

# Sexuality and Crime: The Victims of Sexual Offenses

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## I. SEXUAL OFFENSES IN GERMAN CRIMINAL LAW

### A. *The Current Law*<sup>1</sup>

The range of sexual offenses against the person is wide. There are many ways to violate someone's right to sexual self-determination. The provisions in the German Penal Code that sanction sexual assault and any other offense of a sexual nature committed upon another person cover many areas such as rape, assault with intent to rape, sexual harassment, acts of indecency, indecent exposure, sexual abuse of minors, incest, buggery, pornography, procuring of minors, prostitution, and the trafficking in persons for the purpose of sexual exploitation.

In Germany, sexual offenses are proscribed under chapter 13, sections 174-184 of the Penal Code (StGB).<sup>2</sup> chapter 13 is subtitled "offenses against the right of sexual self-determination."

To cover fully the range of sexual abuse, misconduct, and indecent assault from the perspective of victim's protection and compensation, the provisions in the Penal Code can be classified as follows:

- (a) Whether the offender is in a familial<sup>3</sup> (incest) or extra-familial<sup>4</sup> relationship of care with respect to the victim and

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1. The law is stated as it was on Aug. 1, 1998.
2. §§ 174-184c StGB [German Penal Code].
3. § 174 I Nr. 3 StGB.
4. §§ 174 I Nr.1-2, 174a-c StGB.

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has abused this relationship or position;<sup>5</sup>

(b) Whether the offense is committed on a child<sup>6</sup> or an adolescent;<sup>7</sup> whether the sexual assault consists of procuring minors;<sup>8</sup> or whether pornography is made available to a minor;<sup>9</sup>

(c) Whether the offensive conduct threatens the victim or causes bodily harm,<sup>10</sup> grievous physical damage,<sup>11</sup> or even death;<sup>12</sup>

(d) Whether the offender supports the prostitution of another person (pimping);<sup>13</sup> and whether prostitution occurs in a designated area (preventing street prostitution);<sup>14</sup>

(e) Whether the offender traffics the victim for the purpose of prostitution or sexual exploitation;<sup>15</sup> and

(f) Whether the offensive conduct consists of the exposure of indecent material<sup>16</sup> (pornography) or of the commission of an act of indecency (exhibitionism).<sup>17</sup>

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5. §§ 174, 174a-c, 179 StGB.

6. §§ 176, 176a-176b StGB.

7. § 182 StGB.

8. § 180 StGB.

9. § 184 StGB.

10. §§ 177-178 StGB.

11. §§ 176a IV, 177 IV Nr. 2, 179 VI StGB.

12. §§ 176b, 178, 179 VI StGB.

13. §§ 180, 180a, 181 StGB.

14. Under §§ 184a-184b StGB prostitution is an offense for the prostitute only if the prostitution takes place in a designated area.

15. §§ 180b, 181 StGB.

16. § 184 StGB.

17. §§ 183, 183a StGB (exhibitionism and committing an act of indecency).

*B. Past Amendments*

Starting with the Fourth Criminal Law Reform Act of 1973,<sup>18</sup> sections 174-184c of the German Penal Code have been amended several times. Particularly in the last two years, the reforms and amendments have increased in number and scope.<sup>19</sup> The following are the most recent legislative measures:

The Criminal Law Amendment Act of 1997<sup>20</sup> modified the offenses under sections 177 and 179 StGB to further sanction rape and the sexual abuse of a person whose capabilities to resist sexual advances are limited for various reasons such as age or mental capacity. The Act also abandons the idea that sexual intercourse without consent is not unlawful if the victim is a spouse.<sup>21</sup>

With the enactment of the Information and Communication Services Act of 1997 (IUKDG),<sup>22</sup> Paragraphs 4 and 5 of section 184 StGB were changed, making it an offense to gain possession of pornographic material showing sexual abuse of minors and increasing the sanctions for those who embark on a joint unlawful enterprise to distribute such material.<sup>23</sup>

The Sixth Criminal Law Reform Act of 1998<sup>24</sup> implemented the very latest changes and amendments to Division 13 of the Criminal Code. It focused on the offenses under sections 176, 176a, and 176b StGB to enhance the punishment for the sexual abuse of children and again modified the provisions under sections 177-178 StGB,<sup>25</sup> dealing with rape and indecent assault.

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18. 4th StrRG of Nov. 23, 1973, BGBl. I 1725.

19. For an assessment of the recent reforms and amendments see Axel Dessecker, *Veränderungen im Sexualstrafrecht. Eine vorläufige Bewertung aktueller Reformbemühungen*, 1998 NJW 1.

20. 33d StÄG of July 1, 1997, BGBl. I 1607.

