



Federal Ministry for  
Family Affairs, Senior Citizens,  
Women and Youth

# Pregnancy Counselling

## § 218

Information on the Act on Assistance to Avoid and Cope  
with Conflicts in Pregnancy and Statutory Regulations  
Pertaining to Section 218 of the German Criminal Code



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## Introduction

### Legal provisions

In 1995, German lawmakers introduced changes in criminal law with regard to abortion through the Amending Law on Assistance for Pregnant Women and Families and established regulations entitling pregnant women to extensive counselling during pregnancy through the Act on Assistance to Avoid and Cope with Conflicts in Pregnancy. A central element of this solution, which was adopted in response to a Federal Constitutional Court decision handed down 28 May 1993, is the counselling provision with regard to the termination of a pregnancy. The provision focuses on providing counselling for pregnant women during the early phase of pregnancy with the aim of protecting unborn life; legal sanctions pertaining to the termination of an early pregnancy are waived after a woman has sought counselling. This individual counselling is regulated by the German Criminal Code and the Act on Assistance to Avoid and Cope with Conflicts in Pregnancy. In 2009, the legal entitlement to counselling related to medical reasons for the termination of a pregnancy was expanded and more clearly defined.

### Entitlement to assistance and counselling

The Act on Assistance to Avoid and Cope with Conflicts in Pregnancy governs the details of counselling for pregnant women during the first 12 weeks of pregnancy, before any potential medical grounds for termination of the pregnancy are taken into consideration, and with regard to their entitlement to general and psycho-social counselling on all issues concerning sex education, contraception, family planning, and all pregnancy-related matters.

# I.

## What Do the Statutory Provisions Specifically Foresee?

### The Framework of the Criminal Code

Under Section 218 of the German Criminal Code (StGB) an abortion is a punishable offence for all concerned (pregnant woman, physician, instigator, assistant). There are, however, exceptions:

#### Counselling Provision

If a pregnancy is terminated in accordance with the so-called counselling provision (Section 218a (1) StGB), the punishable offence of abortion shall not be deemed fulfilled if:

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

The exemption from the prosecution of this offense provided under these conditions means that no one involved in performing the abortion shall be subject to prosecution. The act is nonetheless unlawful (Federal Constitutional Court judgement of 28 May 1993):

### Termination of Pregnancy on Medical or Other Grounds

An abortion performed on medical grounds or on grounds related to crime is not deemed unlawful:

Medical  
Grounds

■ Where **medical grounds** exist (Section 218a (2) StGB):

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 circumstances 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 this danger cannot be averted by any other supportable means.

Grounds  
Related to  
a Crime

■ Where a pregnancy is caused by a crime (Section 218a (3), StGB).

The termination of a pregnancy by a physician is not illegal if according to the knowledge of the physician the pregnancy is the consequence of an offence according to Sections 176 to 179 of the German Criminal Code (sexual abuse of children, sexual coercion, rape, sexual abuse of a helpless individual), there are strong reasons to support the assumption that the pregnancy was caused by the criminal act, and no more than twelve weeks have elapsed since conception.

## More Extensive Legal Immunity for the Pregnant Woman

The pregnant woman shall not be subject to punishment by law if the pregnancy is terminated by a physician following counselling by a recognised pregnancy conflict counselling service (Section 219 StGB) and no more than twenty-two weeks have elapsed since conception. Such impunity applies solely to the pregnant woman (personal exemption from liability, Section 218a (4), 1st sentence, StGB).

In addition, the woman may be exempt from punishment (for an indefinite period) if she found herself in exceptional hardship (Section 218a (4), 2nd sentence, StGB).

## Accomplices' Liability to Punishment

### Coercion

Apart from punishable involvement in the performance of an abortion (compliance, instigation, aid and abetment), which is both illegal and punishable for those involved, anyone who uses threats or force to cause a pregnant woman to terminate the pregnancy commits a punishable offence (Section 240 (4) no. 2 StGB – especially serious cases of coercion).

Also anyone who is obliged to provide maintenance to a pregnant woman and withholds this maintenance in an inappropriate manner and thereby causes a termination of the pregnancy, is deemed to have committed an offence (Section 170 (2) StGB – non-payment of child support).

## Physicians' Duties

Physicians' Duties to Ensure Exemption from Punishment

When performing an abortion, the physician must meet the following requirements in order to remain exempt from prosecution (Section 218c StGB):

- The woman must be given an opportunity to explain the reasons for her request for a termination of pregnancy.
- The pregnant woman must be given medical advice about the significance of the operation, especially about the circumstances of the procedure, after-effects, risks, possible physical or psychological consequences.
- Cases that fall under Section 218a (1) and (3) (counselling provision, grounds related to a crime), the stage of the pregnancy must be determined by medical examination.
- Where proof of mandatory pregnancy conflict counselling is necessary for the woman to remain exempt from punishment (Section 218a (1) StGB), the physician who has counselled the woman under Section 219 of the German Criminal Code is prohibited from also performing the abortion.

## Pregnancy Conflict Counselling in Relation to Abortions Subject to the Counselling Provision

Pregnancy Conflict Counselling

The counselling provision recognises the fact that unborn human life can only be protected in the early phase of pregnancy by supporting the woman and not by acting against her.

Section 219 of the German Criminal Code and Sections 5 and 6 of the Act on Assistance to Avoid and Cope with Conflicts in Pregnancy (Schwangerschaftskonfliktgesetz, Ger. abbr. = SchKG) provide legal regulations establishing what counselling must comprise and fulfil.

One of the requirements that must be fulfilled in order to avoid prosecution for the termination of pregnancy is that the counselling is provided by a recognised pregnancy conflict counselling service (see p. 10).

Pregnancy conflict counselling is intended to protect unborn life. It should be guided by efforts to encourage the woman to continue the pregnancy and to show her possible options for a life with the child. It should help her come to a responsible and conscientious decision – in the awareness that, at every stage of the pregnancy, the unborn child has its own right to life, also with respect to the mother. The counselling must be conducted so as to leave the decision open and on the premise that the responsibility lies with the pregnant woman. It should be encouraging and understanding, not reproving and patronising (Section 5 (1) SchKG).

Specifically, pregnancy conflict counselling (Section 5 (2) SchKG) entails:

- entering into conflict counselling in which it is expected that the pregnant woman informs the counsellor of her reasons for considering an abortion. The pregnant woman cannot, however, be forced to discuss her situation and cooperate with the counsellor;
- all necessary medical, social and legal information related to the case in question, including an explanation of the legal entitlements available to both mother and child and the available forms of practical assistance, particularly those which aid the continuation of the pregnancy and ease the situation for mother and child;
- an offer to help the pregnant woman in advancing her claims, in finding accommodation, in making childcare arrangements, in continuing with vocational education and training, as well as the provision of follow-up support.

The pregnant woman can also request information on ways to avoid unwanted pregnancies.

## How is Pregnancy Conflict Counselling Conducted?

A pregnant woman seeking advice has a right to counselling without delay (Section 6 (1) SchKG). If she so wishes, she may remain anonymous and not reveal her identity to the counsellor she sees (Section 6 (2) SchKG). Where necessary, and with the pregnant woman's consent, other practitioners (particularly physicians, psychologists, social workers and legal specialists) and persons providing personal support may be included in the counselling session (Section 6 (3) SchKG). Pregnancy conflict counselling is provided free of charge (Section 6 (4) SchKG).

