Auf der Grundlage der Übersetzung von Brian Duffett und Monika Ebinger, aktualisiert durch Kathleen Müller-Rostin und Iyamide Mahdi
Vollständige Überarbeitung und laufende Aktualisierung durch Ute Reusch
Original translation by Brian Duffett and Monika Ebinger, updated by Kathleen Müller-Rostin and Iyamide Mahdi
Translation completely revised and regularly updated by Ute Reusch
Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 3 des Gesetzes vom 11. Juli 2019 (BGBl. I, S. 1066)
Version information: The translation includes the amendments to the Act by Article 3 of the Act of 11 July 2019 (Federal Law Gazette I, p. 1066)
Zur Nutzung dieser Übersetzung lesen Sie bitte den Hinweis auf www.gesetze-im-internet.de unter "Translations".

For conditions governing use of this translation, please see the information provided at www.gesetze-im-internet.de under "Translations".

German Code of Criminal Procedure

(Strafprozeßordnung – StPO)

Code of Criminal Procedure as published on 7 April 1987 (Federal Law Gazette I, p. 1074, 1319), as last amended by Article 3 of the Act of 11 July 2019 (Federal Law Gazette I, p. 1066)

Book 1
General provisions

Chapter 1
Substantive jurisdiction of courts

Section 1
Operation of Courts Constitution Act

Substantive jurisdiction of the courts shall be 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 shall be 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 shall be competent to make the order. If there is no such court, it shall be 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 shall be decisive in respect of the proceedings.

Section 6
Review of substantive jurisdiction

At all stages of the proceedings the court shall, ex officio, review its substantive jurisdiction.

Section 6a
Jurisdiction of particular criminal divisions

Prior to the opening of the main proceedings, the court shall, ex officio, review 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 examination on the charges.

Chapter 2
Venue

Section 7
Venue at place of commission

(1) Venue shall be 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 shall be 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 shall also have jurisdiction if the person insulted has his domicile or habitual residence in that district.

Section 8
Venue at domicile or habitual residence

(1) Venue shall also be deemed to be established in the court in whose district the indicted accused has his 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 shall also be determined by his habitual residence and, if such place of residence is not known, by his last domicile.

Section 9
Venue at place of apprehension

Venue shall also be 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 shall be 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) shall apply 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 shall be Hamburg; the competent local court shall be 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, as well as of civil servants of the Federal Government or of one of the *Länder* employed abroad, venue shall be determined by the domicile which they had in Germany. If they had no such domicile, the seat of the Federal Government shall be considered their domicile.
(2) These provisions shall 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 shall be 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 shall take 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, shall be deemed to be established in each court having jurisdiction over one of the criminal cases.
(2) If more than one connected criminal case is 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, the common upper court shall, upon application by the public prosecution office or an indicted accused, decide whether and in which court the cases shall 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, the Federal Court of Justice shall decide which court shall be competent.

Section 14
Determination of jurisdiction by common upper court

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

Section 15
Venue established by assignment due 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 might endanger public safety, the next upper court shall assign the investigation and decision to an equivalent court in another district.

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

Prior to the opening of the main proceedings, the court shall, ex officio, review its local jurisdiction. Thereafter, it may declare 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 the commencement of his examination on the charges.

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 shall designate the competent court.

Section 20
Investigatory acts by court lacking jurisdiction

Individual investigatory acts by a court lacking jurisdiction shall not be 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.

Chapter 3
Exclusion and challenge of court personnel

Section 22
Debarment from exercising judicial office by law

A judge shall be barred by law from exercising his judicial office

1. if he himself was aggrieved by the offence;
2. if he is or was the spouse, the life partner, the guardian or the carer of the accused or of the aggrieved person;
3. if he 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 or to the aggrieved person;
4. if he has 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 he has been heard in the case as a witness or expert.

Section 23
Debarment of judges for participating in contested decision

(1) A judge who was involved in reaching a decision contested by way of appellate remedy shall be barred by law from participating in the decision of the court of higher instance.
(2) A judge who was involved in reaching a decision which was contested by application to reopen the proceedings shall 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 shall also be barred. Sentences 1 and 2 shall apply accordingly to participation in decisions to prepare the reopening of the proceedings.

Section 24
Challenge of judge; fear of bias

(1) A judge may be challenged both where he has 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 shall 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 shall be admissible prior to commencement of 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. All grounds for the challenge shall be stated at the same time.
(2) Thereafter, a judge 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 shall no longer be admissible once the defendant has had the last word.

Section 26
Procedure for challenge

(1) The motion for challenge shall be filed with the court of which the judge is a member; it may be made orally to be recorded by the court registry. 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 (2), the fact that the request was submitted in time must be substantiated. The taking of an oath to substantiate a challenge shall not be admissible. To substantiate a challenge, reference may be made to the testimony of the challenged judge.
(3) The challenged judge shall make an official statement concerning the grounds for challenge.

Section 26a
Rejection of inadmissible motion for challenge

(1) The challenge of a judge shall be rejected by the court as 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 shall reach 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 shall be required. If a commissioned or requested judge, a judge in preparatory proceedings or a criminal court judge is challenged, he shall decide himself 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 shall decide on the motion of challenge without the challenged person’s participation.
(2) If a judge of the adjudicating criminal division is challenged, the criminal division shall 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, another judge of the same court shall decide. A decision shall not be 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, the next superior court shall decide.

Section 28
Appellate remedy

(1) An order declaring a challenge to be well-founded shall not be contestable.

(2) An immediate complaint 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
Performance of non-deferrable acts

(1) Prior to conclusion of the motion for challenge, a challenged judge shall perform only such acts as may not be deferred. If a judge is challenged before the commencement of the main hearing and the decision on the challenge would delay the commencement of the main hearing, the main hearing may be held before a decision is taken on the motion for challenge, up until the point at which the public prosecutor reads out the bill of indictment.
(2) If a judge is challenged during the main hearing and if the decision on the challenge (sections 26a and 27) would require an interruption of the main hearing, the main hearing may be continued until such time as a decision on the challenge may be taken without delaying the main hearing; a decision on the challenge shall be taken no later than the beginning of the day following the next day of the hearing and always prior to commencement of the closing speeches. 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 shall be repeated. This shall not apply to such acts as may not be deferred. After submission of the motion for challenge, decisions which may also be taken outside the main hearing may be taken with the participation of the challenged person only if they may not be deferred.
(3) If the court has requested, pursuant to section 26 (1) sentence 2 that the applicant provide, within a specified period, written grounds for the motion for challenge, subsection (2) shall apply accordingly, with the proviso that a decision is to be taken on the motion for challenge by the start of day following the next day of the hearing and always prior to commencement of the closing speeches.

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

The court competent to decide on a motion for challenge shall also decide where no such motion has been filed but a judge reports circumstances which might justify his 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 chapter shall apply accordingly to lay judges as well as to registry clerks and to other persons assisting as recording clerks.
(2) It shall be for the presiding judge to decide. In a grand criminal division and a criminal division with lay judges, it shall be for the judicial members of the bench to decide. If a recording clerk has been assigned to a judge, the latter shall decide on his challenge or disqualification.

Chapter 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 shall each, by statutory instrument, determine 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 which are 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 shall each, by statutory instrument, determine 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 shall determine, 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) It shall be permissible to submit electronic documents 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 shall determine, by statutory instrument requiring the approval of the Bundesrat, those technical parameters which are suitable for the transmission and processing of such files.
(3) When 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 he sends the message and he requests confirmation of being securely logged in pursuant to section 5 (5) of the De-Mail Act,
2. the method of transmission between a special electronic legal mailbox pursuant to section 31a 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 has been established by means of an identification procedure and the authority's or the court's electronic mailroom; further details shall be regulated by statutory instrument as referred to in subsection (2) sentence 2,
4. 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.

(5) An electronic document shall be 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 shall 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 shall be promptly notified thereof, with reference being made to the fact that the document has not been validly received and to applicable technical parameters. An electronic document shall be 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 he 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 the written form and a signature must in addition bear a qualified electronic signature of all the persons responsible for them.
(2) An electronic document shall be 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, as well as 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 shall be permissible; upon request, an electronic document is also to be filed.
(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 shall, by statutory instrument requiring the approval of the Bundesrat, determine 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
(not yet in force)

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. It shall be permissible to convert source documents being held as evidence 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. If the electronic document serves to replace papers used by the prosecuting authorities or courts which have been signed by hand by the person responsible, the proof of conversion must bear a qualified electronic signature of the registry clerk of the court registry. 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. They may be stored or held in safekeeping up to the end of that calendar year, at most, in which statutory limitation commences. Once proceedings have been concluded, source documents which are not being held as evidence may be stored or held in safekeeping up to the end of that 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 shall be authorised to examine them.

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

(1) Inspection of electronic files shall be granted by means of making the content of the file available for retrieval. Upon specific request, inspection of the files shall be 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 shall be 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 shall be 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 or by making a copy of the files available to be taken away. Upon special request, defence counsel or lawyers shall be 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) shall not be 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 to be identified 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 shall, by statutory instrument requiring the approval of the Bundesrat, determine 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.

Chapter 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 shall be taken after hearing the parties to the proceedings.
(2) A decision of the court rendered outside a main hearing shall be 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 shall be heard before facts or evidentiary conclusions in respect of which he has not yet been heard are used to his detriment.
(4) If remand detention, seizure or other measures have been ordered, subsection (3) shall not apply if the prior hearing would jeopardise the purpose of such an order. Special provisions governing the hearing of the parties shall not be 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 might 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 shall make an order, either ex officio or upon application, reverting the proceedings to the situation before the decision in question was given. Section 47 shall apply accordingly.

Section 34
Reasons for contestable and rejection decisions

Decisions which may be contested by appellate remedy as well as those refusing an application shall 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 shall be 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 shall be notified to him orally. He shall be given a copy upon request.
(2) Other decisions shall be 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 shall 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 shall 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 shall also 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 shall also be informed that he is in any case free in his decision to seek an appellate remedy.

Chapter 4b
Procedure in respect of service

Section 36
Service and enforcement of decisions

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

Section 37
Procedure for service

(1) The provisions of the Code of Civil Procedure (*Zivilprozessordnung*) shall 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 shall be 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 shall be served together with the translation. In such cases, service on the other parties to the proceedings shall 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 shall 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, service by publication shall be admissible. Service shall be considered effected where two weeks have elapsed since the notice was displayed.
(2) If the summons to the main hearing has previously been served on the defendant, then service on him by publication shall be 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 shall already be 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 shall be 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 shall 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 included in the records.

Chapter 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 shall not be counted.

Section 43
Calculation of time limits determined in weeks and months

(1) A time limit determined in weeks or months shall expire 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 shall expire 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 shall expire at the end of the next working day.

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

If a person was prevented from observing a time limit through no fault of his own, he shall be granted restoration of the status quo ante upon application. Failure to observe the time limit for filing an appellate remedy shall not be 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 shall be filed with the court where the time limit should have been observed within one week after the reason for non-compliance no longer applies. To observe the time limit, it shall be 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 shall be substantiated at the time the application is filed or during the proceedings concerning the application. The omitted act shall subsequently be 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 shall be 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 shall not be 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 shall 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, as well as other orders which were in force at the time the court decision took effect, shall become effective again. In the case of a warrant of arrest or an order for placement, the court granting restoration of the status quo ante shall make 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) shall review the detention without delay.

Chapter 6
Witnesses

Section 48
Obligations on witnesses; summons

(1) Witnesses shall be obliged to appear before the judge on the date set down for their examination. They shall have the duty to testify if no exception admissible by statute applies.
(2) A witness summons shall specify procedural requirements serving the interests of the witness, the forms of assistance available to witnesses as well as the legal consequences of failure to appear.
(3) If the witness is also the aggrieved person, then account shall be taken at all times of his particular vulnerability throughout hearings, examinations and other investigatory acts concerning him. An examination shall, in particular, be made

1. as to whether an imminent risk of serious detriment to the witness’s well-being 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.

Section 49
Examination of Federal President

The Federal President shall be examined in his place of abode. He shall not be summoned to the main hearing. The record of his examination by the court shall 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 shall be examined whilst present at their place of assembly.
(2) Members of the Federal Government or of a *Land* government shall 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 shall require,

in the case of members of a 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, shall not be summoned to such hearing. The record of their judicial examination shall be read out at the main hearing.

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

(1) A witness who has been properly summoned yet fails to appear shall be charged with the costs attributable to his failure to appear. At the same time, an administrative fine shall be imposed on him and an order made for arrest for disobedience to court orders if the administrative fine cannot be collected. A witness may also be brought before the court by force; section 135 shall apply accordingly. In the case of repeated non-appearance, the administrative measure may be imposed a second time.
(2) No costs shall be charged nor any administrative measure imposed if the witness provides a sufficient and timely excuse for his non-appearance. If such excuse is not provided in time pursuant to sentence 1, the charging of costs and the imposition of a administrative measure shall be 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 shall be revoked subject to the conditions of sentence 2.
(3) Authority to order such measures shall also be vested in the judge in the preliminary investigation as well as 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, due to the lack of intellectual maturity, or minors or persons placed in care, due to mental illness or disability, have no sufficient understanding of the importance of their right of refusal to testify, 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 accused, he may not decide on the exercise of the right of refusal to testify; if both parents are entitled to act as statutory representative, the same shall apply to the parent who is not accused.

(3) Persons who are entitled to refuse to testify and, in cases under subsection (2), also their representatives authorised to decide on the exercise of the right of refusal to testify shall 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, patent attorneys, notaries, certified public accountants, sworn auditors, tax consultants (*Steuerberater*) and tax representatives (*Steuerbevollmächtigte*), doctors, dentists, 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 shall 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, as well as 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, as well as concerning the content of materials which they have produced themselves and matters which have received their professional attention.

This shall only apply 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 shall lapse 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 176 and section 177 (2) no. 1 of the Criminal Code or
3. money laundering or concealing unlawfully acquired assets under section 261 (1) to (4) of the Criminal Code

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 in his 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,
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 shall be equal to those persons. The decision as to whether or not such persons shall exercise their right to refuse to testify shall be 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) shall apply 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 shall 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, as well as to permission to testify.
(2) Members of the Bundestag, of a *Land* parliament, of the Federal Government or of a *Land* government, as well as employees of a federal or *Land* parliamentary group shall be subject to the special provisions applicable to them.
(3) The Federal President may refuse to testify if his testimony would be detrimental to the welfare of the Federation or of one of the *Länder*.
(4) These provisions shall 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) Any witness may refuse to answer any questions the reply to which would subject him or one of the relatives indicated in section 52 (1) to the risk of being prosecuted for an offence or a regulatory offence.
(2) The witness shall be instructed as to his right to refuse to answer.

Section 56
Substantiation of grounds for refusal to testify

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

Section 57
Instruction

Before examination, witnesses shall be warned that they must tell the truth and shall be instructed as to the criminal law consequences of incorrect or incomplete statements. They shall be informed of the possibility that they may be placed under oath. If they are placed under oath, they shall 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; confrontation

(1) Witnesses shall be examined individually and in the absence of the witnesses who are to be heard subsequently.
(2) A confrontation with other witnesses or with the accused in the preliminary investigation shall be admissible if this appears necessary for the further proceedings. Defence counsel shall be permitted to be present during a confrontation with the accused. He is to be given prior notice of the date set down for the confrontation. He shall not be entitled to have the date postponed on account of his being prevented from attending.

Section 58a
Video and audio recording of examination

(1) A video and audio recording may be made of the examination of a witness. The examination shall, after evaluation of the relevant circumstances, be recorded and conducted as a judicial examination

1. if the interests meriting protection of persons under 18 years of age as well as of persons who as children or juveniles have been 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.

(2) Use of the audio-visual recording shall be 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) shall apply accordingly. Sections 147 and 406e shall 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 shall be subject to the consent of the witness.
(3) If the witness does not consent to a copy of the recording of his examination as a witness being made available pursuant to subsection (2) sentence 3, then instead a written transcript of the recording shall be released to the persons entitled to inspect the files in accordance with sections 147 and 406e. The person who produces the transcript shall sign, making the addendum that he confirms the accuracy of the transcript. The right to view the recording pursuant to sections 147 and 406e shall remain unaffected. The witness is to be informed of the right to refuse his 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 shall not be placed under oath unless 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 shall be placed under oath individually after they have been examined. Except as otherwise provided, the oath shall be taken at the main hearing.

Section 60
Prohibitions in respect of administration of oath

An oath shall not be administered

1. to persons who are under 18 years of age at the time of the examination or who have no sufficient understanding of the nature and importance of the oath due to their lack of intellectual maturity or 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) shall 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 shall be 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

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

Section 64
Form of oath

(1) An oath with religious affirmation shall be 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 shall be 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 wants to use a formula of affirmation used by such denomination or community, he may add it to the oath.
(4) The person swearing the oath shall raise his right hand when taking the oath.

Section 65
Affirmation of truth of testimony equivalent to oath

(1) If a witness states that he does not wish to swear an oath for reasons of faith or conscience, he shall affirm the truth of his testimony. The affirmation shall be equivalent to an oath; the witness shall be informed of this fact.
(2) The truth of the statement shall be 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) shall apply 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 shall provide appropriate technical aids. The hearing or speech impaired person is to be instructed as to his right to choose.
(2) The court may require that the oath be taken in written form or order the attendance of a person who facilitates communication if the hearing or speech impaired person has not exercised his 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 shall 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, instead of administering a second oath, may have the witness confirm the accuracy of his statement by reference to the oath previously taken.

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

(1) The examination shall begin with the witness being asked to state his first name, last name, name at birth, age, occupation and place of residence. A witness who has made observations in his official capacity may state his place of work instead of his place of residence.
(2) A witness shall, furthermore, be permitted to state his business address or place of work or another address at which documents can be served instead of stating his place of residence if there is well-founded reason to fear that legally protected interests of the witness or of another person might be endangered or that witnesses or another person might be improperly influenced if the witness states his place of residence. If the conditions of sentence 1 obtain at the main hearing, the presiding judge shall permit the witness not to state his place of residence.
(3) If there is well-founded reason to fear that revealing the identity or the place of residence or whereabouts of the witness would endanger the 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, he shall be required to state in what capacity the facts he is indicating became known to him.
(4) If there are sufficient indications that the conditions of subsection (2) or (3) obtain, the witness is to be advised of the rights provided thereunder. In the case under subsection (2), the witness shall be assisted in specifying an address at which documents can be served. Documentation establishing the witness's place of residence or identity shall be kept by the public prosecution office. They shall only be included in the files when the fear of danger ceases.
(5) Subsections (2) to (4) shall also apply after conclusion of the examination of the witness. Insofar as the 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 might dishonour the witness or a person who is his relative within the meaning of section 52 (1) or which concern their personal sphere of life are 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 relationship with the accused or the aggrieved person, are to be asked insofar as this is necessary. A witness is to be asked about his 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 his 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 shall be permitted to be present. He may be barred from the examination if certain facts justify the assumption that his presence would not only negligibly hinder the orderly taking of evidence. As a rule, this shall be 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 examination and whose interests meriting protection cannot be taken into account in another way shall 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 rights himself at his examination. Section 142 (1) shall apply accordingly.
(3) Decisions pursuant to subsection (1) sentence 3 and subsection (2) sentence 1 shall not be contestable. The grounds therefor shall be documented, insofar as this does not jeopardise the purpose of the investigation.

Section 69
Examination as to subject matter

(1) The witness shall be directed to state, without prompting or interruption, all he knows about the subject of his examination. The subject of the investigation and the name of the accused, if there is an accused, shall be indicated to the witness before the examination.
(2) If so required, further questions shall be asked in order to clarify and complete the statement as well as to establish the grounds on which the witness's knowledge

is based. Witnesses who have been aggrieved by the offence shall in particular be given the opportunity to make submissions concerning the effects which it had on them.
(3) The provision in section 136a shall apply accordingly to the examination of a witness.

Section 70
Consequences of undue refusal to testify or take oath

(1) A witness who without having a legal reason therefor refuses to testify or to take an oath shall be charged with the costs caused by such refusal. At the same time an administrative fine shall be imposed on him and, if the fine cannot be recovered, an order shall be made for arrest for disobedience to court orders.
(2) Detention may also be ordered to force a witness to testify; such detention shall 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 shall also have the authority to order such measures.
(4) If 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 shall be compensated pursuant to the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz*).

Chapter 7
Experts and inspection

Section 72
Application of provisions concerning witnesses to experts

The provisions of Chapter 6 concerning witnesses shall apply accordingly to experts, except as otherwise provided under the following sections.

Section 73
Selection of experts

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

Section 74
Challenge of experts

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

Section 75
Expert's obligation to render opinion

(1) A person appointed as an expert must comply with the appointment if he has been publicly appointed to render opinions of the required kind or if he publicly and commercially practises the science, art or trade the knowledge of which is a prerequisite for rendering an opinion or if he has been publicly appointed or authorised to exercise such profession.
(2) The obligation to render an opinion shall also be incumbent upon a person who has stated his willingness to do so before the court.

Section 76
Expert's privilege of refusal to render opinion

(1) An expert may refuse to render an opinion for the same reasons for which a witness may refuse to testify. An expert may also be released from his obligation to render an opinion for other reasons.
(2) The special provisions of civil service law shall 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 shall be subject to the special provisions applicable to them.

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

(1) In the case of the non-appearance or refusal of an expert obliged to render an opinion, he shall be charged with the costs caused by his non-appearance or refusal. An administrative fine shall be imposed on him 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) If an expert obliged to render an opinion refuses to agree upon a reasonable time limit pursuant to section 73 (1) sentence 2 or if he fails to observe the time limit agreed upon, an administrative fine may be imposed on him. 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 expert's activity

The judge shall guide the expert's participation insofar as he deems this necessary.

Section 79
Administration of oath to expert

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

Section 80
Preparation of opinion through further clarification

(1) The expert may, at his request, be given further details in order to be able to prepare his opinion by means of examining witnesses or the accused.

(2) He may, for the same purpose, be permitted to inspect the file, 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

An expert shall already be given the opportunity during the preliminary investigation to prepare the opinion to be rendered at the main hearing if it is 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.

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 shall make the order pursuant to subsection (1) only if the accused is strongly suspected of having committed the offence. The court may not make this 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 shall be for the court which would be competent to open the main proceedings to decide.
(4) An immediate complaint against the order shall be admissible. It shall have 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 shall be admissible without the consent of the accused, provided no detriment to his health is to be expected.
(2) The authority to give such order shall be 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 shall 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 shall be destroyed without delay as soon as they are no longer required for such purposes.

Section 81b
Photographs and fingerprints of accused

Photographs and fingerprints of the accused may be taken, even against his will, and measurements may be made of him and other similar measures taken with

regard to him insofar as is required for the purposes of conducting the criminal proceedings or of the police records department.