21. See, e.g., Eckhard Horn, *Systematischer Kommentar zum Strafgesetzbuch* before § 174 n.5 (1998).

22. Art. 4 No. 4 Gesetz zur Regelung der Rahmenbedingungen für Informations- und Kommunikationsdienste of July 22, 1997, BGBl. I 1870, 1876.

23. Horn, *supra* at note 21, § 184, at 133-34 (no. 76-82).

24. 6th StrRG of Jan. 26, 1998, BGBl. I 164.

25. Harro Otto, *Die Neufassung der §§ 177-179 StGB*, 1998 Jura 210, 213.

*C. The Meaning of Reforms and Amendments*

Legislative activity can be separated into reforms and amendments. A reform of the law is more ambitious and, compared to an amendment, should go further in terms of innovation and improvement. In order to be called a "reform" rather than merely an "amendment," something particular must be done: something must be changed, something must be "reformed." A reform must include a number of measures that improve the current state of affairs and the current law. A reform must not be limited to legislative activism only, which may lead to short-sighted effects, concealing the real problem. People's belief that "time flies" gives no reason whatsoever for hectic legislative activity or unreflective creation and implementation of new criminal offenses and amendments to the current law. Even though we need decisive measures sanctioning sexual abuse, misconduct, and indecent assault, unreasonable legal and administrative action that may actually take a step backward must be avoided.

To be useful to society as a whole, the "legal academics" who work in universities and other research facilities and do not judge cases or punish offenders must provide the theoretical background and knowledge of contemporary crime. One of the major tasks facing scholars is to look behind the curtains and consider sexual offenses as proscribed under current law in light of the basic principles underlying society and its criminal justice system.

One must, therefore, ask the following questions:

What do the offenses against the "right of sexual self-determination" stand for? What do they mean? Are they consistent with constitutional principals and human rights? If so, why? If not, why not? What is it that makes a sexual abuse, misconduct, or indecent assault a criminal offense? What are these offenses meant to sanction, and how successfully do the provisions in section 13 of the German Penal Code combat sexual harm?

## II. SYSTEM AND PROTECTION

A. *Sexual Property and Integrity*

The “sexual property and integrity” of a person, or, in the language of the Criminal Code, his or her “right of sexual self-determination,” is one of the basic human rights and guaranteed under article 2, section 1 of the German Basic Law.<sup>26</sup>

This particular right is a person’s individual property. The individual alone is the proprietor of his sex, his sexuality, and the way it is used or not used. This right protects the physical integrity of a human being, including his or her sexual integrity. The right protects the way sexuality is lived and the way it is shielded from any external determination, harassment, threat, or harm. This is what can be called “sexual authority,”<sup>27</sup> the comprehensive control over one’s individual sexual property and integrity. Sexual authority needs to be protected from any unwelcome use, de-optimization, or instrumentalization by others.

“Property” is generally defined as “the right to possess, use and dispose of something; . . . something regarded as being possessed by, or at the disposal of, a person. . . .”<sup>28</sup> Property is what a person owns, irrespective of his ability to make use of this ownership. Intellectual property can be defined as “a group of legislative . . . rights affording protection to creative and intellectual effort. . . .”<sup>29</sup>

Both “property” and “intellectual property” in particular “can be used to describe every type of right (that is a claim, recognized by the law), interest, or thing that is

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26. GG art. 2, §1 [German Federal Constitution].

27. In German “Sexualhoheit.”

28. Webster’s New World Dictionary 1038 (3d College ed. Victoria Naufeldt ed., 1993).

29. Butterworth’s Concise Australian Legal Dictionary 210 (Peter Butt & Peter E. Nygh eds., 1997).

legally capable of ownership, and that has a value.”<sup>30</sup> The term goes much further than the items we normally consider to be “real property.”<sup>31</sup> It includes both material and intellectual property. One expression of such ownership of property rights recognized and protected by the law is the intangible personal right to live one’s sexuality freely and independently and to keep it free from any outside force or determination. By law, sexuality is capable of ownership. Like any other form of property, “sexual property” rights include the rights to possession and sale, and may be exercised against all persons.<sup>32</sup>

Every individual, every being, whether natural or artificially created, has property. Every higher natural being possesses a body and sex as soon as, and for as long as it lives. If the being is a human, he or she even has the ability to determine the morality of his or her own sexual performance, to form his or her sexual personality, and to express it in social conduct. This is sexuality. According to general constitutional principles, human sex and sexuality belong to the proprietor in whom they rest and exist. He or she alone is the owner of his or her sex and his or her sexuality, no matter which physical or mental state he or she is in. His or her sexuality belongs to him or her only and is at his or her disposition only. It must not be taken or disturbed by anyone else. The individual alone determines the way his or her sexuality is treated and expressed. The “right of sexual self-determination,” according to the Constitution, is the right to one’s personality, and can only be determined by oneself. The “right to sexual self-determination” can also be defined as the right to keep one’s sexual property free from determination by anyone else, particularly in ways that are offensive towards the owner. De-optimization and instrumentalization of another person’s sexuality are proscribed by section 13 of the Penal Code.