Following pregnancy conflict counselling, the counselling service is to provide the pregnant woman with a certificate stating that mandatory pregnancy conflict counselling took place, the names of those involved and the date on which it occurred (Section 7 (1) SchKG). Issuance of a counselling certificate may not be refused if a continuation of the counselling would make it impossible to observe the 12-week deadline as prescribed in Section 218a of the German Criminal Code.

Staff at pregnancy counselling services are subject to the secrecy requirements set out in Section 203 of the German Criminal Code. They have the right to refuse to testify under Section 53 of the German Code of Criminal Procedure (StPO). Seizure of documents held by the pregnancy counselling services is prohibited under Section 97 of the German Code of Criminal Procedure (StPO).

## Pregnancy Conflict Counselling Services

Pregnancy conflict counselling services have to be specially recognised by the State (Section 9 SchKG). A prerequisite for such recognition is the provision of appropriate pregnancy conflict counselling as defined in Section 5 SchKG and the ability to conduct such counselling in accordance with statutory requirements. Of particular importance is adequate staffing by individuals who have the necessary personal and professional qualifications, the ability to call in additional specialists at short notice, and cooperation with all agencies providing assistance to mother and child. There must also be no organisational or economic ties to institutions performing abortions, since these could be construed as grounds for a material interest in the performance of abortions.

Pregnancy counselling services are required to prepare an annual report on their counselling activities, stating the standards of their activities and the experience gained as a result (Section 10 (1) SchKG).

The annual reports are to be based on the notes that counselling staff are required to make on each and every interview. These notes shall not provide any indication of the identity of the pregnant woman concerned or of any other individuals who took part in the consultation. They must record the important points of the consultation and document the type of assistance offered (Section 10 (2) SchKG). The annual reports allow the authorities responsible for this task to monitor the work of the counselling service. The recognition of a counselling service is subject to review by the competent authority at least every three years. The authority may view the notes mentioned above. If a lack of compliance with any of the conditions required for recognition under Section 9 is ascertained, recognition will be revoked (Section 10 (3) SchKG).

Recognised pregnancy conflict services are publicly and privately funded. Mandatory conflict counselling is thus provided by Church and non-church welfare associations and by other funding providers and organisations (e.g. Workers' Welfare Association [Arbeiterwohlfahrt], Association of Independent Voluntary Welfare Organisations [Deutscher Paritätischer Wohlfahrtsverband], German Red Cross [Deutsches Rotes Kreuz], Protestant Welfare Association [Diakonisches Werk], donum vitae, pro familia), and in some municipalities by local health authorities and certain physicians. Information regarding local organisations and addresses can be found in the list of addresses included in the appendix or from the local welfare office. An on-line pregnancy information service – [www.familienplanung.de/www.schwanger-info.de](http://www.familienplanung.de/www.schwanger-info.de) –, run by the Federal Centre for Health Education (BZgA) and funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), contains a search engine which finds and lists all the pregnancy counselling services in a given area.

### Pregnancy Counselling in Relation to Potential Medical Grounds for Termination

The provision concerning termination of a pregnancy on medical grounds covers two different situations:

- an otherwise inevitable threat to the life of the pregnant woman or her being in danger of grave physical or psychological injury following the diagnosis of a serious illness or disability detected during prenatal testing of the foetus

- a threat to the life of the pregnant woman or her being in danger of grave physical or psychological injury for reasons other than the illness or disability of the child (reasons related solely to the mother) and which cannot be averted by any other means

In both cases, pregnant women have considerable need for information and advice, which is now provided for by the Amended Act on Assistance to Avoid and Cope with Conflicts in Pregnancy valid as of 1 January 2010. The Act also contains provisions which govern medical counselling.

### Counselling Following Diagnosis of a Serious Condition

Counselling by  
the Physician  
Communicating  
the Diagnosis

When compelling evidence indicates that the health of the child is impaired, the **physician** communicating the diagnosis **must counsel** the woman as to the medical, psychological and social aspects of the diagnosis (bringing in physicians with experience in the diagnosed health defect in children who were born with such conditions) and advise her of the type of assistance available to help her to cope with the physical and psychological demands involved. The counselling must be conducted in a manner that is easily understandable and leaves the decision open.

Additionally, the physician communicating the diagnosis must inform the pregnant woman of her entitlement to further and more **in-depth psycho-social counselling** from a counselling service. With the pregnant woman's consent, contact is to be established with a suitable counselling service and also with self-help groups and disability associations.

The physician communicating the diagnosis is required to provide the pregnant woman with **informational material** produced by the Federal Centre for Health Education. This contains information on life with a disabled child and life for people with disabilities. It also points out the legal entitlement to psycho-social counselling at a counselling service and lists the addresses of self-help groups, counselling services, disability associations and associations for parents of disabled children.

#### Counselling by the Diagnosing Physician

Prior to documenting medical grounds in writing, **the physician** responsible for determining that medical grounds for terminating a pregnancy exist must first **counsel** the pregnant woman as to the medical and psychological aspects of an abortion.

The physician responsible for producing a written diagnosis of medical grounds for terminating a pregnancy has also ensure that a **3-day period of reflection** has elapsed **between communicating the diagnosis and producing the written determination** of medical grounds for terminating the pregnancy. This gives the pregnant woman and her partner the necessary time to come to terms with the shock and serves to ensure that an informed and responsible decision can be made as to whether the pregnant woman can cope with the expected demands or whether they pose a threat to her life or her health. The period of reflection does not apply if there is an immanent threat to the pregnant woman's life or health.

When documenting the diagnosis of medical grounds for terminating a pregnancy, the physician must obtain **written confirmation** from the pregnant woman indicating that she has been counselled and referred to a pregnancy counselling service or that she chooses to forego counselling.

However, the pregnant woman is not obliged to seek counselling. It is rather the physician who is required to provide comprehensive information and counselling and, with the pregnant woman's consent, to establish contact with a pregnancy counselling service or self-help groups and disability associations. The pregnant woman may forego both information and counselling (either in whole or in part) as well as a referral to a counselling service. If she does so, she should nonetheless provide the physician who documents her diagnosis with a written statement to that effect.

The aim of counselling

The aim of support and counselling – which are always to be conducted in such a way as to leave the decision open – is to bring attention to all aspects of the disability in question, to support the pregnant woman and her partner in identifying the current and future circumstances and demands, and to consider possible solutions for coming to terms with the pregnancy-related conflict. Psycho-social counselling by a pregnancy counselling service is especially well suited for providing information on the impact of the child's potential disability on the family and its immediate environment, the kind of life people with this disability can expect, and what life with the disabled child will be like. Pregnant women and couples can express their concerns and fears, and discuss various aspects of a possible termination of pregnancy.

The provisions serve to ensure that an informed and sound assessment can be reached as to whether the pregnant woman can cope with the expected burdens or whether these pose a threat to life or health.

**The counselling aids the pregnant woman in making up her mind and also helps the physician responsible for determining grounds for termination due to a serious medical condition in making their decision.**

Act Concerning  
Human Genetic  
Testing

Where **genetic health defects** are involved, the Act Concerning Human Genetic Testing (in force since 1 February 2010) sets out additional educational, advisory and documentation obligations, which must be observed before and after performing prenatal genetic tests. In such cases, it is more difficult for the pregnant woman to forego counselling: on receiving written information concerning the topics addressed in pregnancy conflict counselling, she is required to provide a written statement on her foregoing counselling.

### Counselling in the Case of Medical Grounds for Termination Related Solely to the Mother (no diagnosis of a serious condition)

Counselling by  
the Diagnosing  
Physician

Prior to documenting medical reasons for the termination of a pregnancy in writing, **the physician responsible for producing a written determination of these medical grounds** is required to counsel the pregnant woman as to the medical and psychological aspects of an abortion in order to ensure that she is fully informed.

