal Code, it must at the same time order that the party to confiscation proceedings is not entitled to compensation. This does not apply if the court considers compensation of such party to be necessary pursuant to section 74b (3) sentence 2 of the Criminal Code; in this case, the court also makes a determination of the amount of the compensation. The court is to advise parties holding an interest in confiscation in advance of the possibility of such a decision being taken and is to give them the opportunity to comment.
(4) If the party to confiscation proceedings was neither present nor represented when judgment was pronounced, the time limit for the filing of an appellate remedy begins to run upon service of the operative provisions of the judgment. In addition to service of the judgment, the court may order that those parts of the judgment which do not concern the confiscation be struck out.

Section 431
Appellate proceedings

(1) In appellate proceedings, the examination as to whether confiscation from the party to confiscation proceedings is justified extends to the conviction in the contested judgment only if such person

1. raises objections in this respect and
2. through no fault of his or her own was not heard in respect of the conviction at an earlier stage of the proceedings.

If, accordingly, the examination also extends to the conviction, the court refers to the findings on which the conviction was based, unless such person's submissions require renewed examination.
(2) Subsection (1) does not apply to proceedings on an appeal on fact and law if at the same time a decision needs to be given in respect of the conviction upon an appellate remedy being filed by another party.
(3) In proceedings on an appeal on law, objections to the conviction must be lodged within the time limit set for the submission of the grounds of appeal.
(4) If only the decision on the amount of compensation is being contested, a decision may be given on the appellate remedy by way of an order, unless the parties object thereto. The court advises them in advance of the possibility of following such procedure and of raising an objection and gives them the opportunity to make submissions.

Section 432
Confiscation by way of summary penalty order

(1) If confiscation is ordered by way of a summary penalty order, such order is also served on the party to confiscation proceedings if he or she is a party to the proceedings. Section 429 (3) no. 2 applies accordingly.
(2) If a decision is required only on the objection raised by the party to confiscation proceedings, section 434 (2) and (3) applies accordingly.

Section 433
Subsequent proceedings

(1) Where the confiscation order has become final and a person substantiates that they were, through no fault of their own, unable to exercise the rights of a party to confiscation proceedings either in the proceedings at first instance or in the appeal on fact and law, they may claim in subsequent proceedings that the confiscation, insofar as it relates to them, was not justified.
(2) The application for subsequent proceedings is to be made within one month after the end of that day on which the applicant learned of the final decision. The application is inadmissible where two years have elapsed since the decision became final and enforcement has been concluded.
(3) The application for the conduct of subsequent proceedings does not suspend enforcement of the confiscation order; the court may, however, order suspension and interruption of enforcement. If, in the cases under section 73b of the Criminal Code, also in conjunction with section 73c of the Criminal Code, an application is made under the conditions of subsection (1) for subsequent proceedings to be conducted, no enforcement measures are, as a rule, to be taken against the applicant up until their conclusion.
(4) Section 431 (1) applies accordingly to the scope of the examination. If the right asserted by the applicant is not proved, the application is unfounded.
(5) Prior to giving its decision, the court may, with the public prosecution office's consent, revoke the confiscation order under the conditions of section 421 (1).
(6) The reopening of proceedings pursuant to section 359 no. 5 for the purpose of lodging objections pursuant to subsection (1) is ruled out.

Section 434
Decision in subsequent proceedings

(1) *The decision on confiscation in subsequent proceedings is given by the court of first instance*.
(2) The court gives its decision by way of an order against which an immediate complaint is admissible.
(3) A decision on an admissible application is given by way of a judgment delivered following an oral hearing if the public prosecution office or the applicant applies therefor, or if the court so orders; those provisions governing the main hearing apply accordingly. Whoever has filed an admissible appeal on fact and law against the judgment may no longer file an appeal on law against the appellate judgment on fact and law.
(4) Where the court decided by way of a judgment, section 431 (4) applies accordingly.

Section 435
Independent confiscation proceedings

(1) The public prosecution office and a private accessory prosecutor may apply for an order for independent confiscation if this is admissible by law and, in the light of the outcome of the investigations, issuance of the order is to be expected. The public prosecution office may, in particular, dispense with filing such application if the value of that which was obtained is only negligible or the procedure would involve disproportionate effort.

(2) The object or the sum of money equal to its value must be designated in the application. The facts substantiating the admissibility of independent confiscation must also be cited. In all other respects, section 200 applies accordingly.
(3) Sections 201 to 204, 207, 210 and 211 apply accordingly to further proceedings where this is feasible. In all other respects, sections 424 to 430 and 433 apply accordingly.
(4) Provisions relating to criminal proceedings apply analogously to investigations whose sole purpose is the conduct of independent confiscation proceedings. Investigation measures which are only admissible against an accused and undercover measures within the meaning of section 101 (1) are not admissible.

Section 436
Decision in independent confiscation proceedings

(1) The decision on independent confiscation is given by the court which would be competent if a specific person were to face criminal prosecution. The court in whose district the object has been secured also has local jurisdiction in respect of the decision on independent confiscation.
(2) Section 423 (1) sentence 2 and section 434 (2) to (4) apply accordingly.

Section 437
Special provisions governing independent confiscation proceedings

When giving its decision on independent confiscation pursuant to section 76a (4) of the Criminal Code, the court may, in particular, base its conviction as to whether the object was derived from an unlawful act on the gross imbalance between the value of the object and the legitimate income of the person concerned. It may also take the following into account when reaching its decision:

1. the outcome of the investigations into the offence giving rise to the proceedings,
2. the circumstances under which the object was found and secured, and
3. the person concerned's other personal and economic circumstances.

Section 438
Accessory parties in criminal proceedings

(1) If a decision is to be given concerning the confiscation of an object, the court orders that a person who is neither the indicted accused nor a person who is considered to be a possible party to confiscation proceedings is to become a party to the confiscation aspect of the proceedings as an accessory party (*Nebenbetroffener*) if it appears credible that

1. this person owns or is entitled to the object or
2. this person has another right in the object and the lapse of that right could be ordered pursuant to section 75 (2) sentences 2 and 3 of the Criminal Code in the event of confiscation.

Section 424 (2) to (5) and section 425 apply accordingly to the order for participation in the proceedings.
(2) The court may order that participation in the proceedings does not cover the question of the indicted accused's guilt

1. if, in the case under subsection (1) no. 1, confiscation can only be considered if the object belongs to the person from whom it is to be confiscated or that person is entitled to it or

2. if the object could also be permanently confiscated under those conditions which can establish confiscation, including on the ground of legal provisions outside the scope of criminal law.

Section 424 (4) sentence 2 applies accordingly.
(3) In all other respects, sections 426 to 434 apply accordingly, with the proviso that, in the cases under section 432 (2) and section 433, the court does not re-examine the conviction if, based on the conditions which established the confiscation, an order pursuant to subsection (2) would be admissible.

Section 439
Legal consequences equivalent to confiscation

The destruction or rendering unusable of an object and elimination of an unlawful situation is equivalent to confiscation within the meaning of sections 421 to 436.

Sections 440 to 442
(repealed)

Section 443
Seizure of property

(1) Property or individual items of property may be seized if they are located within the territorial scope of this statute and if they belong to an accused against whom public charges have been preferred or a warrant of arrest has been issued for an offence under

1. sections 81 to 83 (1), section 89a or section 89c (1) to (4), section 94 or section 96 (1), section 97a or section 100, section 129 or 129a, also in conjunction with section 129b (1), of the Criminal Code,

2. one of the provisions referred to in section 330 (1) sentence 1 of the Criminal Code, provided that the accused is suspected of intentionally endangering the life or limb of another or another person's property of considerable value, or under one of the conditions of section 330 (1) sentence 2 nos. 1 to 3 of the Criminal Code, or under section 330 (2) or section 330a (1) and (2) of the Criminal Code,

3. section 51, section 52 (1) no. 1 and no. 2 (c) and (d) or (5) and (6) of the Weapons Act, sections 17 and 18 of the Foreign Trade and Payments Act if the offence was committed intentionally, or under section 19 (1) to (3), section 20 (1) or (2), each also in conjunction with section 21 or section 22a (1) to (3), of the War Weapons Control Act or

4. one of the provisions referred to in section 29 (3) sentence 2 no. 1 of the Narcotics Act under the conditions set out therein or an offence under sections 29a, section 30 (1) nos. 1, 2 and 4, section 30a or 30b of the Narcotics Act.

The seizure also includes any property subsequently acquired by the accused. Revocation of the seizure is to be made before conclusion of the main hearing at first instance at the latest.

(2) Seizure is ordered by the judge. In exigent circumstances, the public prosecution office may make a provisional order for seizure; the provisional order becomes ineffective if it is not confirmed by the judge within three days.
(3) The provisions of sections 291 to 293 apply accordingly.

Division 4
Procedure for imposition of regulatory fines against legal entities and associations

Section 444
Procedure

(1) Where a decision has to be given in criminal proceedings on imposition of a regulatory fine against a legal entity or an association (section 30 of the Regulatory Offences Act), the court orders its participation in the proceedings in respect of the offence. Section 424 (3) and (4) applies accordingly.
(2) The legal entity or the association is summoned to the main hearing; if its representative fails to appear with no sufficient excuse, the hearing may be conducted in its absence. Sections 426 to 428, section 429 (2) and (3) no. 1, section 430 (2) and (4), section 431 (1) to (3) and section 432 (1) apply to its participation in the proceedings and, insofar as a decision only has to be given on an objection, then section 434 (2) and (3) applies analogously.
(3) Section 435, section 436 (1) and (2) in conjunction with section 434 (2) or (3) apply analogously to the independent proceedings. The court in whose district the legal entity or the association has its seat or a branch office also has local jurisdiction.

Sections 445 to 448
(repealed)

Book 7
Enforcement of sentence and costs of proceedings

Division 1
Enforcement of sentence

Section 449
Enforceability

Criminal judgments are not enforceable before they have become final and binding.

Section 450
Crediting of remand detention and disqualification from driving

(1) If a defendant has undergone remand detention after waiving the right to seek an appellate remedy, after having withdrawn an appellate remedy or after the time limit for seeking an appellate remedy has expired without the defendant having made a statement, the period of such detention is credited in full against an enforceable sentence of imprisonment.
(2) If, pursuant to the judgment, the confiscation, securing or seizure of a driving licence pursuant to section 111a (5) sentence 2 has continued, such period is to be credited in full against the duration of the driving ban (section 44 of the Criminal Code).

Section 450a
Crediting of deprivation of liberty undergone abroad

(1) Any deprivation of liberty undergone by the convicted person abroad in extradition proceedings for the purpose of enforcement of sentence is also to be

credited against an enforceable sentence of imprisonment. This also applies if the convicted person has been extradited for the purpose of criminal prosecution.
(2) In the case of extradition for the purpose of enforcement of more than one sentence, the deprivation of liberty undergone abroad is to be credited against the highest sentence, in the case of sentences of equal severity against the sentence which, after the convicted person's placement, was enforced first.
(3) The court may, upon application by the public prosecution office, order that no or only partial crediting is to be effected if such crediting is not justified in view of the convicted person's conduct after pronouncement of judgment in which the underlying findings of fact were last examined. If the court makes such an order, credit is not given in any other proceedings for deprivation of liberty undergone abroad, insofar as its duration does not exceed the sentence.