Section 81c
Examination of other persons

(1) Persons other than the accused who might 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 shall be admissible without such persons' consent provided 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, due to the lack intellectual maturity, or if minors or persons placed in care, due to mental illness or disability, do not have sufficient understanding of the importance of their right of refusal, their statutory representative shall decide; section 52 (2) sentence 2 and (3) shall apply 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 shall be 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 shall not be 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) shall be 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 shall be 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 shall remain unaffected. Section 81a (3) shall apply accordingly.
(6) The provisions of section 70 shall apply 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 shall presuppose 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 might violate the sense of shame of the person to be examined, it shall be carried out by a person of the same sex or by a female or male physician. Where there is a legitimate interest, a request that a physician of a particular sex be appointed to perform the examination shall be granted. Upon the request of the person concerned, a trusted person is to be admitted. The person concerned is to be instructed as to the provisions of sentences 2 and 3.

(2) This provision shall also be applicable 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 the 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 shall be inadmissible.
(2) Examinations which are admissible pursuant to subsection (1) may also be carried out on material which has been found, secured or seized. Subsection (1) sentence 2 and section 81a (3) half-sentence 1 shall apply accordingly. Section 81f (1) shall apply accordingly if the identity of the person from whom this 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 shall only appoint experts 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 to carry out the examinations pursuant to section 81e. The experts shall 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 shall 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, section 38 of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) shall apply, subject to the proviso that the supervisory authority shall also monitor compliance with data protection rules even if it has no sufficient indication that such rules are being violated and the expert is not automatically processing personal data in data files.

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 and subjected to molecular and genetic analysis for the purposes 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 provide grounds for assuming that criminal proceedings will be conducted against him 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 shall 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 shall be 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) shall apply accordingly. In its written reasons the court shall 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 as well as
3. an evaluation of the relevant circumstances in each case.

(4) Subsections (1) to (3) shall 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 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 shall apply

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

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 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. such cell tissue shall be subjected to a molecular and genetic analysis to establish a person's sex and the DNA profile and
3. the DNA profiles 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) shall require a court order. This order shall be made in writing. The order shall designate the persons concerned by reference to certain significant features and shall give reasons. A prior hearing of the persons concerned shall not be required. The decision ordering the measure shall not be contestable.
(3) Section 81f (2) shall apply accordingly to implementation of the measure. The cell tissue collected shall 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 shall be deleted without delay. The fact of the destruction and deletion shall 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 shall also 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 materials originate 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 in the direct line or collaterally up to the third degree and
4. that the DNA profiles established shall not be 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 shall decide whether the 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 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 opinion.
(3) In important cases, the opinion of a specialist authority may be obtained.

Section 84
Compensation of experts

Experts shall be compensated pursuant to the Judicial Remuneration and Compensation Act.

Section 85
Expert witnesses

The provisions concerning evidence by witnesses shall apply where experienced persons have 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 shall be stated in the record and such record shall 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 shall be 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 shall not be called in if this is evidently unnecessary for the clarification of the facts.
(2) An autopsy shall be 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 and having specialist knowledge of forensic medicine. The autopsy is not to be performed by the physician who treated the deceased person during the illness which directly preceded his death. 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 shall be carried out in the judge’s presence.
(3) For the purpose of examination or autopsy, it shall be admissible to exhume a corpse which has been interred.
(4) The autopsy and exhumation of an interred corpse shall be ordered by the judge; the public prosecution office shall be 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 shall 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 shall 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) shall apply accordingly to the molecular and genetic analysis.
(2) If there is an accused, the corpse shall be shown to him for the purpose of identification.

Section 89
Extent of autopsy

Insofar as the condition of the corpse permits it, the autopsy shall always include 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 shall in particular be directed at answering the question of whether it was alive after or during birth and whether it was mature or at least capable of continuing its 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 shall 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 shall, if necessary, be submitted to the authority which issues genuine money or genuine official stamps of that kind. The opinion of this authority shall be obtained as to the falsity or falsification as well as 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 an opinion by 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 as well as to ascertain their author.

Chapter 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 shall be taken into custody or otherwise secured.
(2) Such objects shall be seized if they are in the custody of a person and are not surrendered voluntarily.
(3) Subsections (1) and (2) shall also apply to driving licences which are to be confiscated.

(4) The surrender of movable property shall be governed by sections 111n and 111o.

Section 95
Obligation to surrender

(1) A person who has an object of the above-mentioned kind in his custody shall be 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 person. This shall not apply to persons who are entitled to refuse to testify.

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 shall apply 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 shall not be subject to seizure:

1. written correspondence between the accused and the 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 of refusal 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 shall 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 shall 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) shall 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 shall be 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 shall also extend 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 shall apply 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 papers, audio and video media, data carriers, images or other depictions 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 shall be inadmissible insofar as they are covered by the right of such persons to refuse to testify. Subsection (2) sentence 3 and section 160a (4) sentence 2 shall apply accordingly, the provision on participation in subsection (2) sentence 3, however, only where the particular facts give rise to a strong suspicion of participation; in these cases, too, seizure shall only be 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 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 shall be determined by section 162. The person concerned may also submit the application to the local court in whose district the seizure took place, which shall then forward the application to the competent court. The person concerned shall be instructed as to his rights.
(3) If, after public charges have been preferred, the public prosecution office or one of its investigators has effected seizure, the court shall be notified of the seizure within three days; the objects seized shall 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 shall be requested to carry out such seizure. The requesting agency shall be entitled to participate. No such request shall be necessary if the seizure is to be made in places which are inhabited exclusively by persons other than 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 shall extract from the database the data required for matching purposes and shall transmit them to the prosecuting authorities.
(3) Insofar as isolating the data for transmission from other data requires disproportionate effort, the other data shall, upon order, also be transmitted. Their use shall not be admissible.
(4) Upon request by the public prosecution office, the storing agency shall assist the agency effecting the data match.
(5) Section 95 (2) shall apply 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 shall request court confirmation without delay. The order shall become ineffective if it is not confirmed by the court within three working days. The order shall be made in writing. It shall name the person obliged to transmit the data and shall 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 corresponding *Land* law, present an obstacle to their use. Sections 96, 97 and section 98 (1) sentence 2 shall 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 shall be reserved to the court.
(3) Where data were transmitted on data media, these shall be returned without delay once the data matching has been completed. Personal data transferred to other data media shall 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 shall 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, shall remain unaffected.

Section 99
Seizure of postal items

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 shall be admissible. Seizure of postal items and telegrams shall also be admissible where known facts support the conclusion that they derived from the accused or are intended for him and that their content is of relevance to the investigation.

Section 100
Procedure for seizure of postal items

(1) Only the court and, in exigent circumstances, the public prosecution office shall be authorised to implement seizure (section 99).
(2) Seizure ordered by the public prosecution office, even if it has not yet resulted in a delivery, shall become ineffective if it is not confirmed by the court within three working days.
(3) The court shall have 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 shall not be contestable; it may be revoked at any time. As long as no order has been made pursuant to sentence 2 the public prosecution office shall immediately forward the delivered postal items to the court, leaving any unopened postal items sealed.
(4) It shall be for the court competent pursuant to section 98 to decide on a seizure ordered by the public prosecution office. The court which ordered or confirmed the seizure shall decide 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 shall apply 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 a crime by committing 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 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 shall be

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 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, as well as section 152a (3) and section 152b (1) to (4),
    f) offences against sexual self-determination in cases under sections 176a and 176b 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 pornography under section 184b (1) and (2) 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 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 or concealing unlawfully acquired assets under section 261 (1), (2) and (4); if criminal liability is based on the fact that impunity pursuant to section 261 (9) sentence 2 is ruled out under section 261 (9) sentence 3, then only where the object is derived from 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), as well as 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), as well as 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. 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 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;

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 shall enable the court, the public prosecution office and its investigators (section 152 of the Courts Constitution Act) to take these measures and shall provide the necessary information without delay. Whether and to what extent precautionary measures are to be taken in this respect shall follow from the Telecommunications Act (*Telekommunikationsgesetz*) and from the Telecommunications Interception Ordinance (*Telekommunikations-Überwachungsverordnung*) issued thereunder. Section 95 (2) shall apply 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 shall provide protection against unauthorised access using methods reflecting the state of the art. Copied data shall be protected against modification, unauthorised deletion and authorised inspection using methods reflecting the state of the art.
(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 shall be

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, as well as under section 97a, section 98 (1) sentence 2, section 99 (2), section 100 and section 100a (4),

   b) 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),

   c) counterfeiting of money and official stamps under sections 146 and 151, in each case also in conjunction with section 152, as well as under section 152a (3) and section 152b (1) to (4),

   d) crimes against sexual self-determination in the cases under section 176a (2) no. 2 or (3) 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 pornography in the cases under section 184b (2),

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

   g) offences against personal liberty under section 234, section 234a (1) and (2), sections 239a and 239b and human trafficking under section 232 (3), forced prostitution and forced labour under section 232a (3) and (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) gang theft under section 244 (1) no. 2 and aggravated gang theft under section 244a,

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

   j) 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,

k) 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,

l) an especially serious case of money laundering or concealing unlawfully acquired assets under section 261 under the conditions of section 261 (4) sentence 2; if criminal liability is based on the fact that impunity pursuant to section 261 (9) sentence 2 is ruled out under section 261 (9) sentence 3, then only where the object is derived from one of the especially serious crimes referred to in nos. 1 to 7,

(m) 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 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;

5. 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);

6. 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;

7. 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 shall be 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) shall apply 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 private premises of the accused. The measure shall be admissible on the private premises of other persons 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 to assume 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 shall be 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 shall be documented.
(3) Where possible in the case of measures under section 100b, technical means shall 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 shall 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 shall be 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 shall seek a decision from the court without delay concerning the interruption or continuation of the measure; section 100e (5) shall apply 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 shall apply accordingly.
(5) In the cases under section 53, measures under sections 100b and 100c shall be inadmissible; if during or after implementation of the measure it becomes apparent that a case under section 53 exists, then subsection (2) shall apply 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) shall apply 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 shall become ineffective if it is not confirmed by the court within three working days. The order shall be limited to a maximum duration of three months. An extension of no more than three months in each case shall be 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. His order shall become ineffective unless it is confirmed by the criminal division within three working days. The order shall be limited to a maximum duration of one month. An extension of the measure for subsequent periods of no more than one month shall be 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 shall decide on any further extension orders.
(3) The order shall be given in writing. The operative part of the order shall 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 date 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 shall specify the requirements and main considerations underlying the decision. In particular, the following shall 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 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 shall be terminated without delay. The court which made the order shall 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 shall also be informed about the course of the measure. If the conditions for the order no longer exist, the court shall order 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 deletion is to be documented. 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 100e (1) and (3), and (5) sentence 1 shall 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 (section 96 (1) of the Telecommunications Act) 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 shall be permissible only if other means of establishing the facts would offer no prospect of success. The capture of location data pursuant to this subsection shall be 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 113b of the Telecommunications Act may be captured insofar as establishing the facts or determining the accused's whereabouts would be considerably difficult in some other way or would be futile and the data capture stands in appropriate relation to the importance of the matter. Particularly serious crimes within the meaning of sentence 1 shall be

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, as well as 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, forming criminal organisations under section 129 (1) in conjunction with (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),
   c) offences against sexual self-determination in the cases under sections 176a and 176b and, under the conditions of section 177 (6) sentence 2 no. 2, in the cases under section 177,

d) dissemination, procurement and possession of child and youth pornography in the cases under section 184b (2) and section 184 (2),

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

f) 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,

g) 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 and concealing unlawfully acquired assets under section 261 under the conditions of section 261 (4) sentence 2,

h) 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 to 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 in conjunction with section 21,

   b) an especially serious crime 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) shall be 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 113b 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 shall be inadmissible. Findings gained regardless may not be used in court. Recordings thereof shall be deleted without delay. The fact that the recordings were obtained and deleted shall be documented. Sentences 2 to 4 shall 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) to (4) shall apply accordingly.
(5) If the telecommunications traffic data are not captured by the provider of publicly accessible telecommunications services, then general provisions shall 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 shall be 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 shall be 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 shall be 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.

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 as well as
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 are to be deleted without delay once the measure has been completed.
(3) Section 100a (3) and section 100e (1) sentences 1 to 3, as well as (3) sentence 1 and (5) sentence 1 shall apply accordingly. The order shall be limited to a maximum period of six months. An extension of no more than six months in each case shall be 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 on data collected pursuant to sections 95 and 111

of the Telecommunications Act may be requested from any person providing or collaborating in the provision of telecommunications services on a commercial basis (section 113 (1) sentence 1 of the Telecommunications Act). If the request for information under sentence 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 113 (1) sentence 2 of the Telecommunications Act), information may only be requested if the statutory requirements for the use of such data 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 113 (1) sentence 3, section 113c (1) no. 3 of the Telecommunications Act).
(3) Requests for information as referred to in subsection (1) sentence 2 may be ordered by the court only upon application by the public prosecution office. In exigent circumstances, the order may 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 shall not apply 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 fulfilment of the conditions of sentence 4 shall be documented.
(4) In the cases under subsection (1) sentence 2 and subsection (2), the data subject shall be notified of the request for information. Notification shall take place insofar as and as soon as this can be effected without thwarting the purpose of the information. It shall be dispensed with where overriding interests meriting protection of third parties or of the data subject himself constitute an obstacle thereto. Where notification is deferred pursuant to sentence 2 or dispensed with pursuant to sentence 3, the reasons therefor shall be documented.
(5) Based on a request for information pursuant to subsection (1) or (2), any person providing or collaborating in the provision of telecommunications services on a commercial basis shall transmit, without delay, the data required for the provision of the information. Section 95 (2) shall apply accordingly.

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 163f shall be 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 shall be deposited at the public prosecution office. They shall be 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 shall 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.

Mention is to be made in the notification of the option of subsequent legal protection pursuant to subsection (7) and of the applicable time limit. Notification shall be dispensed with 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, as well as the resulting detriment for such person or other persons.
(5) Notification shall be 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 is deferred pursuant to sentence 1, the reasons shall be documented.
(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 shall be subject to the approval of the court. The court shall decide upon the duration of any further deferrals. The court may approve the permanent dispensation with notification 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 shall begin 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 shall be six months.
(7) Court decisions pursuant to subsection (6) shall be taken by the court competent to order the measure. In all other cases, the court situated where the competent public prosecution office is located shall be 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 as well as of the manner and means of its implementation. An immediate complaint against the decision shall be admissible. If public charges have been preferred and the defendant has been notified, the court seized of the matter shall decide 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 shall be deleted without delay. The fact of the deletion is to be documented. Insofar as deletion of the data has been deferred merely for the purposes of a possible court review of the measure, the data shall not be used for any other purpose without the consent of the data subjects; access to the data is to be restricted accordingly.

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

(1) In the case of traffic data capture pursuant to section 100g, section 100a (3) and (4) and section 100e shall 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 has transferred were stored pursuant to section 113b 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 shall 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 shall suffice.

(2) If a measure under section 100g is ordered or extended, the reasons shall 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 shall be labelled accordingly and analysed without delay. The labelling shall clearly indicate whether the data were stored in accordance with section 113b of the Telecommunications Act. After transmission to another agency, the receiving agency is to retain the original labelling. Section 101 (8) shall apply 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 (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 (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 the life, limb or liberty of a person or the existence of the Federation or one of the *Länder* (section 113c (1) no. 2 of the Telecommunications Act).

The transmitting agency shall keep a record of the fact of the data transmission and its purpose. If the data referred to in sentence 1 no. 2 are no longer needed to avert the danger or are no longer needed for the pre-judicial or judicial review of the measures taken to avert the danger, the agency responsible for averting the danger shall delete any recordings of these data without delay. A record shall be made of the fact of the deletion. 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 shall be blocked for uses for other purposes.
(5) If usable personal data which had been stored pursuant to section 113b 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 shall be informed of the fact that the traffic data are being captured pursuant to section 100g. Section 101 (4) sentences 2 to 5 and (5) to (7) shall apply accordingly, with the proviso that

1. the competent court must order that the notification referred to in section 101 (4) sentence 3 is not necessary;
2. in derogation from section 101 (6) sentence 1, the postponement of notification referred to in section 101 (5) sentence 1 must always be ordered by the competent court and the first postponement must be limited to a period of a maximum of 12 months.

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 shall submit to the Federal Office of Justice a report detailing those measures ordered within their remit under sections 100a, 100b, 100c and 100g. The Federal Office of Justice shall produce a summary of the measures ordered nationwide during the reporting year and shall publish it on the Internet. Before publication on the Internet, the Federal Government shall 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 shall 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 shall 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 shall 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, as well as 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 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 refraining from 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 shall 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.

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 apprehension, as well as 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 shall be 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 shall also be 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 shall not apply to premises where the accused was apprehended or which he entered during the pursuit.

Section 104
Night-time search

(1) Private premises, business premises and enclosed property may be searched during the night only in pursuit of a person caught in the act, in exigent circumstances or for the purpose of re-apprehending an escaped prisoner.
(2) This restriction shall not apply to premises which are accessible at night to anyone or which are known to the police as shelters or gathering places of offenders, as depots of property obtained through offences, or as hiding places for gambling, illegal trafficking in narcotics or weapons, or prostitution.
(3) Night-time shall include, in the period from 1 April to 30 September, the hours between 9 pm and 4 am and, in the period from 1 October to 31 March, 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 shall be ordered by the judge; in exigent circumstances, the public prosecution office shall be 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 shall 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 shall be requested to carry out such a search. The requesting agency shall be entitled to participate. No such request shall be necessary if the search is to be carried out on premises which are inhabited exclusively by persons other than 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 at the search. If he is absent, his representative, an adult relative, a person living in his household or a neighbour shall, if possible, be called in to assist.
(2) In the cases under section 103 (1), the purpose of the search shall be made known to the occupant or to the person called in to assist in his absence before the search begins. This provision shall 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 shall, upon his request, 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, he shall also be given a list of the objects which were taken into custody or seized; if nothing suspicious was found, however, he shall be given a certificate to this effect.

Section 108
Seizure of other objects

(1) If objects which indicate that another offence has been committed are found during a search, they shall be provisionally seized even though they are not connected with the ongoing investigation. The public prosecution office shall be informed thereof. Sentence 1 shall 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 shall be 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 shall only be 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 shall be precisely recorded and, in order to prevent mistakes arising, shall be 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) shall have the authority to examine identity papers belonging to the person affected by the search.
(2) In all other respects, officials shall be authorised to examine identity papers found by them only if the holder permits such examination. Otherwise, they shall 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 an electronic storage medium on the premises of the person affected by the search may be extended to also cover physically separate storage media insofar as they are accessible from the 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; section 98 (2) shall 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, of 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 a repetition. Their use shall be 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.
(2) Undercover investigators shall be 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 shall be 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 shall be obtained without delay; the measure shall be terminated if the public prosecution office does not give its consent within three working days. Consent shall be given in writing and for a specified period. Extensions shall be 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

shall require the consent of the court. In exigent circumstances, the consent of the public prosecution office shall suffice. If the public prosecution office's decision cannot be obtained in time, such decision shall be obtained without delay. The measure shall be terminated if the court does not give its consent within three working days. Subsection (1) sentences 3 and 4 shall apply 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 the identity to be revealed to them. In all other cases, maintaining the secrecy of identity in criminal proceedings shall be admissible pursuant to section 96, in particular if there is reason to fear that revealing the 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 shall be governed by this statute and by other legal provisions.

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 if 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 a checkpoint, all persons shall be 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 shall be made by the judge; in exigent circumstances, the public prosecution office and its investigators (section 152 of the Courts Constitution Act) shall be 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 shall 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 a person 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 shall 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 shall have the effect of an order or confirmation of seizure of the driving licence issued by a German authority. This shall also apply 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 shall 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 shall 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 shall 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 shall be ordered. Section 94 (3) shall remain unaffected.
(2) Sections 102 to 110 shall apply accordingly.

Section 111c
Enforcement of seizure

(1) The seizure of movable property shall be enforced by way of 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 shall 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 shall apply analogously. The request in respect of making the declarations referred to in section 840 (1) of the Code of Civil Procedure shall 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 shall be enforced by way of 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 shall apply accordingly.
(4) The seizure of a ship, a ship construction or an aircraft shall 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 shall 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 shall apply accordingly in this case.

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

(1) The enforcement of seizure of an object shall have 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 shall not be 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 if he pays a sum of money equal to the value of the asset. The sum paid shall take the place of the asset. It may also be surrendered to the person concerned, subject to revocation at any time, for his 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.

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 shall 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) There shall be no seizure to secure the costs of enforcement.
(4) The claim to be secured, including the amount of money, shall be designated in the order. In addition, the order shall 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 shall apply accordingly.
(5) Sections 102 to 110 shall apply accordingly.
(6) The possibility of issuing an order pursuant to section 324 of the Fiscal Code shall prove no obstacle to issuing 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 shall be enforced by way of attachment. Sections 928 and 930 of the Code of Civil Procedure shall apply analogously. Section 111c (2) sentence 3 shall apply accordingly.

(2) Asset seizure in respect of land or of a right which is governed by the provisions on compulsory enforcement against immovable property shall be enforced by means of entering a debt-securing mortgage. Sections 928 and 932 of the Code of Civil Procedure shall apply analogously.
(3) Asset seizure in respect of a ship, a ship under construction or an aircraft shall 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, sections 928 and 931 of the Code of Civil Procedure shall apply analogously.
(4) In the cases under subsection (2) and subsection (3) sentence 2, an entry shall also be 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 shall be set aside.
(2) If the seizure was ordered by virtue of a fine or the anticipated costs of the criminal proceedings, asset seizure measures shall be set aside upon application by the defendant if he needs the attached item to pay the costs of his defence, his own maintenance or the maintenance of his family.

Section 111h
Effect of enforcement of asset seizure

(1) Enforcement of asset seizure in respect of an object shall have 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*) shall apply to the security interest arising upon enforcement of asset seizure.
(2) Compulsory enforcement in respect of objects attached by way of enforcing asset seizure shall not be admissible for the duration of the enforcement of seizure. Enforcement of an order in accordance with section 324 of the Fiscal Code shall remain unaffected insofar as the right of seizure arose by virtue of an offence.

Section 111i
Insolvency proceedings

(1) If at least one aggrieved 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 shall expire as soon as it forms part of the insolvency estate. The security interest shall 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 shall apply accordingly to a lien in respect of the security deposited pursuant to section 111g (1).
(2) If there are several aggrieved persons 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 the aggrieved persons’ claims to payment of a sum of money equal to the value of that which was obtained to which they have become entitled by virtue of the offence and which they have asserted vis-à-vis the public prosecution office, then the public prosecution office shall file a request to open insolvency proceedings against the debtor’s assets. The public prosecution office

shall refrain from filing such 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 shall acquire a lien up to the amount of the attached assets over the debtor’s claim to surrender of such surplus. The insolvency administrator shall surrender the amount of the surplus to the public prosecution office.

Section 111j
Procedure for ordering seizure and asset seizure

(1) Seizure and asset seizure shall be 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) shall also be competent to seize movable property.
(2) Where the public prosecution office has ordered seizure or asset seizure, it shall apply to the court for confirmation of the order within one week. This shall 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 shall be governed by section 162.