The physician must also inform the pregnant woman regarding her entitlement to further, more in-depth psycho-social counselling at a pregnancy counselling service. With the pregnant woman's consent, contact with an appropriate counselling service is to be established.

! The physician **must ensure** that a 3-day period of reflection elapses **between counselling** on the medical and psychological aspects of a termination of pregnancy and the **written determination** stating the preconditions for an abortion on medical grounds. The period of reflection does not apply if there is an immanent threat to life or health.

### **I Confirmation by the Pregnant Woman**

When determining the preconditions for an abortion on medical grounds in writing, the physician must obtain written confirmation from the pregnant woman concerning the counselling and referral to a pregnancy counselling service or her decision to forego counselling.

The pregnant woman is, however, **not obliged to seek counselling**. It is rather the physician who is required to provide comprehensive information and counselling and, with the pregnant woman's consent, establish contact with a counselling service. The pregnant woman may forego both information and counselling (either in whole or in part) as well as a referral to a counselling service. If she does so, she should nonetheless provide the physician who documents her diagnosis with a written statement to that effect.

### Calculating the Period of Reflection

In calculating the 3-day period of reflection, the day on which the patient receives the diagnosis is not **counted** (Section 187 (1) German Civil Code (Bürgerliches Gesetzbuch, Ger. abbr. = BGB)). **The period ends at the end of the last day** (Section 188 (1) BGB).

#### **Example:**

**Thursday: patient receives diagnosis**

Friday: period begins, first day of the three-day period

Saturday: second day of the three-day period

Sunday: third day of the three-day period

Monday: written documentation of medical grounds

### Infringements/Violations

Section 14 of the Amended Act on Assistance to Avoid and Cope with Conflicts in Pregnancy emphasises the requirement for comprehensive counselling and adherence to the necessary

timeframe, because a physician who fails to counsel a pregnant woman or ignores the 3-day period of reflection violates the law.

## Where Can Pregnancies Be Terminated?

Recognised pregnancy conflict counselling services

The German states (Länder) are required to ensure the availability of a sufficient number of inpatient and outpatient facilities for the performance of abortions. These must ensure provision of the necessary aftercare (Section 13 SchKG). Mandatory pregnancy conflict counselling must also include all necessary medical and social information as demanded by the case in question (Section 5 (2) no. 2 SchKG). This also includes the provision of information on nearby facilities that perform abortions.

## How are the Costs of an Abortion Covered?

Health insurance funds cover the costs of an abortion Performed on medical grounds or grounds related to a crime

The costs of an abortion performed on medical grounds or grounds related to a crime are covered by the statutory health insurance funds if the pregnant woman is appropriately insured.

The costs of an abortion performed in accordance with the mandatory counselling requirement are not covered by the statutory health insurance funds. However, the funds do cover the costs of medical treatment during the pregnancy and for aftercare if complications arise.

Under the Act on Assistance to Avoid and Cope with Conflicts in Pregnancy, women are entitled to a reimbursement of the costs they are required to bear themselves in cases of abortions performed in exceptional circumstances, provided they have

their places of residence or habitual abodes in the jurisdiction of this Act and cannot reasonably be expected to find the funds for economic reasons.

These costs are borne by the Länder (Sections 19 to 22 of the Act).

A prerequisite for the provision of assistance is financial need: women are deemed in need if their available personal income does not exceed an income ceiling determined by law and if they have no short-term assets available. The income ceiling is usually reset each year and information related to it can be obtained from the statutory health insurance funds.

The status of need is deemed to exist without further assessment for women who receive one of the following forms of assistance or benefits:

- Social assistance under Book XII of the German Social Code (SGB XII)
- Unemployment benefit II (under SGB II)
- Vocational education and training as ordered by the Federal Employment Agency, either via individual promotion of vocational education and training or via employment and vocational promotion for people with disabilities
- Vocational education and training grant under the Federal Educational Assistance Act
- Benefits under the Asylum Seekers Benefit Act.

The same applies to women who live in an institution, a home or a similar facility if the costs of accommodation are borne by a welfare organisation or by youth welfare services.

The benefits are provided upon application by the statutory health insurance fund with which the woman is insured. If she is not so insured, she can choose a local statutory health insurance fund at her place of residence or habitual abode. The statutory health insurance fund issues a certificate stating that they will cover the costs and also administer payment of the amount due. Application forms for cost reimbursement can be obtained from the statutory health insurance funds or in facilities performing abortions.

The entitlement to continued pay also exists in the case of abortions performed under the counselling provision. However, no sick pay is provided in such cases.

### Federal Statistics on Abortions

National statistics are compiled on abortions performed in accordance with section 218a (1) to (3) of the Criminal Code. The statistics are collected and processed by the Federal Statistical Office (Section 15 SchKG).

To aid the compilation of national statistics, medical practitioners and hospitals are required to provide information on abortions performed within two years prior to the end of the quarter in which the survey is conducted (Section 18 (1) SchKG). The data to be collected are legally prescribed: the name of the woman terminating a pregnancy may not be communicated by the reporting agencies (see Section 16 (1) SchKG). Information provided under Section 16 (1) SchKG and negative reports must be reported to the Federal Statistical Office on a quarterly basis by the end of the quarter (Section 16 (2) SchKG).

By introducing regulations on compiling official statistics, the legislature has created the necessary conditions for monitoring the impact of the statutory protective approach towards unborn life.

## General Pregnancy Counselling

What general pregnancy counselling entails

Every woman and every man shall have the right to obtain, anonymously if so requested, information and counselling in matters of sex education, contraception, family planning and all questions directly or pregnancy-related matters from counselling services assigned to the purpose (Section 2 (1) SchKG). Counselling is usually provided free of charge. The legal entitlement to counselling comprises information on existing statutory assistance and support for families and children, preventive medical examinations during pregnancy (including special prenatal tests), social and financial assistance for pregnant women, possible solutions to psycho-social conflicts which arise in connection with a pregnancy, and assistance available to people with disabilities and their families (see Section 2 (2), 1st sentence SchKG).

In addition, support must be provided for a pregnant woman, as needed, in claiming her entitlements, in finding accommodation and childcare options for the child she is carrying, and in the continuation of her vocational education and training (Section 2 (2) SchKG). The entitlement to counselling also includes aftercare following an abortion or following childbirth (Section 2 (3) SchKG). In contrast to mandatory pregnancy conflict counselling, general pregnancy counselling does not involve the provision of a counselling certificate.

Services provided by the Federal Foundation “Mother and Child”

Pregnant women may also turn to pregnancy counselling services to apply for assistance from funds provided by the Federal Foundation “Mother and Child – Protection of Unborn Life”. Such assistance can be provided in acute cases to individuals

for whom all statutory benefits (e.g. unemployment benefit II, social assistance, advances on child maintenance and housing benefit) have been exhausted, are insufficient, or cannot be granted in good time. Assistance from the Federal Foundation is provided, in particular, to cover the costs of the child's initial needs, of maintaining the household, of housing and appliances/furnishings, and for the care of a small child. According to the Act on Establishing the Federal Foundation "Mother and Child – Protection of Unborn Life", the Federal Government provides the Federal Foundation with annual funds of at least € 92 million with the aim of helping pregnant women cope in specific emergency situations. Information about the Federal Foundation, its services, application for assistance, necessary requirements and funding allocation can be found in a flyer as well as on the Foundation's website ([www.bundestiftung-mutter-und-kind.de](http://www.bundestiftung-mutter-und-kind.de)).

