

## **U.S. Mission Germany**



# **Information for Citizens of The United States of America Imprisoned in The Federal Republic of Germany**

A guide to assist Americans in understanding the laws and procedures governing the German legal and penal system.

September 2011



## TABLE OF CONTENTS

	Page
<b>SECTION I: INTRODUCTION</b>	
Purpose of this booklet	6
Jurisdiction	6
The Consul's Role	6
Privacy Act	7
<b>SECTION II: ARREST AND PRE-TRIAL DETENTION</b>	
The Arrest	8
Conditions under which Pre-Trial Detention May Be Imposed	9
Reasons for Detention	9
Posting of Bond	9
Warrant of Arrest	10
Notification	10
Legal Counsel	11
Attorneys Fees	11
Selection of Defense Attorney	12
Private Attorney	12
Court-appointed Attorney	12
Communication with the Accused	13
First Hearing	14
Review of Basis for Continued Detention (Haftprüfung / Haftbeschwerde)	14
Oral Hearing	14
<b>SECTION III: COMPLETION OF PRE-TRIAL DETENTION</b>	
Bill of Indictment	16
German courts and their jurisdiction	17
<b>SECTION IV: THE MAIN TRIAL</b>	
Plea Bargaining	18
The German Judge's Role	18
Evidence and Exhibits Introduced at the Request of the Accused	18
Taking of Depositions	19
Service of the Order Opening the Main Proceedings	19
Suspension and Postponement/Interruption	19
Obligatory Presence of the Accused	20
Absence of the Accused because of Misconduct	20
Direct Examination of Witnesses	20
The Victim as Private Prosecutor (Nebenkläger)	20
The Right to Ask Questions	20
Course of the Main Trial	21
Taking of Evidence	21
Extent of Taking Evidence	22
Belated Requests for Taking Evidence	22
Medical Expert	22
Statement of the Accused/Public Prosecutor and the Defense Attorney	22
Closing Statements	22

Interpreter	23
Sentence/Verdict	23
Prison Term	23
Placement to a Psychiatric Hospital	23
Placement to a Rehabilitation Clinic	24
Suspension of Sentence on Probation	24
Probation Period	24
Appellate Proceedings	24

## **SECTION V: PRACTICAL FACTS YOU SHOULD KNOW ABOUT DETENTION**

Admission to prison	25
Accommodation	25
Clothing	26
Funds	26
Leave ( <i>Vollzugslockerungen/Ausgang/Urlaub</i> )	27
Mail/Stamps	27
Medical Care	28
Nourishment - Meals from Outside Sources	28
Outdoor Exercise	28
Packages	28
Personal Property	28
Psychological Care	28
Radio/Television	29
Reading Material	29
Religious Attendance	29
Shopping ( <i>Einkauf</i> )	29
Social Worker ( <i>Sozialarbeiter</i> )	29
Toilet Articles	29
Trips Outside the Prison ( <i>Ausföhrung</i> )	29
Visitation	30
Work	30

## **SECTION VI: RELEASE**

Curtailement of sentence	31
Release at Half-Time	31
Expulsion ( <i>Ausweisung</i> ) / Deportation ( <i>Abschiebung</i> )	31
Curtailement of Sentence in Connection with Deportation	33
Deportation Proceedings	33

## **SECTION VII: INTERNATIONAL PRISONER TRANSFER PROGRAM**

Prisoner Transfer Treaty	34
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<b>Appendix I: Glossary</b>	37
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This guide was prepared by Helga Krüger-Pompl of the Special Consular Services Unit of the American Consulate General in Munich, following consultations with Bavarian judicial and prison authorities. Special thanks go to officials at the Munich prison and attorney-at-law, Dr. Wolfgang Kreuzer. The booklet draws upon brochures and pamphlets prepared by the U.S. Department of State. The American Embassy in Berlin has reviewed the handbook, which is intended for use throughout Germany.

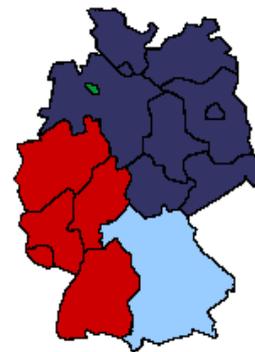
This booklet contains provisions of the

***Strafprozessordnung (StPO)*** - rules of criminal procedure;

***Strafvollzugsgesetz (StVollzG)*** - laws pertaining to pre-trial detention and the laws governing the execution of sentences, and the

***Ausländerrecht (AuslR)*** - the law on the rights of foreigners.

**We must emphasize that practices and interpretations of regulations vary among different Länder (states) of the Federal Republic of Germany**, and among courts, public prosecutors and prison officials within the same state. Therefore, this handbook is by no means meant to be authoritative. It was prepared solely as a guide to assist Americans in understanding the laws and procedures governing the German legal and penal system.



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##### **American Consulate General**

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This booklet consists in part of unofficial translations of German texts and is intended to be as accurate as possible. Nevertheless, neither the Department of State, its Diplomatic and Consular Missions, nor its employees accept any responsibility for the accuracy of the information contained herein.

## SECTION I: INTRODUCTION

### **Purpose**

The purpose of this booklet is to provide American civilians who are arrested and facing trial in the Federal Republic of Germany with a general summary of German criminal law and procedure. The U.S. Department of State is responsible for the welfare and protection of Americans overseas. Part of its job is to ensure that you have a basic understanding of your legal rights upon arrest in Germany. This handbook highlights several basic differences between the U.S. and German legal systems. It is also intended to help you adjust to prison life. This material is not meant to take the place of legal counsel; rather it is to inform you so that you can better understand what is happening.

### **Jurisdiction**

All persons who commit an offense within the territorial jurisdiction of the Federal Republic of Germany (including transit areas of German airports) are subject to prosecution by German authorities. Germany's authority to try foreigners as well as its own citizens is based upon the principle of sovereignty, which is the right of a nation to make and enforce its laws within its own boundaries. As for U.S. servicemen, there is a general waiver by the state of Germany waiving jurisdiction under the Status of Forces Agreement. The German public prosecutor can revoke this waiver within a certain period after notification. This is done very rarely and only in cases of felonies. Thus U.S. servicemen are almost always tried in a U.S. military court. All American civilians in Germany, however, including military dependents and civilian Army employees, are under the absolute jurisdiction of German courts. The German legal system provides many safeguards to ensure that the investigations and possible trials are conducted fairly. U.S. legal specialists have carefully studied the German system and determined that it provides for a fair trial.

### **The Consul's Role**

A U.S. passport does not entitle the bearer to any special privileges or preferential treatment. In spite of what you may have heard to the contrary, neither the United States Government nor its representative, the American Consul, can get you out of prison. Nevertheless, neither arrest nor conviction deprives a United States citizen of the Consul's best efforts in protecting the citizen's legal and human rights.

If, at the time of your arrest, you request that the American Consulate be notified, you will be visited in jail as soon as possible after notification. A Consular Officer will then visit you periodically, and in an emergency will come right away. Prison visits enable the American Consul to monitor your health and well-being, as well as the status of your case.

The Consular Officer will, as soon as possible, provide you with a representative list of English-speaking attorneys. However, an attorney cannot be selected for you, nor can legal advice be given. The Consular Officer will ensure that you have adequate legal representation, where guaranteed by German law. The Consulate will, if you so desire, obtain copies of the Bill of Indictment and trial proceedings.

The Consular Officer can intercede on your behalf when necessary to ensure that you receive adequate medical attention. The Consul will also look into any complaints you may have, and discuss them with the appropriate authorities.

## **Privacy Act**

The Consul will notify your family and friends of your situation, and relay requests for financial or other aid, provided you give authorization to do so by signing the Privacy Act Waiver. He or she can also serve as a liaison between you and your lawyer.

The United States Privacy Act of 1974 (Public Law 93-579) was enacted by Congress to protect you against unauthorized disclosure of information. Therefore, if you wish the Consular Officer to notify your family and/or friends of your arrest, and, at a later date, the status of your case, you must provide authorization by signing the Privacy Act Waiver form. The Consulate will communicate only with those individuals whom you specify by name on the release form. You may rest assured that no information regarding your arrest will be released to your family or any other individual without your express written permission.

The Department of State is charged with the welfare and protection of Americans overseas. To enable the Department to protect your legal and human rights, the American Consulate sends regular reports to Washington, D.C., regarding the details of your arrest, the status of your trial or appeal, your health, anticipated date of release, and so forth. Consular files are compiled primarily for the purpose of providing protection and welfare to American citizens overseas, and not for law enforcement reasons. However, the Department of State can disclose information which is a matter of public record to anyone who requests it or information which is not a matter of public record to other government agencies who have a legitimate interest on a need-to-know basis. The Department of Justice and the Drug Enforcement Agency are two such agencies.

Thus, if the Department of State's records on an individual seem to relate reasonably to law enforcement purposes in the U.S., or if there is knowledge that a prisoner is a fugitive from U.S. justice, the appropriate law enforcement agency can be informed. American citizens who are arrested, convicted and imprisoned abroad are not liable for prosecution for the same crime upon return to the U.S. unless an outstanding U.S. arrest warrant exists.

The Department of State has no control in those cases where German authorities pass information directly to their American counterparts such as the F.B.I. Similarly, the Department has no control over the dissemination of information by Interpol.