Section 111k
Procedure for enforcing seizure and asset seizure

(1) Seizure and asset seizure shall be enforced by 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) shall apply accordingly.
(2) Section 37 (1) shall apply 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). Section 174 of the Code of Civil Procedure shall 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 shall give the aggrieved person notice of the enforcement of seizure or asset seizure.
(2) In the case of seizure of movable property, such notification shall 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 shall at the same time invite the aggrieved person to declare whether he 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 shall 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 aggrieved person would involve disproportionate effort. Notification may also be published in some other suitable manner. The same shall apply if the aggrieved person is unknown or his whereabouts are not known. Personal data may be published only if it is essential that they be published to safeguard the aggrieved person's rights. After completion of the relevant measures, the public prosecution office shall have the notification deleted.

Section 111m
Management of seized or attached items

(1) The public prosecution office shall be 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 shall be surrendered to the last person having possession of it.
(2) In derogation from subsection (1), the object shall be surrendered to the aggrieved person who has been 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 to the last person having possession of it or to the aggrieved person, the property shall be surrendered to the third party if that third party is known.
(4) Such surrender shall be 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 shall lie 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 and its investigators.

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 shall take the place of the object sold.

(2) The emergency sale shall be ordered by the public prosecution office. Its investigators (section 152 of the Courts Constitution Act) shall 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 shall be heard before the order is made. The order, as well as the time and place of the sale, shall be made known to them insofar as this appears feasible.
(4) The public prosecution office shall be 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 shall 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 material and equipment

(1) The seizure of material 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 material which do not contain anything of a criminal nature shall 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 material giving rise to the seizure.
(4) It shall be for the court to order the seizure of periodically printed material or of the equipment used for or intended for its production within the meaning of section 74d of the Criminal Code. Seizure of other printed material or of the equipment used for 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 shall become ineffective if it is not confirmed by the court within three days. Those parts of the material giving rise to the seizure shall be designated in the order for seizure.
(5) Seizure in accordance with subsection (4) shall 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 due 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. Before preferring public charges or applying for independent confiscation, the seizure is to be set aside upon application therefor by the public prosecution office.

Chapter 9
Arrest and provisional arrest

Section 112
Conditions for remand detention; grounds for arrest

(1) Remand detention may be ordered against the accused if he is strongly suspected of having committed the offence and if 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 shall exist 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 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 211, 212, 226, 306b or 306c of the Criminal Code or insofar as life or limb of another have 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 shall also exist if the accused is strongly suspected of

1. having committed an offence under sections 174, 174a, 176 to 178 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 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 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 shall also be given to offences which are or have been the subject of other, including finally concluded, proceedings.
(2) Subsection (1) shall 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 up to 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 has made preparations for flight,
2. has no permanent residence or residence within the territorial scope of this statute or
3. cannot establish his identity.

Section 114
Warrant of arrest

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

1. the accused,
2. the offence of which he 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 as well as
4. the facts disclosing the strong suspicion of the offence and the ground for arrest, unless disclosure would endanger 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 shall be stated.

Section 114a
Issuance of warrant of arrest; translations

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

Section 114b
Instruction of arrested accused

(1) The arrested accused shall be instructed as to his rights without delay and in writing in a language he understands. If written instruction is clearly insufficient, oral instruction shall also be given. The same procedure shall apply accordingly if it is not possible to give instruction in writing; written instruction shall, however, be given subsequently insofar as this can reasonably be done. The accused shall confirm in writing that he was given instruction; if he refuses, this shall be documented.
(2) In the instruction pursuant to subsection (1) the accused shall be advised that he

1. shall, without delay, at the latest on the day after his apprehension, be brought before the court which is to examine him and decide on his further detention,
2. has the right to reply to the accusation or to remain silent,
3. may request that evidence be taken in his defence,
4. may at any time, including before his examination, consult with defence counsel of his choice,

4a. may, in the cases under section 140 (1) and (2), request the appointment of defence counsel in accordance with the provisions of section 141 (1) and (3),

5. has the right to demand an examination by a female or male physician of his choice,
6. may notify a relative or a person trusted by him, 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 he has no defence counsel and
8. may, if remand detention is continued after he is 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 or who is hearing or speech impaired shall be advised in a language he understands that he 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 foreign national shall be advised that he may demand notification of the consular representation of his home state and have messages communicated to the same.

Section 114c
Notification of relatives

(1) An arrested accused shall be given the opportunity without delay to notify a relative or a person trusted by him, provided the purpose of the investigation is not significantly endangered thereby.
(2) If detention is enforced against the arrested accused after he is brought before the court, the court shall order that one of his relatives or a person trusted by him be

notified without delay. The same duty shall exist in respect of every further decision on the continuation of detention.

Section 114d
Information communicated to penal institution

(1) The court shall communicate a copy of the warrant of arrest along with the request for admission to the penal institution competent for the accused. In addition, it shall inform 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 his personality and other relevant criminal proceedings.

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

Section 114e
Information passed on by penal institution

The penal institution shall communicate 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 shall remain unaffected.

Section 115
Appearance before competent judge

(1) If the accused is apprehended on the basis of a warrant of arrest, he shall be brought before the competent court without delay.
(2) The court shall examine the accused concerning the subject of the accusation without delay following the arrest and no later than on the following day.

(3) During the examination, the incriminating circumstances shall be pointed out to the accused and he shall be informed of his right to reply to the accusation or to remain silent. He shall be given the opportunity to remove grounds for suspicion and arrest and to present those facts which speak in his favour.
(4) If remand detention is continued, the accused shall be informed of the right of complaint as well as 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) shall remain 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 his apprehension, he shall be brought before the nearest local court without delay, no later than the day following his apprehension.
(2) Once the accused has been brought before it, the court shall examine him without delay, no later than the following day. Section 115 (3) shall apply 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 shall be released. If he 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 shall inform the competent court and the competent public prosecution office without delay, using the fastest means available in the circumstances; the competent court shall without delay review whether the warrant of arrest is to be revoked or its enforcement suspended.
(3) If the accused is not released, he shall, at his request, be brought before the competent court for examination in accordance with section 115. The accused shall be informed of this right and shall be instructed pursuant to section 115 (4).

Section 116
Suspension of enforcement of warrant of arrest

(1) The judge shall suspend 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 shall order enforcement of the warrant of arrest if

1. the accused grossly contravenes the duties and restrictions imposed upon him,
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 was not justified or
3. new circumstances have arisen which necessitate the arrest.

Section 116a
Suspension upon provision of security

(1) Security shall 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*) shall remain unaffected.
(2) The judge shall determine the amount and type of security at his 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 must authorise a person residing within the district of the competent court to receive service on his behalf.

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

Enforcement of remand detention shall precede 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 shall 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 the accused is in remand detention, he 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 shall be inadmissible if an application has been made for a review of detention. The right of complaint against the decision on the application shall remain unaffected.
(3) The judge may order specific investigations which may be important for the subsequent decision concerning continuation of remand detention, and he 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 shall be 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 shall have a 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) A right to an oral hearing shall not exist 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 shall 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 shall be notified of the place and time of the oral hearing.
(2) The accused shall be brought to the hearing, unless he has waived his right to be present at the hearing or unless great distance or sickness of the accused or other insurmountable obstacles prevent his being brought to the hearing. The court may order that, under the conditions of sentence 1, the oral hearing shall 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 shall safeguard his rights at the hearing. In that case, the accused shall be assigned defence counsel for the oral hearing if he does not yet have such counsel. Sections 142, 143 and 145 shall apply accordingly.
(3) The parties present shall be heard during the oral hearing. The court shall determine the type and extent of evidence to be taken. A record shall be drawn up of the hearing; sections 271 to 273 shall apply accordingly.
(4) The decision shall be pronounced at the end of the oral hearing. If this is not possible, the decision shall be given within one week at the latest.

Section 118b
Application of provisions concerning appellate remedies

Sections 297 to 300 and section 302 (2) shall 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 shall be subject to permission,
2. visitation, telecommunications, correspondence and parcels shall be monitored,
3. the handing over of items during visitation shall be subject to permission,
4. the accused shall be separated from individual or all other detainees,
5. his placement and presence on premises shared with other detainees shall be restricted or ruled out.

The orders shall be 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 shall be submitted to the court for approval within three working days, unless it has in the meantime ceased to be operative. The accused shall be informed of orders. The order referred to in sentence 2 no. 2 shall include the authorisation to terminate visitation and telecommunications as well as to hold correspondence and parcels.
(2) Implementation of the order shall be 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 shall not be 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 shall be informed of the intended surveillance immediately after the connection has been established. The information may be given by the accused himself. The accused shall be advised in good time prior to the commencement of telecommunications of the duty to so inform.
(4) Sections 148 and 148a shall remain unaffected. They shall apply accordingly to communications between the accused and

1. the probation office competent for his case,
2. the authority competent for supervision of his conduct,
3. the court assistance agency competent for his case,
4. the Bundestag and the *Länder* parliaments,
5. the Federal Constitutional Court and the *Land* constitutional court competent for his case,
6. the *Land* ombudsman competent for his 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 38 of the Federal Data Protection Act,
8. the European Parliament,
9. the European Court of Human Rights,
10. the European Court of Justice,

11. the European 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 his home state.

The measures necessary to determine the existence of the conditions of sentences 1 and 2 shall be 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 shall not have suspensive effect. The court may, however, make provisional orders.
(6) Subsections (1) to (5) shall 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 shall be 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 shall 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 shall 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 shall not be delayed by the fact that an appellate remedy is being sought.
(3) The warrant of arrest shall also 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 shall 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 shall 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 shall be 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 shall be suspended until pronouncement of the 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 shall likewise be 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 shall be 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 shall decide instead.

Section 122
Special review of detention by higher regional court

(1) In the cases under section 121, the competent court shall submit 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 defence counsel shall 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 shall apply accordingly.
(3) If the higher regional court orders continuation of remand detention, section 114 (2) no. 4 shall apply accordingly. In respect of the further review of remand detention (section 117 (1)), the higher regional court shall have 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 shall decide on an application for an oral hearing at its discretion.
(4) Reviews of whether the conditions of section 121 (1) are met shall also be 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 to the aforementioned provisions.
(7) If the Federal Court of Justice has jurisdiction, it shall decide 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) shall 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 shall be 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 shall be 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 as well as the person who has provided security for the accused shall be requested to make a statement. They shall be 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 shall 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 shall have 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 shall take 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 shall be 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 shall be 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 shall be 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 shall rest 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 shall issue 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 shall have jurisdiction. During proceedings on an appeal on points of law, the court whose judgment is being contested shall have jurisdiction. Individual measures, in particular those under section 119, shall be ordered by the presiding judge. In urgent cases, he 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 shall 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 shall 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 shall lie 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 shall lie with the local court in whose district the supervisory authority responsible for that facility has its seat. Section 121b of the Prison Act (*Strafvollzugsgesetz*) shall apply 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 his placement in a

psychiatric hospital or in an addiction treatment facility will be ordered, the court may make an order for placement directing that he 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 shall apply accordingly with respect to provisional placement. Sections 121 and 122 shall apply accordingly, subject to the proviso that the higher regional court shall review whether the conditions for provisional placement continue to apply.
(3) The order for placement shall be revoked if the conditions for provisional placement no longer apply or if the court does not order placement in a psychiatric hospital or in an addiction treatment facility in its judgment. Release shall not be delayed by the fact that appellate remedies have been sought. Section 120 (3) shall apply accordingly.
(4) If the person committed has a statutory representative or a legal representative as defined in section 1906 (5) of the Civil Code, the latter shall also 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 shall be authorised to arrest him provisionally, even without judicial order, if there is reason to suspect flight or if his identity cannot be immediately established. The establishment of the identity of a person by the public prosecution office or by police officers shall be governed by section 163b (1).
(2) In exigent circumstances, the public prosecution office and police officers shall also be 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 shall also be admissible where no application has yet been filed. This shall apply accordingly if an offence may be prosecuted only with authorisation or upon request to prosecute.
(4) Sections 114a to 114c shall apply accordingly to provisional arrest by the public prosecution office and by police officers.

Section 127a
Exemption from ordering 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 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) shall apply accordingly.

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

(1) The public prosecution office and police officers shall also be 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 shall 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 shall 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 shall be given by the judge responsible for conducting the accelerated proceedings.

Section 128
Appearance before judge following provisional arrest

(1) The arrested person shall, without delay, be brought before the judge of the local court in whose district he was arrested, at the latest on the day after his arrest, unless he has been released. The judge shall examine the person brought before him in accordance with section 115 (3).
(2) If the judge does not consider the arrest justified or if he considers that the reasons therefor no longer apply, he shall order release. Otherwise, he shall issue 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) shall apply accordingly.

Section 129
Appearance before judge following provisional arrest after preferment of public charges

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

Section 130
Warrant of arrest prior to filing request to prosecute

If, because 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, shall be immediately informed of the issuance of the warrant of arrest and be 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 shall not exceed one week. If no request to prosecute is filed within this time limit, the warrant of arrest shall be revoked. This shall apply accordingly if an offence may be prosecuted only upon authorisation or upon a request to prosecute. Section 120 (3) shall apply.

Chapter 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 shall 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) shall also be entitled to exercise this power, subject to the same conditions. In the cases under sentence 2, the decision of the public prosecution office shall be obtained without delay. The order shall become ineffective if it is not confirmed within 24 hours.
(4) The accused shall be named and, where necessary, described as accurately as possible; an image may be attached. The offence of which he is suspected, the place and time of its commission, as well as circumstances which may be relevant for his apprehension may be indicated.
(5) Sections 115 and 115a shall apply accordingly.

Section 131a
Alert to determine whereabouts

(1) An alert may be issued requiring determination of the whereabouts of an accused or of a witness if his whereabouts are not known.
(2) Subsection (1) shall also apply 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 his 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 whereabouts would offer much less prospect of success or would be much more difficult.
(4) Section 131 (4) shall apply accordingly. When determining the whereabouts of a witness it shall be made clear that the person sought is not the accused. There shall be no public search 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 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) Publication of images of an accused who is suspected of having committed an offence of substantial significance shall also be 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) Publication of images of a witness and references to the criminal proceedings underlying such publication shall also be 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 shall apply accordingly.

Section 131c
Ordering 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) shall 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, as well as 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 shall become ineffective if they are 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) shall 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) shall apply 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 has on his person and which belong to him may be seized. Sections 94 and 98 shall apply accordingly.

Chapter 9b
Provisional disqualification from exercising profession

Section 132a
Ordering 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 profession, branch of profession, trade or branch of trade. Section 70 (3) of the Criminal Code shall apply accordingly.
(2) The provisional disqualification from exercising a profession shall be revoked if the reason therefor no longer exists or if the court does not order disqualification from exercising a profession in the judgment.

Chapter 10
Examination of accused

Section 133
Summons

(1) The accused shall 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 court immediately if reasons exist which would justify the issuance of a warrant of arrest.
(2) The order shall precisely describe the accused and the offence with which he is charged; the reason for his being brought before the court shall be indicated.

Section 135
Immediate examination

The accused shall, without delay, be brought before the judge and examined by him. He may not be kept in custody by virtue of the order for longer than the end of the day following the day on which he was first brought before the court.

Section 136
First examination

(1) At the commencement of the first examination, the accused shall be informed of the offence with which he is charged and of the applicable criminal law provisions. He shall be advised that the law grants him 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 his examination, to consult defence counsel of his choice. If the accused wishes to consult defence counsel prior to his examination, he shall be provided with information which makes it easier for him to be able to contact such defence counsel. Reference is thereby to be made to any emergency legal services which are available. He shall, further, be advised that he may request evidence to be taken in his defence and, under the conditions of section 140 (1) and (2), request the appointment of defence counsel in accordance with section 141 (1) and (3); in the latter case, reference shall be made to the resulting costs referred to in section 465. In appropriate cases, the accused shall also be informed that he 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 and to assert the facts which speak in his favour.
(3) At the first examination of the accused, consideration shall also be given to ascertaining his personal situation.

Section 136a
Prohibited examination methods; prohibited evidence

(1) The accused's freedom to make up his mind and to manifest his will must 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 shall be prohibited.
(2) Measures which impair the accused's memory or his capacity to understand the wrongfulness of an act shall not be permitted.
(3) The prohibitions under subsections (1) and (2) shall apply irrespective of the accused's consent. Statements which were obtained in breach of this prohibition shall not be used, even if the accused consents to their use.

Chapter 11
Defence

Section 137
Accused's right to assistance of defence counsel

(1) The accused may avail himself of the assistance of defence counsel at any stage of the proceedings. No more than three defence counsel may be chosen.
(2) If the accused has a statutory representative, the latter may also engage defence counsel independently. Subsection (1) sentence 2 shall apply 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 own 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 can avail themselves of the assistance of a lawyer or representation by a lawyer, they may, in accordance with subsection (1) and subsection (2) sentence 1, also choose the other persons designated therein.

Section 138a
Exclusion of defence counsel

(1) Defence counsel shall be excluded from participating in proceedings if he 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 shall also 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 he has committed or is committing one of the acts designated in subsection (1) nos. 1 and 2.
(3) The exclusion shall 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 may not defend the accused in other proceedings governed by statute either. He may not visit an accused who is not at liberty in relation to other matters.
(5) As long as defence counsel is excluded, he may not defend other accused persons in the same proceedings either 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) shall apply accordingly.

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

Defence counsel shall also 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 participation would endanger the security of the Federal Republic of Germany. Section 138a (3) sentence 1 no. 1 shall apply accordingly.

Section 138c
Competence for decision on exclusion of defence counsel

(1) Decisions under sections 138a and 138b shall be 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, the Federal Court of Justice shall decide. If the proceedings are pending before a panel of the higher regional court or of the Federal Court of Justice, another panel shall decide.
(2) After public charges have been preferred and until final conclusion of the proceedings, the court which is competent pursuant to subsection (1) shall decide, upon submission by the court before which the proceedings are pending and otherwise upon application by the public prosecution office. The submission shall be 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 shall 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 the rights of defence counsel under sections 147 and 148 to be suspended 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 shall be given by the court which has to decide on exclusion of defence counsel. The order shall take the form of an incontestable decision. For the duration of the order, the court shall appoint another defence counsel to exercise the rights under sections 147 and 148. Section 142 shall apply accordingly.
(4) If the court before which the proceedings are pending makes a submission pursuant to subsection (2) during the main hearing, it shall 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 up to 30 days.
(5) If defence counsel, on his own initiative or at the request of the accused, withdraws from participation in the proceedings after an application for his 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 shall be 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. The decision on this shall be 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 shall be given after an oral hearing.
(2) Defence counsel shall be summoned to the oral hearing. The time limit for the summons shall be 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 shall be notified of the date of the oral hearing.
(3) The oral hearing may be held without defence counsel if he has been properly summoned and has had his attention drawn in the summons to the fact that the oral hearing may be conducted in his absence.
(4) Those parties who are present at the oral hearing shall be heard. Section 247a (2) sentence 1 shall apply accordingly to the hearing of the president of the bar association. The extent to which evidence is taken shall be determined by the court at its duty-bound discretion. A record shall be drawn up of the hearing; sections 271 to 273 shall apply accordingly.
(5) The decision shall be pronounced at the end of the oral hearing. If this is not possible, the decision shall be given no later than within one week.
(6) An immediate complaint shall be 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 shall not be entitled to lodge a complaint. A decision rejecting the exclusion of defence counsel pursuant to section 138a shall not be 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, 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 participation of defence counsel shall be mandatory if

1. the main hearing at first instance is held at the higher regional court or at the regional court;
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. remand detention under section 112 or 112a or provisional placement under section 126a or section 275a (6) is enforced against an accused;
5. the accused has been in an institution for at least three months based on judicial order or with the approval of the judge and will not be released from such institution at least two weeks prior to commencement of the main hearing;
6. placement of the accused pursuant to section 81 is being considered for the purpose of preparing an opinion on his mental condition;
7. proceedings for preventive detention are conducted;
8. the previous defence counsel is excluded from participating in the proceedings by a decision;

9. a lawyer has been assigned to the aggrieved person pursuant to section 397a and section 406h (3) and (4).

(2) In all other cases, the presiding judge shall appoint defence counsel upon application or ex officio if the assistance of defence counsel appears necessary due to the severity of the offence, due to the difficult factual or legal situation, or if it is evident that the accused cannot defend himself. Applications filed by accused persons with a speech or hearing impairment shall be granted.

(3) The appointment of defence counsel pursuant to subsection (1) no. 5 may be revoked if the accused is released from the institution at least two weeks prior to commencement of the main hearing. The appointment of defence counsel pursuant to subsection (1) no. 4 shall remain effective for the further proceedings under the conditions of subsection (1) no. 5, unless another defence counsel is appointed.

Section 141
Court-appointed defence counsel

(1) In the cases under section 140 (1) nos. 1 to 3 and 5 to 9 and (2), defence counsel shall be appointed by the court as soon as an indicted accused who has no defence counsel has been requested in accordance with section 201 to reply to the bill of indictment.

(2) If it only subsequently appears that defence counsel is needed, he shall be appointed immediately.

(3) Defence counsel may also be appointed in the course of the preliminary investigation. The public prosecution office shall request such appointment if, in its opinion, the assistance of defence counsel will be necessary pursuant to section 140 (1) or (2). Upon conclusion of the investigations (section 169a), he shall be appointed upon application by the public prosecution office. The court before which the judicial examination is to be conducted shall appoint defence counsel to the accused if the public prosecution office so requests or if, on account of the importance of the examination, it appears necessary for defence counsel to be involved in order to safeguard the rights of the accused. In the case under section 140 (1) no. 4 defence counsel shall be appointed without delay after the commencement of enforcement.

(4) The judge presiding over the court seized of the case shall decide on the appointment. Before preferring charges, 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 shall decide; in the case under section 140 (1) no. 4, the court competent pursuant to section 126 or section 275a (6) shall decide.

Section 142
Selection of defence counsel to be appointed

(1) Prior to the appointment of defence counsel, the accused shall be given the opportunity to name defence counsel of his choice within a time limit to be specified. It shall be for the presiding judge to appoint such defence counsel, unless there is an important reason for him not doing so.

(2) In the cases under section 140 (1) nos. 2, 5 and 9, and section 140 (2), persons who have undergone legal training and have passed the prescribed first examination for the judicial service and have been employed within the judicial service for at least one year and three months may also be appointed as defence counsel in proceedings at first instance, but not before the court to whose judges they have been assigned for training.

Section 143
Revocation of appointment of defence counsel

The appointment of defence counsel by the court shall be revoked if another defence counsel is soon to be chosen and such counsel accepts the mandate.

Section 144
(repealed)

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 shall 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 in accordance with section 141 (2), the court may decide to suspend the main hearing.
(3) The hearing shall be interrupted or suspended if the newly appointed defence counsel declares that he does not have the time needed to prepare the defence.
(4) If a suspension becomes necessary through the fault of defence counsel, he shall be charged with the costs incurred.