Organisations  
running preg-  
nancy counselling  
services

General pregnancy counselling services are run by Church and non-church welfare organisations as well as other non-governmental organisations (e.g. Workers' Welfare Association [Arbeiterwohlfahrt], Association of Independent Voluntary Welfare Organisations [Deutscher Paritätischer Wohlfahrtsverband], German Red Cross [Deutsches Rotes Kreuz], Protestant Welfare Association [Diakonisches Werk], donum vitae, Caritas, Catholic Women's Welfare Service [Sozialdienst katholischer Frauen], pro familia). Information regarding local organisations and their addresses can be found in the appendix or can be obtained from local welfare offices. An on-line pregnancy information service ([www.familienplanung.de](http://www.familienplanung.de)/[www.schwanger-info.de](http://www.schwanger-info.de)) run by the Federal Centre for Health Education (BZgA) and funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) contains a search engine that finds and lists all of the pregnancy counselling services in a given area.

# II.

## The Law

### Excerpts from the German Criminal Code (Strafgesetzbuch, Ger. abbr. = StGB)

#### Section 170

##### Non-payment of child support etc.

(1) Whosoever evades a statutory maintenance obligation so that the necessities of the person entitled to maintenance are endangered or would be endangered without the assistance of others, shall be liable to imprisonment of not more than three years or a fine.

(2) Whosoever is obliged to provide maintenance to a pregnant woman and withholds this maintenance in an inappropriate manner and thereby causes a termination of the pregnancy, shall be liable to imprisonment of not more than five years or a fine.

(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 of not more than one year or a fine.

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

#### Section 218

##### Abortion

(1) Whosoever terminates a pregnancy shall be liable to imprisonment of not more than 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.

#### 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.

## 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 of not more than 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 of not more than 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.

## 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 of not more than 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.

## 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 Assistance to Avoid and Cope with Conflicts in Pregnancy.

(2) The counselling must take place pursuant to the Act on Assistance to Avoid and Cope with Conflicts in Pregnancy 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 Assistance to Avoid and Cope with Conflicts in Pregnancy. The physician who performs the termination of pregnancy is excluded from being a counsellor.

## 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 of not more than 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.

## 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 of not more than 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.

## Section 240

### **Using threats or force to cause a person to do, suffer or omit an act**

(1) Whosoever unlawfully with force or threat of serious harm causes a person to commit, suffer or omit an act shall be liable to imprisonment of not more than three years or a fine.

(2) The act shall be unlawful if the use of force or the threat of harm is deemed inappropriate for the purpose of achieving the desired outcome.

(3) The attempt shall be punishable.

(4) 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. causes another person to engage in sexual activity or to enter into marriage;
2. causes a pregnant woman to terminate the pregnancy; or
3. abuses his powers or position as a public official.

# Act on Assistance to Avoid and Cope with Conflicts in Pregnancy (Gesetz zur Vermeidung und Bewältigung von Schwangerschaftskonflikten / Schwangerschaftskonfliktgesetz, Ger. abbr. = SchKG)

## Part I Education, Contraception, Family Planning and Counselling

### Section 1

#### Education

(1) With preventive healthcare and avoiding and resolving pregnancy-related conflicts as objectives, the Federal Centre for Health Education (BZgA), working in participation with the Länder and in cooperation with representatives of family counselling services regardless of funding provider, shall compile drafts on sex education tailored to the requirements of the different age groups and population sectors.

(1a) In accordance with subsection (1), the Federal Centre for Health Education shall compile information material on living with a mentally or physically disabled child and on life for people with mental and physical disabilities. The information material shall make reference to the legal right to psycho-social counselling under section 2 and to contact addresses of self-help groups, counselling services, disability associations and associations for parents of disabled children. The physician shall provide the pregnant women with this information material during counselling under section 2a (1).

(2) For the objectives referred to in subsection (1), the Federal Centre for Health Education shall disseminate nationally uniform educational

material in which contraception and contraceptives are comprehensively described.

(3) The educational material shall be provided free of charge to individuals on demand, as teaching and information material to schools and vocational training facilities, to counselling services, gynaecologists, physicians and medical facilities which perform prenatal diagnostics, and to human geneticists and all youth work and education institutions.

### Section 2

#### Counselling

(1) In accordance with the objectives laid out in section 1 (1), every woman and every man shall have the right to obtain, anonymously if so requested, information and counselling in matters of sex education, contraception, family planning and all questions directly or pregnancy-related matters from counselling services assigned to the purpose.

(2) The right to counselling shall include information relating to:

1. Sex education, contraception and family planning;
2. Available family support benefits and assistance for children and families, including special rights in employment;
3. Preventive checkups during pregnancy and costs of childbirth;
4. Social and economic assistance for pregnant women, including financial benefits and assistance in finding or keeping accommodation, employment or a training place;
5. Assistance available for disabled people and their families before and after the birth of a child with a physical, mental or psychological handicap;

6. Methods of performing an abortion, the physical and emotional consequences of an abortion and the associated risks;
  7. Possibilities for resolving psycho-social conflicts in connection with a pregnancy;
  8. Legal and psychological aspects of adoption.
- The pregnant woman shall additionally be supported in claiming entitlements, finding accommodation, making childcare arrangements and continuing her education or training. Third parties shall be called in to counselling sessions at the pregnant woman's request.

(3) The right to counselling includes follow-up support after abortion or after childbirth.

## Section 2a

### Education and counselling in exceptional circumstances

(1) If prenatal diagnostic findings give urgent cause to suspect impairment to the child's physical or mental health, the physician who informs the pregnant woman of the diagnosis shall provide counselling on the medical and psycho-social aspects it implies, calling in for the purpose physicians who have experience with the impairment in children born with it. The counselling shall be provided in a form which is understandable to a layperson and so as to leave the decision open. It shall include detailed discussion of possible medical, mental and social aspects and the possibilities for support in the event of physical and mental strain. The physician shall inform the pregnant woman of her right to further and more in-depth psycho-social counselling under section 2 and, subject to her consent shall establish contact with counselling services under section 3 and with self-help groups or disability associations.

(2) The physician who under section 218b (1) of the Criminal Code is required to issue a written determination stating whether the requirements of section 218a (2) of the Criminal Code have been satisfied shall, before issuing the written determination under section 218b (1) of the Criminal Code, provide the pregnant woman with counselling on the medical and mental aspects of an abortion, inform her of her right to further and more in-depth psycho-social counselling under section 2 and subject to her consent establish contact with counselling services under section 3 and with self-help groups or disability associations, unless this has already been done under subsection (1). The written determination shall not be issued less than three days after notification of the diagnosis under the 1st sentence of subsection (1) or after counselling under the first sentence of this subsection. The preceding sentence shall not apply if the pregnancy must be terminated to avert immediate and significant danger to life or limb for the pregnant woman.

(3) The physician who is required to issue the written determination of reasons shall, before issuing the determination but not before the end of the deliberation period under subsection (2) 2nd sentence, obtain written confirmation from the pregnant woman regarding the provision of or dispensation with counselling and the establishment of contacts under subsections (1) and (2).

## Section 3

### Counselling services

The Länder shall provide a sufficient number of local counselling services for counselling under subsection (2). Counselling services provided by non-affiliated organisations shall also be supported. Individuals seeking advice shall have a choice of counselling services of differing philosophical or denominational orientation.