Section 451
Enforcing authority

(1) The sentence is enforced by the public prosecution office, as the enforcing authority, on the basis of a certified copy of the operative part of the judgment containing an endorsement of enforceability, which is to be issued by the registry clerk.
(2) Prosecutors at the local courts are authorised to enforce the sentence only insofar as such authority has been conferred on them by the *Land* department of justice.
(3) The public prosecution office, which is the enforcing authority, also performs the duties incumbent upon the public prosecution office vis-à-vis the criminal chamber responsible for enforcement of sentences at another regional court. It may delegate its duties to the public prosecution office competent at that court if this is deemed to be imperative in the interest of the convicted person and if that public prosecution office gives its consent.

Section 452
Right to grant pardon

The right to grant pardon is vested in the Federation in cases decided at first instance in which the Federation exercises jurisdiction. In all other cases, it is vested in the *Länder*.

Section 453
Subsequent decision on suspension of sentence on probation or warning with sentence reserved

(1) Subsequent decisions on suspending the remainder of a sentence on probation or issuing a warning with sentence reserved (sections 56a to 56g, 58, 59a and 59b of the Criminal Code) are given by the court, with no oral hearing, in an order. The public prosecution office and the defendant are to be heard. Section 246a (2) and section 454 (2) sentence 4 apply accordingly. If the court has to decide on revoking the suspension of sentence owing to non-compliance with conditions or directions, it is, as a rule, to give the convicted person the opportunity to be heard orally. Where a probation officer has been appointed, the court informs that officer if a decision on the revocation of suspension of sentence or of remission of sentence is being considered; the court is, as a rule, to give the probation officer information obtained from other criminal proceedings if this appears appropriate given the objective of probationary supervision.

(2) A complaint is admissible against decisions pursuant to subsection (1). The complaint may be based only on the ground that an order made is unlawful or that the probation period has been subsequently extended. Revocation of suspension, remission of sentence, revocation of remission, imposing a sentence reserved and an order that a warning is sufficient (sections 56f, 56g and 59b of the Criminal Code) may be contested by immediate complaint.

Section 453a
Instruction on suspension of sentence or warning with sentence reserved

(1) If the defendant was not instructed pursuant to section 268a (3), such instruction is given by the court competent to give the decision pursuant to section 453. The presiding judge may entrust such instruction to a commissioned or a requested judge.
(2) The instruction is, as a rule, to be given orally, except in cases of minor significance.
(3) The defendant is also, as a rule, to be instructed in respect of subsequent decisions. Subsection (1) applies accordingly.

Section 453b
Supervision during probation period

(1) The court supervises the convicted person's conduct during the probation period, in particular compliance with conditions and directions, and with offers made and assurances given.
(2) Supervision is the responsibility of the court competent to give the decisions pursuant to section 453.

Section 453c
Provisional measures prior to revocation of suspension

(1) If there are sufficient reasons to believe that the suspension will be revoked, the court may, up until the revocation order enters into force, take provisional measures to ensure that the convicted person will not abscond and, if necessary, may issue a warrant of arrest under the conditions of section 112 (2) no. 1 or no. 2 or if certain facts substantiate the risk that the convicted person will commit offences of substantial significance.
(2) Detention served on the basis of a warrant of arrest pursuant to subsection (1) is credited against a sentence of imprisonment to be enforced. Section 33 (4) sentence 1, sections 114 to 115a, sections 119 and 119a apply accordingly.

Section 454
Suspension of remainder of sentence of imprisonment on probation

(1) The decision on suspending enforcement of the remainder of a sentence of imprisonment on probation (sections 57 to 58 of the Criminal Code) and the decision that prior to expiry of a certain time limit an application by the convicted person to this effect is inadmissible is given by the court without an oral hearing in an order. The public prosecution office, the convicted person and the penal institution are to be heard. The convicted person is to be heard orally. The oral hearing of the convicted person may be dispensed with if

1. the public prosecution office and the penal institution support suspension of a determinate sentence of imprisonment and the court proposes suspension,

2. the convicted person has applied for suspension and, at the time of the application, has served

   a) less than half or less than two months of a determinate sentence of imprisonment,

   b) less than 13 years of a sentence of imprisonment for life

   and the court refuses the application because it has been submitted prematurely or

3. the convicted person's application is inadmissible (section 57 (7), section 57a (4) of the Criminal Code).

The court at the same time decides whether crediting pursuant to section 43 (10) no. 3 of the Prison Act is to be ruled out.
(2) The court obtains the opinion of an expert concerning the convicted person if it is considering suspending enforcement of the remainder of

1. a sentence of imprisonment for life or

2. a determinate sentence of imprisonment of more than two years for an offence of the type referred to in section 66 (3) sentence 1 of the Criminal Code and it cannot be ruled out that reasons of public safety may preclude the convicted person's early release.

The opinion must, in particular, express a view as to whether the risk that the convicted person still poses the danger which is apparent from the offence committed no longer exists. The expert is to be heard orally. The public prosecution office, the convicted person, his or her defence counsel and the penal institution are to be given the opportunity to participate in the hearing. The court may dispense with the oral hearing of the expert if the convicted person, his or her defence counsel and the public prosecution office waive such a hearing.
(3) An immediate complaint is admissible against the decisions under subsection (1). A complaint lodged by the public prosecution office against the decision ordering suspension of the remainder of the sentence has suspensive effect.
(4) In all other respects, section 246a (2), section 268a (3), section 268d, section 453, section 453a (1) and (3), and sections 453b and 453c apply accordingly. Instruction on suspension of the remainder of the sentence is given orally; the duty to give such instruction may also be delegated to the penal institution. The instruction is, as a rule, to be given immediately prior to release.

Section 454a
Start of probation period; revocation of suspension of remainder of sentence

(1) If the court orders suspension of enforcement of the remainder of a sentence of imprisonment at least three months before the date of release, the probation period is extended by the period between the entry into force of the decision on suspension and release.
(2) The court may revoke suspension of enforcement of the remainder of a sentence of imprisonment until the convicted person's release if, by virtue of new facts or facts which have subsequently come to light, suspension can no longer be justified, having regard to the security interests of the general public; section 454 (1) sentences 1 and 2 and (3) sentence 1 applies accordingly. Section 57 (5) of the Criminal Code remains unaffected.

Section 454b
Sequence of enforcement of sentences of imprisonment and default imprisonment; interruption

(1) Sentences of imprisonment and default imprisonment for failure to pay a fine are, as a rule, to be enforced consecutively.
(2) If several sentences of imprisonment or a sentence of imprisonment and default imprisonment for failure to pay a fine are to be enforced consecutively, the enforcing authority interrupts enforcement of the first sentence of imprisonment to be enforced if,

1. under the conditions of section 57 (2) no. 1 of the Criminal Code, one half but at least six months of the sentence,
2. in the case of a determinate sentence of imprisonment, two thirds but at least two months of the sentence or
3. in the case of a sentence of imprisonment for life, 15 years of the sentence

have been served. This does not apply to the remainder of a sentence enforced because its suspension has been revoked. If the conditions for interrupting the first sentence of imprisonment to be enforced have already been met before the sentence of imprisonment subsequently to be enforced becomes liable to enforcement, the interruption takes effect retrospectively from the time the sentence of imprisonment became liable to enforcement.
(3) Upon application by the convicted person, the enforcing authority may refrain from interrupting enforcement of sentences of imprisonment in the cases under subsection (2) sentence 1 no. 1 or no. 2 if it is anticipated that, after they are served in full, the conditions for deferment of enforcement of a sentence pursuant to section 35 of the Narcotics Act in respect of a further sentence of imprisonment to be served will be met.
(4) If the enforcing authority has interrupted enforcement pursuant to subsection (2), the court does not give the decisions pursuant to section 57 and section 57a of the Criminal Code until a decision can at the same time be given on suspension of enforcement of the remainder of all the sentences.

Section 455
Postponement of enforcement of sentence of imprisonment owing to unfitness to serve

(1) Enforcement of a sentence of imprisonment is to be postponed if the convicted person becomes insane.
(2) The same applies with respect to any other illness if imminent risk to the convicted person’s life is to be feared in the case of enforcement.
(3) Enforcement may also be postponed if the convicted person’s physical condition is such that it would make immediate enforcement incompatible with the facilities available in the penal institution.
(4) The enforcing authority may interrupt enforcement of a sentence of imprisonment if

1. the convicted person becomes insane,
2. owing to an illness an imminent risk to the convicted person’s life is to be feared in the case of enforcement or

3. the convicted person falls seriously ill and the illness cannot be diagnosed or treated in a penal institution or in the hospital of such institution

and if it is to be expected that the illness will presumably continue to exist for a considerable length of time. Enforcement may not be interrupted if overriding reasons, especially reasons of public safety, pose an obstacle thereto.

Section 455a
Postponement of enforcement of sentence on organisational grounds

(1) The enforcing authority may postpone enforcement of a sentence of imprisonment or of a measure of reform and prevention involving deprivation of liberty or may interrupt it without the prisoner's agreement if this is necessary on the grounds of the institutional organisation and if overriding reasons of public safety do not present an obstacle thereto.
(2) If the decision of the enforcing authority cannot be obtained in time, the director of the institution may provisionally interrupt enforcement under the conditions of subsection (1) without the prisoner's agreement.

Section 456
Temporary postponement

(1) Upon application by the convicted person, enforcement may be postponed if immediate enforcement causes serious detriment to the convicted person or to the convicted person's family which is unintended by the penalty.
(2) Postponement of sentence may not exceed a period of four months.
(3) Approval may be made contingent on the provision of security or on other conditions.

Section 456a
Exemption from enforcement in case of extradition, transfer or expulsion

(1) The enforcing authority may dispense with the enforcement of a sentence of imprisonment, default imprisonment or a measure of reform and prevention if the convicted person is to be extradited to a foreign government or transferred to an international criminal court of justice for another offence, or if he or she is to be deported or removed from or refused entry to the territorial scope of this federal statute.
(2) If the convicted person returns, enforcement may take place subsequently. Section 67c (2) of the Criminal Code applies accordingly to subsequent enforcement of a measure of reform and prevention. On dispensing with enforcement, the enforcing authority may, at the same time, order subsequent enforcement in the event of the convicted person's return and, to this end, it may issue a warrant of arrest or an order for placement and may order the necessary search measures, in particular the issuance of an alert for arrest; section 131 (4) and section 131a (3) apply accordingly. The convicted person is to be instructed thereof.

Section 456b
(repealed)

Section 456c
Postponement and suspension of prohibition of exercising profession

(1) When giving judgment, the court may, upon the convicted person's application or with his or her agreement, make an order postponing the entry into force of the prohibition of exercising a profession if immediate entry into force would impose considerable hardship on the convicted person or on the convicted person's

relatives which is unintended by the prohibition and avoidable by postponed entry into force. If the convicted person has a statutory representative, the latter's consent is required. Section 462 (3) applies accordingly.
(2) The enforcing authority may suspend the prohibition of exercising a profession under the same conditions.
(3) Postponement and suspension may be made contingent on the provision of security or on other conditions. Postponement and suspension may not exceed a period of six months.
(4) The period of postponement and of suspension is not credited against the period specified for the prohibition of exercising a profession.

Section 457
Investigatory acts; order to appear before judge, warrant of arrest for enforcement of sentence of imprisonment

(1) Section 161 applies analogously for the purposes of this Division.
(2) The enforcing authority is authorised to make an order for the convicted person to be brought before it or a warrant of arrest for enforcement of a sentence of imprisonment if the convicted person, after being summoned to commence the sentence, has not appeared or is suspected of having absconded. It may also make an order that the convicted person be brought before it or may issue a warrant of arrest if a prisoner escapes or otherwise evades serving the sentence.
(3) In all other respects, in the cases under subsection (2), the enforcing authority has the same powers as the prosecuting authority insofar as the measures are intended and appropriate for the purpose of arresting the convicted person. When assessing the proportionality of measures, special consideration is to be given to the length of the sentence of imprisonment still to be served. Court decisions which may become necessary are given by the court of first instance.