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30. *Id.* at 321.

31. “Real property” traditionally only includes “land and interests in land.” *Id.* at 334.

32. *Id.* at 291.

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*B. Sexual Self-Determination*

The “right of sexual self-determination” can also be understood as the authority of a human being to enjoy, exercise, and employ sexual self-determination in the widest possible sense. One may then distinguish between positive and negative aspects of sexual self-determination. It is then possible to subdivide further and, thus to analyze the meaning of the concept of sexual self-determination:

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The StGB basically follows the system shown above and sanctions offenses against the various expressions of the “right of sexual self-determination.”

Sections 174 to 174c, 176 I, II and III 2, 176a, 176b, 179 and 182 of the Penal Code define criminal offenses against the use and utilization of one’s sexuality, which occur, for example, in the sexual abuse of minors and adolescents.<sup>33</sup>

Sections 177 and 178 of the Penal Code<sup>34</sup> define criminal offenses such as rape or sexual exploitation. These sections aim to protect the control over one’s sexual activity.

Sections 180, 180a and 180b of the Penal Code<sup>35</sup> make it a criminal offense to encroach upon the right to independent choice of one’s partner in any sexual activity. Examples include the procuring minors,<sup>36</sup> illegal support of the prostitution of others,<sup>37</sup> and the trafficking in persons for the purpose of prostitution and sexual exploitation.<sup>38</sup>

Sections 176 III no. 1 and 3, 183-184b define criminal offenses designed to protect the individual from unwanted or harmful exposure to sexuality.

Furthermore, the Penal Code contains provisions against the unlawful production and use of pornographic material.

### *C. Sexual Integrity*

According to the introduction and definitions given above, sexual offenses can be described as those against the individual’s sexual property. Like sections 223 to 233 of the Penal Code,<sup>39</sup> protecting the physical integrity of a person and sanctioning assault and causing bodily harm,

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33. §§ 174-174c, 176 I, II, III (2), 176a-176b, 179, 182 StGB.

34. §§ 177, 178 c.

35. §§ 180, 180a-180b StGB.

36. § 180 StGB.

37. § 180a StGB (pimping).

38. § 180b StGB.

39. §§ 223-233 StGB (subtitled “Offenses Against the Physical Integrity”).

the offenses in section 13 of the Penal Code focus on encroachments on the right to sexual integrity. The sexual offenses in the Penal Code are meant to combat any unwelcome sexual conduct in circumstances in which the victim would be harassed, offended, humiliated, or intimidated.

Article 2, section I of the German Basic Law recognizes the protection of a person's sexual property as a component of the protection of physical integrity. Any person is to be protected from any unwelcome interference with his or her sexuality. Any social conduct of a sexual nature that invades, restricts, or endangers another person's sexual integrity must be prevented.

*D. De-Optimization and Instrumentalization of Sexuality*

Sexuality may be expressed only by the individual and must not be de-optimised by another person. In this context, the term "de-optimization" of another person's sexuality means any sort of social conduct that is likely to reduce or even fully negate a person's right "to make the most of, develop, or realize to the utmost extent, [and to] obtain the most efficient or optimum use of<sup>40</sup> his or her sexuality. De-optimization can occur in any way that may have a negative impact on the optimal and exclusive ownership of sexuality and its expression and use. De-optimization includes any sort of threat to, or illegal determination of, another person's sexuality. De-optimized sexuality can be instrumentalized in a way that reduces or eliminates the victim's capacity for resistance. The criminal law proscribes such de-optimization of another person's sexuality.

De-optimization in the definition given above may even lead to the instrumentalization of the victim and his or her sexuality. This occurs whenever the unwelcome use of the victim's sexuality through physical or penetrating sexual conduct involves victims who are incapable of

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40. Webster's New World Dictionary, *supra* note 28, at 951 ("optimization").

defending or resisting such conduct due to their age or mental or physical state. The penetration of victims who are completely unaware and unable to realize that they are the object of such sexual conduct and abuse is the most intensive instrumentalization of another person's sexuality. In this respect, "instrumentalization" means the intentional abuse of another person's weakness, unawareness, disability, or vulnerability.