## Section 4

### Public funding of counselling services

(1) The Länder shall ensure that the counselling services under sections 3 and 8 have at their disposal at least one full-time counsellor or an equivalent number of part-time counsellors for every 40,000 population. Departures from this ratio are required if the stipulated staffing level is insufficient for counselling services to function properly on an ongoing basis. Due consideration shall be given in this regard to the need for pregnant women to be able to visit a counselling service within a reasonable distance from home.

(2) In an effort to provide information about the services offered in the local catchment area and ensure comprehensive counselling, counselling services shall cooperate in the networks set out in section 3 of the Act on Cooperation and Information for Child Protection Enhancement.

(3) The counselling services necessary under sections 3 and 8 to ensure sufficient provision shall be entitled to an appropriate level of public funding for costs of labour and material.

(4) Further details shall be laid down in Länder law.

## Part II Pregnancy conflict counselling

## Section 5

### Substance of pregnancy conflict counselling

(1) The counselling required under section 219 of the Criminal Code shall be conducted so as to leave the decision open. It shall be conducted on the premise that responsibility lies with the pregnant woman. Counselling is intended to be encouraging and understanding, not reproving or patronising. Pregnancy conflict counselling shall serve to protect unborn life.

(2) Counselling shall comprise:

1. Entering into conflict counselling; it is expected for this purpose that the pregnant woman informs the counsellor of her reasons for considering an abortion; the counselling situation rules out the pregnant woman being forced to discuss her situation and to cooperate with the counsellor;
2. Depending on the case in question, any necessary medical, social and legal information, an explanation of the legal entitlements available to both mother and child and of the available forms of practical assistance, particularly those which aid the continuation of the pregnancy and ease the situation for mother and child;
3. An offer to help the pregnant woman in advancing her claims, in finding accommodation, in making childcare arrangements and in continuing her education or training, as well as the provision of follow-up support. If the pregnant woman so wishes, she

shall also be informed about ways to avoid unwanted pregnancies.

## Section 6

### Conduct of pregnancy conflict counselling

(1) Any pregnant woman seeking counselling shall be counselled without delay.

(2) At her request, the pregnant woman may remain anonymous towards the person performing the counselling.

(3) Subject to the pregnant woman's consent, the following shall be called in to counselling sessions as far as necessary:

1. Other professionals, including individuals with medical, specialist medical, psychological, social education, social work or legal training;
2. Professionals with special experience in early intervention with disabled children;
3. Other individuals, including the father and close relatives.

(4) Counselling shall be free of charge for the pregnant woman and for individuals called in under subsection (3) no. 3.

## Section 7

### Counselling certificate

(1) After the conclusion of counselling, the counselling service shall issue the pregnant woman with a named and dated certificate that counselling under sections 5 and 6 has taken place.

(2) Counselling shall continue without delay if after the counselling session the counsellor considers a continuation necessary.

(3) The counsellor shall not refuse to issue a counselling certificate if a continuation of counselling might make it impossible to observe the time limits set out in section 218a (1) of the Criminal Code.

## Section 8

### Pregnancy conflict counselling services

The Länder shall ensure the availability of a sufficient number and diversity of local counselling services to provide counselling under sections 5 and 6. Such counselling services require special recognition by the state under section 9. Services provided by non-affiliated organisations and physicians may also be recognised as counselling services.

## Section 9

### Recognition of pregnancy conflict counselling services

To qualify for recognition, a counselling service must ensure professional pregnancy conflict counselling under section 5 and be able to conduct pregnancy conflict counselling under section 6 and shall:

1. Be adequately staffed by individuals who have the necessary personal attributes and specialist training;
2. Ensure the possibility of calling in additional professionals with medical, specialist medical; psychological, social education, social work or legal training at short notice;
3. Cooperate with all agencies providing public or private assistance to mother and child;

4. Be associated neither organisationally nor through business ties with any facility in which abortions are performed in such a way as to make it difficult to rule out the possibility of them having a material interest in performing abortions.

## Section 10

### Reporting obligations and inspection of pregnancy conflict counselling services

(1) Counselling services shall set down the standards on which their counselling work is based and record experience gained in that work in an annual written report.

(2) As a basis for the written report under subsection (1), counsellors shall draw up a record of each counselling session. The record of a counselling session must not make it possible to identify the pregnant woman or any other individuals called in. It shall record the main substance of the counselling session and the assistance offered.

(3) The competent authority shall appraise at intervals of not more than three years whether the requirements for recognition under section 9 are still met. For this purpose, it may require submission of the reports under subsection (1) and inspection of the records kept under subsection (2). If any requirement under section 9 ceases to be met, recognition shall be withdrawn.

## Section 11

### Transitional provisions

Recognition of a counselling service under item II.4 of the decision formula set out in the decision of the Federal Constitutional Court of 28 May 1993 (BGBI. I p. 820) shall be equivalent to recognition under sections 8 and 9 of this act.

## Part III Performance of abortions

## Section 12

### Refusal

(1) No person shall be obliged to take part in an abortion.

(2) Subsection (1) shall not apply if participation is necessary to avert an otherwise unavoidable risk to the life of the pregnant woman or of grave injury to her health.

## Section 13

### Facilities for the performance of abortions

(1) Abortions shall only be performed in a facility where the necessary follow-up treatment is ensured.

(2) The Länder shall ensure the availability of a sufficient number of inpatient and outpatient facilities for the performance of abortions.

## Section 14

### Fines

(1) A person shall be guilty of misconduct who:

1. In contravention of section 2a (1) or (2) fails to counsel the pregnant woman;
2. In contravention of section 2a (2) 2nd sentence issues a written determination;
3. In contravention of section 13 (1) performs an abortion;
4. Fails to satisfy the duty to provide information under section 18 (1).

(2) The misconduct shall be punishable with a fine of up to five thousand euros.

## Section 15

### Part IV National statistics on abortions

#### Compilation of national statistics

National statistics shall be compiled on abortions performed in accordance with section 218a (1) to (3) of the Criminal Code. The statistics shall be collected and processed by the Federal Statistical Office.

## Section 16

#### Information to be compiled, reporting dates and periodicity

(1) Information for the national statistics shall be compiled for each calendar quarter and shall comprise the following:

1. Total number of abortions performed in the reporting period (including negative reports);

2. Legal basis of the abortion (counselling provision or abortion on medical or other grounds);
  3. Marital status and age of the pregnant woman and number of children she has;
  4. Duration of the terminated pregnancy;
  5. Type of the abortion and any complications;
  6. German Land in which the abortion performed and German Land or foreign country in which the pregnant woman lives;
  7. Whether the abortion has been performed at a medical practice or in hospital and if in hospital the duration of the hospital stay;
- The name of the pregnant woman shall not be recorded.

(2) The information under subsection (1), including negative reports, shall be communicated to the Federal Statistical Office every quarter year by the end of each quarter.

## Section 17

#### Ancillary information

Ancillary information for the statistical survey shall comprise:

1. The name and address of the facility under section 13 (1);
2. The telephone number of the contact person for any queries.

## Section 18

### Duty to provide information

(1) There is a duty to provide information for the national statistics. The duty to provide information applies to the owners of medical practices and the heads of hospitals in which abortions have been carried out in the last two years before the end of a quarter.

(2) The information under section 17 (2) is voluntary.

(3) For the compilation of the national statistics, the Federal Statistical Office shall be provided on request:

1. By the medical associations in the German Länder, the addresses of physicians at whose practices, according to information available to the medical associations, abortions have been or are to be performed;
2. By the competent health authorities, the addresses of hospitals at which, according to information available to the competent health authorities, abortions have been or are to be performed.

