

P4P COUNTRY INFORMATION ON CHILD PROTECTION SYSTEMS	
COUNTRY	GERMANY
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1. GENERAL DESCRIPTION OF CHILD PROTECTION SYSTEM AND PARTICULAR RISK GROUPS

1.1 Child Protection System

Governmental structure

To explain the Child Protection System in Germany it is important to understand how the structure of the federal government works. The Federal Republic of Germany is a federation which is formed by sixteen Federal States (*Bundesländer*). The Federal States are the so called *Länder*.

Germany's constitution, the Basic Law for the Republic of Germany (*Grundgesetz* [hereinafter GG]), states a hierarchical level in which there is a primacy of the Federal law over the Land Law (Article 31 of the GG but gives sovereign powers to the *Länder*¹. The *Länder* are largely autonomous and have their own constitution as well as govern their own affairs. In the legislative process, the *Länder* are empowered to enact legislation in areas in which the Federation does not assume legislative responsibility itself or which have not been assigned to the Federation in the GG. Consequently, the *Länder* have legislative rights regarding education, sciences and cultural policy matters.

The structure of Germanys hierarchical level is also portrayed on the level of the cities and municipalities². All these have the right to act in full self-determination and govern the affairs of their local communities in the framework of existing legislation. Local government law is enacted by the *Länder* and local authorities are likewise responsible for the youth welfare.

Definition of Child Protection

According to the German Law the term child protection („*Kinderschutz*“) is not specifically defined in any legal document. The child protection system is applicable to all persons under the age of 27 including children (those defined under Section 7 (1) and (2) of the Book Eight of the Social Code ([Sozialgesetzbuch \(SGB\) - Achtes Buch \(VIII\) - Kinder- und Jugendhilfe](#) hereinafter SGB VIII) and adolescents up to the age they reach their majority which according to Section 2 of the German Civil Code ([Bürgerliches Gesetzbuch](#) hereinafter BGB) begins at the age of eighteen.

¹ Article 30 of the GG states that “the exercise of state powers and the discharge of state functions is a matter for the *Länder*”

² The Basic Law guarantees local self-government in cities, municipalities and counties (Article 28 GG)

Definition of Child endangerment

The endangerment of the child's wellbeing is defined as the endangerment of the "physical, mental or psychological best interests of the child or his/her property" (§ 1666 (1) BGB). The German Federal Supreme Court (BGH) clarified on its decision NJW 1956, 1434 that, a child's best interest is in danger if it can be foreseen with a high degree of certainty that future developments will result in considerable harm to the child. The German legal system does not provide any explicit differentiation on the meaning of which forms of danger cause maltreatment³.

Legal instruments on child protection

According to the German constitution (GG) the Federation has the legislative power in the field of public welfare if laws are necessary for the establishment of equivalent living conditions or the maintenance of legal or economic unity throughout Germany. It has therefore enacted several laws in the field of child protection over the years. However, the main Acts implemented served to modify and amend the SGB VIII. The changes at the SGB VIII through other legislative acts will be described below on a chronological order:

- The 2000 Act to Outlaw Violence in Education (Gesetz zur Ächtung der Gewalt in der Erziehung)⁴
- The 2002 Child Promotion Act - *Kinderrechteverbesserungsgesetz* (hereinafter KindRVerbG)⁵
- The 2005 Child and Youth Welfare Further Development Act - *Gesetz zur Weiterentwicklung der Kinder- und Jugendhilfe* (Kinder- und Jugendhilfeweiterentwicklungsgesetz [hereinafter KICK])⁶
- The 2008 Child Promotion Act (*Kinderförderungsgesetz* [hereinafter KifoG])⁷
- The 2011 Federal Child Protection Act – *Bundeskinderschutzesetz* (hereinafter BkiSchG)⁸

Other legal instruments were implemented to reform some legal measures already in place. Below a list of important instruments on the application of child protection measures:

- Grundgesetz (hereinafter GG)^{9,10}
- BGB¹¹
- German Criminal Code (Strafgesetzbuch [hereinafter StGB])¹²
- Act to facilitate family court measures of children facing risk of their well-being¹³ (Gesetz zur Erleichterung familiengerechter Massnahmen bei Gefährdung des Kindeswohls)¹⁴

³ It shall be clarified that the German law uses the term child and adolescent in several occasions. For a question of consistency, we will only use the term child to identify persons under the age of eighteen as in accordance with the UN CRC

