



Übersetzung des Strafgesetzbuches durch Prof. Dr. Michael Bohlander

Translation of the German Criminal Code provided by Prof. Dr. Michael Bohlander

Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 6 Abs. 18 des Gesetzes vom 10.10.2013 (BGBl. I S. 3799)

Version information: The translation includes the amendment(s) to the Act by Article 6(18) of the Law of 10.10.2013 (Federal Law Gazette I p 3799).

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GERMAN CRIMINAL CODE

Full citation: Criminal Code in the version promulgated on 13 November 1998, Federal Law Gazette [Bundesgesetzblatt] I p. 3322, last amended by Article 1 of the Law of 24 September 2013, Federal Law Gazette I p. 3671 and with the text of Article 6(18) of the Law of 10 October 2013, Federal Law Gazette I p 3799.

(...)

Section 218 Abortion

(1) Whosoever terminates a pregnancy shall be liable to imprisonment not exceeding three years or a fine. Acts the effects of which occur before the conclusion of the nidation shall not be deemed to be an abortion within the meaning of this law.

(2) In especially serious cases the penalty shall be imprisonment from six months to five years. An especially serious case typically occurs if the offender

1. acts against the will of the pregnant woman; or
2. through gross negligence causes a risk of death or serious injury to the pregnant woman.

(3) If the act is committed by the pregnant woman the penalty shall be imprisonment not exceeding one year or a fine.

(4) The attempt shall be punishable. The pregnant woman shall not be liable for attempt.

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Section 218a
Exception to liability for abortion

(1) The offence under section 218 shall not be deemed fulfilled if

1. the pregnant woman requests the termination of the pregnancy and demonstrates to the physician by certificate pursuant to section 219(2) 2nd sentence that she obtained counselling at least three days before the operation;
2. the termination of the pregnancy is performed by a physician; and
3. not more than twelve weeks have elapsed since conception.

(2) The termination of pregnancy performed by a physician with the consent of the pregnant woman shall not be unlawful if, considering the present and future living conditions of the pregnant woman, the termination of the pregnancy is medically necessary to avert a danger to the life or the danger of grave injury to the physical or mental health of the pregnant woman and if the danger cannot reasonably be averted in another way from her point of view.

(3) The conditions of subsection (2) above shall also be deemed fulfilled with regard to a termination of pregnancy performed by a physician with the consent of the pregnant woman, if according to medical opinion an unlawful act has been committed against the pregnant woman under sections 176 to 179, there is strong reason to support the assumption that the pregnancy was caused by the act, and not more than twelve weeks have elapsed since conception.

(4) The pregnant woman shall not be liable under section 218 if the termination of pregnancy was performed by a physician after counselling (section 219) and not more than twenty-two weeks have elapsed since conception. The court may order a discharge under section 218 if the pregnant woman was in exceptional distress at the time of the operation.

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Section 218b
Abortion without or under incorrect medical certification

(1) Whosoever terminates a pregnancy in cases under section 218a(2) or (3) without having received the written determination of a physician, who did not himself perform the termination of the pregnancy, as to whether the conditions of section 218a(2) or (3) were met shall be liable to imprisonment not exceeding one year or a fine unless the offence is punishable under section 218. Whosoever as a physician intentionally and knowingly makes an incorrect determination as to the conditions of section 218a(2) or (3) for presentation under the 1st sentence above shall be liable to imprisonment not exceeding two years or a fine unless the act is punishable under section 218. The pregnant woman shall not be liable under the 1st or 2nd sentences above.

(2) A physician must not make determinations pursuant to section 218a(2) or (3) if a competent agency has prohibited him from doing so because he has been convicted by final judgment for an unlawful act under subsection (1) or under section 218, section 219a or section 219b or for another unlawful act which he committed in connection with a termination of pregnancy. The competent agency may provisionally prohibit a physician from making determinations under section 218a(2) and (3) if an indictment has been admitted to trial based on a suspicion that he committed unlawful acts indicated in the 1st sentence above.

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Section 218c
Violation of medical duties in connection with an abortion

(1) Whosoever terminates a pregnancy

1. without having given the woman an opportunity to explain the reasons for her request for a termination of pregnancy;
2. without having given the pregnant woman medical advice about the significance of the operation, especially about the circumstances of the procedure, after-effects, risks, possible physical or mental consequences;
3. in cases under section 218a(1) and (3) without having previously convinced himself on the basis of a medical examination as to the state of the pregnancy; or
4. despite having counselled the woman with respect to section 218a (1) pursuant to section 219, shall be liable to imprisonment not exceeding one year or a fine unless the act is punishable under section 218.

(2) The pregnant woman shall not be liable under subsection (1) above.

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Section 219
Counselling of the pregnant woman in a situation of emergency or conflict

(1) The counselling serves to protect unborn life. It should be guided by efforts to encourage the woman to continue the pregnancy and to open her to the prospects of a life with the child; it should help her to make a responsible and conscientious decision. The woman must thereby be aware that the unborn child has its own right to life with respect to her at every stage of the pregnancy and that a termination of pregnancy can therefore only be considered under the law in exceptional situations, when carrying the child to term would give rise to a burden for the woman which is so serious and extraordinary that it exceeds the reasonable limits of sacrifice. The counselling should, through advice and assistance, contribute to overcoming the conflict situation which exists in connection with the pregnancy and remedying an emergency situation. Further details shall be regulated by the Act on Pregnancies in Conflict Situations.

(2) The counselling must take place pursuant to the Act on Pregnancies in Conflict Situations through a recognised pregnancy conflict counselling agency. After the conclusion of the counselling on the subject, the counselling agency must issue the pregnant woman with a certificate including the date of the last counselling session and the name of the pregnant woman in accordance with the Act on Pregnancies in Conflict Situations. The physician who performs the termination of pregnancy is excluded from being a counsellor.

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Section 219a
Advertising services for abortion

(1) Whosoever publicly, in a meeting or through dissemination of written materials (section 11(3)), for material gain or in a grossly inappropriate manner, offers, announces or commends

1. his own services for performing terminations of pregnancy or for supporting them, or the services of another; or
2. means, objects or procedures capable of terminating a pregnancy with reference to this capacity, or makes declarations of such a nature shall be liable to imprisonment not exceeding two years or a fine.

(2) Subsection (1) No 1 above shall not apply when physicians or statutorily recognised counselling agencies provide information about which physicians, hospitals or institutions are prepared to perform a termination of pregnancy under the conditions of section 218a(1) to (3).

(3) Subsection (1) No 2 above shall not apply if the offence was committed with respect to physicians or persons who are authorised to trade in the means or objects mentioned in subsection (1) No 2 or through a publication in professional medical or pharmaceutical journals.

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Section 219b
Distribution of substances for the purpose of abortion

(1) Whosoever with intent to encourage unlawful acts under section 218 distributes means or objects which are capable of terminating a pregnancy shall be liable to imprisonment not exceeding two years or a fine.

(2) The secondary participation by a woman preparing the termination of her own pregnancy shall not be punishable under subsection (1) above.

(3) Means or objects to which the offence relates may be subject to a deprivation order.