## Part V Assistance for Women Terminating a Pregnancy in Special Cases

### Section 19

#### Entitled persons

(1) A woman shall be entitled to benefits under this Part if she cannot be reasonably expected to find the financial means for an abortion and she has her place of residence or habitual abode in the jurisdiction of this Act. In respect of women entitled to benefits under the Asylum Seekers Benefits Act, the fourth sentence of Section 10a (3) of that Act\* shall apply accordingly.

(2) A woman cannot be reasonably expected to find the financial means for an abortion within the meaning of subsection (1) if her personal monthly income does not exceed 1,001 euros or equivalent (the income limit) and she has at her disposal no assets which can be liquidated at short notice or the use of such assets would cause her undue hardship. The income limit shall increase by 237 euros for each child under the age of majority whom the woman is required

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\* Excerpt from the Asylum Seeker Benefits Act (Asylbewerberleistungsgesetz): Section 10a (1), 1st sentence: The authority locally responsible for services under this Act is the authority determined under section 10 into whose jurisdiction the entitled person has been allocated by decision of the reception centre appointed by the Federal Ministry of the Interior or has been assigned by the competent authority in the relevant German Land. Section 10a (3), 4th sentence: If a person has been allocated or assigned under subsection (1) 1st sentence, the jurisdiction concerned shall be deemed the person's usual place of residence.

to support and who lives in her household or is predominantly supported by her. If the accommodation costs of the woman and the children for whom the income limit is increased under the 2nd sentence exceed 294 euros, the income limit shall be raised by the amount of the excess up to a maximum of 294 euros.

(3) The requirements set out in subsection (2) shall be deemed satisfied:

1. If the woman receives ongoing assistance towards living expenses under Social Code Book Twelve, payments to secure subsistence under Social Code Book Two, educational assistance under order of the Federal Employment Agency on individual promotion of vocational training or on employment and career promotion for disabled persons, benefits under the Asylum Seekers Benefits Act\* or educational assistance under the Federal Educational Assistance Act; or
2. If the costs of accommodating the woman in an institution, a home or equivalent facility are paid for by a social assistance or youth assistance agency.

## Section 20

### Benefits

(1) Benefits under this Act shall comprise the benefits listed in Section 24b (4) of Book Five of the Social Code that are paid for by a statutory health insurance fund solely in respect of a lawful abortion.

(2) The benefits shall be provided as non-cash benefits in respect of a lawful abortion or of an abortion performed in accordance with the requirements set out in Section 218a (1) of the Criminal Code. Benefits under Book Five

of the Social Code shall have precedence over benefits under this Part.

## Section 21

### Implementation, responsibility and procedure

(1) The benefits shall be granted, on application, by the statutory health insurance fund of which the woman is a member. If the woman is not a member of a statutory health insurance fund, the woman may select a statutory health insurance fund at her place of residence or habitual abode.

(2) The procedure shall be carried out in writing at the woman's request. Subject to satisfaction of the requirements under section 19, the health insurance fund shall without delay issue notice that it will meet the costs. Facts must be substantiated.

(3) The entitled woman shall have free choice among the physicians and facilities willing to perform the abortion for the fee referred to in the 2nd sentence. Physicians and facilities are entitled to the fee paid by the health insurance fund for its members for the services under section 20 in connection with a not unlawful abortion.

(4) For the performance of services under section 20, the physician or the facility performing the services shall invoice the health insurance fund which issued the notice referred to in subsection (2) 2nd sentence. The invoice shall be accompanied by confirmation that the abortion has been performed in a facility under section 13 (1) of this Act in satisfaction of the requirements set out in Section 218a (1), (2) or (3) of the Criminal Code.

(5) Throughout the entire procedure, the woman's right to privacy shall be observed in consideration of the special situation of the pregnancy. The agencies involved shall cooperate and endeavour to ensure that their activities complement each other effectively.

## Section 22

### Refund of costs

The Länder shall refund the costs incurred by the statutory health insurance funds under this Part. Further details, including the budgetary procedure and administrative responsibilities, shall be determined by the Länder.

## Section 23

### Appeals

Public-law disputes on matters relating to this Part shall be decided by the social courts.

## Section 24

### Adjustment

The amounts referred to in Section 19 (2) shall be adjusted by the percentage by which the current pension value is adjusted in the statutory pension insurance system; the amount shall be rounded to the nearest euro. The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth shall publish the modified amounts in the Federal Gazette.

## Section 25

### Transitional provisions

(1) In departure from Section 19 (2) 1st sentence, women whose place of residence or habitual abode is in the territory stated in Article 3 of the Treaty of Unification shall be subject to an income limit of 990 euros; the amount of the increase for each child under section 19 (2) 2nd sentence shall be 237 euros; in respect of costs of accommodation under section 19 (2) 3rd sentence any amount in excess of 264 euros shall be provided for up to a maximum of 294 euros.

(2) For the territory stated in Article 3 of the Treaty of Unification, the amounts under subsection (1) shall, until such time as correspondence with the amounts applying in the remainder of the jurisdiction of this Act is achieved, be adjusted as of 1 July each year by secondary legislation issued with the consent of the German Bundestag by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth in consultation with the Federal Ministry of Health and the Federal Ministry of Finance.

## Excerpts from the Act Concerning Human Genetic Testing (Gesetz über genetische Untersuchungen bei Menschen / Gendiagnostikgesetz, Ger. abbr. = GenDG)

### Section 1

#### Purpose

The purpose of this Act is to determine the requirements for genetic testing, for genetic analysis performed in connection with genetic testing and for the use of genetic samples and data, and to prevent discrimination based on genetic characteristics in order in particular to uphold the state's duty to respect and safeguard human dignity and the right of informational self-determination.

### Section 2

#### Scope

(1) This Act applies to genetic testing, and to genetic analysis in connection with genetic testing, of born human beings, embryos and foetuses during pregnancy, and to the use of genetic samples and genetic data obtained in genetic testing for medical purposes, for the determination of parentage, for insurance purposes and in employment.

(2) This Act does not apply to genetic testing and analysis or to the use of genetic samples or data:

1. For research purposes;
2. Under provisions:
  - a) On criminal procedure, on international assistance in criminal law enforcement, under the Federal Criminal Investigation Office Act (BKAG) and the police acts of the various Länder;

b) Under the Act on the Prevention and Control of Infectious Diseases in Man (IfSG) and secondary legislation issued thereunder.