## SECTION II: ARREST

### THE ARREST (*Festnahme and Verhaftung*)

A person can be taken into detention (*Festnahme*) on the basis of an existing arrest warrant (*Haftbefehl*), or into **temporary** detention (*vorläufige Festnahme*) by the public prosecutor or police where grounds for the issuance of an arrest warrant exist. In addition there is a general right of arrest where a person is caught in the act, or where it is suspected he is going to flee, or his identity cannot be established.

Upon apprehension the person is taken to the police station in the area in which the offense or crime was allegedly committed or in which the person was apprehended. The arrestee must be informed of the reason for his arrest. At the police station, the arrestee will be questioned.

#### ☞ **YOU HAVE THE RIGHT TO REMAIN SILENT**

If language difficulties exist, the services of an interpreter must be provided. If no interpreter is available, the questioning must be continued at police headquarters, where an interpreter is generally on duty. Any statements made by the arrested person will be recorded in writing, and after the record of statements has been read (and translated, if applicable) to him, he will be asked to sign this record.

☞ **It is strongly recommended that you request an interpreter and the counsel of a lawyer before you answer any questions posed by the investigating police or judge. The request for legal assistance and the services of an interpreter are basic rights and cannot be denied.**

#### StPO § 81 a **Body Search, Blood Test**

At this point the police might decide to take photographs and fingerprints. They may also take blood tests or make other physical examinations without the consent of the arrestee. Such tests must be made by a medical doctor and can be performed only if they do not jeopardize the health of the arrestee.

#### StPO § 81 d **Examination of a Female**

Physical examination of a female arrestee has to be performed by a female police official or by a medical doctor. The arrestee is entitled to request the presence of another woman.

#### StPO § 81 e **Molecular Genetic Examination**

(1) Substances obtained in accordance with StPO § 81a, subpara. 1, may be examined with molecular genetic techniques as far as it is necessary to determine the origin thereof and/or whether the evidence is from the accused or the victim.

#### StPO § 81 g **DNA Analysis**

(1) To determine a person's identity in possible future criminal proceedings, tissue samples may be taken from an accused person suspected of a serious crime, in particular a sexual offense, and examined through molecular genetic techniques to determine the DNA identification pattern, if because of the nature and the way the crime was committed, or the personality of the accused or because of other evidence there is reason to believe that future criminal proceedings may be instigated in one of the above mentioned crime categories.

(2) The tissue samples extracted may be used only for the molecular genetic examination mentioned in paragraph 1, and must be destroyed as soon as they are no longer needed

for that use. During the examination, no other examination besides the ones that are necessary for determining the DNA identification pattern may be made.

☞ **When a person is taken into temporary detention he must be brought before the court at the latest by the end of the following day in accordance with StPO §128. The judge must either order his release or issue an arrest warrant.**

StPO § 112      **Conditions under which Pre-trial Detention May Be Imposed;  
Reasons for Detention**

(1) Pre-trial detention may be imposed if the arrestee is strongly suspected of having committed an offense or crime and if reasons for arrest exist. Pre-trial detention may not be imposed in cases in which confinement would not be in proportion to the seriousness of the case and the punishment that can be expected.

(2) Reasons for arrest exist:

1. If it can be determined by facts that the suspect is fugitive or hiding.
2. If there is reason to believe that the suspect will escape from justice  
(**flight risk – *Fluchtgefahr***)

☞ **Comment: This applies to most foreigners arrested in Germany.**

3. If the attitude or behavior of the person charged with an offense justifies the strong suspicion that he or she intends to alter, conceal, suppress, forge or destroy evidence, or will try to influence witnesses or experts, thus obstructing investigation and prejudicing the course of justice through collusion (***Verdunkelungsgefahr***).

(3) Pre-trial detention may also be imposed (even if subparagraph 2 above does not apply) in cases of suspected murder, manslaughter, assault and battery, aggravated arson, arson with fatal outcome, or if the crime poses a danger to the life and limb of another person.

StPO § 113      (2) in **minor cases** entailing less than six months imprisonment or a fine, pre-trial detention based on flight risk can be imposed only if the person concerned has no permanent residence in Germany.

**Suspension of the Arrest Warrant/ Release on Bail**

StPO § 116      **Suspension of the Arrest Warrant** (*Aussetzung des Vollzugs des Haftbefehls*)

(1) The judge may suspend an arrest order imposed solely on the grounds of suspicion of flight when justice may still be served by other means. Alternative measures include:

1. The regular appearance of the accused at predetermined times before the investigating judge, police or other officials as directed.
2. The individual may not leave his designated area of residence without the specific approval of the judge or police.
3. The order that the person may only leave the apartment under the supervision of a designated person.
4. Payment of a security deposit (bail) by the suspect or any other party.

StPO § 116 a    **Release on Bail** (*Aussetzung gegen Sicherheitsleistung*)

(1) Bail shall be furnished by depositing cash or securities, by pledging property or in the form of bond posted by suitable persons.

(2) The judge shall determine the type of bail at his discretion

(3) The accused who applies for suspension of the execution of the arrest warrant upon furnishing bail and who resides outside the district of this law shall be obliged to authorize a person residing in the district of the court to receive service of the court documents on his behalf.

☞ **Comment: The amount of bail is set in relation to the financial situation of the party, the nature of the crime, and the likelihood of his or her leaving the country. If the accused leaves the country without permission or hides within Germany, bail will be confiscated.**

**Release on bail is rarely applied in the case of non-German arrestees because of the likelihood of escaping from justice by leaving the country. Even in cases where a permanent residence and family ties in Germany can be proven, the court is most hesitant to grant release on bail.**

StPO § 114 **Warrant of Arrest (*Haftbefehl*)**

(1) The judge issues a written warrant of arrest.

(2) The warrant of arrest must contain

1. the name of the person charged;

2. an indication of the offense the person is being charged with, the time and place that the offense was allegedly committed, and the applicable paragraph of the law;

3. the reason for the arrest.

4. All facts upon which the suspicion and the reason for arrest are based upon, unless the national security is at risk.

StPO § 114 a **Notification of the Arrest Warrant (*Bekanntgabe des Haftbefehls*)**

(1) At the time of the arrest, the person charged must be notified of the arrest warrant.

(2) The person charged receives a copy of the arrest warrant.

StPO § 114 b **Advising the accused of his rights (*Belehrungspflicht*)**

(1) The arrested person must be advised in writing of his rights without any delay and in a language he understands

(2) In this notification in accordance with paragraph 1 the accused has to be advised, that:

1. without any delay he has to be taken to court, by the latest on the day following the arrest, which has to hold a hearing and decide on the subsequent detention,

2. he has the right to make a statement or remain silent,

3. he may apply for the hearing of exonerating evidence,

4. he may consult with an attorney of his choice at any time, even before his hearing,

5. he has the right to be examined by a doctor of his choice and that

6. he may notify a relative or a person in whom he places trust, as long as it does not endanger the investigation.

An accused who does not understand sufficient German has to be advised that he is entitled to ask that an interpreter be provided free of charge.<sup>3</sup> A foreign citizen has to be advised that he has the right to have his consular representation notified.

☞ **If you wish the American Consulate to be notified of your arrest, you should say so at this time.**

## Vienna Consular Convention

Under Article 36(1) b of the Vienna Convention on Consular Relations, the Federal Republic of Germany must, at your request, notify the consular representative of your country of nationality immediately upon your arrest. The court, the state prosecutor, or the penal institution will make the notification. In addition, the diplomatic representative of your country can, if you agree to this, also be notified of the reasons for your arrest.

☞ **Comment:** The fact that a person who is arrested or accused remains silent CANNOT under German law be held against him or be construed as proof of guilt. Any statements the arrestee makes, formal or informal, may be recorded in writing and may be used during the investigation and trial. The person charged or accused cannot be punished for remaining silent. At no time during the course of the judicial procedure or the trial will you be put under oath. It may, however, have a detrimental effect on the court's final verdict if you initially offer a statement and then later refuse to make any. It may lead the judge to conclude that facts are being concealed, which would be detrimental to the evaluation of the case. Nevertheless, silence itself cannot be construed as proof of guilt. Partial silence can, however, result in negative conclusions being drawn.

## LEGAL COUNSEL

### Should you retain a lawyer?

If you intend to employ an attorney, you should do so as early as possible. If your case involves anything more serious than a small traffic violation, we recommend that you retain a German defense attorney. Attorneys practicing criminal law acquired the title “Fachanwalt für Strafrecht”. This title is usually printed next to their name on their business card. A German lawyer is not as active in court as an American lawyer, due to the prominent role of the presiding judge, but your defense counsel will argue your case for you and try to convince the court to interpret the facts and apply the law in a manner favorable to you.

Your German attorney is your primary source of advice. You should regard him as though he were an American attorney defending you in an American court. As in the U.S., the attorney is obliged to honor the attorney-client privilege. He may not reveal any confidential information, and the court in turn may not question the attorney or search his office. Ask your attorney any questions that you have about your case and listen carefully to his advice, for he is trained in German law and has the duty to defend you to the best of his ability. If you do not already have a lawyer, consult the attached list of attorneys who practice in the area where you are incarcerated.

### Attorney Fees

☞ **Legal services will be at your own expense.**

If you have no funds, see the section on *Pflichtverteidiger* (court-appointed attorney) below.

The State Department cannot provide funds for employing a lawyer, but will telephone your family in the U.S. or anywhere else, to request their financial assistance.

Attorney fees are regulated by a state-approved schedule of fees. The attorney will adhere to these tariffs if the retainer fee has not been specially discussed. In cases of complicated and time-consuming proceedings (for example, major offenses or crimes), the attorney, in order to cover excess time spent beyond normal services, will suggest an individual contract concerning the cost of his services. This contract must be signed by the client in order to be valid and binding.