*E. Summary of Sexual Offenses in the Penal Code*

The Criminal Law is meant to sanction any de-optimization or instrumentalization of another person's sexuality, including any threat or offensive behavior that may have a negative impact on the victim's maturation or development. The likelihood of such negative impact is sufficient to constitute an offense. As is true of strict liability offenses, any hazardous conduct is sufficient to constitute an offense, irrespective of whether the negative impact occurs.

The offenses defined in sections 174 to 184c of the German Penal Code<sup>41</sup> protect the sexual integrity of another person. They are comparable to property offenses insofar as they are offenses against the sexual property of another person. These sections of the Penal Code protect the individual's sexuality from any unwelcome negative impact.

Sections 174 to 184c define offenses against the illegal de-optimization and instrumentalization of another person's sexuality. The right to sexual self-determination is protected against three different types of misconduct: infringement of the right to make free use of one's sexuality; unwanted and harmful exposure to sexuality; and the use of a person's sexuality for the sexual ends of others.<sup>42</sup>

Sexual abuse is unlawful under sections 174 to 176b,

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41. §§ 174-184c StGB.

42. *Id.*

179, and 182 of the Penal Code.<sup>43</sup> These offenses can be described as provisions for sanctioning any conduct that offends one's control over the use and utilization of his or her own sexuality in a self-determined way. If the sexual abuse is committed with the intention of producing pornographic images of children,<sup>44</sup> it is an offense against the child's control over pornographic performance and production. If the sexual abuse also includes the showing of indecent or pornographic material, or the performance of sexual activity in the presence of a child,<sup>45</sup> it also offends the child's authority to determine his or her exposure to sexuality.

Rape and sexual assault<sup>46</sup> can be considered offenses against the free utilization of one's own sexuality. The prohibition against supporting the sexual activity of minors protects the right to utilize one's own sexuality and particularly, the freedom independently to choose a sexual partner. At the same time, this prohibition protects the minor's authority to determine his or her exposure to sexuality.

Sections 180a to 181a,<sup>47</sup> which address the prostitution of another person and the trafficking in women for the purpose of prostitution and sexual exploitation, criminalize any utilization of another, including sexuality for profit as well as and other forms of commercialization of the sexuality of another.

Sections 183-184b focus on offenses against the authority to determine one's exposure to sexuality and address exhibitionism and the illegal offering of pornography and indecent material. These sections also sanction the trade in, or possession of, pornographic material.

All of the offenses in chapter 13 of the Penal Code require at least the likelihood of a negative impact on the

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43. §§ 174-176b, 179, 182 StGB.

44. § 176a II StGB.

45. § 176 III StGB.

46. §§ 177, 178 StGB.

47. §§ 180a-181a StGB.

victim's sexuality. Even though pornography, exhibitionism, and prostitution in particular may have a strong impact on the general public and its attitude toward sexual behavior, sections 174 through 184c<sup>48</sup> are not meant to protect any collective goal or morality. Instead, they focus primarily on the individual's right to sexual self-determination, not the side effects of sexual conduct.

### III. VICTIMOLOGY AND VICTIMIZATION

#### A. Introduction

The study of victims is a new field.<sup>49</sup> It is only within the last ten years that the nature and extent of victimization have received widespread publicity. Victims now attract a level of interest, both as subjects of criminological inquiry and as a focus of criminal justice policy, unimaginable a decade ago.<sup>50</sup> Far from being a compartmentalized research topic, the recognition of victims and their victimization has resulted in a new orientation within criminology.<sup>51</sup> This has led to a number of recent research projects focusing on the potential fear of crime, the victim's contribution to the commission of crime, the offender-victim relationship, the victim's vulnerability and recidivism, the victim's attitude toward legislation and law enforcement, and the victim's role in the criminal justice system.

There are various factors that influence the victimization of an individual. Lifestyle,<sup>52</sup> age,<sup>53</sup> gender,<sup>54</sup>

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48. §§ 174-184c StGB.

49. For the origin and history of victimology, see B. Mendelsohn, *The Origin and Doctrine of Victimology*, 3 *Excerpta Criminologica* 239-45 (1963).

50. Lucia Zedner, *Victims*, in *The Oxford Handbook of Criminology* (Mike Maquire et al. eds., 3d ed. forthcoming 1999).

51. For an overview of background and recent development of victimology, see generally Günther Kaiser, *Kriminologie* 163-72 (5th ed. 1997).

52. Michael Gottfredson, *Victims of Crime: The Dimension of Risk*, Home Office Research Study No. 81, London: HMSO (1984) (pointing out that a person's

ethnic,<sup>55</sup> and social<sup>56</sup> background are all influential factors determining victimization. According to the research undertaken to date, there is evidence that victimization is more common for some groups in our society than for others, and that some people suffer more from certain crimes than do others. Individuals within certain segments of the population may fall victim to many offenses, whereas others may never or only very rarely experience a crime.