Section 458
Court decisions on enforcement of sentence

(1) Where doubts arise concerning the interpretation of a criminal judgment or the calculation of the sentence imposed or where objections are raised against the admissibility of enforcing the sentence, a court decision is to be obtained.
(2) It is for the court to also decide, in the cases under section 454b (1) to (3) and under sections 455 and 456 and section 456c (2), on objections raised against the enforcing authority's decision or on objections raised against the enforcing authority's order that a sentence or a measure of reform and prevention is subsequently to be enforced against a person who has been extradited, deported, removed or refused entry.
(3) The course of enforcement is not suspended as a result; the court may, however, order postponement or suspension of enforcement. In the cases under section 456c (2), the court may make a provisional order.

Section 459
Recovery of fine; operation of Act on the Recovery of Claims of the Judicial Authorities

The provisions of the Act on the Recovery of Claims of the Judicial Authorities apply to enforcement of a fine, unless otherwise provided under this statute.

Section 459a
Authorisation to relax payment conditions

(1) After the judgment has entered into force, it is for the enforcing authority to decide whether to relax the payment conditions in respect of a fine (section 42 of the Criminal Code).
(2) The enforcing authority may subsequently amend or revoke a decision concerning the relaxation of payment conditions pursuant to subsection (1) or section 42 of the Criminal Code. It may deviate from a preceding decision to the convicted person's detriment only on the basis of new facts or evidence.
(3) If relaxation in the form of payment in specified instalments is revoked pursuant to section 42 sentence 2 of the Criminal Code, this must be noted in the files. The enforcing authority may grant relaxation of payment conditions again.
(4) A decision concerning the relaxation of payment conditions also extends to the costs of the proceedings. It may also be given with regard to costs alone.

Section 459b
Crediting of instalments

Instalments are first credited against the fine, then against possible incidental legal consequences requiring payment of money and, finally, against the costs of the proceedings, unless the convicted person makes other dispositions regarding payment.

Section 459c
Recovery of fine

(1) A fine, or a part thereof, is recovered within two weeks after the amount became due only if it is apparent, on the basis of certain facts, that the convicted person wishes to evade payment.
(2) Enforcement may be dispensed with if it is to be expected that it will not lead to any success in the foreseeable future.
(3) A fine may not be enforced in respect of the convicted person's estate.

Section 459d
Non-recovery of fine

(1) The court may order that there is to be no enforcement of the full amount of the fine or of a part thereof if

1. a sentence of imprisonment has been enforced or suspended on probation in the same proceedings or
2. a sentence of imprisonment has been imposed in other proceedings and the conditions of section 55 of the Criminal Code are not met,

and enforcement of the fine may make the convicted person's social rehabilitation more difficult.
(2) The court may also decide pursuant to subsection (1) with regard to the costs of the proceedings.

Section 459e
Enforcement of default imprisonment

(1) Default imprisonment is enforced on the basis of an order made by the enforcing authority.
(2) The enforcement order is contingent on the fine not being recoverable or on enforcement being dispensed with pursuant to section 459c (2). Before the order is made, it is to be indicated to the convicted person that he or she may be granted relaxation of payment conditions under section 459a and that, pursuant to the

statutory instrument as referred to in Article 293 of the Introductory Act to the Criminal Code (*Einführungsgesetz zum Strafgesetzbuch*) or other *Land* legislation, he or she may also be permitted to avoid enforcement of default imprisonment through free work; where there is reason to believe that the convicted person does not have sufficient command of the German language, such indication is to be made in a language he or she understands.
(2a) For the purpose of calling the convicted person's attention to means by which the fine may be paid off through the relaxation of payment conditions or the enforcement of default imprisonment may be avoided through free work, the enforcing authority and the court assistance agency involved on the basis of section 463d sentence 2 no. 2 may transmit the personal data required therefor to a non-public agency commissioned by the enforcing agency. It is to be indicated to the agency commissioned that it may only use and process the transmitted data for the purposes referred to in sentence 1. It may only collect personal data as well as process and use the collected data if the convicted person has consented thereto and this is necessary for the purposes referred to in sentence 1. The provisions of Regulation (EU) 2016/679 and of the Federal Data Protection Act apply even if the personal data are not processed automatically and are not or will not be stored in a data system. The personal data are to be deleted by the agency commissioned after the end of one year following completion of the activity with which it was commissioned.
(3) Enforcement of default imprisonment may not be ordered for part of a fine not corresponding to a full day of imprisonment.
(4) Default imprisonment is not enforced to the extent that the fine is paid or recovered or enforcement is dispensed with pursuant to section 459d. Subsection (3) applies accordingly.

Section 459f
Exemption from enforcement of default imprisonment

The court makes an order to the effect that there is to be no enforcement of default imprisonment if enforcement would constitute undue hardship for the convicted person.

Section 459g
Enforcement of incidental legal consequences

(1) If an order has been made for the confiscation or rendering unusable of an object, it is enforced by taking the object away from the person against whom such order was made. The provisions of the Act on the Recovery of Claims of the Judicial Authorities apply to enforcement.
(2) Sections 459 and 459a and section 459c (1) and (2) apply accordingly to enforcement of those incidental legal consequences requiring payment of money.
(3) Sections 94 to 98, with the exception of section 98 (2) sentence 3, sections 102 to 110, section 111c (1) and (2), section 111f (1), section 111k (1) and (2), and section 131 (1) also apply accordingly to enforcement pursuant to subsections (1) and (2). Section 457 (1) remains unaffected. The hearing of the person concerned is dispensed with before a court decision is given if such a hearing would jeopardise the purpose of the order.
(4) The court orders that enforcement of confiscation be precluded pursuant to sections 73 to 73c of the Criminal Code upon the lapse of that right which is acquired, by virtue of the offence, to restitution of that which was obtained or to

payment of the sum of money equal to the value of that which was obtained. This does not apply to rights which have lapsed on account of the statute of limitations.
(5) In the cases under subsection (2), the court orders that confiscation is not to be enforced if it would be disproportionate. Enforcement is resumed by court order if circumstances subsequently become known or arise which pose an obstacle to the order pursuant to sentence 1. The hearing of the person concerned is dispensed with before a court order pursuant to sentence 2 is made if such a hearing would jeopardise the purpose of the order. An order pursuant to sentence 1 poses no obstacle to investigations being conducted into whether the conditions for resuming the enforcement are fulfilled.

Section 459h
Compensation

(1) An object confiscated pursuant to sections 73 to 73b of the Criminal Code is returned to the person who has, by virtue of the offence, become entitled to return of the object obtained, or to his or her successor in title. The same applies if the object has been confiscated pursuant to section 76a (1) of the Criminal Code, also in conjunction with section 76a (3) of the Criminal Code. In the cases under section 75 (1) sentence 2 of the Criminal Code, the confiscated object is surrendered to the person who owns the object or is entitled to the object if that person registered his or her right with the enforcing authority in due time.
(2) If the court has ordered confiscation of the equivalent sum of money pursuant to section 73c and section 76a (1) sentence 1 of the Criminal Code, also in conjunction with section 76a (3) of the Criminal Code, the proceeds generated by the realisation of the objects attached on the ground of asset seizure or a confiscation order are disbursed to the person who has become entitled to payment of the sum of money equal to the value of the object obtained by virtue of the offence, or to his or her successor in title. Section 111i applies accordingly.

Section 459i
Notification requirements

(1) The person who has, by virtue of the offence, acquired the right to return of that which was obtained or to payment of the sum of money equivalent to the value of that which was obtained is given notification without delay upon the confiscation order pursuant to sections 73 to 73c and section 76a (1) sentence 1 of the Criminal Code, also in conjunction with section 76a (3) of the Criminal Code, becoming final. Notification is to be served on the aggrieved person; section 111l (4) applies accordingly.
(2) In the event of confiscation of the object, notification is to include a reference to the right under section 459h (1) and to the procedure pursuant to section 459j. In the event of confiscation of the equivalent sum of money, notification is to include a reference to the right under section 459h (2) and to the procedure pursuant to sections 459k to 459m.

Section 459j
Procedure for return and surrender

(1) The entitled party must file the claim to return or surrender pursuant to section 459h (1) with the enforcing authority within six months after having been notified of the confiscation order becoming final.
(2) If the applicant’s entitlement is immediately apparent from the confiscation order and the determinations on which it was based, the confiscated object is returned or

surrendered to the applicant. Otherwise, this requires the court giving leave therefor. The court gives leave for the return or surrender of the object subject to the provisions of section 459h (1). Such leave is to be denied if the applicant fails to substantiate the entitlement; section 294 of the Code of Civil Procedure applies.
(3) Prior to giving a decision on the return or surrender, the party against whom the confiscation order has been made is to be heard. This only applies if it appears feasible that the hearing can be held.
(4) In the event of failure to meet the deadline set in subsection (1) sentence 1, restitution of the status quo ante is to be granted, subject to the conditions of sections 44 and 45.
(5) Notwithstanding the procedure under subsection (1), the entitled party may assert the claim to return or surrender pursuant to section 459h (1) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure from which the claim being asserted is apparent.

Section 459k
Procedure for disbursement of proceeds of realisation

(1) The entitled party must file the claim to disbursement of the proceeds of realisation pursuant to section 459h (2) with the enforcing authority within six months after having been notified of the confiscation order becoming final. The amount of the claim must be designated in the application.
(2) If the applicant's claim and the amount of the claim are immediately apparent from the confiscation order and the determinations on which it was based, the proceeds of realisation are disbursed to the applicant in that amount. Otherwise, this requires the court giving leave therefor. The court gives leave for disbursement of the realised proceeds subject to the provisions of section 459h (2). Such leave is to be denied if the applicant fails to substantiate the entitlement; section 294 of the Code of Civil Procedure applies.
(3) Prior to giving its decision on disbursement, the party against whom the confiscation order has been made is to be heard. This only applies if it appears feasible that the hearing can be held.
(4) In the event of failure to meet the deadline set in subsection (1) sentence 1, restitution of the status quo ante is to be granted subject to the conditions of sections 44 and 45.
(5) Notwithstanding the procedure under subsection (1), the entitled party may assert the claim to disbursement of the proceeds of realisation pursuant to section 459h (2) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure from which the claim being asserted is apparent. Enforceable legal documents under public law for receivables in money which have become final are equivalent to an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure.

Section 459l
Rights of persons concerned

(1) If the person against whom the confiscation order has been made submits an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure from which it is apparent that there is a right to

return of that which was obtained by virtue of the offence, then the entitled party may demand that the confiscated object be returned or delivered to him or her in accordance with the provisions of section 459h (1). Section 459j (2) applies accordingly.
(2) If the person against whom the order for confiscation of the equivalent sum of money has been made satisfies the entitled party's entitlement to restitution of that which was obtained by virtue of the offence or to compensation of the value of that which was obtained by virtue of the offence, said person may demand compensation from the proceeds of realisation up to the amount of the satisfaction, insofar as, under the conditions of section 459k (2) sentence 1, the proceeds of realisation would have to have been paid to the entitled party pursuant to section 459h (2). Section 459k (2) sentences 2 to 4 applies accordingly. In all cases, the entitled party must substantiate the fact that the claim has been satisfied by issuing a receipt. The entitled party is to be heard before a decision is given on the claim to compensation if this appears feasible.