The attorney usually will request a down payment from his client at the beginning of the proceedings, and will account for it at their termination. Once you have signed a power of attorney, you are obligated to pay your lawyer's bill for services rendered to date, even if you change attorneys. You should know that the lawyer may charge for additional services that are not related to your criminal case, as well as frequent and lengthy telephone conversations with your relatives/friends.

### **Selection of Defense Attorney**

StPO § 137 A person charged with an offense, or his legal representative, may employ the assistance of a private attorney at any stage of the judicial proceedings. The number of selected defense attorneys may not be more than three.

### **Private Attorney (*Wahlverteidiger*)**

StPO § 138 (1) The defense attorney must either be licensed to practice before German courts or be a law professor at a German university.

#### **StPO § 138 a Reasons for disqualification of an attorney**

A lawyer may be rejected by the court, if, for example, he is suspected of having participated in the offense being tried.

### **A Defense Attorney is Required in the Following Cases:**

#### **StPO § 140 A criminal defense attorney is mandatory in the following cases**

- (1) 1. If the initial trial will be held at the *Landgericht* (Regional Court) or *Oberlandesgericht* (Higher Regional Court);
2. if the accused is charged with a felony (*Verbrechen*),
3. if the proceedings may result in withdrawal of a professional license;
4. if pre-trial detention is being enforced;<sup>(\*)</sup>
6. if an expert opinion must be prepared regarding the mental condition of the accused, which might lead to the accused's admission to a mental institution;
7. if the court orders the prisoner's admission to a mental or medical treatment facility; or
8. if a previously appointed defense attorney is dismissed from the proceedings by a decision of the court.

(2) In other cases not specified above, at the request of the accused or automatically, the court will appoint a defense attorney if the severity of the offense or the legal complexities involved make it appear warranted that legal assistance to the accused is required [in a legal sense], or if it is otherwise obvious that the accused is not capable of handling his own defense.

### **Court-appointed Attorney (*Pflichtverteidiger*)**

<sup>(\*)</sup>A prisoner in pre-trial detention can either hire a private attorney or receive a court appointed attorney. A German court-appointed attorney is not quite comparable to the American 'public defender'. Any private attorney can be appointed as a public defender. Therefore you may choose an attorney and, if the attorney agrees to defend you on a court appointment basis, you should give his name to the judge. If you do not choose an attorney, the court may appoint an attorney of its choice.

If you need an interpreter to communicate with your attorney, the attorney should apply for one. The costs will be borne by the German government.

In case you are convicted and sentenced, the *Justizkasse* will, at the end of the entire proceeding, send a notice to you to pay for all costs incurred, e.g., court costs, costs for the interpreter, the witnesses, translations, and also for the court-appointed attorney.

**StPO § 145 a Service of Documents to the Attorney**

The selected defense attorney must be supplied by his client with a power of attorney. This power of attorney is to be filed with the court. Private defense attorneys and court-appointed attorneys are authorized to receive all documents relating to the case.

**StPO § 146 Joint Representation of Defendants**

A defense attorney is not permitted to represent more than one accused in the same trial.

**StPO § 147 The Attorney's Access to Records**

(1) The defense attorney is authorized to examine the court's records used for completing the indictment and to inspect and examine exhibits and all other evidence.

(2) If the investigations have not been completed, the defense attorney may be denied access to the dossier of the client and exhibits, if such access may jeopardize the investigation.

(3) Recorded statements made by the client as well as expert opinions must be accessible to the attorney at every phase of the proceedings.

☞ **Comment: The attorney has the right to have access to all information/material upon which the arrest warrant is based.**

**StPO § 148 Communication with the Accused**

The accused has the right to communicate orally and in writing with his defense attorney, whether or not the accused is under detention.

☞ **Comment: Exchange of correspondence and oral consultations between the arrestee and his defense attorney are not subject to censorship by the court or supervision by prison guards. Correspondence with your lawyer should be clearly marked "Verteidigerpost" on the outside of the envelope.**

**Correspondence between the American Consulate and the prisoner is not privileged. It is like all other correspondence routed through the investigative judge and, after the trial, through the prison authorities.**

## FIRST HEARING

### StPO § 136 **First Hearing (*Erste Vernehmung*)**

(1) The first hearing serves several purposes: At the opening of the first hearing before the judge the person charged is told the offense with which he is charged and which paragraphs of the penal code might be applicable. He is informed that the law permits him to remain silent, make statements, or consult a lawyer before answering any questions. He is also informed of his right to request investigations on his behalf to bring to light any exonerating evidence.

(2) The hearing before the judge is intended to give the person charged an opportunity to refute the suspicion of guilt and to produce facts which would be in his favor.

(3) During the initial hearing the personal, social and educational background of the arrestee is determined.

### **Prohibited Methods of Questioning**

StPO § 136 a The freedom of the person charged to make voluntary decisions may not be restricted or influenced by mistreatment, exhaustion, physical interference, drugs, torture, deception or hypnosis. Compulsion may be applied only as allowed by the law of criminal procedure. Any threat to apply measures contrary to that law, or promises of advantage not provided by this law, are prohibited.

### **Review of Basis for Continued Detention (*Haftprüfung*)**

StPO § 117 (1) As long as the accused is in pre-trial detention, he can, at any time, request a judicial examination to determine whether the arrest warrant could be set aside or whether its execution could be suspended in accordance with § 116 StPO (*Haftprüfung*).

Alternatively, but not simultaneously, a person may file a *Haftbeschwerde* (appeal against the arrest warrant). Discuss with your attorney which is the best avenue in your particular case.

### StPO § 118 **Oral Hearing (*Mündliche Verhandlung*)**

(1) The examination of the validity of continued detention is generally conducted orally at the request of the person charged with an offense, or at the discretion of the court.

(2) The same oral proceedings may be used for the examination of a complaint (*Beschwerde*) against detention.

(3) If, as a result of the oral proceedings, it has been decided that investigative detention is to be continued, the detainee can file another request for hearing only if he has been in pre-trial detention for at least three months and at least two months have elapsed since his last hearing.

StPO § 118 a **Conduction the Oral Hearing**

1. The office of the public prosecutor, as well as the person charged with an offense and his defense attorney, have to be advised by the court of the date and place of the hearing.
2. The person charged is to be personally present at the hearing, unless he expressly waives his right to be present, or illness, distance from the court, or other reasons make his presence impossible. If the detainee cannot be present at the hearing, he must be represented by a defense attorney. The court must assign an attorney for this purpose, unless the person has retained a private lawyer.
3. At the oral hearing all parties in the case must be heard. The taking of evidence (*Beweisaufnahme*) is adjudicated by the court. A written record must be made of the hearing and the record must be signed by the presiding judge and the official in charge of the records (§ 271 to 273).
4. The decision reached has to be pronounced at the end the hearing. If this is not possible, the decision must be reached within one week.

**☞ Comment: The detainee or his legal representative can file an appeal against the court's decision. For details on how to file an appeal, consult your lawyer.**

### SECTION III: COMPLETION OF PRE-TRIAL INVESTIGATION

During the period of custody described above the Public Prosecutor's Office (Staatsanwaltschaft) has the duty to conduct investigations into the charges contained in the arrest warrant. They include examination of the witnesses, including the accused, opinions from various experts, police investigative summaries, laboratory reports, and so on. Once the Public Prosecutor's Office is satisfied that it has sufficient evidence to prosecute, the investigatory stage is formally closed. The accused will be served with the bill of indictment (Aklageschrift) and the case will be brought for trial before the appropriate court. (See chart on next page.)

#### StPO § 200     **The bill of indictment [Contents of the Bill of Indictment]**

(1) The bill of indictment shall indicate the accused, the criminal offence with which he is charged, the time and place of its commission, its statutory elements and the penal provisions which are to be applied (the charges). In addition, the evidence, the court before which the main hearing is to be held, and defense counsel shall be indicated. In the cases referred to in § 68 subsection (1), second sentence, and subsection (2), first sentence, it shall be sufficient as regards the designation of witnesses, to indicate an address at which documents can be served. Where a witness is mentioned whose identity is not to be revealed either wholly or in part, this fact shall be indicated; the same shall apply mutatis mutandis to the confidentiality of the witness's place of residence or whereabouts.

#### **German courts and their jurisdiction:**

The **Amtsgericht AG** (Local Court) is a court of first instance; cases are presided over by one professional judge (*Einzelrichter*). The expected sentence usually does not exceed two years.

At the AG Schöffengericht (full bench) - cases are presided over by one professional judge and two lay judges. The expected sentence is usually between two and four years.