The rate of sexual offenses is very difficult to assess. Offensive behavior of a sexual nature, such as rape and other sexual abuse of women and children, rarely comes to light and often raises problems of definition. Moreover, abuse and violence perpetrated by people known to the victim are often perceived as less offensive, less "criminal" than street crime and offenses committed by strangers.<sup>57</sup>

### *B. The Perception of Sexual Crime*

The perceptions and impact of sexual crime range from minor inconvenience to the victim to great personal suffering. The severity of such crimes as experienced by the victim cannot be qualified.

Many in the criminal justice system have noted that improvements in information and communication technology, coupled with the increasing mobility of people and goods, have contributed to an increased fear of crime among the general population.<sup>58</sup> Many people are

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lifestyle of going out at night, heavy drinking, working out of the home, and using public transportation affects the likelihood of victimization).

53. See, e.g., Ronald Clarke et al., *Elderly Victims of Crime and Exposure to Risk*, 24 *How. L.J.* 1-9 (1985).

54. For women as victims, see, e.g., Allison Morris, *Women, Crime and Criminal Justice* 160-92 (1987).

55. See Katherine S. Williams, *Textbook on Criminology* 88-89 (2d ed. 1994) (including further bibliography).

56. For the victimology of property offenses, see, e.g., J.L. Barkas, *Victims* 136-67 (1978).

57. See, e.g., Elizabeth A. Stanko, *Hidden Violence Against Women*, in *Victims of Crime: A New Deal* 201 (Mike Maquire & John Pointing eds., 1987).

58. For one of the earliest research projects, see James Garofalo, *Victimization and the Fear of Crime*, 16 *J. Res. Delinq.* 80 (1979).

influenced by media images of victimization, even though these images bear little relation to reality. Recent studies<sup>59</sup> have discovered that this fear of crime often reflects the interviewee's unrealistic perception of the risk of becoming the victim. Thus, it is also possible that falling crime rates coincide with increased feelings of personal safety.

Nevertheless, we must bear in mind that the fear of crime—and particularly the perception of the likelihood of falling victim to a sexual offense—is closely related to the number of crimes committed, reported to the police and other authorities, and recorded in official statistics.

*C. The Number of Sexual Offenses in Germany 1993-1997*

To date, sexual assault and other forms of domestic and intra-familial abuse of, and violence against, women and children have rarely been assessed by crime statistics, despite the fact they are considered to be a significant problem for certain parts of the population.

In light of the actual number of sexual crimes in Germany as recorded by the official crime statistics, I will give a brief overview of the total number of sexual offenses as defined under sections 174 to 184c of the German Penal Code. Then I will take a closer look at certain types of crime such as sexual abuse of minors, rape and indecent assault, and prostitution.

It must be kept in mind that the figures shown below do not adequately assess crime, especially crimes of violence against women and children. This is mainly because many sexual offenses are committed against women and children in their own homes by a spouse, parent, other relative, or friend. Some victims may not see the offender as a criminal, may not dare to report such crimes, or may be embarrassed or reluctant to reveal the identity of the offender.

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59. See, e.g., Mike Hough & Patrick Mayhew, *Taking Account of Crime: Findings from the Second British Crime Survey*, Home Office Research Study No. 85, London: HMSO (1985).

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## 1. Total Number of Offenses under Sections 174-184c StGB

A good deal of attention has been focused on sexual crime in recent years. With the increasing availability of information and news, and changes in moral attitudes, the general public and the criminal justice system have become more aware of sexual conduct on the whole, and of sexual misconduct in particular. Therefore, one must address the question of whether the number of recorded offenses actually substantiates the perception that sexual crime has increased in recent years.

Offenses under Sections 174-184c StGB<sup>60</sup>

	1993	1994	1995	1996	1997
Recorded offenses	44,175	45,339	47,108	49,080	53,135
Recorded suspects	23,252	25,313	26,102	27,669	n/a
Male suspects	21,605 92.92%	23,175 91.55%	23,837 91.32%	25,086 90.66%	n/a
Prior recording of offender	13,153 54.1%	n/a	n/a	n/a	n/a

Within a span of only five years, the number of sexual offenses under sections 174-184c of the Penal Code, as recorded by the police, rose constantly from 44,175 in 1993 to 53,135 in 1997. The number rose by 3.7% from 1994 to 1995 and, more significantly, by 7.63% from 1996 to 1997.