Section 145a
Service on defence counsel

(1) Defence counsel of choice whose power of attorney is recorded in the files as well as court-appointed defence counsel are considered authorised to receive notifications and other communications on behalf of the accused.
(2) A summons for the accused may be served on defence counsel only if he is expressly authorised to receive summonses by power of attorney recorded in the files. Section 116a (3) shall remain unaffected.
(3) If a decision is served on defence counsel pursuant to subsection (1), the accused shall be informed thereof; he shall be provided with a copy of the decision at the same time. If a decision is served on the accused, defence counsel shall be simultaneously informed thereof even if the files contain no power of attorney; he shall also 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 he 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 shall be rejected as defence counsel as soon as this becomes evident; the same shall apply if the conditions of section 146 are met after he 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 shall all be rejected. The decision to reject defence counsel shall be

taken by the court before which the proceedings are pending or which would be competent to hear the main proceedings.
(2) Acts by defence counsel prior to his rejection shall not be 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 shall be 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 as well as 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 as well as 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 shall be made available to defence counsel in suitable form; to this extent, as a rule, inspection of the files shall 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 should have been admitted, nor may he be refused inspection of expert opinions.
(4) An accused who has no defence counsel shall be 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 shall 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 shall be 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 shall apply accordingly. These decisions shall be given without reasons if their disclosure might 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 shall revoke the order no later than upon conclusion of the investigations. Defence counsel or an accused who has no defence counsel shall be notified as soon as he once again has the unrestricted right to inspect the files.
(7) (repealed)

Section 148
Accused's communications with defence counsel

(1) The accused shall be entitled to communicate with defence counsel in writing as well as orally even when he 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 shall order that in communications with defence counsel any papers or other items shall 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 shall be 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, devices which rule out the possibility of handing over papers and other items shall be put in place in respect of 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 shall be 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 in respect of which there is an obligation to report an offence shall be provisionally taken into custody. The provisions concerning seizure shall 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 shall keep secret any knowledge which he obtains during surveillance; section 138 of the Criminal Code shall remain unaffected.

Section 149
Admission of assisting counsel

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

Section 150
(repealed)

Book 2
Proceedings at first instance

Chapter 1
Public charges

Section 151
Principle of indictment

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

Section 152
Indicting authority; principle of mandatory prosecution

(1) The public prosecution office shall be authorised to prefer public charges.

(2) Except as otherwise provided by law, the public prosecution office shall be 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 shall also apply 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 shall not be 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 shall not be required if the main hearing cannot be conducted for the reasons stated in section 205 or is conducted in his absence in the cases under section 231 (2) and sections 232 and 233. The decision shall be given by way of an order. The order shall not be 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 in 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 to strive therefor,
6. participation in a social skills training course or

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*).

The public prosecution office shall set 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, shall be a maximum of six months and, in the cases under sentence 2 nos. 4 and 6, 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 shall be given for any contribution made towards compliance. Section 153 (1) sentence 2 shall apply accordingly in the cases under sentence 2 nos. 1 to 6. Section 246a (2) shall apply 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 shall apply accordingly. The decision under sentence 1 shall be made by way of an order. The order shall not be contestable. Sentence 4 shall also apply to a finding that conditions and directions imposed pursuant to sentence 1 have been complied with.
(3) The running of the period of limitation shall be 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 shall apply 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 shall apply 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 might 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, the 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 shall be 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 shall be vested in the Federal Public Prosecutor General.

Section 153d
Non-prosecution of offences against national security due 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 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 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 shall apply if the offender has made such contribution

by disclosing to an agency after the offence such knowledge as he 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 shall only apply 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 shall apply 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 might 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 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 he 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 shall be 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 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 law. Section 154 (1) no. 2 shall apply accordingly. The limitation shall be included in the records.
(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 law which were not considered. An application by the public prosecution office for reintroduction shall be granted. If parts of an offence which were not considered are reintroduced, section 265 (4) shall apply 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 shall apply if he 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 might result from the domestic prosecution is negligible in comparison to the penalty or measure of reform and prevention which has been imposed on him with binding effect abroad or which he can expect 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 shall, upon application by the public prosecution office, provisionally terminate the proceedings. Section 154 (3) to (5) shall apply accordingly, subject to the proviso that the time limit in subsection (4) shall be 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 on account of 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 due 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 shall 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 shall not 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 shall terminate 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 statute of limitation shall 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 shall extend only to the offence specified and to the persons accused in the charges.
(2) Within these limits, the courts shall be authorised and obliged to act independently; in particular, they shall not be 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 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. An agreement may not be accepted 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 shall 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 only process and use the personal data transmitted pursuant to subsection (1) 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 only collect personal data and only process and use such information to the extent that the data subject has given his consent and that this is necessary to carry out the victim–offender mediation or the restitution. Upon conclusion of their activity they shall 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 Part II of the Federal Data Protection Act shall also apply if the information is not processed in or from data files.
(4) Documentation containing the personal data referred to in subsection (2) sentences 1 and 2 shall be destroyed by the commissioned agency upon expiry of one year following conclusion of the criminal proceedings. The public prosecution office or the court shall inform the commissioned agency ex officio and without delay of the time when proceedings are concluded.

Section 156
Withdrawal of charges

The 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.

Chapter 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 the local courts. An offence which is reported orally shall be recorded in writing. Upon application, the aggrieved person is to be provided with written confirmation of receipt of his report. Such confirmation is to include 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 shall 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 shall 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 shall, upon the request of the aggrieved person, 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 shall be provided with the necessary assistance in order to be able to report the offence in a language which he speaks. In such cases, the written confirmation of the report referred to in subsection (1) sentences 3 and 4 shall, upon application, be translated into a language he understands; subsection (1) sentence 5 shall remain 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 shall be obliged to inform the public prosecution office or the local court thereof without delay.
(2) The written permission of the public prosecution office shall be 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 shall investigate the facts in order to decide whether public charges are to be preferred.

(2) The public prosecution office shall ascertain both incriminating and exonerating circumstances and shall ensure that evidence the loss of which is to be feared is taken.
(3) The public prosecution office shall also investigate 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 shall be 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 shall be 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 shall be included in the records. 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, sentences 2 to 4 shall apply accordingly.
(2) Insofar as a person designated in section 53 (1) sentence 1 nos. 3 to 3b or no. 5 might 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, this shall be given particular consideration in the context of 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 shall apply accordingly to the use of information for evidential purposes. Sentences 1 to 3 shall not apply to lawyers and non-lawyer providers of legal services who have been admitted to a bar association.
(3) Subsections (1) and (2) shall apply accordingly insofar as the persons designated in section 53a would have the right to refuse to testify.
(4) Subsections (1) to (3) shall 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 shall apply 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) shall 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 shall be included in the records.

Section 161
Public prosecution office's general investigatory powers

(1) For the purpose indicated in section 160 (1) to (3), the public prosecution office shall be 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 shall be obliged to comply with the request or order of the public prosecution office and shall be entitled, in such cases, to request information from all the authorities.

(2) 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 shall remain unaffected.

(3) 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 shall be 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 Chapters 6 and 7 of Part 1 concerning witnesses and experts shall 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 shall have 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 shall apply 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 shall each apply accordingly. Court decisions as referred to in sentences 1 and 2 shall not be 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 shall also be vested in the requested public prosecution office.

(5) Section 185 (1) and (2) of the Courts Constitution Act shall apply accordingly.

Section 162
Investigating judge

(1) If the public prosecution office considers a judicial investigation to be necessary, it shall submit its applications prior to the preferment of public charges 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 shall be 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 shall 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 shall be the competent court. During proceedings on an appeal on points of law, the court whose judgment is being contested shall be the competent court. After final conclusion of the proceedings, subsections (1) and (2) shall apply accordingly. Following an application for the reopening of proceedings, the court competent to decide in the reopened proceedings shall be the competent court.

Section 163
Role of police in preliminary investigation

(1) The authorities and officers of the police force are to investigate offences and take all measures which may not be deferred in order to prevent the concealment of facts. To this end, they shall be authorised to request and, in exigent circumstances, to demand information from all authorities, as well as 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 shall 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 shall be possible.
(3) Upon being summoned by the public prosecution office's investigators, witnesses shall be 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 Part 6 of Book 1 shall apply accordingly. The court reserves the right to examine witnesses under oath.
(4) The public prosecution office shall decide

1. whether a person has the status of witness or whether he 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 shall have the right to determine the sentence of imprisonment.

In all other respects, the person conducting the examination shall take 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 shall apply accordingly. Court decisions as referred to in sentence 1 shall not be contestable.
(6) Section 52 (3) and section 55 (2) shall apply accordingly to instruction given to experts by police officers. In the cases under section 81c (3) sentences 1 and 2, section 52 (3) shall also apply accordingly to examinations by police officers.
(7) Section 185 (1) and (2) of the Courts Constitution Act shall apply analogously.

Section 163a
Examination of accused

(1) The accused shall be examined prior to conclusion of the investigations at the latest, unless the proceedings are terminated. Section 58a (1) sentence 1 and (2) and (3) and section 58b shall apply accordingly. In simple matters it shall be sufficient to give the accused the opportunity to respond in writing.
(2) If the accused applies for evidence to be taken in his defence, such evidence shall be taken if it is of importance.
(3) The accused shall be obliged to appear before the public prosecution office if summoned. Sections 133 to 136a and section 168c (1) and (5) shall apply accordingly. Upon application by the accused, the court competent pursuant to section 162 shall decide on the lawfulness of his being made to appear. Sections 297 to 300, 302, 306 to 309, 311a and 473a shall apply accordingly. The decision of the court shall not be contestable.
(4) The accused shall be informed of the offence with which he is charged when he is first examined by police officers. In all other respects, section 136 (1) sentences 2 to 6 and (2) and (3) and section 136a shall apply to the examination of the accused by police officers. Section 168c (1) and (5) shall apply accordingly to defence counsel.

Section 163b
Measures to establish identity

(1) If somebody is suspected of having committed an offence, the public prosecution office and police officers may take the measures necessary to establish his identity; section 163a (4) sentence 1 shall apply accordingly. The suspect may be kept in custody if his identity cannot be established by other means or only with considerable difficulty. Under the conditions of sentence 2, it shall be admissible to search the suspect and the objects found on him as well as 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 shall apply 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 identity. The arrested person shall be brought without delay before the judge at the local court in the district of which he 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 identity. Sections 114a to 114c shall apply accordingly.
(2) Deprivation of liberty for the purpose of establishing identity shall not exceed a total of 12 hours.
(3) Once identity has been established, the documentation prepared in connection with the establishment shall 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, as well as the circumstances which may be important for investigating the offence or for apprehending the offender may be electronically stored 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 shall also apply 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 shall apply for judicial confirmation of such order without delay. Section 100e (1) sentence 3 shall apply accordingly.
(3) The order shall be given in writing. It shall 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 shall specify the nature and duration of the measures. It shall be limited to a particular area and to a maximum period of three months. One extension of no more than three further months shall be admissible if the conditions of subsection (1) continue to apply.
(4) If the conditions for issuance of the order no longer exist 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 are to 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 shall be inadmissible. The public prosecution office shall 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 to show 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 shall be 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 shall apply for court confirmation without delay. Section 100e (1) sentence 3 shall apply accordingly. The order shall 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

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

(longer-term observation). 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 shall be 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.
(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 shall become ineffective if it is not confirmed by the court within three working days. Section 100e (1) sentences 4 and 5 and (3) sentence 1 shall apply accordingly.
(4) (repealed)

Section 164
Arrest of persons disrupting official activities

The official directing official activities on the ground shall be authorised to apprehend persons who intentionally disturb his official activities or oppose orders given by him within the scope of his authority and to have them kept in custody until completion of his 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 applies for certain exonerating evidence to be taken, the judge shall, insofar as he considers it of importance, 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 shall lie with the public prosecution office.

Section 168
Record of judicial investigatory acts

A record shall be made of each judicial investigatory act. A registry clerk shall be called in to make such record; the judge may dispense with this if he considers the presence of a recording clerk not to be necessary. In urgent cases, the judge may call in a person to be sworn in by him as recording clerk.

Section 168a
Form of record of judicial investigatory acts

(1) The record must indicate the place and date of the hearing as well as 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) shall remain unaffected.
(2) The content of the record may be provisionally recorded in regular shorthand, by stenotype, tape recorder or by comprehensible abbreviations. In this case, the record shall be produced without delay after conclusion of the hearing. The provisional record is to be placed on file or, if it is not suitable for such purposes, shall be kept together with the files at the registry. Tape recordings may be erased

once the proceedings have been concluded with binding effect or have been otherwise terminated.
(3) That part of the record which concerns the persons participating in the hearing shall be read to them for approval, or shall be submitted to them for inspection or displayed to them on a screen. The fact of their approval shall be noted down. The parties shall sign the record or shall state therein why this was not done. If the content of the record has only been recorded provisionally, it shall be sufficient for the record to be read out or played back. The record shall indicate that this was done and that approval was given or which objections were raised. The displaying on a screen, reading out or submission for inspection or the playing back may be omitted if the participating persons, insofar as it concerns them, dispense with this after the recording; the record shall indicate that such waiver was pronounced.
(4) The record shall be signed by the judge as well as by the recording clerk. If the content of the record has been recorded in full or in part by means of a tape recorder and without involving a recording clerk, the judge and the person who produced the record shall sign it. The latter shall sign, making the addendum that he confirms the accuracy of the transcript. Proof of inaccuracy of the transcript shall be admissible.

Section 168b
Record of investigating authorities' investigatory acts

(1) The result of investigatory acts of the investigating authorities shall be included in the record.
(2) The examination of the accused, witnesses and experts shall be recorded pursuant to sections 168 and 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 defence counsel participated in the examination shall be documented.
(3) The instruction of the accused prior to his examination pursuant to section 136 (1) and section 163a shall be documented. The same shall apply to the accused's decision as to whether he wishes to consult his own choice of defence counsel prior to his examination.

Section 168c
Right to be present during judicial examination

(1) The public prosecutor and defence counsel shall be permitted to be present during the judicial examination of the accused. Following the examination, they shall 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 shall be permitted to be present during the judicial examination of a witness or an expert. Following the examination they shall 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 shall apply accordingly.
(3) The judge may exclude an accused from being present at the hearing if his presence would jeopardise the purpose of the investigation. This shall in particular apply 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 shall be entitled to be present only at those hearings which are held at the court of the place where he is in custody.
(5) The persons entitled to be present shall be given prior notice of the dates set down for the hearings. Notification shall be dispensed with if it would endanger the success of the investigation. Persons entitled to be present shall 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 shall be permitted to be present at the hearing when a judicial inspection is made. Section 168c (3) sentence 1, (4) and (5) shall apply accordingly.
(2) If experts are consulted at the judicial inspection, the accused may request that the experts to be proposed by him for the main hearing be summoned to the hearing and, if the judge rejects the application, the accused may have them summoned himself. The experts named by the accused shall be 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 well-being in the event of his being examined in the presence of persons entitled to be present and if that risk cannot be averted in some other way, the judge shall examine the witness separately from those entitled to be present. There shall be simultaneous audio-visual transmission of the examination to the latter. The rights of participation of those entitled to be present shall otherwise remain unaffected. Sections 58a and 241a shall apply accordingly. The decision referred to in sentence 1 shall not be 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 shall 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 shall make 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 shall prefer them by submitting a bill of indictment to the competent court.
(2) Otherwise, the public prosecution office shall terminate the proceedings. The public prosecutor shall notify the accused thereof if he was examined as such or a warrant of arrest was issued against him; the same shall apply if he 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 shall notify the applicant, indicating the reasons. If the applicant is also the aggrieved person, the order shall indicate to him 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 shall apply accordingly to aggrieved persons who would be entitled to join a public prosecution as private accessory prosecutor pursuant to section 395, insofar as they make a request for a translation.

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

(1) If the applicant is also the aggrieved person, he shall be 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 shall be deemed to have been observed. Time shall 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. He shall be instructed as to this right and as to the form such application shall take; the time limit shall not run if no instruction has been given. The application shall be 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 shall apply in the cases under sections 153c to 154 (1) as well as 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 shall be governed by the same provisions as apply in civil litigation. The application shall be submitted to the court competent to decide.
(4) The higher regional court shall be competent to decide on the application. Sections 120 and 120b of the Courts Constitution Act shall apply analogously.

Section 173
Court procedure after filing of application

(1) Upon the request of the court, the public prosecution office shall submit to the court the records of the hearings conducted so far.

(2) The court may inform the accused of the application, setting him 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) The court shall dismiss the application if there are no sufficient grounds to prefer public charges and shall notify the applicant, the public prosecution office and the accused of the dismissal.
(2) If 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 shall order the preferment of public charges. This order shall be 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 shall 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 shall remain unaffected. The court shall, at its discretion, determine the amount of security to be provided. At the same time, the court shall specify 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 shall declare the application withdrawn.

Section 177
Costs

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

Chapter 3
(repealed)

Chapter 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 shall decide whether main proceedings are to be opened or whether proceedings are to be provisionally terminated.
(2) The bill of indictment shall contain the application to open the main proceedings. The file shall be submitted to the court together with the bill of indictment.

Section 200
Content of bill of indictment

(1) The bill of indictment shall indicate the indicted accused, the offence with which he 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 shall also be indicated. If witnesses are designated, their place of residence or whereabouts shall be indicated, whereby indication of the full address shall not be required. In the cases under section 68 (1) sentence 2 and (2) sentence 1, indicating the name of the witness shall be sufficient. If reference is made to a witness whose identity is not to be revealed either in full or in part, this fact shall be indicated; the same shall apply accordingly to the confidentiality of the witness's place of residence or whereabouts.
(2) The bill of indictment shall also set 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 shall communicate the bill of indictment to the indicted accused and at the same time shall summon him to state, within a time limit to be set, whether he wants to apply for individual evidence to be taken before the decision to open main proceedings or whether he wants to raise objections to the opening of main proceedings. The bill of indictment shall also be communicated to a private accessory prosecutor and to a person entitled to private accessory prosecution who has applied therefor; section 145a (1) and (3) shall apply accordingly.
(2) The court shall decide on the applications and objections. The decision shall not be 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 shall not be 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 shall be documented.

Section 203
Decision to open main proceedings

The court shall decide 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 indicted accused shall be given notification of the order.

Section 205
Termination due 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 shall secure the evidence, insofar as this is necessary.

Section 206
Applications not binding on court

The court shall not be bound in the formulation of its decision by the public prosecution office's applications.

Section 206a
Termination due 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 shall be 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 shall terminate the proceedings by an order made outside the main hearing. The order shall be 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 shall admit the charges for the main hearing and designate the court before which the main hearing is to take place.
(2) The court shall specify 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 some 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 case under subsection (2) nos. 1 and 2, the public prosecution office shall submit a new bill of indictment corresponding to the order. Presentation of the relevant results of investigations may be dispensed with.

(4) The court shall at the same time decide ex officio whether remand detention or provisional placement shall 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 shall open 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 shall submit 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 shall be 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 shall be 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 shall 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.

Chapter 5
Preparation of main hearing

Section 212
Discussion of status of proceedings with parties

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

Section 213
Setting of date for main hearing

(1) The date for the main hearing shall be 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 shall coordinate 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 summonses required for the main hearing shall be ordered by the presiding judge. The presiding judge shall at the same time order 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) shall apply accordingly. The court registry shall ensure 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 shall order 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 shall be entitled to summon additional persons directly.
(4) The public prosecution office shall ensure 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 shall be served on the defendant at the latest with the summons. In the cases under section 207 (3), this shall apply accordingly to a bill of indictment subsequently submitted.

Section 216
Summoning of defendant

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

(3) The defendant may waive observance of this time limit.

Section 218
Summoning of defence counsel

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

Section 219
Defendant's applications to take evidence

(1) If the defendant requests that witnesses or experts be summoned or that other evidence be produced for the main hearing, he shall make his applications to the presiding judge, indicating the facts on which evidence is to be taken. He shall be notified of the direction made following this request.
(2) If the defendant's applications concerning evidence are granted, they shall 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 him summoned directly. He shall be authorised to do so even without a previous application.
(2) A person directly summoned shall be obliged to appear only if, at the time of the summons, the statutory reimbursement for travel expenses and absence from work is offered him in cash or 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 shall, upon application, 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 shall provide the public prosecution office and the defendant with the names of the summoned witnesses and expert witnesses in good time, indicating their place of residence or whereabouts. If the public prosecution office makes use of its right under section 214 (3), it shall provide the court and the defendant with the names of the summoned witnesses and experts in good time, indicating their place of residence or whereabouts. Section 200 (1) sentences 3 to 5 shall apply analogously.
(2) The defendant shall provide the court and the public prosecution office in good time with the names of the witnesses and experts directly summoned by him or to be brought to the main hearing, indicating their place of residence or whereabouts.

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 shall 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. The presiding judge may make an order communicating the composition prior to the main hearing; communication on behalf of the defendant shall be made to his defence counsel. If the composition, as communicated, changes, this shall be indicated no later than on commencement of the main hearing.
(2) If communication about the composition or about a change in the composition of the court is received less than one week prior to the commencement of the main hearing, 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.
(3) The documentation which determines the composition may be inspected on behalf of the defendant only by his 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 up to the commencement of the examination of the first defendant on the charges at the main hearing. The facts on the basis of which the composition is alleged to be contrary to the rules shall be indicated. All objections are to be raised at the same time. If made outside the main hearing, the objection shall be made in writing; section 345 (2), and for the private accessory prosecutor section 390 (2), shall apply accordingly.
(2) The court shall decide on the objection in the composition required for decisions made outside the main hearing. If it considers the objection to be well-founded, it shall declare itself not to be properly composed. If an objection results in a change in the composition of the court, section 222a shall not apply to the new composition.

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 from appearing at the main hearing for a longer or indefinite period of time.
(2) The same rule shall apply where a witness or an expert cannot reasonably be expected to appear due 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 shall be notified in advance of the dates set down for the examination; their presence at the examination shall not be required. Notification may be dispensed with if it would endanger the success of the investigation. The record made thereof shall be submitted to the public prosecution office and defence counsel.
(2) If a defendant who is not at liberty has defence counsel, he shall be entitled to be present only at those court hearings which are held at the court at the place where he is in custody.

Section 225
Judicial inspection by commissioned or requested judges

The provisions of section 224 shall 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 shall submit the files to this court via the public prosecution office; section 209a no. 2 (a) shall apply accordingly. The court to which the matter has been referred shall make 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 shall decide on the application.
(3) The defendant and the court before which the main hearing is to be held shall be named in the order accepting the case. Section 207 (2) nos. 2 to 4, (3) and (4) shall apply accordingly. Contestability of the order shall be governed by section 210.
(4) The procedure described in subsections (1) to (3) shall also apply 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 shall refer the case to that chamber with binding effect; contestability of the decision on the referral shall be governed by section 210.

Chapter 6
Main hearing

Section 226
Uninterrupted presence

(1) The main hearing shall be conducted in the uninterrupted presence of the persons called upon to reach a judgment, as well as of the public prosecution office and a registry clerk.
(2) The criminal court judge may dispense with the requirement that a registry clerk attend the main hearing. The decision shall not be 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 court shall decide on the suspension of a main hearing and on its interruption pursuant to section 229 (2). The presiding judge shall be competent to order brief interruptions.