Section 459m
Compensation in other cases

(1) In the cases under section 111i (3), the surplus is paid to the entitled party who provides an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure from which the claim being asserted is apparent. Section 459k (2) and (5) sentence 2 applies accordingly. Payment is ruled out where two years have elapsed since insolvency proceedings were set aside. In the cases under section 111i (2), sentences 1 to 3 apply accordingly if insolvency proceedings have not been conducted.
(2) Subsection (1) sentences 1 and 2 applies accordingly if an object is attached after insolvency proceedings are set aside or after distribution of the proceeds of realisation in the event of confiscation of the equivalent sum of money pursuant to section 73c and section 76a (1) sentence 1 of the Criminal Code, also in conjunction with section 76a (3) of the Criminal Code.

Section 459n
Payments following confiscation of equivalent sum of money

If the person against whom an order has been made settles payments following the ordering of confiscation of the equivalent sum of money pursuant to section 73c and section 76a (1) sentence 1 of the Criminal Code, also in conjunction with section 76a (3) of the Criminal Code, then section 459h (2) and sections 459k and 459m apply accordingly.

Section 459o
Objections against decisions of enforcing authority

The court decides on objections against decisions of the enforcing authority pursuant to sections 459a, 459c, 459e and 459g to 459m.

Section 460
Subsequent formation of aggregate sentence

If a person has been sentenced in different final judgments and the provisions concerning an aggregate sentence (section 55 of the Criminal Code) were not taken into account, the sentences imposed are to be combined into an aggregate sentence in a subsequent court decision.

Section 461
Crediting of period of time spent in hospital

(1) If, after beginning to serve a sentence, a convicted person was taken to a hospital outside the penal institution owing to illness, the duration of stay in the hospital is to be included when calculating the time served, unless the convicted person caused the illness with the intention of interrupting enforcement of sentence.
(2) In the latter case, the public prosecution office must obtain a decision from the court.

Section 462
Procedure for court decisions; immediate complaint

(1) The decisions required pursuant to section 450a (3) sentence 1 and sections 458 to 461 are given in a court order without an oral hearing. This also applies to the reinstatement of abilities and rights (section 45b of the Criminal Code), to revocation of the reservation of confiscation and to the subsequent order of confiscation of an object (section 74f (1) sentence 4 of the Criminal Code), to the subsequent order of confiscation of the equivalent sum of money (section 76 of the Criminal Code) and to the extension of the limitation period (section 79b of the Criminal Code).
(2) The public prosecution office and the convicted person are to be heard before the decision is given. The court may dispense with hearing the convicted person in the case of a decision pursuant to section 79b of the Criminal Code if, owing to certain facts, it is to be assumed that conduct of the hearing will not be feasible.
(3) The court order is contestable by immediate complaint. An immediate complaint lodged by the public prosecution office against the order imposing interruption of enforcement has suspensive effect.

Section 462a
Jurisdiction of criminal chamber responsible for enforcement of sentence and of court of first instance

(1) If a sentence of imprisonment is enforced in respect of a convicted person, responsibility for decisions pursuant to sections 453, 454, 454a and 462 lies with the criminal chamber responsible for enforcement of sentences in whose district the penal institution is located in which the convicted person is being held at the time the court is seized of the case. Such criminal chamber also remains competent for decisions which need to be given after enforcement of a sentence of imprisonment has been interrupted or enforcement of the remainder of a sentence of imprisonment has been suspended on probation. The criminal chamber may refer individual decisions pursuant to section 462 in conjunction with section 458 (1) to the court of first instance; the referral is binding.
(2) In cases other than those designated in subsection (1), the court of first instance is competent. The court may refer the decisions to be given pursuant to section 453, in full or in part, to the local court in whose district the convicted person has his or her domicile or, if the convicted person has no domicile, his or her habitual residence; the referral is binding. In derogation from subsection (1), the court of first instance is competent in the cases referred to therein if it has reserved preventive detention, and a decision thereon pursuant to section 66a (3) sentence 1 of the Criminal Code is still possible.
(3) In the cases under section 460, it is for the court of first instance to decide. If judgments were pronounced by different courts, the decision is given by the court which imposed the severest type of penalty or, in the case of penalties of the same type, the highest sentence and, if more than one court was then competent, the

decision is given by the last court to pronounce judgment. If the relevant judgment was pronounced by a court of higher instance, the court of first instance determines the aggregate sentence; if one of the judgments was pronounced by a higher regional court of first instance, the higher regional court fixes the aggregate sentence. If a local court would be competent to determine the aggregate sentence and if its sentencing power is not sufficient, it is for the criminal division of its superior regional court to decide.
(4) If different courts have imposed a final sentence on the convicted person in cases other than those designated in section 460 or if they have given said person a warning with sentence reserved, only one such court is competent for the decisions to be given pursuant to sections 453, 454, 454a and 462. Subsection (3) sentences 2 and 3 applies accordingly. In the cases under subsection (1), the criminal chamber responsible for enforcement of sentences decides; subsection (1) sentence 3 remains unaffected.
(5) The court of first instance decides in lieu of the criminal chamber responsible for enforcement of sentences if the judgment was pronounced by a higher regional court of first instance. The higher regional court may refer the decision to be given pursuant to subsections (1) and (3) in full or in part to the criminal chamber responsible for enforcement of sentences. The referral is binding; it may, however, be revoked by the higher regional court.
(6) The court of first instance in the cases under section 354 (2) and under section 355 is the court to which the case has been referred back and, in the cases in which a decision was given in reopened proceedings pursuant to section 373, the court which gave that decision.

Section 463
Enforcement of measures of reform and prevention

(1) The provisions on enforcement of sentences apply analogously to the enforcement of measures of reform and prevention, unless otherwise provided.
(2) Section 453 also applies to decisions to be given pursuant to sections 68a to 68d of the Criminal Code.
(3) Section 454 (1), (3) and (4) also applies to decisions to be given pursuant to section 67c (1), section 67d (2) and (3), section 67e (3), section 68e, section 68f (2) and section 72 (3) of the Criminal Code. In the cases under section 68e of the Criminal Code, no oral hearing of the convicted person is necessary. Insofar as the court is called upon to decide on enforcement of preventive detention, section 454 (2) applies accordingly in the cases under section 67d (2) and (3) and section 72 (3) of the Criminal Code, irrespective of the offences designated therein and, in the case of a review of the conditions of section 67c (1) sentence 1 no. 1 of the Criminal Code, also irrespective of whether the court is considering a suspension; in all other respects, section 454 (2) applies to the offences mentioned therein. In preparing the decision pursuant to section 67d (3) of the Criminal Code and the subsequent decisions pursuant to section 67d (2) of the Criminal Code, the court is to obtain an opinion from an expert which focuses in particular on the question of whether it is to be expected that the convicted person will continue to commit serious unlawful acts. If placement in preventive detention has been ordered and the convicted person has no defence counsel, the court appoints such counsel in good time prior to a decision pursuant to section 67c (1) of the Criminal Code.
(4) As part of its review of placement in a psychiatric hospital (section 63 of the Criminal Code) pursuant to section 67e of the Criminal Code, the court is to obtain

an expert opinion from the facility providing measures of reform and prevention into which the convicted person has been placed. The court must, as a rule, obtain an expert opinion every three years, after six years every two years of placement in a psychiatric hospital. The expert may neither have been concerned with the treatment of the person subject to an order for placement within the context of enforcement of the placement nor may that expert be working in the psychiatric hospital in which the person has been placed, nor may he or she, as a rule, be the person who drew up the last expert opinion rendered during a previous review. The expert who is called in to render the first expert opinion in the course of a review of placement may, as a rule, also not be the person who rendered the expert opinion in the proceedings in which the placement or its subsequent enforcement was ordered. Only experts who are physicians or psychologists and have expert knowledge of and experience in forensic psychology are, as a rule, to be commissioned with rendering an expert opinion. The expert is to be granted inspection of the patient data kept on the detainee by the hospital. Section 454 (2) applies accordingly. If the person detained has no defence counsel, the court appoints such counsel for the review of placement in the course of which an expert opinion is to be obtained pursuant to sentence 2.
(5) Section 455 (1) does not apply if placement in a psychiatric hospital has been ordered. If placement in an addiction treatment facility or preventive detention has been ordered and if the convicted person becomes insane, enforcement of the measure may be postponed. Section 456 does not apply if an order has been made placing the convicted person in preventive detention.
(6) Section 462 also applies to decisions to be given pursuant to section 67 (3), (5) sentence 2 and (6), section 67a and section 67c (2), section 67d (5) and (6), sections 67g and 67h, section 69a (7) and sections 70a and 70b of the Criminal Code. In the cases under section 67d (6) of the Criminal Code, the convicted person is to be heard in an oral hearing. The court declares the immediate enforceability of the order of measures under section 67h (1) sentences 1 and 2 of the Criminal Code if there is a danger that the convicted person will commit serious unlawful acts; immediate enforcement (section 307 and section 462 (3) sentence 2) still applies in the case of decisions under section 67d (5) sentence 1 of the Criminal Code.
(7) Supervision of conduct in the cases under section 67c (1), section 67d (2) to (6) and section 68f of the Criminal Code is equivalent to the suspension of the remainder of a sentence for the purposes of the application of section 462a (1).
(8) If placement in preventive detention is enforced and the convicted person has no defence counsel, the court appoints such counsel for the proceedings concerning the court decisions to be given in regard to enforcement. Such appointment is to be made in good time prior to the first court decision and also applies to all further proceedings as long as the appointment is not revoked.

Section 463a
Jurisdiction and powers of supervisory authorities

(1) The supervisory authorities (section 68a of the Criminal Code) may request information from all public authorities responsible for the supervision of the convicted person’s conduct and for his or her compliance with directions, and they may carry out investigations of any kind, excluding examinations under oath, or have them carried out by other agencies within the framework of their competence. If the convicted person’s whereabouts are not known, the head of the supervisory

authority may issue a notice requiring determination of his or her whereabouts (section 131a (1)).
(2) The supervisory authority may order that, for the duration of the supervision of conduct or for a shorter period, the convicted person be placed under observation during police checks conducted for the purposes of verifying personal identification data. Section 163e (2) applies accordingly. The order is made by the head of the supervisory authority. The need to continue the measure must be reviewed at least once a year.
(3) Upon application by the supervisory authority, the court may order that the convicted person appear before a judge if that person has failed without sufficient excuse to comply with a direction pursuant to section 68b (1) sentence 1 no. 7 or no. 11 of the Criminal Code and was informed in the summons that in such a case it would be admissible to have him or her brought before the judge. To the extent that the court of first instance has jurisdiction, it is for the presiding judge to decide.
(4) In the case of a direction being issued pursuant to section 68b (1) sentence 1 no. 12 of the Criminal Code, the supervisory authority, with the aid of the technical devices which the convicted person is carrying, collects and stores through automation data concerning the convicted person's whereabouts and concerning any interference with data collection; insofar as technically possible, it must be ensured that no data are collected on the convicted person's private premises concerning his or her whereabouts extending beyond the fact of his or her presence on the premises. The data may only be used without the consent of the data subject insofar as this is necessary for the following purposes:

1. to establish a case of non-compliance with a direction issued pursuant to section 68b (1) sentence 1 no. 1, 2 or 12 of the Criminal Code,
2. to take supervisory measures which may follow from non-compliance with a direction issued pursuant to section 68b (1) sentence 1 no. 1, 2 or 12 of the Criminal Code,
3. to punish non-compliance with a direction issued pursuant to section 68b (1) sentence 1 no. 1, 2 or 12 of the Criminal Code,
4. to avert a significant present danger to the life, physical integrity, personal liberty or sexual self-determination of third parties or
5. to prosecute an offence of the kind referred to in section 66 (3) sentence 1 of the Criminal Code or an offence under section 129a (5) sentence 2, also in conjunction with section 129b (1), of the Criminal Code.