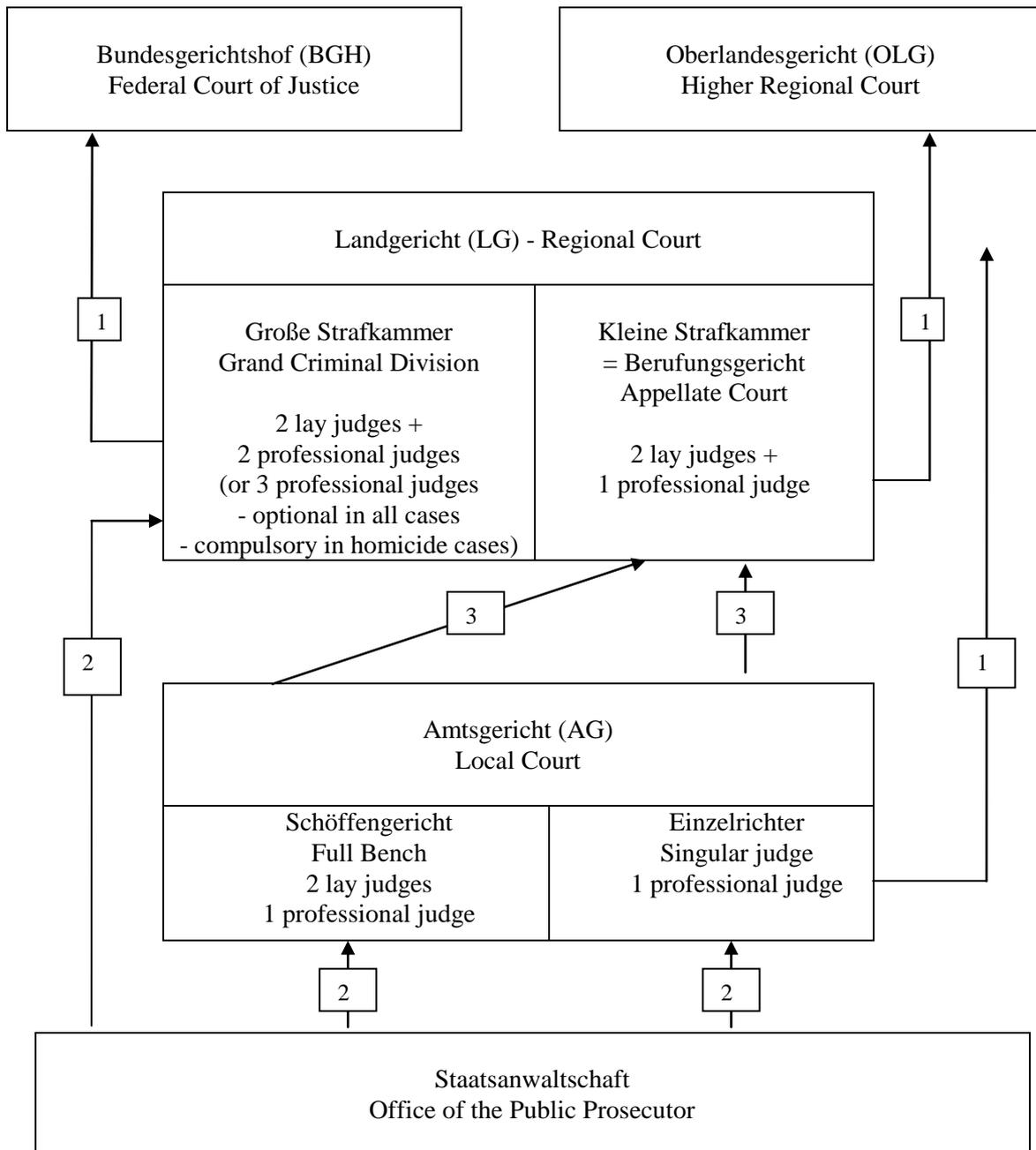
The **Landgericht LG** (Regional Court) handles serious cases.

It is divided into the:

**Grosse Strafkammer** (Grand Criminal Division); presided over by two professional and two lay judges or 3 professional and two lay judges (Schwurgericht) in particularly serious cases, it is compulsory in homicide cases.

**Kleine Strafkammer** (Small Criminal Division) handles appeals against decisions rendered by the Amtsgericht.

The **Oberlandesgericht OLG** (Higher Regional Court) handles exceptional cases, including crimes against the state. It is also the appellate court for decisions rendered by the Kleine Strafkammer.



- 1 = Revision (appeal on questions of law only)
- 2 = Anklage (indictment)
- 3 = Berufung (appeal on questions of fact and law)

## SECTION IV: THE MAIN TRIAL

### General information concerning the trial

#### Plea Bargaining

Formal pleas of "guilty" or "not guilty" do not exist in German trials. The German legal system does not provide for an opening statement by the defendant or his lawyer. However, in recent years, more and more plea bargains are made between the prosecutor's office, the defense attorney and the court. The outcome might be that the court guarantees that the sentence will be a certain minimum and not exceed a certain maximum if the defendant pleads guilty. This deal has to be made public during the trial and recorded in the court records.

#### The German Judge's Role

In the U.S., the judge will have little or no knowledge of a case until evidence has been introduced in the courtroom. In Germany, however, a judge will have read the case file in advance of the trial. This file will contain copies of all pre-trial investigations, actions, statements, and records. In a German trial it is the primary responsibility of the judge, not the defense counsel or prosecutor, to elicit the testimony of the witnesses.

StPO § 238 It is the responsibility of the presiding judge to conduct the trial, to question the accused, and to take evidence.

StPO § 213 The presiding judge of the court before which the trial is to take place sets the main trial date.

StPO § 214 (1) The presiding judge also initiates the notification of the accused, the defense attorney(s), expert(s) and witness(es).

(2) If the main trial is expected to last several days, witnesses and experts may be requested to appear on any day during the course of the trial, whenever their questioning is likely to occur.

(3) The public prosecutor has the right to issue a personal summons for the appearance of witnesses not called for by the court.

#### Evidence and Exhibits Introduced at the Request of the Accused

*(Beweisanträge des Angeklagten)*

StPO § 219 (1) The accused has the right to request the appearance of witnesses and experts on his behalf and to request the introduction of exhibits in his favor. This request must be submitted to the presiding judge for approval. The request has to specify the facts which the accused intends to prove through the selected witnesses or exhibits. The accused must be informed whether or not the court will accept or reject his request.

StPO § 220 (1) Should a request by the accused for the appearance of a witness be denied, he may ask his witness directly to appear at the trial without the court's prior approval.

(2) The private witness, however, is not obligated to appear at the trial, unless he has been offered adequate compensation for his travel expenses and losses in salary and time.

(3) If in the course of the trial it becomes apparent that the witness invited privately by the accused has, by his testimony, helped clarify the case, the court, upon request, must authorize the payment of the witness' fee from public funds.

StPO § 222 (1) The accused has to be notified in advance of the names and addresses of the witnesses and experts summoned by the judge and the public prosecutor.

(2) The accused, in turn, must duly inform the court and the public prosecutor in advance of the names and addresses of the witnesses and experts privately invited without the court's prior approval.

### **Taking of Depositions from Witnesses Unable to Appear at the Trial**

*(Kommissarische Zeugenvernehmung)*

StPO § 223 (1) If a witness or expert is prevented from appearing at the trial for reasons beyond his control (illness, for example), the court may order that such witness be interrogated by a judge nearest the witness' domicile.

(2) The same method can be used if the witness or expert resides at a great distance from the place of trial and his physical appearance is not possible.

### **Service of the Order Opening the Main Proceedings**

*(Zustellung des Eröffnungsbeschlusses)*

StPO § 207 Before the opening of the trial, the accused is to be served two different documents:

1. *Eröffnungsbeschluss* (a committal for trial)
2. *Ladung* (a summons for the accused to appear for trial)

StPO § 216 (2) At the time the accused is served the summons, he must be asked if he wishes to file any special requests in support of his defense.

StPO § 217 (1) The legal period of summoning to appear for trial is a minimum of one week.

(3) The accused can waive this requirement.

StPO § 218 The defense attorney, if appointed by the court, must by law be informed of the trial date. A private attorney must likewise be informed if his power of attorney is on record with the court.

### **Suspension and Postponement/Interruption**

*(Aussetzung und Unterbrechung)*

StPO § 228 (1) If suspension or postponement of a trial appears warranted, the court has to give its approval. The presiding judge can grant short intermissions.

(2) Non-appearance of the defense attorney does **not** entitle the accused to request the postponement of the trial, §145 notwithstanding.

☞ **Comment: However, § 145 obliges the court, where defense is mandatory, to appoint a new defense attorney immediately or postpone the trial.**

### **Obligatory Presence of the Accused**

- StPO § 230 (1) The main trial cannot take place without the appearance of the accused.
- (2) If the accused does not offer satisfactory excuse for his failure to appear, he will be compelled to appear or a warrant of arrest will be issued against him.

- StPO § 231 (1) The accused is not permitted to absent himself from the courtroom during trial. The presiding judge can take suitable measures to prevent his departure. He can be placed in detention during the intermissions of the court session.

### **Absence of the Accused because of Misconduct**

- StPO § 231 b (1) If the accused causes his removal from the courtroom by misconduct, the trial can be continued in his absence if his presence is not considered essential to the finding of the truth, and if it is feared that his misconduct will cause grave disturbance of the court session. The accused must, however, be given opportunity to answer the allegations contained in his indictment.

### **Direct Examination of the Witness**

- StPO § 239 (1) Upon request, the judge will permit the public prosecutor and the defense attorney to question the witnesses and experts directly. Defense witnesses will be questioned by the defense attorney first and the public prosecutor second, and vice versa.
- (2) The presiding judge may, subsequently, question all witnesses and experts to elicit information he deems necessary for further clarification of the case.

### **The Victim as Private Prosecutor (*Nebenkläger*)**

☞ **Comment:** Contrary to U.S. law, the German Code of Criminal Procedure provides that the victim of the offense or his survivors be permitted to participate in the trial as intervener, or private prosecutor. The intervener is usually represented by counsel, and may bring out aspects relevant to the case and may question witnesses.

### **The Right to Ask Questions**

- StPO § 240 (1) The presiding judge must allow the judges and lay assessors assisting in the trial, at their request, to direct questions to the accused, the witnesses and the experts.
- (2) The presiding judge must also permit the public prosecutor, the accused and his defense attorney, and the lay assessors to direct questions to the witnesses and the experts. Direct cross-examination of the accused by a co-accused is not permissible.
- StPO § 242 If admissibility of a question is disputed, the decision rests with the court.