(2) An impediment to defence counsel's appearance shall, without prejudice to the provision in section 145, not entitle the defendant to request suspension of the hearing.
(3) If the time limit set in accordance with section 217 (1) has not been complied with, the presiding judge shall inform the defendant of his right to request suspension of the hearing.

Section 229
Maximum period of interruption

(1) A main hearing may be interrupted for a period of up to three weeks.
(2) A main hearing may also be interrupted for a period of up to one month if it has been conducted for at least 10 days prior thereto.
(3) If a defendant or a person called upon to reach a judgment is unable, due to illness, to appear at a main hearing which has already continued for at least 10 days, the running of the time limits referred to in subsections (1) and (2) shall be suspended for the duration of the incapacity, up to a maximum of six weeks; these time periods shall expire no earlier than 10 days after the suspension has ended. The court shall determine the commencement and end date of the suspension 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 shall 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 shall be 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 court shall determine by incontestable decision that a technical fault within the meaning of sentence 1 exists.

Section 230
Defendant's failure to appear

(1) No main hearing shall be held against a defendant who fails to appear.
(2) If insufficient excuse has been provided for the defendant's failure to appear, an order shall be made to bring him before the court or a warrant of arrest shall 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 absent himself from the hearing. The presiding judge may take appropriate measures to prevent the defendant from absenting himself; he may also have the defendant kept in custody during any interruption of the hearing.
(2) If the defendant nevertheless absents himself or fails to appear when an interrupted main hearing is resumed, the main hearing may be concluded in his absence if he has already been examined on the charges, the court does not consider his further presence to be necessary and he was informed in the summons that the main hearing may, in such cases, be concluded in his absence.

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

(1) If the defendant has intentionally and culpably placed himself in a condition which precludes his fitness to stand trial and if, as a result, he knowingly prevents the proper conduct or continuation of the main hearing in his presence, the main hearing shall, if he has not yet been heard on the charges, be conducted or continued in his absence, unless the court considers his presence to be indispensable. The procedure described in sentence 1 shall only apply if 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 shall inform him of the essential content of the proceedings during his absence, unless pronouncement of judgment has commenced.
(3) The court shall decide whether to hold the hearing in the absence of the defendant pursuant to subsection (1) after hearing a physician as an expert. The decision may already be given prior to the beginning of the main hearing. An immediate complaint against the decision shall be admissible; it shall have suspensive effect. A main hearing which has already commenced shall be interrupted until a decision on the immediate complaint is made; the interruption may last up to 30 days even if the conditions of section 229 (2) are not met.
(4) Defence counsel shall be appointed for any 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 absence if the court does not consider his 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 shall 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) shall apply.

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 absent themselves during individual parts of the hearing, unless these parts of the hearing concern them. The order shall 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 was properly summoned and the summons referred to the fact that the hearing may take place in his absence and if only a fine of up to 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 his absence. Disqualification from driving shall be admissible if the defendant was informed about this possibility in the summons.
(2) The main hearing shall not take place without the defendant if the summons was effected by publication.
(3) A record of a judicial examination of the defendant shall be read out at the main hearing.
(4) A judgment given in the defendant's absence must be served on him personally, together with reasons for the judgment, unless it is served on his defence counsel pursuant to section 145a (1).

Section 233
Defendant's release from obligation to appear

(1) The defendant may, upon his 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 his absence. Disqualification from driving shall be admissible.
(2) If the defendant is released from the obligation to appear at the main hearing, he shall be examined on the charges by a commissioned or requested judge. In this connection, he shall be advised of the legal consequences which are admissible at the hearing in his absence and be asked whether he upholds his 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 shall be informed of the date set down for the examination; their presence at the examination shall not be required. The record of the examination shall be 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 shall be 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 shall be 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 shall not be 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, he 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; he may at any time request restoration of the status quo ante if he did not obtain knowledge of the summons to the main hearing. The defendant shall be instructed of this right when the judgment is served on him.

Section 236
Order for defendant to appear in person

The court shall at all times have the power to order that the defendant appear in person and to enforce this by an order to bring him 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 shall conduct the hearing, examine the defendant and take the evidence.
(2) The court shall 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 shall 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 shall first be examined by the public prosecution office; those named by the defendant shall first be examined by defence counsel.
(2) After this examination, the presiding judge shall also ask the witnesses and experts such questions as he deems necessary for the further clarification of the case.

Section 240
Right to ask questions

(1) The presiding judge shall permit the associate judges, upon request, to address questions to the defendant, witnesses and experts.
(2) The presiding judge shall 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 shall be inadmissible.

Section 241
Presiding judge’s right to reject questions

(1) A person who abuses his right under section 239 (1) to examine a witness may 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 shall be 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 duty-bound discretion, no detriment to the well-being of the witness is to be expected.
(3) Section 241 (2) shall apply accordingly.

Section 242
Decision on admissibility of questions

In the case of any doubts as to the admissibility of a question, the court shall decide.

Section 243
Course of main hearing

(1) The main hearing shall begin with the case being called up. The presiding judge shall determine 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 shall leave the courtroom. The presiding judge shall examine the defendant on his personal situation.
(3) Thereupon, the public prosecutor shall read out the charges. In the cases under section 207 (3), he shall base these on the new bill of indictment. In the cases under section 207 (2) no. 3, the public prosecutor shall read out the charges and submit the legal assessment on which the decision to open the main hearing was based; he may, in addition, express his own divergent legal opinion. In the cases under section 207 (2) no. 4, he shall take into account any amendments ordered by the court when admitting the case for a main hearing.
(4) The presiding judge shall state 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 shall also obtain 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 shall then be informed that he may choose to respond to the charges or not to make any statement on the charges. If the defendant is prepared to respond, he shall 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 shall 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 shall apply accordingly. The defendant’s previous convictions shall be disclosed only insofar as they are relevant to the decision. The presiding judge shall decide when such convictions are to be disclosed.

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

(1) After examination of the defendant, evidence shall be taken.

(2) The court shall, in order to establish the truth, ex officio extend the taking of evidence to all facts and means of proof which are relevant to the decision.
(3) An application to take evidence shall be rejected if the taking of such evidence is inadmissible. In all other cases, an application to take evidence may be rejected only if the taking of such evidence is superfluous because the matter is common knowledge, if the fact to be proved is irrelevant to the decision or has already been proved, if the evidence is wholly inappropriate or unobtainable, the application is made to protract the proceedings or 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) Except as 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 shall not apply to cases where the professional competence of the first expert is in doubt, if his opinion is based on incorrect factual suppositions, if the opinion contains contradictions or if the new expert has means of research at his disposal which seem 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, deems the inspection not 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) A court order shall be required if an application to take evidence is rejected. 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 shall 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 shall be substantiated in the application.

Section 245
Extent of taking of evidence; evidence produced

(1) The taking of evidence shall be extended to all witnesses and experts who were summoned by the court and who appeared, as well as 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 shall be 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, as well as to other evidence produced only if an application to take evidence is submitted. The application shall 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, if the evidence is completely unsuitable or if the application has been filed for the purpose of protracting the proceedings.

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 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 shall have the same right in respect of witnesses and experts summoned at the direction of the presiding judge or the court.
(4) The court shall decide on these applications at its discretion.

Section 246a
Examination of expert before taking decision on placement

(1) If the ordering or reservation of the defendant's placement in a psychiatric hospital or in preventive detention is being considered, an expert shall be examined at the main hearing on the defendant's condition and his treatment prospects. The same shall apply 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 of this statute or pursuant to section 56c, section 59a (2) sentence 1 no. 4 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 shall be examined on the defendant's condition and his treatment prospects insofar as this is necessary in order to determine whether the defendant needs such care and treatment.
(3) If the expert has not previously examined the defendant, he shall 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 shall apply if, on examination of a person under 18 years of age as a witness in the defendant's presence, considerable detriment to the well-being 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 his treatment prospects if serious detriment to his health is to be feared. As soon as the defendant is brought back into the courtroom, the presiding judge shall inform him of the essential content of the proceedings, including the testimony given, during his absence.

Section 247a
Order for witness examination via audio-visual means

(1) If there is an imminent risk of serious detriment to the well-being of the witness were he 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 shall also be admissible under the conditions of section 251 (2) insofar as this is necessary to establish the truth. The decision shall not be contestable. Simultaneous audio-visual transmission of the testimony shall be provided in the courtroom. The testimony shall 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) shall apply 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 shall not apply in the cases under section 246a. The decision pursuant to sentence 1 shall not be contestable.

Section 248
Discharge of witnesses and experts

Witnesses and experts who have been examined may absent themselves from the court with permission or upon instruction of the presiding judge. The public prosecution office and the defendant shall first be heard.

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 shall be 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 themselves 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, the court shall decide. A record shall be made of the presiding judge's order, the findings as to cognisance and opportunity, and of the objection.

Section 250
Principle of examination in person

If the proof of a fact is based on the observation of a person, such person shall 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

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 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 statement, reasonably be expected to appear at the main hearing given 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 specifically 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 shall decide whether reading out shall be ordered. The reason for reading out shall be indicated. If the record of a judicial examination is read out, it shall be stated whether the person concerned was examined under oath. If not, an oath shall 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 his 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 can no longer remember a fact, the pertinent part of the record of his previous examination may be read out to refresh his 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 reason therefor shall 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 shall 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 184j 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 previous judicial examination if the defendant and his defence counsel were given the opportunity to participate in such examination. This shall also apply to witnesses who have been aggrieved by one of these offences and were under 18 years of age at the time of the offence. When taking its decision the court shall also consider the interests of the witness meriting protection and shall give the reason for showing the recording. Supplementary witness examination shall be admissible.

Section 256
Reading out of statements by public authorities and experts

(1) The following documents may be read out:

1. statements containing a certificate or an opinion from
   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 from 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 shall be asked whether he has anything to add.
(2) Upon request, the public prosecutor and defence counsel shall also 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 must 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 shall not apply to the applications referred to in section 258. Section 249 shall apply 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 suitable to expedite 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) shall remain unaffected.
(2) The subject matter of this agreement may only comprise the legal consequences which could be 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 shall be an integral part of any negotiated agreement. The verdict of guilty and measures of reform and prevention may not be the subject of a negotiated agreement.
(3) The court shall announce 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 shall be given the opportunity to make submissions. The negotiated agreement shall come into existence if the defendant and the public prosecution office agree to the court's proposal.
(4) The court shall cease 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 shall apply 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 shall give notification of any deviation without delay.

(5) The defendant shall 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 subsequently the defendant shall be given the opportunity to present their arguments and to file applications.
(2) The public prosecutor shall have the right to reply; the defendant shall have the last word.
(3) Even if defence counsel has spoken for him, the defendant shall be asked whether he himself has anything to add to his defence.

Section 259
Interpreters

(1) A defendant who does not speak the language of the court must be informed by an interpreter at least of the applications made in the closing speeches by the public prosecutor and defence counsel.
(2) The same rule shall apply, 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 shall close with the delivery of judgment following the deliberations.
(2) If an order is made prohibiting the exercise of a profession, the judgment shall specify the profession, branch of profession, trade or branch of trade the exercise of which is prohibited.
(3) Termination of the proceedings shall be pronounced in the judgment if there is a procedural impediment.
(4) The operative provisions of the judgment shall indicate the legal designation of the offence of which the defendant has been convicted. If an offence has a statutory title, it shall be used for the legal designation of the offence. If a fine is imposed, the number and the amount of daily rates shall be included in the operative provisions 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 shall be indicated in the operative provisions of the judgment. In all other respects, the wording of the operative provisions of the judgment shall be left to the discretion of the court.
(5) Following the operative provisions of the judgment, the provisions applied shall be listed according to section, subsection, number and letter together with the designation of the 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 shall also be made to section 17 (2) of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz*).

Section 261
Principle of judge’s free evaluation of evidence

The court shall 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 shall also decide on the basis of the provisions applicable to procedure and evidence in criminal cases.
(2) The court shall, however, be 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 shall be 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 shall also cover such circumstances as are specially provided by criminal law to rule out, diminish or increase criminal liability.
(3) The question of guilt shall not cover the conditions applying to the period of limitations.

Section 264
Subject matter of judgment

(1) The subject of adjudication shall be 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 shall not be 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 attention specifically drawn to the change in the legal reference and without having been afforded the opportunity to defend himself.
(2) The same procedure shall 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 transpire 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 shall be suspended upon the defendant’s application if, alleging insufficient preparation for defence, he contests newly discovered circumstances which admit the application of a more severe criminal provision against the defendant 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 shall suspend 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) are considered as a possibility, the defendant shall be asked in appropriate cases whether he will make efforts towards atonement for the wrong committed by him or give undertakings in respect of his future conduct. If the issuing of a direction is considered as a possibility to the effect that the defendant undergo curative or addiction treatment or take up residence in a suitable home or institution, he shall be asked whether he 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 shall correspond to section 200 (1). They shall be included in the record. The presiding judge shall give the defendant the opportunity to defend himself.
(3) The hearing shall be 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 shall be instructed of his 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 shall also 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 shall further specify in its reasons the criminal provision which was applied and shall 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 shall apply accordingly to the imposition of a sentence of imprisonment in the cases under section 47 of the Criminal Code. The judgment shall also indicate in the 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 shall apply accordingly. The reasons for the judgment shall further indicate the grounds for suspending the sentence on probation or for not doing so contrary to an application filed at the hearing; this shall apply

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 shall 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 shall apply accordingly. The further content of the reasons for the judgment shall be 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 shall only be 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 shall apply.
(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 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) The judgment shall be pronounced in the name of the people.
(2) The judgment shall be pronounced by reading out the operative provisions of the judgment and disclosing the reasons for the judgment. Reasons for the judgment shall be 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 orally communicated, as well as in the event of oral communication of the essential content of the reasons for the judgment, consideration shall be given to the interests meriting protection of parties to the proceedings, of witnesses or of aggrieved persons. The reading out of the operative provisions of the judgment shall in each case precede communication of the reasons for the judgment.
(3) The judgment shall be pronounced at the end of the hearing. It must be pronounced no later than on the eleventh day thereafter, or else the main hearing is to be recommenced. Section 229 (3), (4) sentence 2 and (5) shall apply accordingly.

(4) If pronouncement of judgment has been postponed, the reasons for the judgment shall, if possible, be stated in writing beforehand.

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 shall give the decisions designated in sections 56a to 56d and 59a of the Criminal Code in an order; the decision shall be pronounced together with the judgment.
(2) Subsection (1) shall apply 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 shall inform the defendant of 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, as well as 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 shall also inform him that a penalty pursuant to section 145a of the Criminal Code is also possible. The direction shall, as a rule, 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 shall ex officio decide on the continuation of remand detention or provisional placement. The order shall 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 shall instruct the defendant as to when the ban commences (section 44 (3) sentence 1 of the Criminal Code). This instruction shall be given following pronouncement of judgment. If the judgment is pronounced in the defendant’s absence, he shall 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 shall instruct the defendant as to the meaning of the reservation as well as about 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 shall make an order referring the case to the competent court; section 209a no. 2 (a) shall apply accordingly. The same procedure shall apply if the court considers a timely objection by the defendant pursuant to section 6a to be well-founded.
(2) In the order, the court shall name the defendant and the offence as designated in section 200 (1) sentence 1.
(3) The order shall have the effect of an order opening the main proceedings. Contestability of the order shall be 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 shall be 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 shall be made of the main hearing and signed by the presiding judge and, insofar as he was present during the main hearing, by the registry clerk. The date of its completion shall be stated therein.
(2) If the presiding judge is prevented from signing, the most senior associate judge in age shall sign for him. If the presiding judge is the only judge of the court, the signature of the registry clerk shall suffice if the former is prevented from signing.

Section 272
Content of record of main hearing

The record of the main hearing shall include

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;
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 aggrieved persons asserting claims arising from the offence, 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 have 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 shall 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), as well as the applications

filed during the course of the hearing, the decisions given and the operative provisions 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 shall apply 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 shall 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 shall also be included in the record; this shall 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 be added to the files. Section 58a (2) sentence 1 and sentences 3 to 6 shall apply 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 shall, ex officio or upon application by one of the parties to the hearing, order 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 shall be for the court to decide. It shall 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 required for the main hearing can be proved only by the record. Only proof of forgery shall be admissible in respect of the content of that part of the record relating 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 shall be placed on file without delay. This must be done no later than five weeks after pronouncement; this time limit shall be 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 due to a circumstance which cannot be anticipated or averted in the particular case. A record must be kept of the date on which the judgment is added to the files and the date of any amendment of the reasons.
(2) The judgment shall be signed by the judges who participated in the decision. If a judge is prevented from adding his signature, this fact and the reason therefor shall be noted under the judgment by the presiding judge and, if he is prevented from doing so, by the most senior associate judge. The signatures of the lay judges shall not be 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 shall be included in the judgment.
(4) (repealed)

Chapter 7
Decision on ordering of preventive detention reserved in judgment or subsequent ordering of 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 shall send the files in good time to the public prosecution office of the competent court. The public prosecution office shall hand 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 shall send the files without delay to the public prosecution office of 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 shall notify the person concerned thereof. The public prosecution office is to submit its application for a subsequent order of preventive detention without delay and shall hand it over to the presiding judge together with the files.
(2) Unless otherwise provided in the following, sections 213 to 275 shall 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 shall report, in the absence of the witnesses, on the results of the proceedings up to that point. The presiding judge shall read out the previous judgment, insofar as it is of relevance for the decision on the reserved or subsequent order of preventive detention. Thereafter, the convicted person shall be examined and the evidence taken.
(4) Prior to arriving at a decision, the court shall obtain an expert's opinion. If a decision is to be taken as to whether a subsequent order of 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 shall 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 shall remain responsible for the making of the order for placement until the application for an order of 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) shall apply accordingly.

Chapter 8
Proceedings against absent persons

Section 276
Meaning of 'absent'

An accused person shall be deemed to be absent if his whereabouts are unknown or if he is abroad and it does not appear feasible or reasonable that he can be brought before the competent court.

Sections 277 to 284
(repealed)

Section 285
Purpose of securing of evidence

(1) No main hearing shall be held in respect of a person who is absent. Proceedings instituted against an absent person shall serve the purpose of securing evidence in anticipation of his future presence in court.
(2) The provisions of sections 286 to 294 shall apply to these proceedings.

Section 286
Representation of absent persons

The defendant may be represented by defence counsel. Relatives of the defendant shall also be permitted to act as representatives, even without a power of attorney.

Section 287
Notification of absent persons

(1) An absent accused shall not be entitled to notifications concerning the course of the proceedings.
(2) The judge shall, however, be authorised to have notifications sent to an absent accused whose whereabouts are known.

Section 288
Public request to appear before court or report whereabouts

An absent person whose whereabouts are unknown may be requested, through one or more newspapers, to appear before the court or to report his whereabouts.

Section 289
Taking of evidence by commissioned or requested judges

If the defendant's absence becomes apparent only after the main proceedings have been opened, evidence which remains to be taken shall be taken by a commissioned or requested judge.

Section 290
Seizure of property

(1) The property of an absent defendant 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 him which would justify issuing a warrant of arrest.
(2) There shall be 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 shall be published in the Federal Gazette and, at the discretion of the court, may also be published in some other suitable manner.

Section 292
Effect of publication

(1) An indicted accused shall lose the right to dispose of the seized property inter vivos at the time of first publication in the Federal Gazette.
(2) The seizure order shall be communicated to the authority competent to establish a curatorship over absent persons. This authority shall establish a curatorship.

Section 293
Revocation of seizure

(1) Seizure shall be revoked if the reasons therefor no longer apply.
(2) Revocation of seizure shall 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 shall also be ordered; publication of revocation of the seizure in the Federal Gazette shall 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 shall apply accordingly to proceedings following the preferment of the public charges.
(2) The order made after conclusion of these proceedings (section 199) shall include a decision on 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 shall entail exemption from remand detention, but only in respect of the offence for which it is granted.
(3) It shall expire 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

Chapter 1
General provisions

Section 296
Persons entitled to file appellate remedies

(1) Both the public prosecution office and the accused shall be 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 shall 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 is detained by official order is located.
(2) As regards observance of a time limit, it shall be 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 shall not be prejudicial.

Section 301
Effect of appellate remedy filed by public prosecution office

An appellate remedy filed by the public prosecution office shall have 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 shall be precluded. An appellate remedy filed by the public prosecution office for the accused's benefit may not be withdrawn without his consent.
(2) Defence counsel shall require 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 shall not, however, require the consent of a private accessory prosecutor.

Chapter 2
Complaint

Section 304
Admissibility

(1) A complaint shall be 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, 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 shall be admissible only if the value of the subject matter of the complaint exceeds 200 euros.

(4) No complaint shall be admissible against orders and directions given by the Federal Court of Justice. The same shall apply 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 shall, however, be admissible against orders and directions

1. concerning arrest, provisional placement, placement for observation, 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) shall remain 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)) shall be admissible only if it concerns arrest, provisional placement, 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 shall not be 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, as well as all decisions affecting third parties shall be exempted therefrom.

Section 305a
Complaint against order suspending sentence

(1) A complaint shall be 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 shall also be 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, they shall redress it; otherwise, the

complaint shall be submitted immediately, at the latest within three days, to the court hearing the complaint.
(3) These provisions shall 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 shall 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 for submissions in response. This shall 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 shall be 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 shall at the same time decide 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 shall not be contestable.

Section 311
Immediate complaint

(1) The following special provisions shall apply where an immediate complaint is filed.
(2) The complaint shall be lodged within one week; the time limit shall begin to run upon notification (section 35) of the decision.
(3) The court shall not be competent to amend its own decision which is being contested by a complaint. It shall, however, 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 shall, ex officio or upon application, give him a subsequent hearing and, upon application, 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) shall apply accordingly to the proceedings.

Chapter 3
Appeal on points of fact and law (*Berufung*)

Section 312
Admissibility

An appeal on points of fact and law shall be 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 shall be admissible only if accepted for adjudication. The same shall apply 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 shall be accepted for adjudication if it is not manifestly ill-founded. Otherwise, it shall be 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 shall always be 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) shall apply.

Section 314
Form and time limits

(1) An appeal on fact and law shall 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 the judgment.
(2) If judgment was pronounced in the defendant's absence, the time limit shall begin to run for him 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 shall not be 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 fact and law shall be 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 shall then be 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 shall be 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 shall 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 shall immediately be served on him after he 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 shall be 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 shall dismiss the appeal as inadmissible.
(2) Within one week after service of the decision, the appellant may apply for a decision of the court hearing the appeal. In this case, the files shall be sent to the court hearing the appeal; this, however, shall form no obstacle to enforcement of the judgment. The provision in section 35a shall apply accordingly.