Interestingly, at the same time, the percentage of male suspects in such crimes fell from 92.92% in 1993 to 90.66% in 1996. Still, there is no evidence to suggest that the actual number of female sexual offenders is increasing. It is obvious that most sexual offenses are committed by men.<sup>61</sup> The percentage of male suspects is much higher than in other fields of crime.

According to the official statistics, 54.1% of the

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60. Polizeiliche Kriminalstatistik 1997 (Bundeskriminalamt ed., 1998).

61. Hans Göppinger, *Kriminologie* 601 (5th ed. 1997).

offenders recorded have prior criminal records. This is significantly less than in other fields of crime such as murder and manslaughter (56.8% and 54.5%, respectively), robbery (79.1%), or aggravated theft (79.5%), and slightly higher than offenses against physical integrity (49.6%) and the average of all recorded offenders (51.2%).<sup>62</sup> Consequently, there is no evidence to support the popular perception that sexual offenders are “repeat offenders.”

The major problem of the official statistics on sexual offenses is that only a relatively small number of victims are willing and able to report such crimes to the police. Sometimes the victim may consider the offensive conduct to be too trivial to bother reporting it to the police. However, in most cases, the victim may be worried about other consequences of reporting or may consider the official system incapable of providing relief.

## 2. Sexual Abuse of Minors, Sections 176, 176a, 176b StGB<sup>63</sup>

The group least studied until very recently is child victims.<sup>64</sup> But, since the mid 1980's, any form of abuse of children, be it physical or sexual, has become the subject of extensive media coverage. Recent police work has uncovered large numbers of child abusers and pedophiles who offer photos and videotapes of child sexual abuse via mail order or on the Internet. These criminals often work in rings or networks distributing the “visual” product and even sharing the victims with one another.

The growing attention to child sexual abuse may suggest that these offenses have increased in the recent past. The reality, however, may be that these offenses have always occurred but that it is only lately that the

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62. The following figures refer to the year 1993.

63. For further reading on sexual abuse of minors, see Josef Lachmann, *Zur Verbreitung von Sexualdelikten an Kindern und Abhängigen*, in 1998 MSchrKrim 42; Harald Niemann, *Unzucht mit Kindern: eine Kriminologie* (1974).

64. Günther Kaiser, *Kriminologie* 783-84 (3d ed. 1990).

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scope of the problem has been recognized.

Offenses under Sections 176, 176a, 176b StGB<sup>65</sup>

	1993	1994	1995	1996	1997
Recorded offenses	15,430	15,096	16,013	15,674	16,888
Recorded suspects	7,720	7,680	8,038	8,072	n/a
Male suspects	7,529 97.53%	7,445 96.94%	7,751 96.43%	7,820 96.88%	n/a
Prior recording of offender	3,786 47.9%	n/a	n/a	n/a	n/a
Victims:	15,969	18,423	19,652	19,526	n/a
Female	12,137	13,998	14,809	14,569	
0-6 yrs.	1,463	1,687	1,698	1,680	
6-14 yrs.	14,506	16,713	17,919	17,842	
Familial relation	1,387	1,647	2,156	1,921	n/a
Extra-familial	14,582	16,776	17,496	17,605	

An increase in the number of recorded offenses against minors occurred only in 1995 (by 5.73%) and 1997 (by 7.19%). At the same time, there was a slow rise in the number of recorded suspects, from 7,720 in 1993 to 8,072 in 1996, and a more significant increase in the number of victims, from 15,969 in 1993 to 19,652 in 1995 and 19,526 in 1996.

It appears that child sexual abuse occurs frequently and that the sexes perpetrate and suffer from it at different rates of frequency.<sup>66</sup> About three quarters of the victims are female (e.g. 74.61% in 1996), and an average 97% of suspects are male.

According to the official crime statistics, an average 10

65. Polizeiliche Kriminalstatistik, supra note 60 (offense number 1310).

66. On the prevalent occurrence of child physical and sexual abuse, see also Williams, supra note 55, at 90.

to 12% of child victims have been abused by relatives.<sup>67</sup> When considering these figures, we must bear in mind that only a small number of sexual crimes against children committed by relatives are recorded by official statistics and that the number of unreported cases must, therefore, be much higher.<sup>68</sup> Most of these offenses come to light only because other relatives or friends of the family report them. It is unlikely that these crimes will be reported to the police, especially in cases where the victim knows the offender. Instead, these cases generally are reported by other agencies, particularly the local public social services that have responsibility for the welfare of children.<sup>69</sup> Then again, the child victim may not consider the offensive conduct to be criminal in nature, or may be too worried about the consequences of reporting such a crime to the authorities.