## **COURSE OF THE MAIN TRIAL (Gang der Hauptverhandlung)**

- STPO § 243 (1) The main trial opens with a statement of the offense with which the person is accused. The presiding judge determines whether the accused and defense attorneys are present, whether the exhibits have been brought to the courtroom, and whether the witnesses and experts have appeared.
- (2) After the opening formalities, the witnesses have to leave the courtroom. The presiding judge then asks the accused about his personal background and his general situation.
- (3) The public prosecutor then reads the final version of the Bill of Indictment (*Anklageschrift*).
- (4) The accused is then advised of his right to make statements regarding the allegations contained in the bill of indictment, or to remain silent. If the accused is willing to make statements, he must be given opportunity to refute the stated reasons for suspicion and to present facts favorable to his case. The judge may cite previous convictions at this point, if the court considers them relevant.

## **Taking of Evidence (Beweisaufnahme)**

- StPO § 244 (1) The hearing of the accused is followed by the taking of evidence.
- (2) The court is bound by law to do all in its power to find the truth by examining all possible evidence and exhibits connected with and essential to the evaluation of the case.
- (3) A request for admittance of evidence must be denied if the evidence is inadmissible in nature. Evidence may also be denied admittance by the court if, for example, the request is obviously superfluous, if the fact to be proven by the request is immaterial to the case or has already been proven, or if the admittance of the evidence would be irrelevant or merely designed to prolong the trial.
- (4) The request for the interrogation of an expert can be denied by the court if the court itself has expert knowledge of the matter in question. The obtaining of additional expert opinion can also be denied if the contrary of the allegation(s) to be proven by the requested expertise has already been established. If, however, the professional competency of an expert is debatable or if the expertise contains contradictory statements, another expert may be admitted, if he has superior means for evaluating the evidence in question.
- (5) A request to view the scene of the crime may be denied if the court feels that it is immaterial to the finding of the truth.
- (6) The denial of a request for admittance of evidence requires a court order.

☞ **Comment: "Hearsay evidence," for example statements made by other persons against you, can be entered into evidence in a German court. In other words, you do not have to actually be caught in the act of committing a crime to be convicted.**

## **Extent of Taking Evidence**

StPO § 245 The taking of evidence must include all witnesses summoned and present and all exhibits introduced, unless their introduction is intended to prolong the course of the trial. This also applies to the hearing of witnesses or the evaluation of exhibits introduced during the trial in process. The hearing of certain witnesses or the evaluation of exhibits may be waived if the public prosecutor and the accused agree to it.

## **Belated Requests for Introducing Evidence**

StPO § 246 (1) A request for introduction of evidence cannot be denied on the grounds that it was made too late.

(2) If the witness or expert testifying on the petitioner's behalf is not made known to the opponent in a timely manner allowing for adequate investigation, a request can be made to interrupt the trial.

(4) The approval or rejection of the request specified above rests within the free discretion of the court.

## **Medical Expert**

StPO § 246 If it is probable that the accused will be confined to a mental institution or to a facility for treatment of addiction, a medical expert must testify regarding the condition of the accused at the main trial. The expert must be able to examine the accused before the main trial, unless he has already done so.

StPO § 247 The court may order the accused removed from the courtroom during the hearing of witnesses, if it is feared that the presence of the accused might prevent the witness from telling the truth.

## **Statement of the Accused, the Public Prosecutor and the Defense Attorney**

StPO § 257 (1) After the hearing of each witness, expert, and co-accused, and after the reading of each document, the accused is asked for his comment.

(2) After the interrogation of the accused, the taking of evidence, and the hearing of individual witnesses, the public prosecutor and the defense attorney must be permitted, upon request, to make their comments.

## **Closing Statements**

StPO § 258 (1) After the taking of evidence is completed, the public prosecutor and then the accused are given the opportunity to elaborate on their statements and to make motions.

(2) The public prosecutor has the right to retort. The accused has the right to make the final statement.

(3) The accused, even if his defense attorney has made a closing statement, must be asked if he has anything further to add to his defense.

## Interpreter

StPO § 259 (1) If the accused is not proficient in the language of the court (German), an interpreter must translate orally to him at least the final and closing motions and statements made by the public prosecutor and the defense attorney.

## SENTENCE / VERDICT (*Urteil*)

StPO § 260 (1) The main trial closes with the announcement of the sentence.

(4) The text of the verdict has to specify the offense or offenses of which the accused is being convicted. If a criminal or illegal act has a special designation (as appearing in the German Criminal Code), such designation(s) must be used.

(5) The closing statement of the verdict has to cite the paragraphs, sections and subsections, numbers and symbols which were used in the determination of the sentence.

☞ **Comment: If a fine is imposed, the verdict must state the number of days the convicted person would have to serve in lieu of payment and at which rate per day of detention the fine would be paid. For example: a fine of € 600 would require 40 days of detention defrayed at € 15/day. If you default on your payments, you will have to serve the number of days passed in the judgment.**

## Free Evaluation of Evidence

StPO § 261 The court may weigh the evidence according to its own discretion.

## Decision (*Abstimmung*)

StPO § 263 A guilty verdict requires the agreement of two thirds of the court.

StPO § 265 The accused cannot be convicted for crimes other than those specified in the indictment accepted and approved for that particular trial. If additional violations of law come to light during the course of trial, the accused must be advised of this fact and must be allowed adequate time to prepare a new defense.

## Prison Term (*Strafhaft*)

The court will generally credit the entire period of pre-trial detention toward the amount of time to be served in post-trial confinement.

Post-trial confinement commences as soon as the court's judgment is announced at trial, unless there is an appeal, in which case the judgment becomes legally effective only if the appeal is wholly or partially denied or if the appeal is withdrawn. A prisoner is still considered to be in pre-trial detention until the court reaches a decision on his appeal/revision.

In addition to being sentenced to a prison term, other measures can be imposed in order to reform the offender, for example committal to a psychiatric hospital or placement in a rehabilitation clinic.

## StGB § 63 Placement in a Psychiatric Hospital

If a person committed an unlawful act in the absence of criminal responsibility (Section 20) or was in a state of diminished criminal responsibility (Section 21), the court shall order placement in a psychiatric

hospital if a comprehensive evaluation of the offender and his act reveals that, as a result of his condition serious unlawful acts can be expected of him and he therefore presents a danger to the general public.

### StGB § 64 Placement in a Rehabilitation Clinic

(1) If a person has an addiction to consumption of alcoholic beverages or other intoxicating substances and is convicted of an unlawful act which he committed while intoxicated or as a result of his addiction, then the court shall order placement in a rehabilitation clinic if there is a danger that he will commit serious unlawful acts as a consequence of his addiction.

### Suspension of Sentence on Probation

StGB § 56 (1) If the sentence to be imposed is less than one year imprisonment, the court may suspend the sentence on probation if it is expected that the convicted person will not commit a criminal act in the future. The personality of the convicted person, his former life style, the circumstances of the act and his expected behavior after release are taken into account.

(2) The court may also suspend sentences which do not exceed two years, if warranted by special circumstances.

### Probation Period

StGB § 56 a (1) The court determines the period of probation, which may not exceed five years and may not be less than two years.

**☞ Comment: If a person commits another offense during the probationary period, or fails to meet the conditions of probation, the suspension of the sentence can be revoked and the person has to serve the prison term.**

## APPELLATE PROCEEDINGS

The public prosecutor, the accused, or the defense counsel must submit the appropriate petition for appeal or revision to the trial court within one month of the oral announcement of the court's judgment. If the accused was not present when the judgment was orally announced, the one-month period starts when the written judgment is served to him. The accused or his defense counsel must submit the brief supporting the appeal no later than 30 days following the service of the written judgment to the accused. Either the convicted individual or the public prosecutor may appeal the judgment from a court other than the Higher Regional Court (*Oberlandesgericht*) or Federal Court of Justice (*Bundesgerichtshof*). If the public prosecutor appeals the time imposed, the higher court may uphold or even increase the punishment adjudged by the lower court. Appeals from the criminal division of the Local Court (*Amtsgericht*) may result in a complete new trial (*Berufung*), or only an examination of the sentence, depending on the extent of the appeal requested.

Appeals from a penal chamber (*Strafkammer*) of the Regional Court (*Landgericht*) involve only rehearings on questions of law (*Revision*). In case of a new trial, the court may omit the testimony of witnesses and expert witnesses heard during the lower court trial if it believes that testimony would be merely repetitious.

German law protects you, as an accused, from being repeatedly prosecuted or subjected to double jeopardy. An appeal by the prosecution is not, however, considered double jeopardy.

## SECTION V: PRACTICAL FACTS YOU SHOULD KNOW ABOUT DETENTION

Pre-Trial detention is governed by the *Untersuchungshaftvollzugsgesetz* (UVollzG) (code of pre-trial procedure).

The investigative judge (*Ermittlungsrichter*) determines whether the arrested person is to be released, fined or detained. During pre-trial detention the public prosecutor generally is responsible for all matters concerning the prisoner's welfare such as accommodation and outside contacts.

Penal detention is governed by the *Strafvollzugsgesetze* (StVollzG).

☞ **Based on the *Föderalismusreform* (federalism reform) the rules and regulations governing pre – trial and penal detention are regulated by the individual states. Therefore practices and interpretations of regulations vary among different Länder (states) of the Federal Republic of Germany.**

Upon admission to prison, the prisoner is usually given a whole package of information which includes the house rules and regulations and a general information brochure in English.