Section 320
Submission of files to public prosecution office

If an appeal on points of fact and law was filed in time, the court registry, after expiry of the time limit for the giving the grounds, shall 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 shall serve 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 shall transmit the files to the public prosecution office at the court hearing the appeal. The latter shall pass 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 shall decide in the form of a judgment; section 322a shall remain 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 shall decide by way of an order whether to accept the appeal (section 313). The decision shall not be 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 225 shall apply to the preparation of the main hearing. The summons shall expressly advise the defendant of the consequences of non-appearance.
(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 shall order 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 shall affix a note confirming the accuracy of the transcript. The public prosecution office, defence counsel and the defendant shall be given a copy of the record. Proof that the transcript is inaccurate shall be admissible. The record may be read out in accordance with the provisions of section 325.
(3) New evidence shall be admissible.
(4) When selecting the witnesses and experts to be summoned, consideration shall 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 shall, in the absence of the witnesses, report on the outcome of the previous proceedings. The judgment of the court of first instance shall 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 shall be examined and evidence taken.

Section 325
Reading out of documents

Documents may be read out when the rapporteur is giving his 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 as well as of the defendant and his defence counsel shall be heard, with the appellant being heard first. The defendant shall have the last word.

Section 327
Extent of review of judgment

The judgment shall be 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 shall quash the judgment and itself decide on the merits.
(2) If the court of first instance erroneously assumed jurisdiction, the court hearing the appeal shall quash the judgment and refer 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 shall dismiss 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 absented himself 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 absented himself 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 is unfit to stand trial and no defence counsel with a documented power of attorney being present.

The court shall take 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 shall 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 shall be held in his absence if he is represented by defence counsel with a documented power of attorney or, in the event of the hearing being held on an appeal on points of fact and law filed by the public prosecution office, no sufficient excuse has been provided for his absence. Section 231b shall remain unaffected.
(3) If the main hearing on an appeal on points of 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 shall be made for the defendant to appear in court or for his 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 has filed an appeal on points of fact and law is necessary despite his being represented by defence counsel, the court shall summon the defendant to resume the main hearing and make an order for him 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 presence is still required, the court shall dismiss the appeal. The defendant shall be instructed about the possibility of such dismissal in the summons.
(5) If subsection (2) was applied to an appeal on points of fact and law filed by the public prosecution office without defence counsel with a documented power of attorney being present, the presiding judge shall, as long as he has not yet begun pronouncement of the judgment, 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 absence. In the cases under subsection (1) sentences 1 and 2, an appeal on points of 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 shall 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 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 shall also summon the defendant to the main hearing.
(2) If only the statutory representative fails to appear at the main hearing, it shall be conducted without him. 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 shall apply accordingly; if only the defendant fails to appear, section 329 (2) and (3) shall apply accordingly.

Section 331
Prohibition of reformatio in peius

(1) The 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 statutory representative filed the appeal on fact and law or the public prosecution office filed an appeal on fact and law for his benefit.
(2) This provision shall 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 Chapter 6 of Part 2 shall apply.

Chapter 4
Appeal on points of law (*Revision*)

Section 333
Admissibility

An appeal on points of law shall be 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 shall be for the court which would have been competent to decide if an appeal on law were filed after an appeal on fact and law had been heard to decide on the appeal on law.
(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, shall be 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 served on the opponent (sections 344 to 347). An appeal on law against a judgment given on an appeal on fact and law shall be 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, shall also be subject to review by the court hearing the appeal on law. This shall 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 shall constitute a violation of the law.

Section 338
Absolute grounds for appeal on points of law

A judgment shall always 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 composition not being in the prescribed form only insofar as

   a) the provisions governing notification have been violated,

   b) an objection made in time and in the proper form to a composition not being in the prescribed form has been disregarded or rejected,

   c) the main hearing was not interrupted pursuant to section 222a (2) to review composition or
   d) the court gave its decision whilst it was not composed in the prescribed form and determined, pursuant to section 222b (2) sentence 2, that it was not composed in the prescribed form;
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 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 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 important 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, the defendant may not base his appeal on points of law against the judgment issued against his appeal on fact and law on the fact that it would have been necessary for him 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 shall begin 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 shall not be 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 shall be available if it is immediately filed in time in the event of this application being rejected. Further disposition with regard to the appeal on law shall then be 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 shall be 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 shall 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 shall be served on him after he has filed an appeal on law.

Section 344
Grounds for appeal on points of law

(1) The appellant shall make a statement concerning the extent to which he contests the judgment and is applying for it to be quashed (notices of appeal on law) and shall specify the grounds.
(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, shall 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. If the judgment has not been served by the expiry of that time limit, the time limit shall start to run upon service thereof.
(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 shall 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 shall be sent to the court hearing the appeal on law; this, however, shall not constitute an obstacle to enforcement of the judgment. Section 35a shall apply 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 shall 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 shall submit a response within this period if it is anticipated that it will facilitate the examination of the appeal on points of law. The defendant may also submit his response orally to be recorded by the court registry.
(2) The public prosecution office shall send 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 shall make an order declaring that it lacks jurisdiction.
(2) This order, which shall indicate the court competent to hear the appeal on law, shall not be contestable and shall be binding on the court specified therein.
(3) Transmission of the files shall be 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 shall inform 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 shall decide 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 shall be communicated to the defendant, his 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 shall 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 shall begin with submissions by a rapporteur.
(2) Thereafter, the arguments and applications of the public prosecution office, of the defendant and his defence counsel shall be heard, with the appellant being heard first. The defendant shall have 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 shall be 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) shall not be necessary and, if incorrect, shall not be prejudicial.

Section 353
Quashing of judgment and findings

(1) The contested judgment shall 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 shall 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 shall itself decide 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 shall 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 shall apply accordingly. In all other respects, subsections (1) and (1a) shall remain unaffected.

(2) In all other cases, the matter shall 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 shall 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 shall also 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 applying 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 shall simultaneously refer the case to the competent court.

Section 356
Pronouncement of judgment

Judgment shall be 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 shall make an order restoring the proceedings to the situation applying prior to the decision. The application shall 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 shall be furnished. The defendant is to be informed thereof upon notification of a judgment which was given although neither he nor defence counsel with a documented power of attorney was present. Section 47 shall apply 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 shall give its decision as if these persons had also filed an appeal on law. Section 47 (3) shall apply 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 shall 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 statutory representative filed the appeal on law or the public prosecution office filed an appeal on law for his benefit. If an order for placement in a psychiatric hospital is quashed, this provision shall not prevent imposition of a penalty in lieu of placement. Nor shall 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 shall be admissible for the convicted person's benefit

1. if a document produced as genuine, to his 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 his official duties in relation to the case, unless the violation was caused by the convicted person himself;
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 shall 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 shall not be 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 spouse, the life partner, the relatives in the ascending and descending line, and the siblings of the deceased person shall be entitled to file the application.

Section 362
Reopening to convicted person's detriment

The reopening of proceedings concluded by a final judgment shall be admissible to the defendant's detriment

1. if a document produced as genuine, for his 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 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 his official duties in relation to the case;
4. if the person acquitted makes a credible confession, in or outside the court, that he committed the offence.

Section 363
Inadmissibility

(1) The reopening of the proceedings shall not be admissible for the purpose of imposing another penalty on the basis of the same criminal provision.
(2) The reopening of the proceedings for the purpose of mitigating the penalty due to diminished responsibility (section 21 of the Criminal Code) shall also be precluded.

Section 364
Allegation of offence

An application for the reopening of proceedings which is to be based on an allegation of an offence shall be 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 lack of evidence. This shall not apply in the case under section 359 no. 5.

Section 364a
Appointment of defence counsel for reopened proceedings

The court competent to decide in reopened proceedings shall, upon application, appoint defence counsel in the reopened proceedings to represent a convicted person who has no defence counsel if, due 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) The court competent to give decisions in reopened proceedings shall, upon application, appoint 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. due 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 own expense without detriment to his own and his family's necessary maintenance.

If defence counsel has already been appointed for the convicted person, the court shall, upon application, make 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 shall 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 to application

The general provisions on appellate remedies shall 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.

(2) The defendant and the persons specified in section 361 (2) may submit the application only 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 shall be 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 shall forward 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 shall be given without an oral hearing.

Section 368
Dismissal for inadmissibility

(1) The application shall be dismissed as inadmissible if it is not submitted in the prescribed form or does not invoke a statutory ground for reopening proceedings or does not adduce appropriate evidence.

(2) Otherwise, it shall 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 shall, where necessary, commission a judge to take the evidence adduced.

(2) It shall be left to the court's discretion whether the witnesses and experts are to be examined under oath.

(3) The public prosecution office, the defendant and defence counsel shall 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 shall apply accordingly. If the defendant is not at liberty, he shall not be entitled to be present if

the hearing is not held at the court of the place where he is in custody and if his 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 shall 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 shall be 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 shall order the reopening of the proceedings and the recommencement of the main hearing.

Section 371
Acquittal without new main hearing

(1) If the convicted person dies, the court, without recommencing the main hearing and after taking any evidence which may still be needed, shall either enter an acquittal or reject 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; if public charges are preferred, however, it may only do so with the consent of the public prosecution office.
(3) The acquittal shall be combined with the quashing of the original judgment. If only a measure of reform and prevention was imposed, the original judgment shall be quashed in lieu of entering an acquittal.
(4) Upon request by the applicant, the fact that the judgment has been quashed shall 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 shall either 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 behalf the public prosecution office, or his statutory representative applied to reopen the proceedings. This provision shall not prevent an order being made to place 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 shall also be 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 shall apply accordingly to the reopening of proceedings concluded by a final summary penalty order.

Book 5
Participation of aggrieved persons in proceedings

Chapter 1
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 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 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 (*Urheberrechtsgesetz*) 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 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 shall be 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 shall be independent of the others when exercising this right.
(2) If, however, one of those entitled has brought a private prosecution, the others shall only be 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 shall, for the accused's benefit, also take effect 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

In respect of the offences specified in section 374, the public prosecution office shall prefer public charges only if it is in the public interest.

Section 377
Participation of public prosecutor; assumption of prosecution

(1) A public prosecutor shall not be obliged to participate in private prosecution proceedings. The court shall submit the files to him if it is of the opinion that he should 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 shall entail 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) A private prosecutor shall 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 shall 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 shall remain unaffected.

(3) The amount of security, the time limit for provision of security and legal aid shall be governed by the same provisions as apply in civil litigation.

Section 379a
Payment of advance for fees

(1) The court shall set 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 shall thereby be made to the consequences arising under subsection (3).
(2) No court action shall be taken 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 shall be 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 shall quash 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 shall apply 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 referred to in sentence 1. When bringing his private prosecution, the claimant shall 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) shall 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 shall be 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 shall 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 shall communicate 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 shall decide whether to open the main proceedings or 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 shall specify 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 during the main hearing. The order may be contested by immediate complaint.

Section 384
Further procedure

(1) Further procedure shall be governed by the provisions which govern proceedings concerning preferred public charges. However, measures of reform and prevention may not be ordered.
(2) Section 243 shall apply, subject to the proviso that the presiding judge shall read out the order opening the main proceedings.
(3) The court shall determine the extent to which evidence shall 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 shall 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) A private prosecutor shall be called in and heard in proceedings on private charges brought to the same extent as the public prosecution office is to be called in and heard in proceedings on preferred public charges. All decisions which are brought to the attention of the public prosecution office in the latter case shall be brought to the attention of the private prosecutor in the former 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 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 shall be 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 (4) shall apply accordingly.
(4) In the cases under sections 154a and 421, subsection (3) sentence 2 of those sections shall not apply.
(5) In proceedings on an appeal on points of law, no application by the private prosecutor pursuant to section 349 (2) shall be necessary. Section 349 (3) shall not apply.

Section 386
Summons of witnesses and experts

(1) The presiding judge shall decide which persons are to be summoned to the main hearing as witnesses or experts.
(2) The private prosecutor and the defendant shall 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 shall apply to the private prosecutor's lawyer and to the defendant's lawyer.
(3) The court shall be authorised to order that the private prosecutor and the defendant appear in person and shall also be 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, until completion of the last word (section 258 (2) half-sentence 2) at first instance, apply 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 shall be served on the aggrieved person and he shall 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 shall be given at the same time as the decision on the charges.
(4) Withdrawal of the charges shall have 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 in this chapter does not apply, it shall terminate the proceedings in a judgment in which these facts must be clearly indicated.
(2) The public prosecution office shall be informed of the hearings in such cases.

Section 390
Appellate remedies available to private prosecutors

(1) A private prosecutor may avail himself of the same appellate remedies as the public prosecution office in proceedings on preferred public charges. The same shall apply to an application to reopen the proceedings in the cases under section 362. Section 301 shall apply 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 shall be 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 shall be effected by the court registry.
(4) The provision in section 379a on payment of an advance for fees and the consequences of late payment shall apply accordingly.
(5) The provision of section 383 (2) sentences 1 and 2 on termination of proceedings in view of negligibility shall also apply to proceedings on an appeal on fact and law. The order shall not be 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. The withdrawal shall be subject to the consent of the defendant after commencement of his examination at the main hearing at first instance.
(2) The private prosecutor shall be deemed to have withdrawn the charges if in proceedings at first instance and, where the defendant has filed an appeal on fact and law, in proceedings at second instance, he fails to appear at the main hearing or is not represented by a lawyer or, although the court has ordered his personal appearance, he fails to appear at the main hearing or at another hearing, or fails to comply with a time limit set for him and in respect of which he has been warned that non-compliance shall result in termination of proceedings.
(3) If the appeal on fact and law was filed by the private prosecutor, it shall immediately be dismissed 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 shall result 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 shall notify the court of the continuation within two months after the private prosecutor's death; if no such notification is made, this right shall be lost.

Section 394
Notification of accused

The accused shall be notified of the withdrawal of the private prosecution, of the private prosecutor's death and of continuation of the private prosecution.

Chapter 2
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, sections 184i and 184j 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 shall vest 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 his interests.
(4) Joinder shall be admissible at any stage of the proceedings. It may also be effected for the purpose of seeking an appellate remedy after judgment has been given.
(5) If prosecution is limited pursuant to section 154a, this shall 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) shall not apply insofar as it concerns the private accessory prosecution.

Section 396
Declaration of joinder; decision on right of joinder

(1) The declaration of joinder is to 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 shall take effect upon the preferment of public charges. In proceedings involving summary penalty orders, the joinder shall take 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 shall decide whether a person is entitled to join as a private accessory prosecutor after hearing the public prosecution office. In the cases under section 395 (3), it shall decide, after also hearing the indicted accused, whether joinder is imperative on the grounds referred to therein; this decision shall not be 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 shall first decide on the entitlement to joinder.

Section 397
Rights of private accessory prosecutor

(1) A private accessory prosecutor shall be entitled to be present at the main hearing even if he is to be examined as a witness. He shall be summoned to the main hearing; section 145a (2) sentence 1 and section 217 (1) and (3) shall apply accordingly. A private accessory prosecutor shall also be 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, he shall be called in and heard to the same extent as the public prosecution office. Decisions which are notified to the public prosecution office shall also be notified to the private accessory prosecutor; section 145a (1) and (3) shall apply accordingly.
(2) A private accessory prosecutor may avail himself of the assistance of a lawyer or may be represented by such lawyer. The lawyer shall be entitled to be present at the main hearing. He shall be notified of the date set down for the main hearing if his choice has been notified to the court or if he has been appointed as counsel.
(3) If the private accessory prosecutor does not speak German, he shall, upon application, in accordance with the provisions of section 187 (2), receive a translation of written documentation insofar as this is necessary in order to exercise his 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 shall be appointed as his counsel if he

1. has been aggrieved by a serious criminal offence under sections 177, 179, 232 to 232b and 233a of the Criminal Code,

1a. has been aggrieved by an offence under section 184j and this offence is based on a serious criminal offence under section 177 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 serious physical or mental harm,

4. has been aggrieved by an unlawful act under sections 174 to 182, sections 184i, 184j and 225 of the Criminal Code and was under 18 years of age at

the time of the act or cannot himself sufficiently safeguard his 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 his application or cannot himself sufficiently safeguard his own interests.

(2) If the conditions for an appointment pursuant to subsection (1) are not met, the private accessory prosecutor shall, upon application, be granted legal aid for calling in a lawyer subject to the same provisions as apply in civil litigation if he cannot sufficiently safeguard his own interests or if this cannot reasonably be expected of him. Section 114 (1) sentence 1 half-sentence 2 and (2) and section 121 (1) to (3) of the Code of Civil Procedure shall 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 shall decide on the appointment of a lawyer, to which section 142 (1) shall apply accordingly, and on the granting of legal aid.

Section 398
Course of proceedings following joinder

(1) The course of the proceedings shall not be stayed by joinder.
(2) A main hearing which has already been scheduled as well as other scheduled hearings shall be 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) Notification to the private accessory prosecutor of the decisions made and brought to the attention of the public prosecution office prior to joinder shall not be required, 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 shall not be 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 shall have 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) A private accessory prosecutor may avail himself 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

shall immediately be served on the private accessory prosecutor. The time limit for stating the grounds for an appellate remedy shall begin 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, 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 shall begin to run for him upon pronouncement of judgment, even if he was no longer present or represented when judgment was pronounced; he may not claim restoration of the status quo ante in respect of non-observance of the time limit on the ground that he was not instructed as to his right to appellate remedy. If the private accessory prosecutor was not present or represented at all at the main hearing, the time limit shall begin to run when the operative provisions of the judgment are served on him.
(3) If only the private accessory prosecutor has filed an appeal on fact and law, such appeal shall immediately be dismissed, notwithstanding the provision in section 301, if neither the private accessory prosecutor nor a lawyer representing him appeared at the commencement of a main hearing. The private accessory prosecutor may, within one week after his 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 shall be 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 shall become ineffective through revocation and upon the death of the private accessory prosecutor.

Chapter 3
Compensation of aggrieved persons

Section 403
Assertion of rights in adhesion proceedings

The aggrieved person or his 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.

Section 404
Application by aggrieved person; 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 shall set forth the evidence. If the application is not made at the main hearing, it shall be served on the accused.
(2) Making an application shall have the same effect as bringing an action in civil litigation. The effect is produced upon receipt of the application by the court.
(3) The applicant shall be notified of the place and time of the main hearing if the application is made before the main hearing begins. The applicant, his 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 the judgment.
(5) The applicant and the indicted accused shall, upon application, be granted legal aid under the same provisions as in civil litigation as soon as public charges have been preferred. Section 121 (2) of the Code of Civil Procedure shall apply, with the proviso that if the indicted accused has defence counsel, the latter shall be assigned to him; if the applicant avails himself of the assistance of a lawyer in the main proceedings, the latter shall be assigned to him. The court seized of the case shall be competent to decide; the decision shall not be contestable.

Section 405
Settlement

(1) Upon application by the aggrieved person or his heir and by the accused, the court shall include 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 shall make a proposal for a settlement.
(2) The court of civil jurisdiction in whose district the criminal court of first instance is located shall have 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 shall grant 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 shall apply accordingly. The court shall dispense 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 suitable 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 by the applicant, he shall be sentenced in pursuance of the acknowledgment.
(3) The decision on the application shall be equivalent to a judgment in civil litigation. The court shall declare the decision to be provisionally enforceable; sections 708 to 712 and sections 714 and 716 of the Code of Civil Procedure shall 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 shall take place before the competent civil court pursuant to section 304 (2) of the Code of Civil Procedure.
(4) The applicant shall be provided with a copy of the judgment with reasons or with an excerpt thereof.

(5) It the court is considering dispensing with a decision on the application, it shall inform 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 shall make 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 shall be 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 shall not be 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 shall be 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 in respect of the decision on which the application was founded, the decision granting the application shall be quashed. This shall apply even if the judgment has not been contested in this respect.

Section 406b
Enforcement

Enforcement shall be 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 shall have 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 declared in the judgment itself shall be 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 shall then decide in an order without a new main hearing.
(2) Section 406a (3) shall apply accordingly if the application to reopen the proceedings is directed only against that part of the judgment which concerns the offence.

Chapter 4
Other rights of aggrieved persons

Section 406d
Notification of status of proceedings

(1) To the extent that it concerns him, the aggrieved person shall be notified, upon application, of

1. the termination of the proceedings,
2. the place and time of the main hearing, as well as of the charges brought against the defendant,
3. the outcome of the court proceedings.

If the aggrieved person does not speak German, he shall be notified, upon application, of the place and time of the main hearing in a language he understands.
(2) Upon application, the aggrieved person shall be notified as to whether

1. the convicted person has been directed to refrain from making contact or associating with the aggrieved person;
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 can show a legitimate interest and if there is no overriding interest meriting protection of the person concerned in excluding the notification; in the cases of section 395 (1) nos. 1 to 5 as well as in the cases of section 395 (3) in which the aggrieved person was admitted as private accessory prosecutor, there shall be 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 the aggrieved person;
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 shall be given by whoever made the decision relating to the accused or the convicted person; in cases under sentence 1 no. 3, notification shall be given by the competent public prosecution office.
(3) The aggrieved person shall 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, the aggrieved person shall also 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 which the aggrieved person provided. If the aggrieved person has selected a lawyer as counsel, if counsel has been assigned to him or if he is legally represented by such counsel, section 145a shall apply 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 he may view items of evidence in official custody if he can show

a legitimate interest therein. In the cases under section 395, there shall be no requirement to show a legitimate interest.
(2) Inspection of the files shall 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 the conclusion of the investigations in the files.
(3) Applying subsections (1) and (2) accordingly, aggrieved persons who are not represented by a lawyer shall be 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 granting inspection of the files he may be sent copies of the files. Section 478 (1) sentences 3 and 4 shall apply accordingly.
(4) 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 shall give 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 shall apply accordingly. The court's decision shall not be contestable as long as the investigations have not yet been concluded. These decisions shall not be given with reasons if their disclosure might jeopardise the purpose of the investigation.
(5) (repealed)
(6) (repealed)

Section 406f
Assistance for aggrieved person

(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 shall be permitted to be present.
(2) At the examination of aggrieved persons, a person whom they trust who has appeared at the examination shall, at their request, be permitted to be present, except where this might jeopardise the purpose of the investigation. The person conducting the examination shall decide; the decision shall not be contestable. The reasons for denying the request shall be documented.

Section 406g
Psychosocial assistance in legal proceedings

(1) Aggrieved persons may avail themselves of psychosocial assistance in legal proceedings. The person providing psychosocial assistance shall be permitted to be present during the aggrieved person's examination and, when accompanying the aggrieved person, during the main hearing.
(2) The principles of psychosocial assistance in criminal proceedings as well as the standards of qualification and the remuneration of individuals providing psychosocial assistance shall be 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 shall 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 shall be free of charge for the aggrieved person. Section 142 (1) shall apply accordingly to the appointment. In the preliminary investigation, the court competent pursuant to section 162 shall 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 presence might jeopardise the purpose of the investigation. The person conducting the examination shall decide; the decision shall not be contestable. The grounds for denial shall be documented.

Section 406h
Assisting counsel for aggrieved person 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 shall be 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, the court shall decide, after hearing the person and the public prosecution office, whether the person is entitled to be present; the decision shall not be contestable.
(2) The lawyer of the person entitled to private accessory prosecution shall be entitled to be present at the main hearing; subsection (1) sentence 3 shall apply accordingly. He shall be notified of the date set down for the main hearing if the court has been informed of his having been selected or if he has been appointed as counsel. Sentences 1 and 2 shall apply accordingly in the case of judicial examinations and judicial inspections, unless the presence or notification of the lawyer might jeopardise the purpose of the investigation. Following judicial examinations, counsel shall 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 shall apply accordingly.
(3) Section 397a shall apply accordingly to

1. the appointment of a lawyer and
2. the granting of legal aid for calling in a lawyer.