To ensure adherence to the purposes referred to in sentence 2, the processing of data to establish non-compliance pursuant to sentence 2 no. 1, in conjunction with section 68b (1) sentence 1 no. 1 or no. 2 of the Criminal Code, is to be undertaken through automation and the data are to be specially protected against unauthorised cognisance. The supervisory authority may have the data collected and processed by the police authorities and police officers; these are obliged to comply with the request of the supervisory authority. The data referred to in sentence 1 must be deleted no later than two months after their collection, insofar as they are not used for the purposes referred to in sentence 2. Each time the data are retrieved, at least the time, the data retrieved and the retrieving person are to be recorded; section 488 (3) sentence 5 applies accordingly. If data concerning the convicted person's

whereabouts beyond the fact of his or her presence are collected on private premises, these data may not be used and must be deleted without delay after cognisance has been taken. The fact of the taking of their cognisance and deletion is to be documented.
(5) The supervisory authority in whose district the convicted person has his or her domicile has local jurisdiction. If the convicted person has no domicile within the territorial scope of this statute, local jurisdiction lies with the supervisory authority in whose district the convicted person is habitually resident or, if that place is not known, in which the convicted person had his or her last domicile or habitual residence.

Section 463b
Seizure of driving licence

(1) If a driving licence is to be confiscated pursuant to section 44 (2) sentences 2 and 3 of the Criminal Code and it is not voluntarily surrendered, it is to be seized.
(2) Foreign driving licences may be seized so that the driving ban, or the disqualification from driving and the period of disqualification, can be endorsed thereon (section 44 (2) sentence 4, section 69b (2) of the Criminal Code).
(3) If the convicted person is not carrying a driving licence, he or she is required, upon application by the enforcing authority, to make a declaration in lieu of an oath to the local court regarding its whereabouts. Section 883 (2) and (3) of the Code of Civil Procedure applies accordingly.

Section 463c
Public announcement of conviction and sentence

(1) If an order is made for public announcement of the conviction and sentence, the decision is served on the person entitled.
(2) The order under subsection (1) is enforced only if the applicant or a person entitled to file an application in his or her place so requests within one month after service of the final decision.
(3) If the publisher or responsible editor of a periodical publication fails to comply with the obligation to include such an announcement in his or her publication, then upon application by the enforcing authority the court induces him or her to do so by imposing a penalty payment not exceeding 25,000 euros or by imposing punitive detention not exceeding six weeks. A penalty payment may be imposed more than once. Section 462 applies accordingly.
(4) Subsection (3) applies accordingly to an announcement by public broadcast if the person responsible for programming fails to comply with his or her obligation.

Section 463d
Court assistance agency

The court or the enforcing authority may avail itself of the services of the court assistance agency in order to prepare the decisions to be given pursuant to sections 453 to 461. The court assistance agency is, as a rule, to be involved before a decision is taken

1. to revoke suspension of a sentence or suspension of the remainder of a sentence, unless a probation officer has been appointed,

2. to order enforcement of default imprisonment, in order to facilitate avoidance of the order or enforcement by means of the relaxation of payment conditions or through free work.

Section 463e
Oral hearing by way of audio-visual transmission

(1) If the convicted person is given an oral hearing prior to one of the court decisions which are to be given under the provisions of this Division, the court may determine that said convicted person is to remain at a place other than the court during the oral hearing and that the hearing is to be simultaneously transmitted audio-visually to the place where the convicted person is located and to the courtroom. The court is, as a rule, to order the audio-visual transmission only with the proviso that the convicted person is to be located in the offices of defence counsel or of a lawyer during the oral hearing. Sentence 1 does not apply if the convicted person has been sentenced to imprisonment for life or the convicted person's placement in a psychiatric clinic or in preventive detention has been ordered.
(2) If an expert appointed by the court is heard prior to one of the court decisions which are to be given under the provisions of this Division, subsection (1) sentences 1 and 3 applies accordingly.

Division 2
Costs of proceedings

Section 464
Decision on costs and expenses; immediate complaint

(1) Every judgment, every summary penalty order and every decision terminating an investigation must indicate the person who is to bear the costs of the proceedings.
(2) The decision as to who is to bear the necessary expenses is given by the court in the judgment or in the order concluding the proceedings.
(3) An immediate complaint is admissible against the decision regarding costs and necessary expenses; it is not admissible if the main decision referred to in subsection (1) cannot be contested by the complainant. The court hearing the complaint is bound by the findings of fact on which the decision is based. If an immediate complaint, in addition to an appeal on fact and law or an appeal on law, is lodged against the judgment insofar as it relates to the decision on costs and necessary expenses, the court hearing the appeal on law or the court hearing the appeal on facts and law is also competent to give the decision on the immediate complaint whilst considering the appeal on facts or law.

Section 464a
Costs of proceedings; necessary expenses

(1) Costs of the proceedings include fees and Treasury expenditure. They also include the costs of preparing public charges and the costs of enforcing a legal consequence of the offence. The costs of an application to reopen proceedings concluded by final judgment also include the costs of preparing the reopening of proceedings (sections 364a and 364b) insofar as they are caused by an application by the convicted person.
(2) 'Necessary expenses' of a party also include

1. compensation for inevitable loss of time pursuant to the provisions applicable to the compensation of witnesses and
2. fees and expenses of a lawyer insofar as they are to be reimbursed pursuant to section 91 (2) of the Code of Civil Procedure.

Section 464b
Assessment of costs

The amount of the costs and expenses for which one party must reimburse another party is assessed, upon application by a party, by the court of first instance. Upon application, the court declares that interest is to be paid on the assessed costs and expenses with effect from the time of the application for assessment. The provisions of the Code of Civil Procedure apply accordingly to the rate of interest, the proceedings and the enforcement of the decision. In derogation from section 311 (2), the period for the submission of an immediate complaint is two weeks. The order assessing costs need not make reference to the private accessory prosecutor's full address.

Section 464c
Costs of appointing translator or interpreter for indicted accused

If an interpreter or translator has been called in for an indicted accused who does not speak German or who is hearing or speech impaired, the expenditure incurred thereby is charged to the indicted accused insofar as he or she has unnecessarily given rise to such expenditure by culpable omission or culpably in some other way; this must be expressly stated, except in the case under section 467 (2).

Section 464d
Distribution of expenses

Treasury expenditure and necessary expenses of the parties may be apportioned in fractions.

Section 465
Convicted persons' obligation to pay costs

(1) Defendants bear the costs of the proceedings insofar as they were caused by the proceedings for an offence of which they have been convicted or for which a measure of reform and prevention has been ordered against them. For the purposes of this provision, a conviction is also deemed to have been pronounced if a defendant has been given a warning with sentence reserved or the court has dispensed with imposing a penalty.
(2) If specific expenses have been caused by investigations conducted to clarify certain incriminating or exonerating circumstances and if the outcome of such investigations was in the defendant's favour, the court charges the expenses, in part or in full, to the Treasury if it would be inequitable to charge them to the defendant. This in particular applies if the defendant is not convicted for individual severable parts of an offence or is not convicted of one or more of a number of violations of the law. Sentences 1 and 2 apply accordingly to the defendant's necessary expenses. The court may order that an increase in court fees in cases where a psychosocial assistant has been appointed be waived, in part or in full, if it would be inequitable to charge such fees to the defendant.
(3) If a convicted person dies before the judgment enters into force, that person's estate is not liable for the costs.

Section 466
Co-convicted persons' liability for expenses as joint and several debtors

Co-defendants who have been sentenced or in respect of whom a measure of reform and prevention has been ordered for the same offence are jointly and severally liable for the expenses. This rule does not apply to the costs arising from the services of appointed defence counsel or of an interpreter and to the costs for

enforcement, provisional placement or remand detention, and to expenses arising from investigations directed exclusively against one co-defendant.

Section 467
Costs and necessary expenses on acquittal, non-opening and termination

(1) If the indicted accused is acquitted, if the opening of the main proceedings against the indicted accused is refused or if the proceedings against the indicted accused are terminated, Treasury expenditure and the indicted accused's necessary expenses are borne by the Treasury.
(2) The costs of the proceedings caused by the indicted accused's culpable default are charged to him or her. To that extent, the expenses which the indicted accused has caused are not charged to the Treasury.
(3) The indicted accused's necessary expenses are not charged to the Treasury if the indicted accused caused the preferment of public charges by making a report in which he or she pretended to have committed the offence with which he or she was charged. The court may dispense with charging the indicted accused's necessary expenses to the Treasury if

1. he or she caused the preferment of public charges by falsely incriminating himself or herself with regard to material points or in contradiction to his or her later statement or by concealing material exonerating circumstances despite having made a statement in response to the accusation or
2. he or she is not sentenced for an offence only on account of a procedural impediment.

(4) If the court terminates the proceedings pursuant to a provision which permits this at the court's discretion, it may dispense with charging the indicted accused's necessary expenses to the Treasury.
(5) The indicted accused's necessary expenses are not charged to the Treasury if the proceedings are terminated with final effect after previous provisional termination (section 153a).

Section 467a
Treasury expenses on termination following withdrawal of charges

(1) If the public prosecution office withdraws the public charges and terminates the proceedings, the court where the public charges were preferred charges to the Treasury the necessary expenses incurred by the indicted accused upon application by the public prosecution office or by the indicted accused. Section 467 (2) to (5) applies analogously.
(2) In the cases under subsection (1) sentence 1, the court may charge the necessary expenses incurred by another person involved (section 424 (1), section 438 (1), section 439 and section 444 (1) sentence 1) to the Treasury or to another party upon application by the public prosecution office or by the person involved.
(3) The decision pursuant to subsections (1) and (2) is not contestable.

Section 468
Costs following ruling of non-liability for punishment

In the case of a mutual exchange of insults, charging the costs to one or both defendants is not precluded by one or both of them being declared not liable to punishment.

Section 469
Costs charged to person making reckless or intentionally untrue report

(1) If proceedings, even if they are conducted out of court, were caused by the intentional or reckless false report of an offence, then after hearing the person who reported the offence, the court charges the costs of the proceedings and the accused's necessary expenses to that person. The court may charge the necessary expenses of another person involved (section 424 (1), section 438 (1), section 439 and section 444 (1) sentence 1) to the person who reported the offence.
(2) If no court has yet been seized of the case, then upon application by the public prosecution office, the decision is given by the court which would have been competent to open the main proceedings.
(3) The decision pursuant to subsections (1) and (2) is not contestable.

Section 470
Costs of withdrawing request to prosecute

If the proceedings are terminated owing to the withdrawal of the request upon which they were contingent, the person filing the request must bear the costs and the necessary expenses of the accused and of another person involved (section 424 (1), section 438 (1), section 439 and section 444 (1) sentence 1). They may be charged to the defendant or to a person involved as far as that person has declared the willingness to pay such costs, or to the Treasury if it would be inequitable to charge these costs to the parties.

Section 471
Costs of private prosecution

(1) The convicted person in proceedings conducted by private prosecution is also required to reimburse the private prosecutor for necessary expenses incurred.
(2) If the charges against the accused are dismissed or if the accused is acquitted or the proceedings terminated, the costs of the proceedings and the accused's necessary expenses are charged to the private prosecutor.
(3) The court may appropriately apportion the costs of the proceedings and the parties' necessary expenses or may, according to its duty-bound discretion, charge such costs to one of the parties if

1. it granted only a part of the private prosecutor's applications;
2. it terminated the proceedings pursuant to section 383 (2) (section 390 (5)) on account of negligibility;
3. countercharges were preferred.