☞ **The information below is intended to give you some general guidance. If you have any specific questions or concerns, you should always bring them up with your floor warden (*Abteilungsbediensteter*). He is your best source of information.**

- **Admission to prison**

1. The prisoner is asked to state personal data such as nationality, religion, marital status, profession, place of legal residence, name and address of next-of-kin. Your next-of-kin will not be informed of your situation without your express permission.
2. The prisoner must be given a medical examination as soon as possible after admission.
3. The prisoner must be advised of his rights and duties as a prison inmate. This is generally done by providing him with information sheets. A prison social worker can be seen by filing a request for an appointment called "*Antrag*".

- **Accommodation**

As a general rule, pre-trial detention is spent in a single cell. A prisoner may, however, be asked whether he prefers to stay in a *Gemeinschaftszelle* (sharing a cell with others). A prisoner will be assigned to a group if his physical or mental condition so requires.

Every cell is equipped with running water and a toilet. Each prisoner must be allowed to have a shower twice a week. Should the prisoner be assigned to work which makes him dirty, he may be allowed to shower daily. The size and furnishings of the cells differ, but they all have to meet a certain standard of dimensions and window size. By means of an alarm system, the prisoner can call an official, but only in case of emergency.

- **Clothing**

In pre-trial detention: After completion of the entrance formalities, the arrestee is taken to the locker/shower room. There he takes a shower, after which his belongings are searched. This takes place in privacy and no other prisoner is permitted to be present. A prisoner in pre-trial detention is authorized to wear his own clothes and underwear. Additional clothing can be brought to the prison and his laundry can be picked up for cleaning by his relatives or friends. In practical terms this means that prisoners without their own regular change of clothing will be obliged to wear prison clothes as a hygienic measure.

**Exceptions:** As a special security measure, the judge or public prosecutor may deny the prisoner the privilege of wearing his own clothes. For example in Bavaria, this precaution is mandatory for prisoners who are incarcerated for a drug offense.

The prisoner in pre-trial detention who has been issued prison clothes can wear his personal clothes when appearing before a court official.

Prisoners serving sentence are obliged to wear clothes provided by the prison, in contrast to pre-trial detention.

- **Funds**

Each prisoner is assigned an account in prison.

Prisoners in pre-trial detention have only *Eigengeld* (private funds).

Prisoners in penal detention have various accounts, i.e.:

1. Taschengeld (personal pocket money)

is allocated from public funds only in those cases where the prisoner has no private resources and is physically unable to work or cannot be assigned work for reasons beyond his control. This must be applied for.

2. Hausgeld (earned money)

is money derived from work performed while in detention and with which a prisoner can pay for his shopping. A prisoner in investigative detention is not obligated to work, but may do so voluntarily. A prisoner in penal detention must work if he can be assigned a job which he is physically and mentally capable of performing.

*Hausgeld* earned in penal detention is deposited to the *Hausgeld* account on a three-seventh proportional basis. Four seventh of the earnings are deposited with the *Überbrückungsgeld* (see below) account until the required *Überbrückungsgeld* amount has been reached. Neither the *Hausgeld* account nor the *Überbrückungsgeld* account can be confiscated to defray debts.

3. Überbrückungsgeld (money held for your release)

must be accumulated by every prisoner serving sentence. It is intended to better enable you to resettle in society. German law sets the amount. By law this money cannot be confiscated for any reason. *Überbrückungsgeld* is released to the prisoner on the day he leaves the prison.

4. Eigengeld (private funds)

consists of private funds which the prisoner had at the time of his arrest or additional funds deposited for him by an outside source. *Hausgeld* not used for purchases or any excess of *Hausgeld* may also be transferred to the *Eigengeld* account, provided that the *Überbrückungsgeld* has been fully accumulated. *Eigengeld* is subject to confiscation.

## Allowances

Shopping, stamp and prison account allowances are determined by German law. Because they vary yearly, the prisoner should inquire personally about the current amount allowed by law.

☞ Comment: Money deposited in a prisoner's account by an outside party such as family or friends should state clearly on the money order the purpose for which the funds are intended (*zweckgebunden*), for example, for stamps only. As an alternative, money can be sent directly to your lawyer, who may deposit it in your account as necessary.

- **Leave (*Vollzugslockerungen/Ausgang/Urlaub*)**

Prisoners in pre-trial detention are not entitled to take leave, but prisoners serving sentence are allowed up to 21 days leave per year. Leave, if granted, cannot be outside Germany. To receive this privilege it must be clear that there is no danger that it will be abused. Leave may be requested by submitting an application to the prison authorities, usually at least one month prior to the date leave is desired.

Usually the prison authorities start out by granting a one day leave (*Ausgang*). The prisoner needs to file an application (*Antrag*) and must usually have served at least three months in post-trial confinement prior to the application.

The same rules applies to *Urlaub* (vacation).

☞ Prisoners who are likely to flee (*fluchtgefährdet*), a category, which includes most non-Germans, are not suitable for release on leave. Also excluded from this privilege are prisoners against whom deportation, extradition, investigative proceedings, or additional penal proceedings are known to be pending. Foreigners can be released on leave only if it is certain that a formal request for deportation or expulsion is not pending or is not in preparation against them.

Prisoners who do not qualify for *Urlaub*, may apply for "leave within the prison" (*Freistellung von der Arbeitspflicht*). They are not required to go to work during that period of time.

- **Mail/Stamps**

As a general rule, prisoners may write letters and receive them. The monitoring of in and outgoing mail is the responsibility of the public prosecutor/judge in the case of pre-trial prisoners. In the course of pre-trial detention, the judge has the right to restrict a prisoner's correspondence and even stop the forwarding of letters, should they jeopardize the legal proceedings. Whenever the court confiscates mail, the prisoner will be informed in writing.

Postal charges have to be borne by the prisoner. If unable to pay for his postage, he can be assisted by the prison to a limited and reasonable extent. Stamps may be purchased from private funds each month. Funds with which to buy stamps can also be deposited into the prisoner's account. A prisoner is allowed to have a certain amount of stamps in his possession at any given time. Prisoners may also receive return postage with incoming letters.

Prisoners in penal detention have the right to send and receive letters without any restrictions. The correspondence is monitored by the prison authorities. If a prisoner speaks fluent German, the prison authorities expect that person to correspond in German.

- **Medical Care**

The prison doctor is responsible for the prisoner's health. As soon as possible after the prisoner's admittance, he is given a medical examination. In many institutions, this examination includes X-ray and blood tests. The prison doctor determines, among other precautions, the possible need for dietetic meals, the advisability of a group cell in cases in which the physical or mental condition of the detainee so warrants, and, finally, the possible need for admission to the prison hospital or infirmary.

If the needs of the prisoner so require, the prison doctor may call for the services of a specialist or the advisory opinion of another physician, or may order an outpatient examination at a special clinic. If the prisoner cannot receive adequate medical care at the institution of his confinement, he will be transferred to another institution or public hospital having appropriate medical facilities.

- **Nourishment - Meals from Outside Sources**

Prison food is regulated by a uniform meal plan. You can, however, apply for a special diet for medical or religious reasons. In pre-trial detention the meals (breakfast, lunch and dinner) are usually served in the cells.

Prisoners in pre-trial detention may, if they wish, obtain meals at their own expense from an outside source. The prison selects the restaurant. The expenses for meals over a certain period of time have to be deposited in advance. Since all meals from the outside have to go through the security check, the meals will however most probably be cold by the time they reach the cell.

- **Outdoor Exercise**

If a prisoner is not assigned to outdoor work, he is allowed at least one hour per day outdoors. Walking in groups and conversation with other prisoners in the exercise group is allowed.

- **Packages**

Receipt of packages requires the prior permission from the prison. Packages containing foodstuffs and luxury goods are not permitted in most prison facilities. This regulation varies from Bundesland to Bundesland and we therefore recommend that you check with the prison authorities at the prison facility you are in to see whether packages are allowed at your facility. If they are, you should check what rules and regulations apply and how you can apply for the *Paketmarke* (packet label).

- **Personal Property**

The personal belongings of a prisoner are placed in the storeroom (*Kammer*), and valuables and money are deposited with the cashier.

Items which are suitable for personal use and decoration of the cell may be retained by the prisoner, including toilet articles, writing material, pictures of relatives, watches and marriage or engagement rings.

- **Psychological Care**

At the beginning of any extended penal detention, prisoners will have a meeting with the prison officials to discuss their situation (*Zugangsgespräch*). If you have any problems, or if you are depressed, you should explain this at this time. It is in your interest to be frank in your discussions with the officials, since they will make recommendations concerning the type of future treatment you will receive. If you feel you need psychological help, you should ask to speak with the psychologist.

- **Radio/Television**

Most cells have an integrated radio. Prisoners wishing to have individual cell radios must have the permission of the prison authorities, they must purchase them with their own funds and through the prison. A German radio listeners' tax will be imposed.

Television sets can be rented from the prison directly.

- **Reading Material**

All prisoners are supplied with reading material from the prison library and books are distributed to the cells regularly. Newspapers and magazines may be ordered directly from the publisher. In most prison libraries books in English are available. Prisoners may order books directly from a publisher or bookstore at their own expense. If you choose to do so, please advise prison officials in advance of your order, giving the name of the bookstore.