In the preparatory proceedings, it shall be 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 (1) and section 162 shall apply accordingly to the appointment. The appointment shall end unless an 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 shall 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 shall also 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 shall, at a suitable stage of the proceedings, be made aware of those provisions which serve to protect him, 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 shall, at a suitable stage of the proceedings, also be made aware 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 shall 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 claims to compensation in accordance with the provisions of the Act on Compensation to Victims of Violent Crime (*Opferentschädigungsgesetz*).
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 shall also 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. No duty shall exist to provide written information to aggrieved persons who have not provided an address to which documents can be served.

Section 406l
Rights of aggrieved person's relatives and heirs

Section 406i (1) and sections 406j and 406k shall 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

Chapter 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 the 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 shall file such application if it does not

consider a main hearing to be necessary given the outcome of the investigations. The application shall refer to specific legal consequences. The application shall constitute the preferment of the 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 shall not be 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 shall, via the public prosecution office, refer the case to a criminal court judge; the decision shall be binding on the criminal court judge, and the public prosecution office shall be entitled to lodge an immediate complaint. If the criminal court judge considers a court with lay judges to have jurisdiction, he shall, via the public prosecution office, submit the files 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 shall refuse to make a summary penalty order. The decision shall be equivalent to an order refusing to open the main proceedings (section 204, section 210 (2) and section 211).
(3) The judge shall comply with the application of the public prosecution office if he has no reservations about issuing the summary penalty order. He shall set down a date for the main hearing if he has reservations about deciding the case without a main hearing, if he wishes to deviate from the legal assessment in the application to issue the summary penalty order or if he 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 shall 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 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 shall be included in the record of the sitting. Section 407 (1) sentence 4 and section 408 shall not apply.
(2) The judge shall grant the application if the conditions of section 408 (3) sentence 1 are met. In other cases, he shall 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 shall appoint defence counsel for the indicted accused if he does not yet have defence counsel. Section 141 (3) shall apply accordingly.

Section 409
Content of summary penalty order

(1) The summary penalty order shall contain

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 objection, as well as an indication that the summary penalty order shall become effective and enforceable unless an objection is lodged against it pursuant to section 410.

If a sentence of imprisonment is imposed on the defendant or if he is given a warning with sentence reserved or if a driving ban is imposed on him, he shall be instructed in accordance with section 268a (3) or section 268c sentence 1. Section 267 (6) sentence 2 shall apply accordingly.
(2) The summary penalty order shall also 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 the 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) shall 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 shall be equivalent to a judgment which has entered into force.

Section 411
Dismissal for inadmissibility; date of main hearing

(1) If the objection is lodged too late or is otherwise inadmissible, it shall be dismissed in an order without a main hearing; an immediate complaint shall be admissible against the order. Otherwise, a date shall be set down for the main hearing. If the defendant has limited his 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 shall be permissible to the defendant’s detriment; an immediate complaint shall be 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 shall apply.
(3) The complaint and the objection may be withdrawn at any time prior to pronouncement of the judgment by the court of first instance. Section 303 shall apply 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 shall not be 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) shall apply accordingly. If the statutory representative has lodged an objection, section 330 shall also apply accordingly.

Chapter 2
Preventive detention proceedings

Section 413
Admissibility

If the public prosecution office does not conduct criminal proceedings due to the offender’s lack of criminal responsibility or his unfitness to stand trial, it may file an application for an order imposing measures of reform and prevention on their own 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 shall apply analogously to preventive detention proceedings, unless otherwise provided.
(2) The application shall be equivalent to public charges. Instead of a bill of indictment, a written application shall be submitted, which must comply with the requirements made of a bill of indictment. The application shall 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 shall be refused.
(3) An expert shall 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 the preventive detention proceedings is impossible due to his 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 shall 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 shall be informed of the date set for the examination. It shall not be 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, his previous statements which are contained in a judicial record may be read out. The record of his prior examination pursuant to subsection (2) sentence 1 shall be read out.
(5) An expert shall be examined at the main hearing concerning the accused's condition. If the expert has not previously examined the accused, he shall 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 shall make an order declaring that it lacks jurisdiction and shall refer the matter to the competent court. Section 270 (2) and (3) shall apply 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 shall be informed of the new legal situation and shall be given the opportunity to defend himself. If he claims that he has not sufficiently prepared his defence, the main hearing shall be suspended upon his application. If the main hearing has been held in the accused's absence pursuant to section 415, those parts of the main hearing during which the accused was not present shall be repeated.
(3) Subsections (1) and (2) shall 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 because of his unfitness to stand trial.

Chapter 2a
Accelerated proceedings

Section 417
Admissibility

In proceedings before a criminal court judge and a court with lay judges, the public prosecution office shall file 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 shall be held immediately or at short notice without a decision to open main proceedings being required. No more than six weeks are to lie between receipt of the application by the court and commencement of the main hearing.
(2) The accused shall be summoned only if he does not appear at the main hearing of his own volition or is not brought before the court. He shall be informed in the summons of the charges against him. The time limit set in the summons shall be 24 hours.
(3) It shall not be necessary to file a bill of indictment. If such bill of indictment is not filed, the charges shall be preferred orally at the beginning of the main hearing and their essential content shall be included in the record made of the sitting. Section 408a shall apply accordingly.
(4) If imprisonment for a term of at least six months is to be anticipated, defence counsel shall be 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 shall 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 shall be admissible.
(2) Adjudication may also be refused in the main hearing until such time as judgment is pronounced. The decision shall not be contestable.
(3) If adjudication is refused, the court shall decide 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) shall require the consent of the defendant, his 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 shall, notwithstanding section 244 (2), determine the extent to which evidence is to be taken.

Chapter 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 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 confiscation at any stage of the proceedings. It shall grant an application made therefor by the public prosecution office. Section 265 shall apply accordingly.
(3) In the preparatory proceedings, the public prosecution office may limit the procedure to the other legal consequences. The limitation shall be recorded in the files.

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 shall take its decision on the confiscation once the judgment in the main action has become final. The court shall be 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 shall be taken no later than six months after the judgment in the main action becomes final.
(3) The court shall give 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 shall apply accordingly; the provisions governing the main hearing shall 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 shall order that said person become a party to the confiscation aspect of the criminal proceedings (party to confiscation proceedings (*Einziehungsbeteiligter*)).
(2) Such an order shall not be 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 he does not wish to raise any objections

in respect of the confiscation of the object. If the order had already been made upon such declaration being made, the order shall be 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 shall not be contestable. An immediate complaint shall be admissible if participation in the proceedings is refused.
(5) Participation in the proceedings shall 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) shall apply accordingly if

1. a party, association or institution outside the territorial scope of this statute which is pursuing 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 shall 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 might be considered as a party to confiscation proceedings, he shall be heard. This shall only apply if it appears feasible that the hearing can be held. Section 425 (2) shall apply accordingly.
(2) If the person who might be considered as a party to confiscation proceedings declares that he wishes to object to the confiscation, those provisions governing the examination of the accused shall apply accordingly in the event of his examination if it is considered possible that he might 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 shall have the same rights as a defendant, unless otherwise provided by this statute. In accelerated proceedings, this shall apply 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 he fails to appear without sufficient excuse, the court may order that

he be brought before it if a summons has been served on him which draws his 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 shall apply accordingly.
(2) The presiding judge shall, upon application or ex officio, appoint a lawyer to a party to confiscation proceedings if the lawyer's involvement is deemed necessary on account of the complexity of the factual or legal situation in respect of the confiscation or if it is apparent that the party to confiscation proceedings cannot exercise his rights himself. Section 140 (2) sentence 2 shall apply accordingly.
(3) Subsection (1) shall apply accordingly in the preparatory proceedings.

Section 429
Notification of date of main hearing

(1) Notification of the date set down for the main hearing shall be served on a party to confiscation proceedings; section 40 shall apply accordingly.
(2) Where a party to confiscation proceedings is a party to the proceedings, in addition to being notified of the date set down for the main hearing he shall also 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 shall be advised of the fact that

1. the hearing may also be conducted in his absence,
2. he may be represented by a lawyer with a documented power of attorney and
3. the decision given on the confiscation shall apply to him as well.

Section 430
Status in main hearing

(1) If a party to confiscation proceedings fails to appear at the main hearing despite being properly notified of the date of the hearing, the main hearing may be conducted in his absence; section 235 shall not apply. The same shall apply if the party to confiscation proceedings absents himself from the main hearing or does not return once the interrupted main hearing is resumed.
(2) Section 244 (3) sentence 2 and (4) to (6) shall 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 shall at the same time order that the party to confiscation proceedings shall not be entitled to compensation. This shall 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 shall also make a determination of the amount of the compensation. The court shall, in

advance, advise parties holding an interest in confiscation of the possibility of such a decision being taken and shall give them the opportunity to comment.
(4) If the party to confiscation proceedings was neither present nor represented when judgment was pronounced, the judgment shall be served on him. 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 shall extend to the conviction in the contested judgment only if such person

1. raises objections in this respect and
2. through no fault of his 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 shall refer to the findings on which the conviction was based, unless such person's submissions require renewed examination.
(2) Subsection (1) shall 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 shall 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 contested, a decision may be given on the appellate remedy by way of an order, unless the parties object thereto. The court shall advise them in advance of the possibility of following such procedure and of raising an objection and shall give 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 shall also be served on the party to confiscation proceedings if he is a party to the proceedings. Section 429 (3) no. 2 shall apply accordingly.
(2) If a decision is required only on the objection raised by the party to confiscation proceedings, section 434 (2) and (3) shall apply accordingly.

Section 433
Subsequent proceedings

(1) Where the confiscation order has become final and a person substantiates that he was, through no fault of his 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, he may claim in subsequent proceedings that the confiscation, insofar as it relates to him, was not justified.
(2) The application for subsequent proceedings shall be made within one month after the end of that day on which the applicant learned of the final decision. The application shall be inadmissible where two years have elapsed since the decision became final and enforcement was concluded.

(3) The application for the conduct of subsequent proceedings shall 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 shall be taken against the applicant up until their conclusion.
(4) Section 431 (1) shall apply accordingly to the scope of the examination. If the right asserted by the applicant is not proved, the application shall be 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) shall be ruled out.

Section 434
Decision in subsequent proceedings

(1) *The decision on confiscation in subsequent proceedings shall be given by the court of first instance*.
(2) The court shall give its decision by way of an order, against which an immediate complaint shall be admissible.
(3) A decision on an admissible application shall be 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 shall 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) shall apply 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 shall be designated in the application. The facts substantiating the admissibility of independent confiscation shall also be cited. In all other respects, section 200 shall apply accordingly.
(3) Sections 201 to 204, 207, 210 and 211 shall apply accordingly to further proceedings where this is feasible. In all other respects, sections 424 to 430 and 433 shall apply accordingly.

Section 436
Decision in independent confiscation proceedings

(1) The decision on independent confiscation shall be 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 shall also have local jurisdiction in respect of the decision on independent confiscation.
(2) Section 423 (1) sentence 2 and section 434 (2) to (4) shall 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 shall order that a person who is neither the indicted accused nor a person who might be considered as a party to confiscation proceedings shall 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 shall apply accordingly to the order for participation in the proceedings.
(2) The court may order that participation in the proceedings shall 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 shall apply accordingly.
(3) In all other respects, sections 426 to 434 shall apply accordingly, with the proviso that, in the cases under section 432 (2) and section 433, the court shall 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 shall be 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 shall also include any property subsequently acquired by the accused. Revocation of the seizure shall be made before conclusion of the main hearing at first instance at the latest.
(2) Seizure shall be ordered by the judge. In exigent circumstances, the public prosecution office may make a provisional order for seizure; the provisional order shall become ineffective if it is not confirmed by the judge within three days.
(3) The provisions of sections 291 to 293 shall apply accordingly.

Chapter 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 shall order its participation in the proceedings in respect of the offence; section 424 (3) and (4) shall apply accordingly.
(2) The legal entity or the association shall be 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) shall 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) shall apply analogously.

(3) Section 435, section 436 (1) and (2) in conjunction with section 434 (2) or (3) shall apply analogously to the independent proceedings. The court in whose district the legal entity or the association has its seat or a branch office shall also have local jurisdiction.

Sections 445 to 448
(repealed)

Book 7
Enforcement of sentence and costs of proceedings

Chapter 1
Enforcement of sentence

Section 449
Enforceability

Criminal judgments shall not be 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 he waived the right to seek an appellate remedy, after he has 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 shall be 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 shall 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 shall also be credited against an enforceable sentence of imprisonment. This shall also apply 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 shall 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 shall be effected if such crediting is not justified in view of the convicted person’s conduct after pronouncement of the judgment in which the underlying findings of fact were last examined. If the court makes such an order, credit shall not be 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 shall be enforced by the public prosecution office as the enforcing authority on the basis of a certified copy of the operative provisions of the judgment

containing an endorsement of enforceability, which is to be issued by the registry clerk.
(2) The prosecutors at the local courts shall be 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 shall also perform 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 shall be vested in the Federation in cases decided at first instance in the exercise of jurisdiction by the Federation; in all other cases, it shall be 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) shall be given by the court, with no oral hearing, in an order. The public prosecution office and the defendant shall be heard. Section 246a (2) and section 454 (2) sentence 4 shall apply accordingly. If the court has to decide on revoking the suspension of sentence due to non-compliance with conditions or directions, it shall give the convicted person the opportunity to be heard orally. Where a probation officer has been appointed, the court shall inform him if a decision on the revocation of suspension of sentence or of remission of sentence is being considered; the court shall give him information obtained from other criminal proceedings if the objective of probationary supervision makes this seem appropriate.
(2) A complaint shall be 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 shall be 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 shall be given by the court competent to give the decision pursuant to section 453. The presiding judge may entrust a commissioned or a requested judge with giving such instruction.
(2) The instruction shall be given orally, except in cases of minor significance.
(3) The defendant shall also be instructed in respect of the subsequent decisions. Subsection (1) shall apply accordingly.

Section 453b
Supervision during probation period

(1) The court shall supervise the conduct of the convicted person during the probation period, in particular compliance with conditions and directions, as well as with offers made and assurances given.
(2) The supervision shall be 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, until the revocation order enters into force, take provisional measures to ensure that the convicted person will not abscond and, if necessary, 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) shall be credited against a sentence of imprisonment to be enforced. Section 33 (4) sentence 1, sections 114 to 115a, sections 119 and 119a shall 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 shall be inadmissible shall be given by the court without an oral hearing in an order. The public prosecution office, the convicted person and the penal institution shall be heard. The convicted person shall 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 shall at the same time decide whether crediting pursuant to section 43 (10) no. 3 of the Prison Act shall be ruled out.
(2) The court shall obtain 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 might preclude the convicted person's early release.

The opinion shall, in particular, express a view as to whether a risk that the convicted person still poses the danger which is apparent from his offence no longer exists. The expert shall be heard orally. The public prosecution office, the convicted person, his defence counsel and the penal institution shall 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 defence counsel and the public prosecution office waive such a hearing.
(3) An immediate complaint shall be admissible against the decisions pursuant to subsection (1). A complaint lodged by the public prosecution office against the decision ordering suspension of the remainder of the sentence shall have 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 shall apply accordingly. Instruction on suspension of the remainder of the sentence shall be given orally; the duty to give such instruction may also be delegated to the penal institution. The instruction shall 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 shall be extended by the period between the entry into force of the decision on suspension until 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 shall apply accordingly. Section 57 (5) of the Criminal Code shall remain 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 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 shall interrupt 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 shall 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 shall take 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 shall 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 due to unfitness to serve

(1) Enforcement of a sentence of imprisonment shall be postponed if the convicted person becomes insane.
(2) The same shall apply 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. due 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 shall 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 his 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 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 shall apply 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 as well as order the necessary search measures, in particular the issuance of an alert for arrest; section 131 (4) and section 131a (3) shall apply accordingly. The convicted person shall 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 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 his 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 shall be required. Section 462 (3) shall apply 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 shall not be 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 shall apply analogously for the purposes of this chapter.
(2) The enforcing authority shall be 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 his 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 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 shall have 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 shall be given to the length of the sentence of imprisonment still to be served. Court decisions which may become necessary shall be given by the court of first instance.

Section 458
Court decisions on enforcement of sentence

(1) A court decision shall be obtained if doubts arise concerning the interpretation of a criminal judgment or the calculation of the sentence imposed or if objections are raised against the admissibility of enforcing the sentence.
(2) The court shall 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 shall subsequently be enforced against a person who has been extradited, deported, removed or refused entry.
(3) The course of enforcement shall not be suspended as a result of this; 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 shall 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 shall be 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 relaxing 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 shall be noted in the files. The enforcing authority may grant relaxation of payment conditions again.
(4) A decision concerning the relaxing of payment conditions shall also extend to the costs of the proceedings. It may also be given with regard to costs alone.

Section 459b
Crediting of instalments

Instalments shall first be 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 part thereof shall be recovered within two weeks after the amount became due only if, on the basis of certain facts, it is apparent 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 shall 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 shall be enforced on the basis of an order made by the enforcing authority.
(2) The enforcement order shall be contingent on the fine not being recoverable or on enforcement being dispensed with pursuant to section 459c (2).
(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 shall not be enforced to the extent that the fine is paid or recovered or enforcement is dispensed with pursuant to section 459d. Subsection (3) shall apply accordingly.

Section 459f
Exemption from enforcement of default imprisonment

The court shall make an order to the effect that there shall 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 shall be enforced by way of 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 shall apply to enforcement.
(2) Sections 459 and 459a and section 459c (1) and (2) shall apply accordingly to enforcement of those incidental legal consequences requiring payment of money.
(3) Sections 102 to 110, section 111c (1) and (2), section 111f (1), section 111k (1) and (2), and section 131 (1) shall apply accordingly.

(4) The court shall order that enforcement of confiscation be precluded pursuant to sections 73 to 73c of the Criminal Code upon the lapse of that right which the aggrieved person 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.
(5) In the cases under subsection (2), the court shall order that confiscation not be enforced if the value of that which was obtained no longer forms part of the person concerned's assets or enforcement would be disproportionate in some other manner. Enforcement shall be resumed if circumstances subsequently become known or arise which pose an obstacle to the order pursuant to sentence 1.

Section 459h
Compensation of aggrieved person

(1) An object confiscated pursuant to sections 73 to 73b of the Criminal Code shall be returned to an aggrieved person who has become entitled to return of the object obtained, or to his successor in title. The same shall apply 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 shall be surrendered to the aggrieved person or to his successor in title if he registered his 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 shall be disbursed to the aggrieved 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 successor in title. Section 111i shall apply accordingly.

Section 459i
Notification requirements

(1) The aggrieved person shall be 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 shall be served on the aggrieved person; section 111l (4) shall apply accordingly.
(2) In the event of confiscation of the object, notification shall 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 shall 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 aggrieved person or his successor in title shall file his 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 shall be returned or surrendered to the applicant. Otherwise, this shall require the court giving leave therefor. The court shall give leave for the return or surrender of the

object subject to the provisions of section 459h (1). Such leave shall be denied if the applicant fails to substantiate his entitlement; section 294 of the Code of Civil Procedure shall apply.
(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 shall only apply 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 shall be granted, subject to the conditions of sections 44 and 45.
(5) Notwithstanding the procedure under subsection (1), the aggrieved person or his successor in title may assert his 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 aggrieved person or his successor in title shall file his 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 shall be disbursed to the applicant in that amount. Otherwise, this shall require the court giving leave therefor. The court shall give leave for disbursement of the realised proceeds subject to the provisions of section 459h (2). Such leave shall be denied if the applicant fails to substantiate his entitlement; section 294 of the Code of Civil Procedure shall apply.
(3) Prior to giving its decision on disbursement, the party against whom the confiscation order has been made is to be heard. This shall only apply 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 shall be granted subject to the conditions of sections 44 and 45.
(5) Notwithstanding the procedure under subsection (1), the aggrieved person or his successor in title may assert his 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 shall be 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 the aggrieved person has derived the right to restitution of that which was obtained by virtue of the offence, he may demand that the confiscated object be returned or delivered to himself or to his successor in title in accordance with the provisions of section 459h (1). Section 459j (2) shall apply accordingly.
(2) If the person against whom the order for confiscation of the equivalent sum of money has been made satisfies the aggrieved person'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, he 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 had to have been paid to the aggrieved party pursuant to section 459h (2). Section 459k (2) sentences 2 to 4 shall apply accordingly. In all cases, the aggrieved person or his successor in title must substantiate the fact that the claim has been satisfied by issuing a receipt. The aggrieved person or his successor in title shall 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 shall be paid to the aggrieved party or to his successor in title if he 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 shall apply accordingly. Payment shall be ruled out where two years have elapsed since insolvency proceedings were set aside. In the cases under section 111i (2), sentences 1 to 3 shall apply accordingly if insolvency proceedings have not been conducted.
(2) Subsection (1) sentences 1 and 2 shall apply accordingly if an object is attached after insolvency proceedings are set aside or after payment has been made 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 shall apply accordingly.

Section 459o
Objections against decisions of enforcing authority

The court shall decide 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 shall 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 his sentence, a convicted person was taken to a hospital outside the penal institution due to illness, the duration of his stay in the hospital shall be included when calculating the time served, unless the convicted person caused the illness with the intention of interrupting enforcement of sentence.
(2) The public prosecution office shall obtain a decision from the court in the latter case.