(4) Several private prosecutors are jointly and severally liable. The same applies in respect of the liability of several accused for the private prosecutor's necessary expenses.

Section 472
Necessary expenses of private accessory prosecutor

(1) A private accessory prosecutor's necessary expenses are to be charged to the defendant if he or she is sentenced for an offence affecting the private accessory prosecutor. The necessary expenses incurred by the private accessory prosecutor for psychosocial assistance in court proceedings may be charged to the defendant only up to the amount by which the court fees would be increased if the psychosocial assistant were to be appointed. Charges for necessary expenses may

be waived, in full or in part, if it would be inequitable to charge these expenses to the defendant.
(2) If the court terminates the proceedings pursuant to a provision permitting this at the court's discretion, it may charge the necessary expenses referred to in subsection (1), in full or in part, to the indicted accused insofar as this is equitable for special reasons. If the court finally terminates the proceedings (section 153a) after previous provisional termination, subsection (1) applies accordingly.
(3) Subsections (1) and (2) apply accordingly to the necessary expenses which have arisen for a person entitled to join proceedings as a private accessory prosecutor in the exercise of the rights under section 406h. The same applies to a private prosecutor's necessary expenses if the public prosecution office has assumed the prosecution pursuant to section 377 (2).
(4) Section 471 (4) sentence 2 applies accordingly.

Section 472a
Costs and necessary expenses of adhesion proceedings

(1) If an application for the award of a claim arising from the offence is granted, the defendant must also bear the special costs incurred thereby and the necessary expenses of the applicant within the meaning of sections 403 and 404.
(2) If the court dispenses with a decision on the application for adhesion proceedings, part of the applicant's claim is not awarded or the applicant withdraws the application, the court decides, at its duty-bound discretion, who is to bear the expenses incurred by the court and the necessary expenses arising to the parties. Court expenditure may be charged to the Treasury if it would be inequitable to charge such expenditure to the parties.

Section 472b
Costs and necessary expenses of involved third parties

(1) If an order is made for confiscation, reservation of confiscation, destruction or rendering unusable of an object or elimination of a situation which is illegal, the special costs arising from the involvement of another person may be charged to such person. That person's necessary expenses may, if this is equitable, be charged to the defendant and, in independent proceedings, also to another person involved.
(2) If a regulatory fine is imposed on a legal entity or an association, the legal entity or association must bear the costs of the proceedings pursuant to sections 465 and 466.
(3) If an order for one of the incidental legal consequences pursuant to subsection (1) sentence 1 or imposition of a regulatory fine imposed on a legal entity or an association is dispensed with, the ensuing necessary expenses of other persons involved may be charged to the Treasury or to another party.

Section 473
Costs of withdrawn or unsuccessful appellate remedies; costs of restitution of status quo ante

(1) The costs of an appellate remedy which has been withdrawn or which proved to be unsuccessful are to be borne by the person who filed such appellate remedy. If the appellate remedy filed by the accused has proved to be unsuccessful or has been withdrawn, the necessary expenses incurred by the private accessory prosecutor or the person entitled to join the proceedings as a private accessory prosecutor in exercising the rights under section 406h are to be charged to the

accused. If, in the case under sentence 1, only the private accessory prosecutor has filed or pursued the appellate remedy, the accused's necessary expenses are to be charged to him or her. Section 472a (2) applies accordingly to the costs of the appeal and the necessary expenses of the parties if an immediate complaint under section 406a (1) sentence 1 which was admissible when raised has become inadmissible on account of a decision concluding proceedings before a particular instance.
(2) If, in the case under subsection (1), the public prosecution office files the appellate remedy to the detriment of the accused or of another person involved (section 424 (1), section 439 and section 444 (1) sentence 1), his or her necessary expenses are to be charged to the Treasury. The same applies if the appellate remedy filed by the public prosecution office for the benefit of the accused or of a person involved proves to be successful.
(3) If the accused or any other party has limited the appellate remedy to certain points of complaint and such appellate remedy is successful, the party's necessary expenses are to be charged to the Treasury.
(4) If the appellate remedy is partly successful, the court is required to reduce the fees and charge the costs, in part or in full, to the Treasury if it would be inequitable to charge such costs to the parties. This applies accordingly to the parties' necessary expenses.
(5) An appellate remedy is deemed unsuccessful if an order pursuant to section 69 (1) or section 69b (1) of the Criminal Code is not upheld solely on account of its conditions no longer being met owing to the length of a provisional disqualification from driving (section 111a (1)) or of a measure to confiscate, secure or seize the driving licence (section 69a (6) of the Criminal Code).
(6) Subsections (1) to (4) apply accordingly to the costs and necessary expenses arising on account of an application

1. to reopen proceedings concluded by final judgment or
2. for subsequent proceedings (section 433).

(7) The costs for restoration of the status quo ante are borne by the applicant, unless they were caused by an unfounded objection by the opponent.

Section 473a
Costs and necessary expenses of separate decision on lawfulness of investigation measure

If, upon the application of the person concerned, the court is required to rule in a separate decision on the lawfulness of an investigation measure or its enforcement, it at the same time decides who is to bear the costs and the parties' necessary expenses. These are to be borne by the Treasury insofar as the measure or its enforcement is held to be unlawful, in all other cases by the applicant. Section 304 (3) and section 464 (3) sentence 1 apply accordingly.

Book 8
Protection and use of data

Division 1
Provision of information and inspection of files, other use of data for overarching purposes

Section 474
Provision of information to and inspection of files by judicial and other public authorities

(1) Courts, public prosecution offices and other judicial authorities are permitted inspection of the files if this is necessary for the purposes of the administration of justice.
(2) In all other respects, it is permissible to provide public agencies with file information insofar as

1. such information is needed to establish or enforce or oppose legal claims connected with the offence,
2. such agencies would otherwise be entitled, pursuant to a special provision, to the ex officio transmission of personal data from criminal proceedings or where, following ex officio transmission, the transmission of further personal data is needed for the performance of duties or
3. the information is required in order to prepare measures upon whose implementation personal data from criminal proceedings may be transmitted ex officio to such agencies pursuant to a special provision.

Provision of information to the intelligence services is governed by section 18 of the Federal Act on the Protection of the Constitution (*Bundesverfassungsschutzgesetz*), by section 12 of the Security Clearance Check Act (*Sicherheitsüberprüfungsgesetz*), by section 10 of the Military Counterintelligence Service Act (*MAD-Gesetz*) and by section 10 of the Federal Intelligence Service Act (*BND-Gesetz*).
(3) Under the conditions of subsection (2), inspection of the files may be granted if provision of information would require disproportionate effort or the agency requesting inspection of the files declares, indicating the reasons, that the provision of partial information would not be sufficient for the performance of its duties.
(4) Items of evidence kept in official custody may be viewed under the conditions of subsection (1) or (3).
(5) In the cases under subsections (1) and (3), files which are still kept in paper form may be forwarded for inspection.
(6) Provisions under *Land* law granting parliamentary committees the right to inspect the files remain unaffected.

Section 475
Provision of information to and inspection of files by private individuals and other agencies

(1) Without prejudice to section 57 of the Federal Data Protection Act, a lawyer may obtain information from a file for a private individual or for other agencies if such a file is available to the court or would have to be submitted to the court if public charges were preferred and if the lawyer sets forth a legitimate interest therefor. Information is to be refused if the data subject has an interest meriting protection in such refusal.
(2) Inspection of the files may be granted under the conditions of subsection (1) if the provision of information would require disproportionate effort or if it would be insufficient to exercise the justifiable interest according to the explanation supplied by the person requesting inspection of the files.
(3) Items of evidence in official custody may be viewed under the conditions of subsection (2).

(4) Private persons and other agencies may also be given information from the files under the conditions of subsection (1).

Section 476
Provision of information and inspection of files for research purposes

(1) The transmission of personal data in files to universities, other institutions conducting scholarly research and public agencies is admissible to the extent that

1. this is required for the performance of particular scholarly research,
2. anonymous data cannot be used for this purpose or anonymisation requires disproportionate effort and
3. the public interest in the scholarly research significantly outweighs the interests of the data subject meriting protection in preclusion of the transmission.

As part of the consideration of the public interest pursuant to sentence 1 no. 3, particular consideration is to be given to scholarly interest in the research project.
(2) Transmission of the data occurs by means of the provision of information if the purpose of the research can be achieved thereby and this does not require disproportionate effort. Otherwise, inspection of the files may also be granted. Files which are still kept in paper form may be forwarded for inspection.
(3) Personal data are only transmitted to those persons who hold public office who are under a special public service obligation or who have been placed under the obligation to maintain secrecy. Section 1 (2) and (3) and (4) no. 2 of the Obligations Act applies accordingly to placement under the obligation to maintain secrecy.
(4) Personal data may only be used for the research for which they were transmitted. Use for other research work or passing on to others must be in accordance with subsections (1) to (3) and requires the consent of the agency which ordered transmission of the information.
(5) The data are to be protected against unauthorised disclosure to third parties. The agency conducting the scholarly research must ensure that the use of the personal data is physically and organisationally separate from the fulfilment of those administrative activities or commercial practices for which these data may also be of significance.
(6) As soon as the research purpose allows, personal data are to be anonymised. For as long as this is not possible, characteristics by which individual pieces of information regarding personal or material circumstances of certain or ascertainable persons can be established are to be stored separately. They may only be combined with individual pieces of information to the extent required for the research purpose.
(7) Whoever has obtained personal data pursuant to subsections (1) to (3) may only publish these if the data are essential for presenting research results concerning contemporary historical events. Publication requires the consent of the agency which transmitted the information.
(8) If the recipient is not a public agency, the provisions of Regulation (EU) 2016/679 and of the Federal Data Protection Act apply even if the personal data are not automatically processed and are not or will not be stored in a file system.

Section 477
Ex officio data transmission

(1) Personal data from criminal proceedings may be transmitted ex officio to prosecuting authorities and criminal courts for the purposes of criminal prosecution and to the competent authorities and courts for the purposes of prosecuting regulatory offences insofar as the data are, in the transmitting agency's opinion, necessary therefor.
(2) The ex officio transmission of personal data from criminal proceedings is also admissible where knowledge of such data is, in the transmitting agency's opinion, necessary

1. to enforce penalties or measures within the meaning of section 11 (1) no. 8 of the Criminal Code or to enforce or implement disciplinary measures against juvenile offenders or disciplinary measures within the meaning of the Youth Courts Act,
2. to enforce measures involving deprivation of liberty or
3. to make decisions in criminal matters, in particular regarding the suspension of a sentence on probation or its revocation, or in regulatory fines proceedings or clemency petition matters.

Section 478
Form of data transmission

The provision of information pursuant to sections 474 to 476 and ex officio data transmission pursuant to section 477 may also be effected by means of issuing copies of file documents.

Section 479
Prohibition of data transmission and restrictions of use

(1) The provision of information pursuant to sections 474 to 476 and ex officio data transmission pursuant to section 477 is to be denied if it is contrary to the purposes of the criminal proceedings, including jeopardising the purpose of an investigation in other criminal proceedings, or it is contrary to special federal or *Land* statutory rules of usage.
(2) If a measure under this statute is admissible only where specific offences are suspected, then section 161 (3) applies accordingly to the use, in other criminal proceedings, of data obtained on the basis of such a measure. Further, usable personal data which have been obtained by means of a measure of the type described in sentence 1 may only be used without the consent of the person affected by the measure

1. for the purposes of averting a danger, insofar as they could be captured by means of a suitable measure pursuant to legislation applicable to the competent agency,
2. to avert a danger to life, limb or a person's liberty or to the security or existence of the Federation or of one of the *Länder* or to significant assets where, in an individual case, the data provide concrete indications for averting such a danger,
3. for purposes for which transmission is admissible pursuant to section 18 of the Federal Act on the Protection of the Constitution and
4. in accordance with the provisions of section 476.