⁴ This Act changed not only the SGB VIII but also the BGB, the Law on Child Maintenance (*Kindesunterhaltsgesetz*) and other Acts

⁵ This Act changed not only some articles of the SGB VIII as well as from the Personal Status Law (*Personenstandsgesetz* [PStG])

⁶ This Act changed the SGB VIII as well as the Book Seventh of the Social Code

⁷ The Act also changed the Books V and XI of the Social Code and other five legislative Acts

⁸ This Act introduced not only changes into the SGB VIII but also at the Ninth Book of the Social Code, and on the law on conflicts in pregnancies (*Schwangerschaftskonfliktgesetz*). Besides this, this act introduced a new Act on Cooperation and Information on Child Protection (*Gesetz zur Kooperation und Information im Kinderschutz* [KKG]). It is important to sustain here, that there is a recommendation on the implementation of this Act (in German: *Handlungsempfehlungen zum Bundeskinderschutzesetz*) from the Working Group for Children and Youth Welfare Services (*Arbeitsgemeinschaft für Kinder- und Jugendhilfe* [hereinafter AGJ])

⁹ According to Article 6 (1) marriage and family are under the special protection of the state and under 6 (2) stipulates that it is the primary responsibility of parents to safeguard their children livelihoods and protect children as well as provide their supervision. In general, the parental tasks arise from the substance of the parental care regulated in the Civil Code

¹⁰ However, if parents do not comply with the rights and obligations specified by the GG Article 6 (2) GG applies and the State intervenes. On a case law decision, the Federal Constitutional Court stated: „Helping and supporting measures by the government, which are geared towards establishing responsible behaviour of the natural parents have priority". In German *„Helfende, unterstützende, auf Herstellung eines verantwortungsgerechten Verhaltens der natürlichen Eltern gerichtete Maßnahmen des Staates haben Vorrang“* (BVerfGE 24, 119, 1968).

¹¹ Article 1631 (2) BGB guarantees children the right to a nonviolent upbringing. Physical punishment, psychological injuries and other degrading measures are considered inadmissible (Quoting in original language *„Kinder haben ein Recht auf gewaltfreie Erziehung. Körperliche Bestrafungen, seelische Verletzungen und andere entwürdigende Maßnahmen sind unzulässig“*)

¹² The German Criminal Code states clearly that child sexual abuse, neglect and physical maltreatment are under certain circumstances considered criminal offences. A detailed explanation on the different types of criminal offenses related to the child under the StGB are: child neglect (Section 171 and Section 221); Physical maltreatment (223 and 224 in this case there are no specific offences against children but persons in general); Physical maltreatment and neglect (Section 225); Child abuse (Section 174; 176; 176a; 176 b; 180; 182; 184 and 225).

¹³ Translation provided by the authors of this text

¹⁴ This act facilitates early interventions of family court in cases of child maltreatment

As stated above the Federal Republic of Germany is a federal state consisting of sixteen Länder, each of which is a state in itself and regulates accordingly its child protection system through the so called *Landeskinderschutzgesetze* (Child Protection Acts at the Länder level). These regulate mainly obligatory preventive medical examinations for infants, local child protection networks and rights and duties of data exchange in suspected cases of child endangerment¹⁵.

Every single Länder has its own child protection law and in Hessen, the region in which the HRM is based the *Hessisches Kinder- und Jugendhilfegesetzbuch* (hereinafter HKJGB)¹⁶ which regulates the child protection system.

It shall be underlined that the German child and youth services are quite holistic since the services provided by it include child day care, preschool activities, youth work and recreational activities as well as the child protection system¹⁷. The child and youth welfare stand for a range of activities which should ensure the well-being of the child, namely: to prevent or abolish child endangerment; to implement interventions in the family as well as taking decisions about care or accommodation of children; and finally, social administration and social intervention.