Section 462
Procedure for court decisions; immediate complaint

(1) The decisions required pursuant to section 450a (3) sentence 1 and sections 458 to 461 shall be given in a court order without an oral hearing. This shall also apply 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) Before the decision is taken, the public prosecution office and the convicted person shall be heard. If the court orders an oral hearing, it may specify that the convicted person be located somewhere other than the court and that the hearing be simultaneously transmitted audio-visually to the place where the convicted person is located and to the courtroom. The court may dispense with hearing the convicted person in the case of a decision pursuant to section 79b of the Criminal Code if, due to certain facts, it is to be assumed that conduct of the hearing will not be feasible.
(3) The court order shall be contestable by immediate complaint. An immediate complaint lodged by the public prosecution office against the order imposing interruption of enforcement shall have 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 shall lie 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 shall also remain 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 shall be binding.
(2) In cases other than those designated in subsection (1), the court of first instance shall be 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 domicile or, if he has no domicile, his habitual residence; the referral shall be binding. In derogation from subsection (1), the court of first instance shall be 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, the court of first instance shall decide. If judgments were pronounced by different courts, the decision shall be 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 shall be 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 shall determine the aggregate sentence; if one of the judgments was pronounced by a higher regional court of first instance, the higher regional court shall fix the aggregate sentence. If a local court would be competent to determine the aggregate sentence and if its sentencing power is not sufficient, the criminal division of its superior regional court shall 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 him a warning with sentence reserved, only one such court shall be competent for the decisions to be given pursuant to sections 453, 454, 454a and 462. Subsection (3) sentences 2 and 3 shall apply accordingly. In the cases under subsection (1), the criminal chamber responsible for enforcement of sentences shall decide; subsection (1) sentence 3 shall remain unaffected.
(5) The court of first instance shall decide 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 entirely or partially refer the decision to be given pursuant to subsections (1) and (3) to the criminal chamber responsible for enforcement of sentences. The referral shall be 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 shall be 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 shall apply analogously to the enforcement of measures of reform and prevention, unless otherwise provided.
(2) Section 453 shall also apply to decisions to be given pursuant to section 68a to 68d of the Criminal Code.
(3) Section 454 (1), (3) and (4) shall also apply 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, there shall be no need for an oral hearing of the convicted person. Insofar as the court is called upon to decide upon enforcement of preventive detention, section 454 (2) shall apply 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 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) shall apply 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 shall 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 shall appoint 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 shall obtain an expert opinion from the facility providing measures of reform and prevention into which the convicted person has been placed. The court shall 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 he be working in the psychiatric hospital in which the person has been placed, nor should he have drawn up the last expert opinion rendered during a previous review. The expert who is called in to render the first expert opinion during a review of placement may also not have 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 shall be commissioned with rendering an expert opinion. The expert is to be granted inspection of the patient data kept by the hospital on the detainee. Section 454 (2) shall apply accordingly. If the person detained has no defence counsel, the court shall appoint 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) shall 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 shall not apply if an order has been made placing the convicted person in preventive detention.
(6) Section 462 shall also be applicable 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 shall declare 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.
(7) Supervision of conduct in the cases under section 67c (1), section 67d (2) to (6) and section 68f of the Criminal Code shall be 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 shall appoint such counsel for the proceedings concerning the court decisions to be given in regard to enforcement. Such appointment shall be made in good time prior to the first court decision and shall also apply 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 compliance with directions and 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 whereabouts (section 131a (1)).
(2) The supervisory authority may order that, for the duration of the supervision of his conduct or for a shorter period, the convicted person be put under observation during police checks conducted for the purposes of verifying personal identification data. Section 163e (2) shall apply accordingly. The order shall be made by the head of the supervisory authority. The need to continue the measure shall be reviewed at least once a year.
(3) Upon application by the supervisory authority, the court may make an order to appear in court if the convicted 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 he has been informed in the summons that in such a case it would be admissible to have him brought before the court. To the extent that the court of first instance has jurisdiction, the presiding judge shall 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 shall, with the aid of the technical devices which the convicted person is carrying on himself, collect and store through automation data concerning his whereabouts and concerning any interference with data collection; insofar as technically possible, it shall be ensured that on the convicted person's private premises no data concerning his whereabouts extending beyond the fact of his presence are collected. 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, shall be undertaken through automation and the data shall be specially protected against unauthorised

cognisance. The supervisory authority may have the data collected and processed by the police authorities and police officers; these shall be obliged to comply with the request of the supervisory authority. The data referred to in sentence 1 shall 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 shall be recorded; section 488 (3) sentence 5 shall apply accordingly. If data concerning the convicted person's whereabouts beyond the fact of his presence are collected on his private premises, these data may not be used and shall be deleted without delay after cognisance. The fact of their cognisance and deletion shall be documented.
(5) The supervisory authority in whose district the convicted person has his domicile shall have local jurisdiction. If the convicted person has no domicile within the territorial scope of this statute, local jurisdiction shall lie with the supervisory authority in whose district he is habitually resident or, if that place is not known, in which he had his 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 shall 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 does not have his driving licence with him, he shall, upon application by the enforcing authority, 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 shall apply 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 shall be served on the person entitled.
(2) The order pursuant to subsection (1) shall be enforced only if the applicant or a person entitled to file an application in his 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 his obligation to include such an announcement in his publication, the court shall, upon application by the enforcing authority, induce him 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 shall apply accordingly.
(4) Subsection (3) shall apply accordingly to an announcement by public broadcast if the person responsible for programming fails to comply with his obligation.

Section 463d
Court assistance agency

To prepare the decisions to be given pursuant to sections 453 to 461, the court or the enforcing authority may avail itself of the services of the court assistance agency; this shall in particular apply before a decision is given on the revocation of the suspension of sentence or of the suspension of the remainder of a sentence, unless a probation officer has been appointed.

Chapter 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 shall be made by the court in the judgment or in the order concluding the proceedings.
(3) An immediate complaint shall be admissible against the decision regarding costs and necessary expenses; it shall not be admissible if the main decision referred to in subsection (1) cannot be contested by the complainant. The court hearing the complaint shall be 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 shall also be 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 shall include fees and Treasury expenditure. They shall also include the costs of preparing public charges as well as the costs of enforcing a legal consequence of the offence. The costs of an application to reopen proceedings concluded by final judgment shall also include the costs of preparing the reopening of proceedings (section 364a and 364b) insofar as they are caused by an application by the convicted person.
(2) Necessary expenses of a party shall 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 shall, upon application by a party, be assessed by the court of first instance. Upon application, the court shall declare that interest shall be paid on the assessed costs and expenses with effect from the time of application for assessment. The provisions of the Code of Civil Procedure shall 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 shall be 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 shall be charged to the indicted accused insofar as he has unnecessarily

given rise to such expenditure by culpable omission or culpably in some other way; this shall 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 person's obligation to pay costs

(1) The defendant shall bear the costs of the proceedings insofar as they were caused by the proceedings for an offence of which he has been convicted or for which a measure of reform and prevention has been ordered against him. For the purposes of this provision, a conviction shall also be deemed to have been pronounced if the 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 shall charge the expenses, in part or in full, to the Treasury if it would be inequitable to charge them to the defendant. This shall in particular apply 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 shall 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, his estate shall not be 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 shall be jointly and severally liable for the expenses. This rule shall 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 him is refused or if the proceedings against him are terminated, Treasury expenditure and the indicted accused's necessary expenses shall be borne by the Treasury.
(2) The costs of the proceedings caused by the indicted accused's culpable default shall be borne by him. To that extent, the expenses he has caused shall not be charged to the Treasury.
(3) The indicted accused's necessary expenses shall not be charged to the Treasury if the indicted accused caused the preferment of public charges by making a report in which he pretended to have committed the offence with which he was charged.

The court may dispense with charging the indicted accused’s necessary expenses to the Treasury if

1. he caused the preferment of public charges by falsely incriminating himself with regard to material points or in contradiction to his later statement or by concealing material exonerating circumstances despite having made a statement in response to the accusation or
2. he 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 shall not be 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 shall charge 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) shall apply 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) shall not be 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 shall not be 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 conducted out of court, were caused by the intentional or reckless false report of an offence, the court shall, after hearing the person who reported the offence, charge to such person the costs of the proceedings and the accused’s necessary expenses. 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, the decision shall, upon application by the public prosecution office, be given by the court which would have been competent to open the main proceedings.
(3) The decision pursuant to subsections (1) and (2) shall not be contestable.

Section 470
Costs of withdrawing request to prosecute

If the proceedings are terminated due to the withdrawal of the request upon which they were contingent, the person filing the request shall bear the costs as well as 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 he declares himself willing 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 shall also 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 shall be charged to the private prosecutor.
(3) The court may appropriately apportion the costs of the proceedings and the parties’ necessary expenses or, 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 shall be jointly and severally liable. The same shall apply 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 shall be charged to the defendant if he 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) shall apply accordingly.
(3) Subsections (1) and (2) shall 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 his rights under section 406h. The same shall apply 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 shall apply 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 shall also bear the special costs incurred thereby and the aggrieved person's necessary expenses.
(2) If the court dispenses with a decision on the application, part of the aggrieved person's claim is not awarded or the aggrieved person withdraws his application, the court shall decide, at its duty-bound discretion, who is to bear the relevant court expenditure and the parties' relevant necessary expenses. 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 shall 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 shall 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 his rights under section 406h shall 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 shall be charged to him. Section 472a (2) shall apply 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 necessary expenses shall be charged to the Treasury. The same shall apply 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) Where the accused or any other party limited the appellate remedy to certain points of complaint and such appellate remedy is successful, the party's necessary expenses shall be charged to the Treasury.
(4) If the appellate remedy is partly successful, the court shall 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 shall apply accordingly to the parties' necessary expenses.
(5) An appellate remedy shall be 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 due 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) shall 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 shall be 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 shall at the same time decide who is to bear the costs and the parties' necessary expenses. These shall 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 shall apply accordingly.

Book 8
Protection and use of data

Chapter 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 shall be able to inspect the files if this is necessary for the purposes of the administration of justice.
(2) In all other respects, it shall be 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 shall be 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 23 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 shall remain unaffected.

Section 475
Provision of information to and inspection of files by private individuals and other agencies

(1) Without prejudice to the provision of section 406e, a lawyer may obtain information from a file for a private individual or for other agencies if such file is available to the court or would have to be submitted to the court if public charges were preferred and if he sets forth a legitimate interest therefor. Information shall 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 shall be 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 by preclusion of the transmission.

As part of the consideration of the public interest pursuant to sentence 1 no. 3, particular consideration shall be given to scholarly interest in the research project.
(2) Transmission of the data shall occur by providing pieces 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 shall only be 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 shall apply accordingly to placement under the obligation to maintain secrecy.
(4) Personal data may only be used for the research for which it was transmitted. Use for other research work or passing on to others shall be in accordance with subsections (1) to (3) and shall require 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 shall ensure that the use of the personal data is physically and organisationally separate from the fulfilment of those administrative activities or commercial practice for which these data may also be of significance.
(6) As soon as the research purpose allows, personal data shall 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 shall 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 shall require the consent of the agency which transmitted the information.
(8) If the recipient is not a public agency, the provisions of Part III of the Federal Data Protection Act shall also apply if the data are not processed into or from data files.

Section 477
Data transmission and restrictions as to use

(1) Information may also be provided in the form of copies made from the files.
(2) Information from files and inspection of files shall be denied if the transmission is contrary to the purposes of the criminal proceedings or might also jeopardise the purpose of an investigation in other criminal proceedings, or is contrary to certain federal or *Land* statutory rules of usage. If a measure under this statute is admissible only where specified offences are suspected, then any personal data obtained on the basis of such a measure may only be used without the consent of the person affected by the measure for evidential purposes in other criminal proceedings in respect of which the investigation of the offence could have been ordered pursuant to this statute. Further, personal data which have been obtained through a measure of the type described in sentence 2 may only be used without the consent of the person affected by the measure

1. to counter a significant danger to public safety,

2. for those purposes for which transmission is admissible pursuant to section 18 of the Federal Act on the Protection of the Constitution and
3. in accordance with the provisions of section 476.

Section 100e (6), section 100i (2) sentence 2, section 101a (4) and (5), and section 108 (2) and (3) shall remain unaffected.
(3) In proceedings in which

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 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 refusal.
(4) Responsibility for the admissibility of transmission shall lie with the recipient insofar as it is a public agency or lawyer. The transmitting agency shall in this case only review 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 shall apply accordingly, with the proviso that it shall be permissible to use personal data acquired in accordance with sections 474 and 475 for other purposes if it were 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.

Section 478
Decision on provision of information or inspection of files; legal remedies

(1) In preparatory proceedings and after the final conclusion of proceedings, the public prosecution office shall decide whether to provide information and allow inspection of the files; in all other respects, the presiding judge of the court seized of the matter shall decide. The public prosecution office shall be entitled, even subsequent to the preferment of public charges, to provide information. 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 shall be admissible without a decision pursuant to sentence 1, unless there are doubts concerning the admissibility of the transmission or of the inspection of the files.
(2) Information may only be provided from file material extraneous to the file if the applicant provides proof that the agency responsible for such material has consented thereto; the same shall apply to inspection of the files.
(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 shall apply accordingly. The decision of the court shall not be contestable as long as the investigations have not yet been concluded. The reasons for these

decisions shall not be stated to the extent that disclosure might jeopardise the purpose of the investigation.

Section 479
Ex officio data transmission

(1) Personal data from criminal proceedings may be transmitted ex officio to the prosecuting authorities and criminal courts for the purpose of criminal prosecution, as well as to the competent authorities and courts for the purpose of prosecuting regulatory offences insofar as these 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 to

1. enforce penalties or measures within the meaning of section 11 (1) no. 8 of the Criminal Code or to enforce or implement disciplinary measures for juvenile offenders or disciplinary measures within the meaning of the Youth Courts Act,
2. enforce measures involving deprivation of liberty,
3. make decisions in criminal matters, in particular regarding suspension of a sentence on probation or its revocation, in civil penalty or clemency petition matters.

(3) Section 477 (1), (2) and (5) as well as section 478 (1) and (2) shall apply accordingly; responsibility for the admissibility of the transmission shall lie with the transmitting agency.

Section 480
Provisions on transmission unaffected

Special statutory provisions which require or allow the transmission of personal data from criminal proceedings shall remain unaffected.

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 if this is necessary to avert an imminent 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 shall not apply in cases in which the police were exclusively active in protecting private rights.
(2) Use shall be 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 478 (1) sentences 1 and 2 shall apply accordingly.

Section 482
Notification of file reference number and outcome of criminal proceedings to police

(1) The public prosecution office shall inform the police authority involved in the matter of its file reference number.
(2) In the cases under subsection (1), it shall inform 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 shall be 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, in accordance with subsection (2), the outcome of the proceedings shall not be notified ex officio.
(4) If a judgment which has been contested is transmitted, the name of the person seeking an appellate remedy shall be designated.

Chapter 2
Provisions on data files

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 store, modify and use personal data in data files to the extent necessary for the purposes of the criminal proceedings.
(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 data file together with data stored in accordance with legislation on police matters, the law governing the storing agency shall apply to the processing and use 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 store, modify and use the following in data files 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 potential damage,
4. the charges, by means of a reference to the statutory provisions,
5. the initiation of the proceedings as well as 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 stored, modified or used in data files 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 there will be additional criminal proceedings 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 storage, modification and use pursuant to sentence 1 shall be 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* shall 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 shall not apply to data in data files which are stored only temporarily and 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 use of personal data which have been or will be stored in police data files for the purposes of future criminal proceedings shall be subject to legislation on police matters, except for use 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 store, modify and use personal data in data files to the extent necessary for the purposes of the administration of proceedings. Use for the purposes set forth in section 483 shall be admissible. Use for the purposes set forth in section 484 shall be admissible to the extent that storage would be admissible under this provision, too. Section 483 (3) shall apply accordingly.

Section 486
Shared data files

(1) Personal data may be stored in shared data files on behalf of the agencies designated in sections 483 to 485.
(2) In the case of supra-regional shared data files, section 8 of the Federal Data Protection Act shall apply accordingly to compensation claims filed by a data subject.

Section 487
Transmission of stored data; information contained in data file

(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 477 (2) and section 485 sentence 3 shall apply accordingly. Probation officers 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.
(2) In addition, information may be provided from a data file insofar as inspection of the files or information could be granted in accordance with the provisions of this

statute. The same shall apply to notifications in accordance with sections 479 and 480 and section 481 (1) sentence 2.
(3) Responsibility for the admissibility of the transmission shall lie with the transmitting agency. If transmission takes place based on the request of the recipient, it shall bear this responsibility. In such a case, the transmitting agency shall only examine 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 shall apply accordingly.
(5) Special statutory provisions which require or allow the transmission of data from criminal proceedings shall remain unaffected.
(6) Data may only be used for the purpose for which they were transmitted. Use for another purpose shall be 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 shall be 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 shall 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 shall be applied.
(2) Section 10 (2) of the Federal Data Protection Act shall apply accordingly regarding the specifications for setting up the automated retrieval procedure. This requires the consent of the federal and *Land* ministries competent for the storing agency and the retrieving agency. The storing agency shall transmit 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 shall lie with the recipient. The storing agency shall examine the admissibility of the retrieval only if there is cause to do so. The storing agency shall ensure that the transmission of personal data can, at a minimum, be established and checked by appropriate sampling. For every tenth retrieval it shall record at least the time, the data retrieved, the retrieving agency's code and the recipient's file reference. The data recorded may only be used to control admissibility of the retrievals and shall be deleted after 12 months.

Section 489
Correction, deletion and blocking of data

(1) Personal data in data files shall be corrected if they are inaccurate.
(2) They are to be deleted if storage thereof is inadmissible or if, in the course of an individual case, it becomes apparent that knowledge of the data for each of the purposes set forth in sections 483, 484 and 485 is no longer necessary. Data stored pursuant to

1. section 483 shall be deleted upon conclusion of the proceedings insofar as their storage is not admissible under sections 484 and 485,
2. section 484 shall be deleted to the extent that the examination under subsection (4) shows that knowledge of the data for the purpose set forth in section 484 is no longer necessary and their storage is not admissible under section 485,
3. section 485 shall be deleted as soon as their storage is no longer necessary for the administration of proceedings.

(3) Disposal by the criminal prosecution office or, in cases where public charges have been preferred, by the court shall be deemed to be a disposal of the proceedings. If a penalty or other sanction has been ordered, completion of enforcement or remission shall be decisive. If the proceedings have been terminated and the termination does not prevent resumption of the prosecution, the proceedings shall be considered concluded upon expiry of the limitation period.
(4) The storing agency shall examine, within the established time limits, whether data stored pursuant to section 484 are to be deleted. The time limits shall be

1. for accused persons who at the time of the offence were 18 years of age: 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.

(5) The storing agency may set down shorter examination time limits in the order to create data files pursuant to section 490.
(6) If data regarding a person are stored in a data file for other proceedings, deletion thereof shall not take place until the conditions for deletion have been met in respect of all entries. Subsection (2) sentence 1 shall remain unaffected.
(7) Instead of being deleted, data shall be blocked if

1. there are grounds to believe that the deletion would cause detriment to a data subject's interests meriting protection,
2. the data are needed for ongoing research or
3. in view of the particular form of storage, deletion is not possible or would be possible only with disproportionate effort.

Personal data shall also be blocked insofar as they have been stored only for the purposes of securing or monitoring data protection. Blocked data may only be used for the purpose for which deletion has not occurred. They may also be used insofar as this is indispensable to remedy an existing lack of evidence.
(8) If the storing agency finds that personal data which are inaccurate or which are to be deleted or blocked have been transmitted, the recipient shall be informed of the correction, deletion or blocking if this is necessary to safeguard a data subject's interests meriting protection.

(9) Instead of deletion of the data, the data carriers shall be given to a public records office insofar as specific provisions under the law governing archives make provision therefor.

Section 490
Order creating automated data files

The storing agency shall set forth in an order for each automated data file, at a minimum:

1. the name of the data file,
2. the legal basis for and purpose of the data file,
3. the group of people regarding whom data in the data file 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 data file will be transmitted to which recipient and in which proceedings,
7. review periods and retention period.

This shall not apply to data files which are only temporarily stored and which will be deleted within three months after their creation.

Section 491
Information provided to data subjects

(1) Where this statute contains no specific provisions dealing with the provision or refusal of information, the data subject shall be given information in accordance with section 19 of the Federal Data Protection Act. Information shall not be provided in respect of proceedings which were initiated by the public prosecution office less than six months prior to the filing of the application for information. The public prosecution office may extend the time limit set in sentence 2 to up to 24 months if, in the particular case, there is a need to maintain secrecy due to the complexity or scope of the investigations. The Public Prosecutor General shall give a decision on any further extension of the time limit; in proceedings of the Office of the Federal Public Prosecutor General, such decision shall lie with the Federal Public Prosecutor General. Decisions pursuant to sentences 3 and 4, including the reasons therefor, are to be documented. The applicant is to be informed of the provisions of sentences 2 to 5, regardless of whether proceedings have been initiated against him.
(2) If, in the case of a shared file, the data subject is unable to ascertain the name of the storing agency, he may approach any agency involved which is entitled to store the data. The latter shall give a decision regarding the disclosure of information in consultation with the agency which entered the data.

Chapter 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) shall maintain a central register of proceedings conducted by the public prosecution offices.

(2) The following shall 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 potential damage,
4. the charges, by means of a reference to the statutory provisions,
5. the initiation of the proceedings as well as 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 shall 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. Section 5 (5) sentence 1 no. 2 of the Weapons Act, section 8a (5) sentence 1 no. 2 of the Explosives Act (*Sprengstoffgesetz*) and section 12 (1) no. 2 of the Security Clearance Check Act shall remain unaffected; information concerning the entry shall be 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 23 (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 shall apply accordingly.
(4a) If the authority holding the register cannot clearly assign a message or request to a data set, it shall transmit data sets concerning persons with similar personal identification data to the requesting agency. Upon successful identification, the requesting agency shall delete, without delay, all data not relating to the data subject. If identification is not possible, all transmitted data shall be deleted. The statutory instrument referred to in section 494 (4) shall limit 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 shall lie with the recipient. The authority holding the register shall examine the admissibility of transmission only if there is a special reason for doing so.
(6) Without prejudice to subsection (3) sentence 3 and to subsection (4), the data may be used only in criminal proceedings.

Section 493
Automated data transmission procedure

(1) The data shall be 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 shall guarantee that measures reflecting 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 shall be used.
(2) The specifications for setting up the automated retrieval procedure shall be determined in accordance with section 10 (2) of the Federal Data Protection Act. The authority holding the register shall transmit the specifications to the Federal Commissioner for Data Protection.
(3) Responsibility for the admissibility of each automated retrieval shall lie with the recipient. The authority holding the register shall examine the admissibility of retrievals only if there is cause to do so. For every tenth retrieval, a record shall be made of at least the time, the data retrieved, the retrieving agency's code and the recipient's file reference. The data recorded may be used only to monitor admissibility of the retrievals and are to be deleted after six months.
(4) Subsections (2) and (3) shall apply accordingly to the automated inquiry and disclosure procedure.

Section 494
Correction, deletion and blocking of data; authorisation to issue statutory instruments

(1) The data are to be corrected if they are incorrect. The competent agency shall inform the authority holding the register without delay of any inaccuracy; it shall bear responsibility for the accuracy and currency of the data.
(2) The data shall be deleted

1. if their storage is inadmissible or
2. 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 him has been refused with incontestable effect or if the proceedings have been not only provisionally terminated, the data shall 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 shall remain stored until the requirements for deletion have been fulfilled in respect of all entries. The public prosecution office shall inform 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) and (8) shall apply accordingly.
(4) The Federal Ministry of Justice and Consumer Protection shall, with the approval of the Bundesrat, specify 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 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 section 9 of the Federal Data Protection Act.

Section 495
Information provided to data subject

Information from the register of proceedings shall be provided to the data subject in accordance with section 19 of the Federal Data Protection Act; section 491 (1) sentences 2 to 6 shall apply accordingly. The authority holding the register, in consultation with the public prosecution office which communicated the personal data for entry in the register, shall decide 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 the 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, shall decide whether to disclose the information.

Chapter 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 shall be permissible 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 shall not be files within the meaning of Chapter 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) It shall be permissible for non-public agencies 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 shall not be permissible. 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 shall be permissible insofar as the use of personal data in criminal proceedings is permissible 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 shall not be permissible, 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 shall be deleted without delay as soon as they are no longer required.