Section 100i (2) sentence 2 and section 108 (2) and (3) remain unaffected.
(3) If, in the cases under sections 474 to 476,

1. the accused is acquitted, the opening of the main proceedings is refused or the proceedings are terminated or
2. the conviction is not included in a certificate of good conduct for authorities and more than two years have elapsed since the decision became effective,

information from files and inspection of files by non-public agencies may be granted only where a legal interest in knowledge of the information is credibly substantiated and the previously accused person has no interest meriting protection in refusing.
(4) Responsibility for the admissibility of transmission lies with the transmitting agency. In derogation therefrom, in the cases under sections 474 to 476, the recipient holds responsibility for the admissibility of transmission, insofar as it is a public agency or lawyer. In such cases, the transmitting agency only reviews whether the transmission request forms part of the recipient's remit, unless there is particular cause for a more extensive examination of the admissibility of the transmission.
(5) Section 32f (5) sentences 2 and 3 applies accordingly, with the following provisos:

1. the use of personal data obtained pursuant to sections 474 and 475 for other purposes is permissible if it would be permissible to provide information or grant file inspection therefor and, in the case under section 475, the agency which granted the information or inspection of the file consents thereto;
2. the use of personal data obtained pursuant to section 477 is permissible for other purposes if transmission pursuant to section 477 would be permissible.

Section 480
Decision on data transmission

(1) In preparatory proceedings and after the final conclusion of proceedings, it is for the public prosecution office to decide whether data may be transmitted pursuant to sections 474 to 477; in all other cases, it is for the presiding judge of the court seized of the matter to decide. The public prosecution office is entitled, even subsequent to the preferment of public charges, to transmit personal data. The public prosecution office may authorise the police authorities which have led or are leading the investigations to grant inspection of the files and information in the cases under section 475. Their decision may be appealed to the public prosecution office. The transmission of personal data between the police authorities or the inspection of such files is admissible without a decision pursuant to sentence 1 where no doubts exist concerning the admissibility of the transmission or of the inspection of the files.
(2) Data from file material extraneous to the files may only be transmitted if the agency responsible for such material has consented thereto; the same applies to inspection of the files. In the cases under sections 474 to 476, the provision of information and file inspection is only admissible if the applicant provides proof of consent.
(3) In the cases under section 475, the decision of the public prosecution office pursuant to subsection (1) may be appealed by applying for a decision by the court competent pursuant to section 162. Sections 297 to 300, 302, 306 to 309, 311a and 473a apply accordingly. The court's decision is not contestable as long as the

investigations have not yet been concluded. The reasons for these decisions are not stated to the extent that disclosure could jeopardise the purpose of the investigation.
(4) The transmitting agency is required to place the fact of the transmission and its purpose on record.

Section 481
Use of personal data for police purposes

(1) Police authorities may use personal data from criminal proceedings in accordance with the provisions of legislation on police matters. Prosecuting authorities and courts may transmit personal data from criminal proceedings to police authorities or grant inspection of files for the purposes referred to in such legislation. The data referred to in sentence 2 may also be transmitted by probation officers and authorities competent for the supervision of conduct if this is necessary to avert a danger to a significant legal right and there is no guarantee that the authorities referred to in sentence 2 will be able to supply the data in a timely manner. Sentences 1 and 2 do not apply in cases in which the police were exclusively active in protecting private rights.
(2) Use is inadmissible insofar as special federal or *Land* statutory rules of usage present an obstacle thereto.
(3) If the police authorities have doubts as to whether the use of personal data pursuant to this provision is admissible, section 480 (1) sentences 1 and 2 applies accordingly.

Section 482
Notification of file reference number and outcome of criminal proceedings to police

(1) The public prosecution office informs the police authority involved in the matter of its file reference number.
(2) In the cases under subsection (1), the public prosecution office informs the police authority of the outcome of the proceedings by giving notification of the operative part of the decision, the authority taking the decision, and the date and type of the decision. It is admissible to send the notification to the Federal Central Criminal Register and, upon request, a copy of the judgment or decision to terminate proceedings, with reasons.
(3) In proceedings against an unknown person and in the case of road traffic offences, to the extent they are not encompassed by sections 142 and 315 to 315c of the Criminal Code, the outcome of the proceedings is not notified ex officio in accordance with subsection (2).
(4) If a judgment which has been contested is transmitted, the name of the person seeking an appellate remedy must be designated.

Division 2
Provisions on data processing

Section 483
Data processing for purposes of criminal proceedings

(1) Courts, the prosecuting authorities including enforcing authorities, probation officers, the supervisory authorities of those who supervise conduct and the court assistance agency may process personal data in file systems to the extent necessary for the purposes of the criminal proceedings. The police may, under the conditions of sentence 1, also process personal data in an information system

established under the provisions of another statute. The following, at a minimum, is set down in relation to such an information system:

1. the labelling of the personal data by designating
   a) the procedure used to collect the data,
   b) the measure on account of which the data were collected and the legal basis for their collection and
   c) the criminal offence for whose investigation the data were collected,
2. access authorisations,
3. the time periods within which a review is to be conducted as to whether the stored data must be deleted and the retention period for the data.

(2) The data may also be used in other criminal proceedings, in criminal proceedings involving international mutual assistance and in clemency petition matters.
(3) If the data are stored in a police file system together with data stored in accordance with legislation on police matters, the law governing the storing agency applies to the processing of personal data and to the rights of the data subject.

Section 484
Data processing for purposes of future criminal proceedings; authorisation to issue statutory instruments

(1) The prosecuting authorities may process the following in file systems for the purposes of future criminal proceedings:

1. the accused's personal particulars and, where necessary, other distinguishing features which can be used for identification purposes,
2. the competent agency and the file reference number,
3. a detailed description of the offences, including in particular the times and places of commission of the offences and the amount of any damage incurred,
4. the charges, by means of a reference to the statutory provisions,
5. the initiation of the proceedings and the outcome of the proceedings disposed of at the public prosecution office and in court, including reference to the statutory provisions.

(2) Other personal data regarding accused persons and parties to an offence may only be processed in file systems to the extent necessary where, based on the type or manner of commission of the offence, the personality of the accused or parties to an offence or other knowledge, there is reason to assume that additional criminal proceedings will be conducted against the accused. If the accused is finally acquitted, if the opening of the main proceedings has been refused with incontestable effect or the proceedings have not been only provisionally terminated, then processing pursuant to sentence 1 is inadmissible if it appears, based on the reasons for the decision, that the data subject did not commit, or did not unlawfully commit, the act.

(3) The Federal Ministry of Justice and Consumer Protection and the governments of the *Länder* each determine for their portfolio by statutory instrument the details regarding the type of data which may be stored for the purposes of future criminal proceedings in accordance with subsection (2). This does not apply to data in file systems which are stored only temporarily and which will be deleted within three months after their creation. The governments of the *Länder* may delegate such authorisation by statutory instrument to the competent *Land* ministries.
(4) The processing of personal data which have been or will be stored by the police for the purposes of future criminal proceedings is subject to legislation on police matters, except in respect of processing for the purposes of criminal proceedings.

Section 485
Data processing for purposes of administration of proceedings

Courts, the prosecuting authorities including enforcing authorities, probation officers, the supervisory authorities of those who supervise conduct and the court assistance agency may process personal data in file systems to the extent necessary for the purposes of the administration of proceedings. Use for the purposes set forth in section 483 is admissible. Use for the purposes set forth in section 484 is admissible to the extent that storage would be admissible under this provision, too. Section 483 (1) sentence 2 and (3) applies accordingly.

Section 486
Shared file systems

Personal data may be stored in shared data file systems on behalf of the agencies designated in sections 483 to 485. This applies accordingly to the cases under section 483 (1) sentence 2, also in conjunction with section 485 sentence 4.

Section 487
Transmission of stored data; provision of information

(1) Data stored pursuant to sections 483 to 485 may be transmitted to the competent agencies to the extent necessary for the purposes referred to in these provisions, for the purposes of a clemency petition, enforcement of measures involving deprivation of liberty or for the purposes of international mutual assistance in criminal matters. Section 479 (1) and (2) and section 485 sentence 3 apply accordingly. Probation officers and authorities competent for the supervision of conduct may transmit personal data concerning convicted persons who have been placed under supervision of conduct to prisons and facilities responsible for measures of reform and prevention if these data are necessary in order to enforce the sentence of imprisonment, in particular in order to support the drawing up of prison and treatment plans or to prepare a detained person’s release; the same applies to notifications made to enforcing authorities insofar as these data are necessary for the purposes referred to in section 477 (2) no. 1 or no. 3.
(2) In addition, information may, without prejudice to section 57 of the Federal Data Protection Act, be provided insofar as inspection of the files or information could be granted in accordance with the provisions of this statute. The same applies to notifications in accordance with sections 477 and 481 (1) sentence 2 and to other specific statutory provisions which require or allow the transmission of personal data.
(3) Responsibility for the admissibility of the transmission lies with the transmitting agency. If transmission takes place based on the request of the recipient, it bears this responsibility. In such a case, the transmitting agency only examines whether

the transmission request forms part of the recipient's remit, unless there is particular cause for more extensive examination of the admissibility of the transmission.
(4) Data stored pursuant to sections 483 to 485 may also be transmitted for scholarly purposes. Section 476 applies accordingly.
(5) Special statutory provisions which require or allow the transmission of data from criminal proceedings remain unaffected.
(6) Data may only be used for the purpose for which they were transmitted. Use for another purpose is admissible insofar as the data could also have been transmitted for that purpose.

Section 488
Automated data transmission procedures

(1) The establishment of an automated retrieval procedure or an automated inquiry and disclosure procedure is admissible for transmissions pursuant to section 487 (1) amongst the agencies referred to in section 483 (1) insofar as this form of data transmission is appropriate, having regard to the data subjects' interests meriting protection, in view of the large number of transmissions or of their special urgency. The agencies involved must guarantee that measures reflecting the state of the art at the relevant time are implemented to ensure data protection and security which in particular guarantee the confidentiality and integrity of the data; where publicly accessible networks are used, encryption procedures reflecting the state of the art are to be applied.
(2) When making the determination to establish an automated retrieval procedure, the agencies involved must guarantee that the permissibility of the retrieval procedure can be monitored. To that end the following must be set down in writing:

1. the occasion for establishing and the purpose of the retrieval procedure,
2. the third parties to whom or which data are transmitted,
3. the nature of the data to be transmitted and
4. the technical and organisational measures which are necessary in accordance with section 64 of the Federal Data Protection Act.

The determinations made require the consent of the federal and *Land* ministries competent for the storing agency and the retrieving agency. The storing agency transmits the specifications to the agency competent for controlling compliance with the provisions regarding data protection within public agencies.
(3) Responsibility for the admissibility of individual retrieval requests lies with the recipient. The storing agency examines the admissibility of the retrieval only if there is cause to do so. The storing agency must guarantee that the transmission of personal data can be established and checked. Within the context of logging in accordance with section 76 of the Federal Data Protection Act, it must also record the data referred to in subsection (2) of that provision, the data retrieved, the retrieving agency's code and the recipient's file reference. The log data must be deleted after 12 months.
(4) Subsections (2) and (3) apply accordingly to the automated inquiry and disclosure procedure.