Organisation of the Youth Welfare Office (*Jugendamt*)

On a national level

In Germany, several ministries are responsible for queries that in one way or another may be relevant for children¹⁸, namely: the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Health, the Federal Ministry of Education and Research and the Federal Ministry of Justice and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*)¹⁹. The last one is playing a leading role in terms of child protection. Furthermore, there are other central authorities with a national coordinating role in terms of child protection:

- Federal Panel of Experts (*Bundesjugendkuratorium*),
- Federal Working Group of the State Child and Youth Office (*Bundesarbeitsgemeinschaft Landesjugendämter*)
- Working Group of the Highest State Authorities on Youth and Family (*Arbeitsgemeinschaft der Obersten Landesjugend- und Familienbehörden*)

On an administrative level (the Länder; the Gemeinde, Kreisen und Städte)

According to Section 69 SGB VIII the bearers of public youth welfare are determined by the federal law which sets the overall framework for key legal concerns²⁰ whereas the state law defines some of the rights and obligations²¹. Child protection is under the control of public authorities²².

Section 69 of the SGB VIII determines that the bearers of public youth welfare as such are local and supra-regional youth welfare agencies²³. Furthermore, there is an obligation of the local institution to establish a Youth Welfare Office (*Jugendamt*) and for the supra-local institution to establish a regional or State Youth Welfare Office²⁴ (*Landesjugendamt*)^{25 26}. Each Länder has to set up this State Youth Welfare Office (*Landesjugendamt*)²⁷.

¹⁵ Galm & Derr (2011: 17)

¹⁶ This Act can be found under the [LINK](#)

¹⁷ Berg & Vink (2009: 23)

¹⁸ Berg & Vink (2009: 17) [LINK](#)

¹⁹ The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has 3 departments with 12 policy and programme units

²⁰ For example, Parental rights (defined at Sections [1626 to 1698](#) of the [German Civil Code](#) (*Bürgerliches Gesetzbuch* [BGB]))

²¹ For example, the Hessian Child and Youth Welfare Act (*Hessisches Kinder- und Jugendhilfegesetzbuch* [HKJGB]) defines generally the obligations of the state responsibility for child protection in the federal region of Hessen

²² Bode & Turba (2014: 43)

²³ BeckOGK/Jox, 1.12.2017, SGB VIII § 69 Rn. 2-9

²⁴ The National Coalition for the Implementation of the Rights of the Child in Germany uses the term State Youth Welfare Office to translate the German term *Landesjugendamt*

²⁵ Section 69 (3) SGB VIII

²⁶ For a question of clarification, the tasks of the State Youth Welfare Office are carried out by the State Youth Welfare Committee (*Landesjugendhilfeausschuss*) and by the administration of the State Youth Welfare Office.

²⁷ Berg & Vink (2009: 17)

Finally, Section 69 (4) provides for the establishment of common facilities and services to carry out individual tasks by several local authorities and several supra-local authorities, even if they belong to different *Länder*²⁸. According to the international research project on child protection policy and practice project HESTIA there are around 580 Youth Welfare Offices (*Jugendämter*) in total across all cities and districts that work and support families on a local level²⁹. At *Länder* level, all 16 *Länder* administer separate social affairs ministries, which cooperate and coordinate their work through the Conference of Ministers for Youth and Family Affairs (JMFK) and the AGJ³⁰. The Youth Welfare Office (*Jugendamt*) carries according to the SGB VIII the "overall responsibility including the planning responsibility" for all tasks of youth welfare³¹.

In line with Section 70 of the SGB VIII the Youth Welfare Office (*Jugendamt*) is a biparty authority which duties and responsibilities are carried out both by the youth welfare committee (*Jugendhilfeausschuss*) and by the administration (*Verwaltung*) of the Youth Welfare Office (*Jugendamt*). The State Youth Welfare service is structured in a pluralistic manner³² and is also not determined by a single institution nor a specialized system³³. In contrast, the Youth Welfare Office (*Jugendamt*) practical responsibilities are often very limited³⁴ considering that the services offered by the Youth Welfare Office (*Jugendamt*) are carried out by charities licenced or contracted by the Youth Welfare Office (*Jugendamt*) who has the duty to supervise the work of the agencies, the so called *Wächteramt*.

The State Welfare coordinates many actors who, depending on the circumstances of the case, have specific tasks to accomplish and have at least temporarily, a leading role³⁵. Considering the multiplicity of actors (local authorities, institutions, associations and occupational groups) in the implementation of the welfare state standards on the child protection field authors use the wording "Welfare mix"³⁶ to describe the not so easy to identify organizational structure, since there are several actors involved on the child protection system. The actor roles can have different character: some emerge from a direct, case-related intervention mandate of the Youth Welfare Office (*Jugendamt*), others are rather diffuse predefined, especially in preventive work (e.g.: parenting and family counselling; actors in the health care system, the education sector or the police with diagnostic and reporting functions). Among the variety of protagonists in the child protection system, those protagonists located outside the Youth Welfare Office (*Jugendamt*) are the above mentioned "*freier Träger*"³⁷.