- **Religious Attendance**

All prisoners are entitled to take part in religious services of their denomination. They also have the right to receive visits from a priest, rabbi or minister of their faith. Each detention facility is staffed by prison chaplains (*Geistlicher*). In pre-trial cases the judge can allow visiting privileges to other clergymen not officially assigned to the prison.

- **Shopping (*Einkauf*)**

Prisoners in pre-trial detention are given the opportunity to purchase food and toilet articles from the prison shop from their private funds (*Eigengeld*). Most institutions have their own store, where you can go shopping once or twice a month. If a prison does not have a store, a shopping list will be made available where you can mark the items you wish to purchase. The list will be collected and the items purchased for you.

Prisoners in penal detention may use either their income from services rendered at the prison (*Hausgeld*) or their pocket money (*Taschengeld*) supplied by the prison or, if the above is not available, their own personal money (*Eigengeld*) to an appropriate extent.

- **Social Worker (*Sozialarbeiter*)**

Every prison is staffed with specially trained social workers. The prisoner is entitled to seek the assistance of his social worker in solving personal difficulties. They often speak English and can be especially useful if communication problems exist, or as a liaison with the Consulate.

- **Toilet Articles**

Prisoners usually receive certain toilet articles (comb, toothpaste, and toothbrush) at the time of their arrest.

- **Trips Outside the Prison (*Ausführung*)**

Certain judicial, business or personal matters may be of such extreme importance that they cannot be postponed. If an urgent situation arises which requires your presence outside the prison (for example, funerals, critical illness of your next-of-kin) you may make an application for an outside trip at your own expense accompanied by guards, if approved by the court.

- **Visitation**

Prisoners in pre-trial detention are generally allowed one 30-minute visit every other week. In emergencies, exceptions can be made regarding the frequency and length of visitation. A visiting permit must first be acquired from the public prosecutor in charge of the case. The permit can be obtained at the responsible court or by writing to the public prosecutor directly. When picking up the visiting permit and entering the prison, the visitor has to identify himself by presenting an identification document with a photograph. A prison official supervises the prison visits. If the conversation is to be in a language other than German and the judge has not specifically waived the need for an officially certified interpreter, one must be supplied at the visitor's expense.

Prisoners in penal detention also have a minimum time of one hour per month, which usually consists of two visits of 30 minutes each. For longer visits, or in unusual cases, exceptions can be granted. Several persons may visit with the prisoner at the same time (normally not more than three). Some prisons now have additional facilities for married prisoners to have family visits only by the spouse. See your social worker regarding this matter.

- **Work**

Prisoners in pre-trial detention are not obligated to work. At their own request, they may, however, be assigned some kind of work. If the nature of the work is such that it results in contact with other prisoners (to which the prisoner must consent), participation requires the approval of the respective judge. Pre-trial prisoners are not allowed to work outside the prison.

Prisoners serving sentence are obliged to perform any type of work which he is physically capable of performing. The monetary compensation differs according to the type and quality of work performed.

## SECTION VI: RELEASE FROM PRISON

### Curtailment of sentence

It is common that part of one's sentence, particularly in cases involving first offenders, be curtailed by one-third. The prerequisite, however, is good conduct during the detention period. For calculating the end of two-thirds of the sentence, time spent in pre-trial detention is added to the period spent in penal detention.

The prison authorities will automatically check into the possibility of release after having served two-thirds of the sentence. The request for release at half time requires an application. Although it may be useful to employ the assistance of a lawyer in applying for curtailment, it is not absolutely necessary. The respective prison authorities will provide guidelines as to when and where the application for curtailment is to be filed.

☞ As a rule, the petition is to be addressed to the office of the public prosecutor at the court which issued the final verdict.

STPO § 454 The decision whether the rest of the sentence is to be served on probation is made by the court. The office of the public prosecutor, the convicted person, and the prison will each be consulted.

The Regional Court at the location of the prison (*Landgericht- Strafvollstreckungskammer*) will render the final decision.

STPO § 453 b If a prisoner has been released on probation by the curtailment of his sentence and is not deported, he will remain under the court's supervision during his probation period. The court will appoint a probation officer to monitor his conduct and ensure the fulfillment of specific instructions and requirements imposed upon the individual (e.g. reporting periodically to the police, abstinence from drugs or alcohol, etc). In the case of negligence or relapse, penal detention will be reinstated.

### Release at Half-Time

Release at half-time is granted only in very exceptional cases.

### EXPULSION (*Ausweisung*) / DEPORTATION (*Abschiebung*)

The authority to request and order expulsion or deportation rests with the *Ausländeramt*, the office which deals with matters involving foreigners. The regulations pertaining to expulsion and deportation are defined in the Alien Law (*Ausländerrecht- Aufenthaltsgesetz AufenthG*).

☞ Expulsion and deportation orders are both discretionary decisions that vary according to individual cases. Please consult with the *Ausländeramt* that is responsible in your case. Your last place of residence counts and it is that *Ausländeramt* that has jurisdiction in your case. If you were a tourist at the time of the arrest, the place of arrest counts.

The **termination of a stay** is regulated in the *Aufenthaltsgesetz*, chapter 5 (*Beendigung des Aufenthalts*)

§ 55 AufenthG  
(Alien law)

**Discretionary Expulsion** (*Ermessensausweisung*)

states that a foreigner may be expelled if his stay in Germany impairs the public safety, order or other considerable interests of the Federal Republic of Germany.

☞ Expulsion is often ordered for minor offenses such as residence in Germany for more than three months without a residence permit, working without a work permit, or for minor criminal offenses.

§ 54 AufenthG

**Customary Expulsion** (*Ausweisung im Regelfall*)

states that a foreigner will as a rule be expelled

1. If he has been sentenced for one or more intentional criminal offences to a minimum two year youth offender sentence or to a prison sentence that was not converted to probation.
3. Grows, produces, imports, exports, sells, passed on to another person, or distributes or deals in narcotic drugs or if he entices someone to such an action or is aiding and abetting in such an action.

§ 53 AufenthG

**Mandatory Expulsion** (*Zwingende Ausweisung*)

states that a foreigner will be expelled

1. If he has been sentenced for one or more intentional criminal offences to a prison sentence or youth offender sentence of three years or more, or if he was sentenced within the last five years to several prison sentences totaling three years or more or if preventive detention was ordered at the last conviction.
2. if he was sentenced to a minimum two-year youth offender sentence or to a prison term that was not converted to probation for a drug offence.

§ 56 AufenthG

**Protection against deportation** (*Besonderer Ausweisungsschutz*)

defines what reasons have to exist to protect a foreigner from expulsion.

☞ Marriage to a German national, while taken into consideration, does not preclude expulsion/deportation.

The expulsion order (*Ausweisungsbeschluss*) served upon the foreigner concerned will specify the date by which the foreigner has to leave Germany. If he ignores the order, he will be arrested. His name will remain on the computerized Look-Out-List (*Fahndungsliste*) until the period stated in the expulsion order has expired. Upon arrest, the foreigner is placed in penal detention because contempt of an expulsion order is considered a penal offense. While in detention, proceedings are initiated for his immediate deportation.

§ 58 AufenthG

**Deportation** (*Abschiebung*)

States that a foreigner is to be deported if the expulsion order has become legally binding, the voluntary departure is not guaranteed or it seems warranted that the departure is supervised for reasons of public safety and order.

☞ Deportation is almost always ordered in cases of persons convicted of major offenses.

## **Curtailment of Sentence in Connection with Deportation**

**StPO § 456 a The law enforcement authorities may curtail the unserved part of the sentence if the convicted person is deported from Germany.**

☞ Since deportation is the crucial condition by which reduction of sentence is granted under § 456a StPO, protective measures are exercised to ensure the actual departure of the offender.

### **Deportation Proceedings**

Deportation proceedings will be carried out by the police.

Once the police have been informed that a prisoner is to be deported and a legally binding deportation order exists, they will make the necessary flight arrangements. The police will either book an unaccompanied flight or an accompanied flight, i.e., with two escorts. The escorts can be either police officers or airline personnel, since some airlines provide escorts. The decision whether a person flies unaccompanied or accompanied rests entirely with the police. The prisoner, family or friends cannot make a flight reservation, since the airlines will accept bookings only from the police. The police will usually make a reservation to the nearest port of entry, i.e., New York.

☞ **Every deportee is allowed a maximum weight of 20 kilos for his luggage. In case you have more, we recommend that you make the necessary arrangements ahead of time.**

☞ If your family is willing/able to help you in your return, they should make an onward reservation from New York to your final destination in the U.S. If you do not have the funds, and if you do not have family/friends to help you, the Consulate can help you make the necessary arrangements.

### **Costs for Deportation**

Every prisoner in post-trial detention (*Strafhaft*) is allowed to keep his *Überbrückungsgeld* (money held for prisoner's release). This amount cannot be touched. Any money exceeding this amount will be used for the return ticket, the escorts, and the transportation costs from the prison to the airport. If the prisoner does not have enough money in his account to pay all costs, German government funds will be allocated.

- The prisoner's destination must be the country of his nationality.
- Passports of persons expelled or deported are stamped accordingly.

☞ **To avoid any delay in the deportation process, we recommend that every prisoner have his travel document ready. If you do not have a valid passport, please contact the Consulate and we will make sure that you have the correct document ready in time.**

Deportation orders also state the period during which the former prisoner is not allowed to return to the Federal Republic of Germany. Generally it is for an indefinite period. Should the deported person return to Germany without prior authorization, he will be re-arrested and made to serve the remainder of his penal sentence.