These figures indicate that the family is not necessarily the safe haven it is meant and reputed to be.<sup>70</sup> Child sexual abuse is common and if the claim that as many as 40% of the offenders themselves have been abused during their childhood is true, then the victimization of children might be effectively reduced by counselling both the abusers and the abused child.<sup>71</sup>

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67. 1,921 of 19,526 or 9.84% of recorded victims had been abused by relatives. See also Kaiser, *supra* note 51, at 788-89.

68. According to Armand Mergen, only 5% of all cases are reported. See Armand Mergen, *Kriminologie* 335 (3d ed. 1997); see also Göppinger, *supra* at note 61, at 608.

69. For further reading on child victims, see Jane Morgan & Lucia Zedner, *The Victim's Charter: A New Deal for Child Victims?*, 31 *How. L.J.* 294 (1992).

70. See also Mergen, *supra* note 68, at 335-37.

71. See, e.g., Henry C. Kempe et al., *The Battered Child Syndrome*, 181 *J. Am. Med. Ass'n* 105, 105-12 (1962).

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3. Indecent Assault, Rape and Related Offenses,  
Sections 174-174c, 177, 178StGB<sup>72</sup>

Sexual assault as sanctioned under sections 174 to 174c, 177, and 178 of the Penal Code can occur in many different ways. Sections 174 through 174c define offenses in circumstances where the abuser is in a relationship of care toward the victim. Sections 177 and 178 sanction indecent assault and section 177 II No. 1 sanctions rape.

Offenses under Section 174, 174c, 177, 178 StGB<sup>73</sup>

	1993	1994	1995	1996	1997
Recorded offenses	12,410	12,767	13,280	13,044	13,929
Recorded suspects	8,527	9,013	9,358	9,316	n/a
Male suspects	8,385 98.33%	8,819 97.85%	9,145 97.44%	9,107 97.76%	n/a
Prior recording of offender	4,095 56.7%	n/a	n/a	n/a	n/a
Victims:	10,740	13,049	13,633	13,359	n/a
Female	10,283	12,170	12,562	12,387	
0-14 yrs.	1,023	1,815	1,826	1,873	
14-21 yrs.	3,824	4,684	5,196	5,091	
21+ yrs.	5,893	6,549	6,611	6,395	
Familial relation	1,268	1,850	1,945	2,006	n/a
Extra-familial	9,472	11,199	10,617	11,353	

Within the period of time shown above, the number of recorded offenses has increased very slowly, from 12,410 in 1993 to 13,929 in 1997, with a small decrease in 1996.

72. See, e.g., Brigitte Sick, *Sexuelles Selbstbestimmungsrecht und Vergewaltigungsbegriff* (1993); Else Michaelis-Arntzen, *Die Vergewaltigung aus kriminologischer, viktimologischer und aussagepsychologischer Sicht* (2d ed. 1994).

73. *Polizeiliche Kriminalstatistik*, supra note 60 (offense number. 1100).

More interesting is the prevalence of men among the offenders and of women among the victims. No other crimes recorded in the annual official crime statistics have such high percentages of male suspects.<sup>74</sup> In cases of indecent assault and rape, men almost exclusively victimize women. In 1996, for example, 12,387 or 92.72% of the 13,359 victims recorded were female, while in the same year 9,107, or 97.76% of the 9,316 suspects were male.<sup>75</sup>

The majority of the victims of indecent assault, rape and related offenses are under twenty-one years of age (8,970 or 67.15% in 1996). It must be noted that the number of victims under fourteen years of age has increased significantly from 1,023, or 9.53%, in 1993 to 1,873 or 14.02% in 1997.

An average of 12 to 15% (15.02% in 1996) of the offenders are relatives of the victims.<sup>76</sup> Once again, it must be pointed out that domestic violence and sexual abuse within the family are only very rarely reported to the police. In accounting for the number of unreported issues of such categories of crime, it must be noted that victimization of women is often trivialized or treated as less important. The police often view domestic violence and abuse as less serious than other forms of violent crime. These attitudes reflect the patriarchal attitude that also pervades the criminal justice system and society as a whole. Particularly in cases of sexual abuse by the spouse, only a very small number of offenses ever come to light,<sup>77</sup> due to the various reasons given before.

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74. Excluding offenses that can be committed exclusively by men. See, e.g., § 183 StGB (exhibitionism).