The recognition of who these protagonists are is defined by Section 75 SGB VIII. In general, it is stated that legal entities and associations of persons may be recognized as providers of "free" youth assistance / charities and organisations (Service providers) (*Freie Träger der Kinder- und Jugendhilfe*) if they fulfil the requirements of Section 75 (1) (2) and (3) SGB VIII.

Additionally, and to demonstrate how complex and multiple the child protection system Section 81 SGB VIII requires a cooperation of the Youth Welfare Office (*Jugendamt*) with all bodies "whose activity have an impact on the living conditions of young people and their families", namely family and juvenile courts, schools, health care facilities and police regulatory agencies.

²⁸ In the region of Hessen, and in accordance with Section 69 (1) of the SGB VIII which states that bearers of public youth welfare are determined by *Länder* law (*Landesrecht*), the local bearers are administrative districts (*Landkreise*), urban municipality (*Kreisfreie Städte*) and the specific district municipalities (*Kreisangehörigen Gemeinden*) (Section 5 of the Hessisches Kinder- und Jugendhilfegesetzbuch [HKJGB])

²⁹ The White Paper from HESTIA is available under the website [here](#).

³⁰ Youth Policy.org Factsheet on Germany [Link](#)

³¹ Sections 79 and 80 SGB VIII

³² Wolff et. al. refer that „since the beginning of the modern child welfare services at the end of the 19th century child protection in Germany has been a task of nongovernmental charitable agencies and the local government services". (Wolff, Biesel & Heinitz (2011): 183)

³³ Wiesner

³⁴ Although it was described, that the Youth Welfare Office (*Jugendamt*) have limited responsibilities it shall be underlined that in cases related to education (in general), family counselling and intervention in acute suspected hazardous situations the Youth Welfare Office (*Jugendamt*) acts as primarily institution

³⁵ Bode & Turba (2014: 44)

³⁶ Bode & Turba, 2014

³⁷ In conformity with what is established under Section 4 (2) SGB VIII the Youth Welfare Office (*Jugendamt*) does not have to provide all services itself, if the so called "*freier Träger*" (private agencies and /or freelance service providers [e.g.: midwives] as well as charities) can provide this support (HESTIA Project, White Paper)

1.2 Reporting Mechanisms

Child Protection stages

Child protection begins in the context of primary prevention with:

- a. Elucidation and information about the needs of the child,
- b. Guidance on care and education,
- c. Agency on parental skills

Child protection then goes into secondary prevention by supporting parents in stressful life situations that pose specific risks for children.

In both stages, child protection measures are targeted at children and adolescents themselves. They are intended to achieve the objectives proposed at Section 14 (1) SGB VIII such as empowering young people to protect themselves from harmful influences and give them tools such as ability to respond to criticism, decision-making and self-responsibility, as well as responsibility towards their fellow human beings.

As stated before, in the German child protection system there are several actors in place but the central one is the Youth Welfare Office (*Jugendamt*) because it is the central organ which has the legal obligation according to the SGB VIII to carry out investigations to determine whether a child is endangered (Section 8a SGB VIII) as well as to arrange for "*Inobhutnahme*" (the emergency placement of children (Section 42 SGB VIII).

We will firstly analyse the situation in which the Youth Welfare Office (*Jugendamt*) is obliged to intervene, namely in case of children's endangerment and afterwards we will analyse the situation in which the child is taken into "*Inobhutnahme*".

A) Child endangerment under Section 8a SGB VIII

Considering the multiplicity of actors in the German Child protection system, the reporting process can be initiated by different actors playing different roles in the life of children. Nonetheless and according to Section 8a of the SGB VIII there is an obligation for those working in institutions and organs providing services under the SGB VIII to report situations of child endangerment to the "*Jugendamt*"^{38 39}.