☞ **This applies to all Schengen countries.**

If the person wishes to return, he ***must under all circumstances*** formally request a waiver of the departure order by contacting the *Ausländeramt* in Germany or the nearest German Consulate or Embassy. Additionally he must obtain authorization from the office of the public prosecutor that was handling his case.

## **SECTION VII: INTERNATIONAL PRISONER TRANSFER PROGRAM**

The International Prisoner Transfer Program began in 1977 when our government negotiated the first in a series of treaties to permit the transfer of prisoners from countries in which they had been convicted of crimes to their home countries. The program is designed to relieve some of the special hardships that fall upon offenders incarcerated far from home, and to facilitate the rehabilitation of these offenders.

### **PRISONER TRANSFER TREATY**

On February 1, 1992, Germany put into force the Council of Europe's Convention on the Transfer of Sentenced Persons, of which the United States is also a party. This Convention sets up a method for participating states to transfer prisoners to their home country for the remainder of their sentence.

#### **Terms of Transfer**

The transfer treaty permits a U.S. citizen who has been convicted of a crime in the host country to return to the United States to serve the sentence under more familiar living and cultural conditions, thus enhancing the prospects for rehabilitation. The U.S. government, the host government, and the prisoner must all consent to the transfer.

**☞ A prisoner does not gain the right to appeal the conviction in U.S. courts by transferring under the treaty.**

U.S. law provides, however, that a prisoner will not suffer the loss of any civil rights because of incarceration in U.S. prisons as a result of transferring under the treaty.

#### **Eligibility for Transfer**

A U.S. citizen is eligible to transfer under the provisions of the treaty when final sentence has been received, that is, when no appeals are pending. Usually all fines and court costs must be paid. Prisoners who are convicted of certain types of crimes or who have less than six months of their sentence remaining to be served generally are not eligible.

#### **Preliminary Arrangement**

A prisoner who is interested in transferring should contact the Defender Services Division of the Administrative Office of the U.S. Courts to obtain advice as to whether a transfer would be an appropriate option for the prisoner. Some prisoners decide not to apply for transfer after consulting with the federal public defender (FPD) and learning that they will spend less time in custody if they remain in the foreign country than if they transfer to the United States and have their sentence administered according to United States sentencing provisions.

If you have questions concerning how your sentence will be administered in the United States, you should write to:

Chief, Defender Services Division  
Administrative Office of the United States Courts  
Washington, D.C. 20544  
Attn: Prisoner Transfer Treaty Matters

☞ In your letter, you should clearly state that you are seeking advice about an international prisoner transfer and should provide the following information to allow the Federal Public Defender to give the best advice possible:

1. Full name and any aliases;
2. Date and place of birth;
3. Date of the offense and date of arrest;
4. Precise offense of conviction, including any known statutory cites;
5. Sentence imposed, including any fines or restitution;
6. Any projected dates through parole or other form of early release;
7. Any labor credits or other prison credits that may be earned;
8. A detailed description of the offense that includes the foreign government's version of the offense. This description should include whether a weapon was used or present when the offense was committed. If a drug offense is involved, the offense description should include the type of drugs involved and the quantity;
9. A description of your role in the offense in relation to others who may have participated in the offense;
10. Whether you cooperated, provided any confession or took any other action showing that you accepted responsibility for your unlawful conduct;
11. An accurate description of any prior misdemeanor or felony record in the United States, including prior sentences, whether you were under criminal justice supervision (probation, parole or supervised) at the time of the offense and whether any outstanding warrants exist against you; and
12. An accurate mailing address where you can be reached.

Upon receiving this information, the Defender Service Division will assign the matter to a federal public defender for review and response. If the prisoner has provided all of the information listed above, the FDP should be able to give the prisoner a reasonably informed estimate of how the foreign sentence will be administered in the United States should the prisoner be transferred there. Once the case is assigned, it usually takes four to eight weeks for the FPD to respond to the prisoner with advice about the likely manner in which the sentence will be administered.

If, after receiving the information from the FPD, the prisoner still wishes to transfer, he should apply for a transfer to the foreign government. Thereafter, the foreign government will assemble the necessary documents for the application package. This package will include the foreign sentencing documents, a summary and translation of the offense behavior and prisoner information, a copy of the travel document (proof of citizenship) and information regarding the prisoner classification and conduct. Once these documents are assembled, they will be forwarded to the International Prisoner Transfer Unit (IPTU) of

the Criminal Division of the Department of Justice. The IPTU will review the application and decide whether to approve the request. If both the IPTU and the foreign government approve the request, the IPTU will make arrangement for a

### **Consent Verification Hearing**

At the consent verification hearing, which is presided over by a federal magistrate and where the prisoner is represented by an FPD, a determination is made whether the prisoner understands the outcome of the transfer and whether he consents to the transfer.

**☞ Neither an inquiry nor a request for transfer will bind a prisoner to give final consent. However, once final consent is given and verified at the verification proceedings, the consent becomes irrevocable.**

### **Return Procedures**

If the prisoner consents to the transfer, arrangements are made with the Federal Bureau of Prisons and the foreign government to transport him back to the United States where he will be incarcerated in a federal prison.

Once the prisoner is returned to the United States, the foreign sentencing documents will be copied and given to a United States probation officer. The probation officer will review these documents and then visit the prisoner to collect background information. After a brief investigation, the probation officer will prepare a post-sentence investigation report. This report, which takes about 30-60 days to prepare, will include a recommendation as to the length of sentence that should be imposed under the applicable United States Sentencing Guidelines. Thereafter the United States Parole Commission will review the case and decide the length of time the prisoner should remain in prison and the period of supervised release that will apply when the prisoner is released from prison.

For additional information or questions about the International Prisoner Transfer Program, contact the **International Prisoner Transfer Unit** at the Department of Justice.

Paula A. Wolff, Chief  
U.S. Department of Justice, Criminal Division  
OEO, International Prisoner Transfer Program  
JCK Building, 10th Floor  
Washington, DC 20530

Telephone: (202) 514-3173  
Fax: (202) 514-9003

## APPENDIX I

### GLOSSARY

Abschiebung	deportation
Abstimmung	decision
Abteilungsleiter	floor guard
Amtsgericht	local court
Angeklagter	accused
Anklage	indictment
Anklageschrift	bill of indictment
Arbeit	work
Arzt	doctor
Ausführung	urgent trip outside the prison
	accompanied by prison guards
Ausgang	one-day leave
Ausländeramt	Foreigners Office
Ausländerrecht	Law on the rights of foreigners
Aussageverweigerungsrecht	right to remain silent
Aussetzung	suspension
Ausweisung	expulsion
Ausweisungsbeschluss	expulsion order
<b>Berichterstatter</b>	court reporter
Berufung	appeal
Beschluss	decree
Betäubungsmittel/Gesetz (BTMG)	narcotics/law
Beschuldigte	person charged with an offense
Beschwerde	complaint
Besuch/Erlaubnis/Schein	visit/permission/permission slip
Bewährung	probation
Beweis/Beweise	proof/evidence and exhibits
Beweisaufnahme	hearing of the evidence
Brief	letter
Briefmarken	stamps
Bundesgerichtshof	Federal Court of Justice
<b>Dolmetscher</b>	interpreter

Eigengeld	private funds
Eigengeldkasse	private funds cashier
Einkauf	shopping
Ermittlungsrichter	investigative judge
Eröffnungsbeschluss	decree announcing the opening of the trial
Fluchtgefahr	suspicion of flight
Frist für Unterbrechung	maximum period of interruption
Gericht	court
Gerichtsstand	court venue (jurisdiction)
Gerichtsverfassungsgesetz	judiciary act
Geschäftsstelle	court registry
Geschworene	lay (non-professional) judges
Haftbeschwerde	appeal against the arrest warrant
Haftprüfung	review of basis for continued detention
Haftrichter	investigative judge
Hauptverhandlung	main trial
Hausgeld	money earned through prison work
Kommissarische Zeugenvernehmung	taking of deposition from witness unable to appear at the trial
Ladung	summons
Laienrichter	lay (non-professional) judges
Land (singular)	state
Länder (plural)	
Landgericht	regional court
Mündliche	oral
Oberlandesgericht	higher regional court
Paket/Paketmarke	package/package label
Pflichtverteidiger	court-appointed attorney
Prozess	trial
Rauschgift	narcotics
Rechtsanwalt	lawyer
Revision	appeal on points of law
Richter	judge

Schöffen	lay (non-professional) judges
Schöffengericht	criminal court at a local court – full bench
Schwurgericht	jury court
Sicherheitsleistung	bail/bond
Sozialarbeiter	social worker
Staatsanwalt	public prosecutor
Strafhaft	penal detention
Strafkammer	penal chamber
Strafprozessordnung	code of criminal procedure
Strafrichter	penal judge
Strafvollzugsgesetz	law governing the execution of sentence
Taschengeld	pocket money
Überbrückungsgeld	money held for prisoner's release
Umkleideraum	dressing room
Unterbrechung	postponement/interruption
Untersuchungshaft	pre-trial detention
Untersuchungshaftvollzugsordnung	code of investigative procedure
Urkundenbeamte	custodian of legal records
Urlaub	vacation/leave
Urteil	verdict
Verbrechen	felony
Verdunkelungsgefahr	danger of prejudicing the course of justice/ collusion
Verhaftung	arrest
Verhandlung	trial, proceeding
Verhandlungsleitung	conduct of the trial
Verteidiger	attorney
Vorstand	prison director
Vollzugsplan	confinement plan
Wahlverteidiger	private attorney
Zahlstelle	cashier
Zustellung	service (of a decree)