75. See Morris, *supra* note 54, at 160-81.

76. See also Kaiser, *supra* note 51, at 780.

77. Göppinger, *supra* note 61, at 608; Williams, *supra* note 55, at 86.

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Victimization of Rape in 1997 per. 100,000 population<sup>78</sup>

	Male	Female	Child -ren	Adolesc- ents	18-21 yrs.	21-60 yrs.	60+ yrs.
Rape	n/a	11.4	3.9	65.4	54.5	11.8	0.7
Attempts	n/a	4.4	1.0	19.5	21.5	5.0	0.6

According to the latest official crime statistics for 1997, the likelihood of becoming a rape victim is particularly high among adolescents between fourteen and eighteen years of age.<sup>79</sup> Within this age bracket, an average 65.4 people per 100,000 population were victimized; 54.5 out of 100,000 victims were eighteen to twenty-one years old. There is an apparent paradox in the differing levels of fear of crime reported by younger (under twenty-one years) and older people. Older people constitute a minority of victims of rape, but their fear is known to be much higher. Thus, those who feel most unsafe are least likely to be victimized.

4. Prostitution of Others, Sections 180, 180a StGB<sup>80</sup>

Since the Fourth Criminal Law Reform Act 1973,<sup>81</sup> prostitution is no longer an offense per se.<sup>82</sup> Under sections 184a and 184b of the Criminal Code, street prostitution is an offense only if it occurs in a designated area. Sections 180 and 180a sanction the prostitution of another person (pimping) and the procuring of minors.<sup>83</sup>

78. Die Kriminalität in der Bundesrepublik Deutschland, in Bulletin, 37 Presse- und Informationsamt der Bundesregierung 429 (1998).

79. See also Kaiser, supra note 51, at 779.

80. For further reading on the procuring of minors, see Hartmuth Horskotte, Kuppelei, Verführung und Exhibitionismus nach dem Vierten Gesetz zur Reform des Strafrechts, 1974 Juristenzeitung 295. For further reading on prostitution under the Criminal Law, see Leo Ulrich, Die strafrechtliche Kontrolle der Prostitution: Bestandsaufnahme und Kritik (1995); Brigitte Kelker, Die Situation von Prostituierten im Strafrecht und ein freiheitliches Rechtverständnis, Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft (KritV) 289 (1993).

81. 4th StrRG of Nov. 23, 1973, BGBl. I 1725.

82. For an overview of prostitution under the Criminal Code and its occurrence, see Göppinger, supra note 61, at 615.

83. The implementation of these offenses trace back to a number of international treaties. See generally International Convention for the

Offenses under Sections 180, 180a StGB<sup>84</sup>

	1993	1994	1995	1996	1997
Recorded offenses	685	947	1,127	1,301	1,425
Recorded suspects	794	1,104	1,239	1,301	n/a
Male suspects	556 70.03%	757 68.57%	848 68.44%	894 68.72%	n/a
Prior recording of offender	381 70.9%	n/a	n/a	n/a	n/a
Victims:	747	1,190	1,375	1,662	n/a
Female	645	1,028	1,246	1,512	
0-18 yrs.	288	369	337	394	
18+ yrs.	459	821	1,068	1,268	
Familial relation	27	40	53	45	n/a
Extra-familial	720	1,150	1,322	1,617	

The number of recorded offenses has doubled within the five years shown above, from 685 in 1993 to 1,301 in 1996, and 1,425 in 1997.<sup>85</sup> Interestingly, prostitution is one of the very rare offenses where the number of suspects is higher than the number of offenses recorded. This may be an indication of the extent of organized crime in this "business." At the same time, it should be noted that, of all of the offenses, prostitution has one of the highest percentages of offenders previously known to the police as suspects of criminal activity. Notwithstanding recent media reports on the increasing amount of male

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Suppression of the Traffic in Women and Children, opened for signature Sept. 20, 1921 (amended 1947); Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, (amended 1947); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950; Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), opened for signing Mar. 11, 1980, 19 I.L.M. 33; Convention on the Rights of the Child (CROC), Dec. 12, 1989, 28 I.L.M. 1448.

84. Polizeiliche Kriminalstatistik, supra note 60 (offense number 1410).

85. Now excluding § 180 II StGB.

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prostitution in Germany, the victims of such crimes are mostly women. The increase in the number of victims is proportional to the number of recorded offenses. It is also interesting to note that the number of victims under the age of eighteen is steadily decreasing, from 38.55% (288) in 1993, to 31.01% (369) in 1994 to 24.51% (337) in 1995, to 23.71% (394) in 1996.

## IV. CONCLUSION AND SUMMARY

Sections 174 through 184c the German Penal Code offers comprehensive protection of the sexual property and integrity of a person. The Penal Code sanctions any offensive conduct that may lead to de-optimization and instrumentalization of another person's sexuality. Disregarding official statistics on the likelihood of victimization, the Penal Code does not distinguish at all among the victim's gender, age, capabilities, and mental state. The provisions of the Penal Code that combat sexual crime and protect human sexual property and integrity protect every human being. It will take a few more years to see whether the recent legislative measures undertaken to further criminalize offensive conduct of a sexual nature will contribute to that aim.