The first phase for the Youth Welfare Office (*Jugendamt*) begins when there is "grave", "substantial" (*gewichtiger*) evidence that the child is being endangered⁴⁰. It is not enough to have a guess or have judgments that the child is in danger. This "grave evidence of child endangerment" triggers the obligation to make a risk assessment. By whom the evidences are delivered and on which - if necessary data protection-contrary - way they were obtained, is basically irrelevant⁴¹; but it must be at least partially fact-based information⁴². The information must be "known"⁴³ to the Youth Welfare Office (*Jugendamt*), therefore the Youth Welfare Office (*Jugendamt*) is not obliged and not entitled to investigate independently cases which may indicate evidence that a child is being endangered without giving any indication⁴⁴.

³⁸ This provision also applies to the "*Freier Träger*". This way school teachers, kindergarten teachers and other professionals working with children have a legal obligation to report cases to the Youth Welfare Office (*Jugendamt*).

³⁹ This provision serves on the one hand to improve the protection of children and on the other hand, to give more security to professionals working with children (BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 8a)

⁴⁰ The term "child endangerment" complies with what was explained under Section 1666 of the BGB.

⁴¹ BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 8a Rn. 4-5

⁴² Bringewat (MüKoBGB/Tillmanns SGB VIII § 8a Rn. 3-5, beck-online)

⁴³ The term "known" signifies that the Youth Welfare Office (*Jugendamt*) must ensure that the information is documented and that the responsible body is informed immediately of the notice (BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 8a Rn. 4-5)

⁴⁴ BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 8a Rn. 4-5

In terms of procedure, the risk assessment can usually only take place after the Youth Welfare Office (*Jugendamt*) has gained further information about the child possible endangerment⁴⁵. However, there is a duality in this procedure since the duty to obtain information enters in conflict with the quick obligation to take appropriate measures to protect the child.

If there is significant "evidence of child endangerment" the Youth Welfare Office (*Jugendamt*) can obtain the information⁴⁶ for the risk assessment against the will of the persons concerned e.g. with regards to the children, the guardians. Generally, the information acquirement is gathered through (possibly unannounced) home visits⁴⁷. The text of the law requires that the Youth Welfare Office (*Jugendamt*) must include the legal guardian and the child in the risk assessment⁴⁸. However, the participation of persons entitled to custody and other legal guardians shall be waived if it is questionable the effective protection of the child. This can be the case for example of massive previous mistreatment. The text of the law refers that involvement of the child shall be based on their level of development and their role in the family structure⁴⁹.

Because of the information obtained, the actual risk assessment must be carried out by a "collaboration of several specialists". The requirement of a peer review serves to secure the quality of the assessment process⁵⁰. Once the information required for the risk assessment has been collected, the experts or specialists have to make a final decision⁵¹. If the danger to the child has not been confirmed when collecting the information, the Youth Welfare Office (*Jugendamt*) must stop the procedure. It may not collect any further information⁵².

If the risk of danger has been confirmed, and according to Section 8a (1) Sentence 3 SGB VIII the Youth Welfare Office (*Jugendamt*) must assess, whether an offer of help is sufficient or whether a state intervention regarding the parents' or legal guardians' rights is necessary. The latter is usually the case if the parents or legal guardians reject the inclusion in the assessment and the offer of help. In this case, the family court will be invoked (so-called *Gefährdungsmitteilung*). Afterwards, a discussion will first take place; For this, only a possible risk to the child's well-being is a prerequisite. In practice, however, assistance will only be appropriate and necessary if the legal guardian is willing and able to contribute to the elimination of the child's endangerment. In this case, measures are generally not indicated.

The Youth Welfare Office (*Jugendamt*) must call the Family Court if it deems it necessary⁵³. On the other side, the Family Court must also call the Youth Welfare Office (*Jugendamt*) if the legal guardians are unwilling or unable to avert the endangerment of the welfare of the child or to assist in averting this risk⁵⁴.

⁴⁵ Section 8a (1) SGB VIII

⁴⁶ In principle, the Youth Welfare Office (*Jugendamt*) has access to the information listed in Section 21 SGB X

⁴⁷ Section 8a (1) p. 2 SGB VIII

⁴⁸ Section 8a (1) SGB VIII

⁴⁹ Wiesner (MüKoBGB/Tillmanns SGB VIII § 8a Rn. 6, beck-online)

⁵⁰ It is supposed that those specialists taking part at the risk assessment have adequate competences in the field of child endangerment. If this is not the case external specialists will be called to form part of the risk assessment.