Section 489
Deletion and restriction of processing of data

(1) The following must be deleted, notwithstanding other reasons which establish the obligation to delete data referred to in section 75 (2) of the Federal Data Protection Act:

1. data stored in accordance with section 483, upon conclusion of the proceedings, insofar as their storage is not admissible under sections 484 and 485,
2. data stored in accordance with section 484, to the extent that the conditions set out therein no longer apply and their storage is not admissible under section 485 and
3. data stored in accordance with section 485, as soon as their storage is no longer necessary for the administration of proceedings.

(2) Disposal by the criminal prosecution office or, in cases where public charges have been preferred, by the court is deemed to be disposal of the proceedings. If a penalty or other sanction has been ordered, then completion of enforcement or remission is decisive. If the proceedings have been terminated and the termination does not prevent resumption of the prosecution, the proceedings are to be considered concluded upon expiry of the limitation period.
(3) The controller examines, within the established time limits, whether data stored are to be deleted. The time limit for reviewing the need to store the data in accordance with section 75 (4) of the Federal Data Protection Act is as follows as regards data stored in accordance with section 484:

1. for accused persons who were over 18 years of age at the time of the offence: 10 years,
2. for juveniles: five years,
3. in cases of final acquittal, incontestable refusal to open main proceedings and termination of proceedings which is not merely provisional: three years,
4. in cases of data stored pursuant to section 484 (1) on persons who had not reached the age of criminal responsibility at the time of the offence: two years.

(4) The controller may set down shorter examination time limits in the order to create data files pursuant to section 490.
(5) The time limits set out in subsection (3) begin to run on the day on which the last event occasioning the storage of the data occurred, but not before

1. the data subject is released from prison or
2. a measure of reform and prevention linked to deprivation of liberty ends.

(6) Section 58 (3) sentence 1 no. 1 and no. 3 of the Federal Data Protection Act applies accordingly to deletion in accordance with subsection (1). Furthermore, instead of deleting personal data, their processing may be restricted insofar as they are needed for ongoing research purposes. The processing of personal data is also to be restricted insofar as the data are only stored for the purpose of data backup or data protection monitoring purposes. Data whose processing is restricted in accordance with sentence 1 or 2 may only be used for that purpose for which they

were not deleted. They may also be used insofar as this is indispensable to remedy an existing lack of evidence.
(7) Instead of deleting the data, the data carriers are to be given to a public records office insofar as specific provisions under the law governing archives make provision therefor.

Section 490
Order creating automated file systems

The controller sets forth in an order for each automated file system, at a minimum:

1. the name of the file system,
2. the legal basis for and purpose of the file system,
3. the group of people regarding whom data in the file system will be processed,
4. the type of data to be processed,
5. the delivery or input of the data to be processed,
6. the conditions under which data processed in the file system will be transmitted to which recipient and in which proceedings,
7. review periods and the retention period.

This does not apply to file systems which are only temporarily stored and which will be deleted within three months after their creation and to information systems in accordance with section 483 (1) sentence 2.

Section 491
Information provided to data subjects

(1) If, in the case of a joint file system, the data subject is not in a position to determine who the controller is, he or she may contact any involved agency which is authorised to store the data to demand access in accordance with section 57 of the Federal Data Protection Act. The requested agency which is authorised to store the data takes the decision on whether to grant access in agreement with the controller.
(2) Section 57 of the Federal Data Protection Act applies to the data subject's right of access.

Division 3
National register of proceedings conducted by public prosecution offices

Section 492
Central register of proceedings conducted by public prosecution offices

(1) The Federal Office of Justice (authority holding the register) maintains a central register of proceedings conducted by the public prosecution offices.
(2) The following are to be entered in the register:

1. the accused's personal particulars and, where necessary, other distinguishing characteristics,
2. the competent agency and the file reference number,
3. a detailed description of the offences, including in particular the times and places of commission of the offences and the amount of any damage incurred,

4. the charges, by means of a reference to the statutory provisions,
5. the initiation of the proceedings and the outcome of the proceedings disposed of at the public prosecution office and in court, including reference to the statutory provisions.

The data may be stored and modified only in respect of criminal proceedings.
(3) The public prosecution offices communicate the registrable data to the authority holding the register for the purpose referred to in subsection (2) sentence 2. Information from the register of proceedings may only be given to the prosecuting authorities for the purposes of conducting criminal proceedings. Information may also be provided to the Federal Criminal Police Office insofar as this is necessary, in the individual case, in the performance of its tasks pursuant to section 5 (1), section 6 (1) or section 7 (1) and (2) of the Federal Criminal Police Office Act. Section 5 (5) sentence 1 no. 2 of the Weapons Act, section 8a (5) sentence 1 no. 2 of the Explosives Act (*Sprengstoffgesetz*), section 7 (3) sentence 1 no. 3 of the Aviation Security Act (*Luftsicherheitsgesetz*), section 12 (1) no. 2 of the Security Clearance Check Act and section 31 (4a) sentence 1 of the Money Laundering Act (*Geldwäschegesetz*) remain unaffected; information concerning the entry is transmitted with the approval of the public prosecution office which transmitted the personal data to be recorded in the registry, unless there is reason to fear that this will jeopardise the purpose of the investigation.
(4) Upon request, the data referred to in subsection (2) sentence 1 no. 1 and no. 2 and, where necessary, no. 3 and no. 4 may, in accordance with the provisions of section 18 (3) of the Federal Act on the Protection of the Constitution, also in conjunction with section 10 (2) of the Military Counterintelligence Service Act and section 10 (3) of the Federal Intelligence Service Act, also be transmitted to the federal and *Land* offices for the protection of the constitution, to the Military Counterintelligence Office and the Federal Intelligence Service. Section 18 (5) sentence 2 of the Federal Act on the Protection of the Constitution applies accordingly.
(4a) If the authority holding the register cannot clearly assign a message or request to a data set, it transmits data sets concerning persons with similar personal identification data to the requesting agency. Upon successful identification, the requesting agency must without delay delete all data not relating to the data subject. If identification is not possible, all transmitted data must be deleted. The statutory instrument referred to in section 494 (4) limits the number of data sets which may be transmitted on the basis of one request for information to the number necessary for making the identification.
(5) Responsibility for the admissibility of transmission lies with the recipient. The authority holding the register examines the admissibility of transmission only if there is special reason for doing so.
(6) Without prejudice to subsection (3) sentences 3 and 4 and subsection (4), the data may be used only in criminal proceedings.

Section 493
Automated data transmission procedure

(1) The data are transmitted by means of an automated retrieval procedure or an automated inquiry and disclosure procedure, in the event of a malfunction of the data transmission or in cases of unusual urgency by telephone or telefax. The agencies involved must guarantee that measures which reflect the state of the art at

the relevant time and which specifically guarantee the confidentiality and integrity of the data are implemented to ensure data protection and security; where publicly accessible networks are used, encryption procedures reflecting the state of the art must be used.
(2) Section 488 (2) sentences 1 and 2 applies accordingly when making the determination to establish an automated retrieval procedure. The authority holding the register transmits the specifications to the Federal Commissioner for Data Protection.
(3) Responsibility for the admissibility of each automated retrieval lies with the recipient. The authority holding the register examines the admissibility of retrievals only if there is cause to do so. In the context of logging in accordance with section 76 of the Federal Data Protection Act it must, in addition to the data referred to in subsection (2) of that provision, log the data retrieved, the retrieving agency's code and the recipient's file reference. The log data must be deleted after six months.
(4) Subsections (2) and (3) apply accordingly to the automated inquiry and disclosure procedure.

Section 494
Correction, deletion and restriction of processing of data; authorisation to issue statutory instruments

(1) In the cases under section 58 (1) and section 75 (1) of the Federal Data Protection Act, the controller must inform the authority holding the register, in particular, without delay of any inaccuracy; the controller bears responsibility for the accuracy and currency of the data.
(2) The data are to be deleted as soon as it is evident from the Federal Central Criminal Register that a court decision or direction given by the prosecuting authority which is notifiable pursuant to section 20 of the Federal Central Criminal Register Act has been issued in the criminal proceedings from which the data were transmitted. If the accused is finally acquitted, if the opening of main proceedings against the accused has been refused with incontestable effect or if the proceedings have been not only provisionally terminated, the data must be deleted two years after the proceedings were concluded, unless notification of further registrable proceedings is given before the time limit for deletion. In this case, the data remain stored until the requirements for deletion have been fulfilled in respect of all entries. The public prosecution office informs the authority holding the register without delay of the fulfilment of the requirements for deletion or of the start of the time limit for deletion pursuant to sentence 2.
(3) Section 489 (7) applies accordingly.
(4) The Federal Ministry of Justice and Consumer Protection, with the approval of the Bundesrat, specifies further details in a statutory instrument, including in particular:

1. the type of data to be processed,
2. the delivery of the data to be processed,
3. the conditions under which data processed in the file system may be transmitted to which recipients and in which proceedings,
4. the establishment of an automated retrieval procedure,

5. the technical and organisational measures required pursuant to sections 64, 71 and 72 of the Federal Data Protection Act.

Section 495
Information provided to data subjects

Information from the register of proceedings is to be provided to a data subject in accordance with section 57 of the Federal Data Protection Act; section 491 (2) applies accordingly. The authority holding the register, in consultation with the public prosecution office which communicated the personal data for entry in the register, decides whether information may be disclosed. Insofar as information from the register of proceedings has been made available to a public agency and the data subject seeks information from such agency about data collected in that manner, the agency concerned, in consultation with the public prosecution office which communicated the personal data for entry in the register, decides whether to disclose the information.

Division 4
Protection of personal data in electronic files; use of personal data extracted from electronic files

Section 496
Use of personal data in electronic files

(1) The processing and use of personal data in electronic files or in electronic copies of files is permitted insofar as this is necessary to fulfil the purpose of the criminal proceedings.
(2) To that end,

1. those organisational and technical measures are to be taken which are necessary to meet the specific requirements of data protection and data security, and
2. the principles of orderly data processing must be complied with, in particular data must be constantly available and precautions must be taken to prevent data loss.

(3) Electronic files and electronic copies of files are not file systems within the meaning of Division 2.

Section 497
Data processing on behalf of data controller

(1) Non-public agencies may be commissioned with the legally binding storage of electronic files in perpetuity only if a public agency actually and exclusively controls entry and access to the data processing facilities in which the electronic files are being stored on a legally binding basis.
(2) Non-public agencies are permitted to enter into subcontractual relationships regarding the legally binding storage of electronic files in perpetuity if the client has previously consented thereto in an individual case. Consent may only be given where entry and access to the data processing facilities have been regulated in a subcontract in accordance with subsection (1).
(3) Attachment of those facilities in which a non-public agency processes data on behalf of a public agency is not permitted. Seizure of such facilities presupposes that the public agency has consented thereto in an individual case.

Section 498
Use of personal data extracted from electronic files

(1) The processing and use of personal data extracted from electronic files or electronic copies of files is permitted insofar as the use of personal data in criminal proceedings is permitted or has been ordered on the basis of a legal norm.
(2) The automatic matching of personal data with electronic files or electronic copies of files pursuant to section 98c is not permitted, unless it is done using single files or copies of files which have first been individualised.

Section 499
Deletion of electronic copies of files

Electronic copies of files must be deleted without delay as soon as they are no longer required.

Division 5
Operation of Federal Data Protection Act

Section 500
Corresponding application

(1) Where public agencies of the *Länder* process personal data within the territorial scope of this statute, the provisions of Part 3 of the Federal Data Protection Act apply accordingly.
(2) Subsection (1) applies

1. only to the extent that this statute does not provide otherwise and
2. only with the proviso that the *Land* Commissioner takes the place of the Federal Commissioner for Data Protection and Freedom of Information.