### Section 3

#### Definitions

For the purposes of this Act:

1. 'Genetic testing' means:
  - a) Genetic analysis performed with the objective of determining genetic characteristics; or
  - b) Prenatal risk assessment including evaluation of the results;
2. 'Genetic analysis' means analysis, performed with the objective of determining genetic characteristics, of:
  - a) The number and structure of chromosomes (cytogenetic analysis);
  - b) The molecular structure of deoxyribonucleic acid or ribonucleic acid (molecular genetic analysis); or
  - c) The products of nucleic acids (gene product analysis);
3. 'Prenatal risk assessment' means examination of an embryo or foetus with the objective of determining the probability of the presence of certain genetic characteristics of significance for a disease or disorder in the embryo or foetus;
4. 'Genetic characteristics' mean human inherited genetic information or genetic information acquired upon fertilisation or otherwise prior to birth;
5. 'Responsible medical practitioner' means the physician who conducts any genetic testing for medical purposes;
6. 'Genetic testing for medical purposes' means diagnostic or predictive genetic testing;

7. Diagnostic genetic testing means genetic testing with the objective of diagnosing:
  - a) An existing disease or disorder;
  - b) Genetic characteristics that in conjunction with the influence of extraneous factors or substances could cause a disease or disorder;
  - c) Genetic characteristics that could influence the effect of medication;
  - d) Genetic characteristics that could wholly or partly prevent the onset of a disease or disorder;
8. 'Predictive genetic testing' means genetic testing with the objective of diagnosing:
  - a) A disease or disorder that will arise in the future;
  - b) A carried predisposition for any disease or disorder in offspring;
9. 'Mass genetic screening' means genetic testing for medical purposes that is offered to the entire population or to certain groups without individuals necessarily having reason to suspect that they possess the genetic characteristics targeted in the screening;
10. 'Genetic sample' means biological material intended for use in genetic analysis or on which genetic analysis has been performed;
11. 'Genetic data' means data on genetic characteristics obtained in genetic testing or obtained in genetic analysis performed in connection with genetic testing;
12. 'Employed persons' means:
  - a) Employees;
  - b) Persons employed in the course of training;
  - c) Persons participating in occupational integration schemes, schemes to assess suitability for employment and employment testing schemes (rehabilitands);
  - d) Persons employed in recognised workshops for disabled persons;
  - e) Persons employed under the Youth Voluntary Service Act (JFDG);
  - f) Persons deemed – on the basis of their economic dependence – to be equivalent to employees, including persons working from home and equivalent;
  - g) Job applicants and persons whose employment has been terminated;
13. 'Employers' means natural or legal persons or partnerships possessing legal capacity who or which employ employees according to no. 12, employers and supervisors of persons working from home and equivalent, and third parties to whom employees are seconded to work.

## Section 7

### **Genetic testing restricted to physicians**

(1) Diagnostic genetic testing may only be performed by physicians and predictive genetic testing by physicians who are certified specialists in human genetics or by other physicians who, in the course of obtaining their certification, specialisation or other additional qualification, have acquired training in genetic testing within their area of expertise.

(2) Genetic analysis of a genetic sample may only be performed in connection with genetic testing by the responsible medical practitioner or by persons or facility commissioned by the responsible medical practitioner.

(3) Genetic counselling under section 10 shall only be performed by physicians as defined under subsection (1) who have obtained training in genetic counselling.

## Section 8

### Consent

(1) Genetic testing or analysis may only be performed and a genetic sample required for the purpose shall only be obtained if the person concerned has given the responsible medical practitioner his or her express written consent for the testing and the obtainment of the sample required for the purpose. Consent under the 1st sentence shall comprise both the decision concerning the scope of the genetic testing and the decision regarding whether and to what extent the test results are to be announced or destroyed. A person or facility commissioned under section 7 (2) may only perform genetic analysis if it has written proof of consent.

(2) The person concerned may revoke his or her consent verbally or in writing to the responsible medical practitioner at any time with effect for the future. A record shall be made of any verbal revocation without delay. The responsible medical practitioner shall communicate proof of revocation without delay to any person or facility commissioned under section 7 (2).

## Section 9

### Information to be given prior to consent

(1) Before obtaining consent, the responsible medical practitioner shall inform the person concerned about the nature, significance and consequences of genetic testing. The person concerned shall subsequently be allowed a reasonable deliberation period before deciding whether to give consent.

(2) The information to be given shall include:

1. The purpose, nature, scope and information value of the genetic testing, including the results attainable given the envisaged testing means and the purpose of testing; this also includes the significance of the tested genetic characteristics for a disease or disorder and possibilities for its avoidance, prevention or treatment;
2. Health risks to the person concerned associated with knowledge of the result of the genetic testing and with obtainment of the genetic sample needed for the purpose, including for pregnant women the health risks to the embryo or foetus associated with the prenatal genetic testing and obtainment of the genetic sample needed for the purpose;
3. The intended use of the genetic sample and of the results of testing or analysis;
4. The right of the person concerned to revoke their consent at any time;
5. The right of the person concerned not to know, including the right not to take cognisance of the test results in whole or in part and instead to have them destroyed.
6. In mass genetic screening, notification of the persons concerned about the results of the evaluation of the screening by the genetic diagnostics commission under section 16 (2).

(3) Prior to genetic testing, the responsible medical practitioner shall draw up a record of the information provided.

## Section 10

### Genetic counselling

(1) In the case of diagnostic genetic testing, the responsible medical practitioner should, once the test results are available, offer the person concerned genetic counselling with a physician meeting the requirements under Section 7 (1) and (3). If the person concerned is found to have a genetic characteristic with significance for a disease or disorder that is untreatable on the basis of current scientific and technical knowledge, the 1st sentence shall apply with the additional requirement that the responsible medical practitioner has to offer the counselling.

(2) In the case of predictive genetic testing, before testing is performed and once the results are available, the person concerned shall be given genetic counselling by a physician meeting the requirements under section 7 (1) and (3) unless the person concerned after receiving written information about the substance of genetic counselling has personally waived genetic counselling in writing. After counselling, the person concerned shall be allowed a reasonable deliberation period before testing.

(3) Genetic counselling shall be provided in a form which is understandable to a layperson and shall be conducted so as to leave the decision open. It shall include detailed discussion of possible medical, mental and social aspects in connection with the performance or non-performance of genetic testing and the actual or potential test results and the possibilities

for support in the event that testing and the results cause physical and emotional strain for the person concerned. Subject to the consent of the person concerned, a further specialist may be called in for supporting advice. If it is suspected that genetic relatives of the person concerned may carry tested genetic characteristics of significance for an avoidable or treatable disease or disorder, genetic counselling shall also include the advice to recommend genetic counselling to the genetic relatives. The fourth sentence shall apply accordingly where genetic testing is performed on an embryo or foetus.

(4) The responsible medical practitioner or physician who offers or performs the counselling shall record the information provided.

## Section 15

### Prenatal genetic testing

(1) Prenatal genetic testing shall only be performed for medical purposes and under the provision either that the testing targets specific genetic characteristics in the embryo or foetus which, on the basis of generally recognised current scientific and technical knowledge, may impair its health during pregnancy or after birth, or if it is planned to treat the embryo or foetus with a drug whose effect is influenced by specific genetic characteristics, and the pregnant woman has been provided with information prior to giving consent under section 9 and has given consent under section 8 (1). If genetic testing under the 1st sentence or other prenatal testing reveals the sex of an embryo or foetus, this may be disclosed to the pregnant woman with her consent after the twelfth week of pregnancy.

(2) Prenatal genetic testing shall not be performed with the objective of determining in the embryo or foetus a genetic predisposition for a disease that, on the basis of current scientific and technical knowledge, does not break out until after the age of eighteen.

(3) Before prenatal genetic testing is performed and once the test results are available, the pregnant woman shall be given counselling under section 10 (2) and (3) and shall additionally be informed about the entitlement to counselling under section 2 of the Act on Assistance to Avoid and Cope with Conflicts in Pregnancy (SchKG); the information provided in the counselling shall be recorded.

(4) If prenatal genetic testing is performed on a pregnant woman who is not able to recognise the nature, significance and consequences of prenatal genetic testing and decide accordingly, section 14 (1) nos. 2 and 3 shall apply. The prenatal genetic testing shall only be performed if, previously:

1. The person representing the pregnant woman has been provided with information under section 9.
  2. A physician meeting the requirements under section 7 (1) and (3) has counselled the person representing the pregnant woman under section 2.
  3. The representative of the pregnant woman has given consent under section 8 (1).
- Sections 1627 and 1901 (2) and (3) of the German Civil Code shall apply.

# III.

## Addresses

### **Pregnancy Conflict Counselling Services**

Arbeiterwohlfahrt (AWO)  
Bundesverband e.V.  
Blücherstr. 62/63  
10961 Berlin  
Tel.: 0 30/26 30 90  
Internet: [www.awo.org](http://www.awo.org)

Deutsches Rotes Kreuz (DRK)  
Generalsekretariat  
Carstennstr. 58  
12205 Berlin  
Tel.: 0 30/85 40 40  
Internet: [www.drk.de](http://www.drk.de)

Diakonisches Werk der EKD e.V.  
Reichensteiner Weg 24  
14195 Berlin  
Tel.: 030/83 00 10  
Internet: [www.diakonie.de](http://www.diakonie.de)

donum vitae e.V.  
Breite Str. 27  
53111 Bonn  
Tel.: 02 28/3 86 73 43  
Internet: [www.donumvitae.org](http://www.donumvitae.org)

Deutscher Paritätischer Wohlfahrts-  
verband (DPWV)  
Oranienburger Str. 13-14  
10178 Berlin  
Tel.: 0 30/24 63 60  
Internet: [www.der-paritaetische.de](http://www.der-paritaetische.de),  
[paritaet.org](http://paritaet.org)

pro familia Bundesverband e. V  
Stresemannallee 3  
60596 Frankfurt am Main  
Tel.: 0 69/63 90 02  
Internet: [www.profamilia.de](http://www.profamilia.de)

### **General Pregnancy Counselling Services**

See the addresses under Pregnancy  
Conflict Counselling Services and also  
the following:

Deutscher Caritasverband e.V.  
Karlstr. 40  
79104 Freiburg im Breisgau  
Tel.: 07 61/20 04 18  
Internet: [www.caritas.de](http://www.caritas.de)

Sozialdienst katholischer Frauen (SKF)  
Gesamtverein e.V.  
Agnes-Neuhaus-Str. 5  
44135 Dortmund  
Tel.: 02 31/5 57 02 60  
Internet: [www.skf-zentrale.de](http://www.skf-zentrale.de)

**A directory of counselling services in the individual Federal Länder is available at  
[www.familienplanung.de](http://www.familienplanung.de)/[www.schwanger-info.de](http://www.schwanger-info.de)**

# IV.

## Publications and Ordering Information

A range of German-language informational material is available on the types of assistance provided to mothers and to fathers. These can be ordered or download free of charge:

### **Alleinerziehend**

– Tipps und Informationen –  
(Hrsg. Bundesverband der alleinerziehenden Mütter und Väter e.V.)  
(Single Parents – Tips and Information, Federal Association of Single Mothers and Fathers)

### **Bundesstiftung Mutter und Kind**

– Informationen für schwangere Frauen in einer Notlage –  
(Federal Foundation “Mother and Child” – Information for Pregnant Women in Emergency Situations]

### **Das Kindschaftsrecht (Law on Parents and Children)**

### **Der Unterhaltsvorschuss**

– Eine Hilfe für Alleinerziehende –  
(Child Maintenance Advances – Assistance for Single Parents)

### **Elterngeld und Elternzeit**

– Das Bundeselterngeld- und Elternzeitgesetz –  
(Parental Benefit and Parental Leave – The Federal Act on Parental Benefit and Parental Leave)

(A Guide for Families – State-Provided Assistance at a Glance)

### **Kinder suchen Eltern, Eltern suchen Kinder**

– Informationen zum Adoptionsrecht und Adoptionsvermittlungsrecht –  
(Children Seeking Parents, Parents Seeking Children – Information on Adoption Law and Adoption Referral Law)

### **Merkblatt Kindergeld**

(Hrsg. Bundesagentur für Arbeit)  
(Brochure Child Benefit, Federal  
Employment Agency)

### **Merkblatt Kinderzuschlag**

(Hrsg. Bundesagentur für Arbeit)  
(Brochure Supplementary Child Allow-  
ance, Federal Employment Agency)

### **Mutterschutzgesetz**

- Leitfaden zum Mutterschutz -  
(Maternity Protection Act - A Guide to  
Maternity Protection)

Available from:

Publikationsversand der  
Bundesregierung  
Postfach 48 10 09  
18132 Rostock

Tel.: 0 18 05/77 80 90\*

Fax: 0 18 05/77 80 94\*

Email:

publikationen@bundesregierung.de

Internet: [www.bmfsfj.de](http://www.bmfsfj.de)

### **Wohngeld 2011 (Housing Benefit 2011)**

Available from: Bundesministerium für  
Verkehr, Bau und Stadtentwicklung

Invalidenstraße 44

10115 Berlin

Tel.: 0 30 18/300-30 60

Fax: 0 30 18/300-19 42

Email: [buergerinfo@bmvbs.bund.de](mailto:buergerinfo@bmvbs.bund.de)

### **Das Baby**

- Ein Leitfaden für Eltern -  
(Babies - A Guide for Parents)

### **Eltern sein**

- Die erste Zeit zu dritt -  
(Becoming Parents - Welcoming Your  
Baby)

### **Ich bin dabei!**

- Vater werden -  
(Count Me In - Becoming a Father)

### **Informationsmaterial für Schwangere nach einem auffälligen Befund in der Pränataldiagnostik**

(Informational materials for pregnant  
women with abnormal prenatal testina  
results)

### **Pränataldiagnostik**

- Informationen über Beratung und  
Hilfen zu Fragen vorgeburtlicher  
Untersuchungen - (brochure on Pre-  
natal Diagnostics - Information on  
Counselling and Assistance Concerning  
Prenatal Tests)

### **Pränataldiagnostik**

-Beratung, Methoden und Hilfen  
(flyer on Prenatal Diagnostics - Coun-  
selling, Methods and Assistance Services)

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\* Calls cost €0.14 per minute from the German landline  
telephone network. Charges may vary for calls made from  
mobile telephones.

## **Rundum**

– Schwangerschaft und Geburt –  
(All About Pregnancy and Childbirth)

## **Sichergehen**

– Verhütung für sie und ihn –  
(On the Safe Side – Contraception for  
Women and Men)

## **Unsere Kinder**

– Eine Broschüre für Eltern mit  
Kindern von 1 bis 6 Jahren –  
(Our Children – A Brochure for Parents  
with Children Aged 1 to 6)

Available from:

Bundeszentrale für gesundheitliche  
Aufklärung (BZgA)

51101 Köln

Fax: 02 21/89 92-257

Email: [order@bzga.de](mailto:order@bzga.de) or online at [www.bzga.de](http://www.bzga.de)

**Laws in the original wording can be  
found under [www.bmfsfj.de](http://www.bmfsfj.de)**

## **Internet links**

[www.bmfsfj.de](http://www.bmfsfj.de)

[www.familienplanung.de/www.schwanger-info.de](http://www.familienplanung.de/www.schwanger-info.de)

[www.familien-wegweiser.de](http://www.familien-wegweiser.de)

[www.bundesstiftung-mutter-und-kind.de](http://www.bundesstiftung-mutter-und-kind.de)

# V.

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\*\*\* For general questions to all government offices and agencies, the general civil service telephone number 115 is also available from Monday to Friday from 8 a.m. to 6 p.m. Currently, you can reach this number from selected pilot regions, such as Berlin, Hamburg, Hessen, and North Rhine-Westphalia among others. You can find further information at [www.d115.de](http://www.d115.de); 7 cents/min. from German landlines, a maximum of 42 cents/min. from mobile networks.