⁵¹ Section 8a (1) p. 3 SGB VIII

⁵² BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 8a Rn. 17-23

⁵³ Section 8a (2) SGB VIII. The Youth Welfare Office (*Jugendamt*) must give sufficient reasons in order to call the Family Court. Furthermore, if the Youth Welfare Office (*Jugendamt*) notifies the Family Court of a case according to Section 8a paragraph 2 sentence 1, it must check whether security measures are required. This also applies if the requirements of section 2 sentence 1 are not met (Case law decision from the Frankfurt Higher Regional Court (*Oberlandsgericht*) from 09.09.2013 - 1 UF 105/13 (sentence available [here](#)). The protection order of the Youth Welfare Office (*Jugendamt*) does not end with the invocation of the Family Court. The Youth Welfare Office (*Jugendamt*) may appeal the decision of the court in accordance with Section 162 (3) sentence 2 FamFG.

⁵⁴ Section 8a (2) SGB VIII. Winkler states that between the Family Court and the Youth Welfare Office (*Jugendamt*) there should be a cooperative decision-making process (BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 8a Rn. 28-30).

Furthermore, if there is an urgent “child endangerment”⁵⁵ and the decision of the Family Court cannot be waited, the Youth Welfare Office (*Jugendamt*) is obliged to take the child into custody (*Inobhutnahme*)⁵⁶. The Youth Welfare Office (*Jugendamt*) does not have “any right”, independent of the action of the court, to remove the child from the families, this is a temporary injunction.

At Section 8a (3) SGB VIII the legislator supports the fact that the Youth Welfare Office (*Jugendamt*) cannot alone advert to the child endangerment and in the case that for the risk assessment other institutions outside the youth welfare⁵⁷ are involved the legal guardians are to be informed. However, the Youth Welfare Office (*Jugendamt*) can contact these institutions (e.g. school or kindergarten of the child, other services) itself if there is a need of immediate action and the legal guardians do not cooperate⁵⁸. In the latter condition, the sole factor is the lack of cooperation, not the reasons for it. The intervention by the Youth Welfare Office (*Jugendamt*) is therefore also permissible if the legal guardians cannot be informed on time.

In Section 8a (4) SGB VIII it is stated that the “*Freier Träger*”⁵⁹ can be included in the protective mandate in cases of child endangerment⁶⁰ and this also means that the “*Freier Träger*” can be included at the risk assessment⁶¹. However, the legislator can only oblige public institutions of the Youth Welfare Office (*Jugendamt*) to fulfil the protective mission. These “*Freie Träger*” must be able to perform the protection task according to the standards and must have the appropriate resources and the appropriate organisations to achieve this objective. There is a complexity of issues related to the content of the agreement as determined by Section 8a (4) SGB VIII⁶². Finally, there is a duty of these “*Freier Träger*” to inform the Youth Welfare Office (*Jugendamt*) in the cases predicted at Section 8a (5) SGB VIII⁶³.

The consequences of a violation of Section 8a SGB VIII imply either a compensation for damages⁶⁴ or a criminal offence⁶⁵.

⁵⁵ There are two conditions to take the child into custody which are: the urgent child endangerment and that the decision of the Court cannot be waited. If these conditions are met, then the Section 42 of the SGB VIII applies consequently. The situations in which there is an endangerment of the child are amongst others, the ones described also at Article 1666 and 1666a of the BGB (child maltreatment, child sexual abuse and neglect of the child).

⁵⁶ Section 8a (2) SGB VIII

⁵⁷ Doctors, hospitals, the police or other service providers, such as health insurance, social assistance (see Section 8a (3) SGB VIII)

⁵⁸ These two conditions are cumulative

⁵⁹ As stated above the *Freier Träger* are licensed or contracted by the Youth Welfare Office (*Jugendamt*) to carry out services offered by the Youth Welfare Office (*Jugendamt*)

⁶⁰ As a court decision of the Superior State Social Court of Bavaria in 2015 stated the protection mandate in cases of child endangerment by “*Freier Träger*” applies directly only to the bearers of the public youth welfare service (Court Decision of 29.04.2015 - L 16 R 1062/13. The Court decision can be found [here](#))

⁶¹ In the literature, a permissible limitation of the autonomy of the free bearers is assumed (BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 8a Rn. 39)

⁶² Risk assessment by professionals; Consultation with an experienced professional and determination of their qualification and expertise (in the text of the law “*insoweit erfahrene Fachkraft*”); involvement of the legal guardians and the child; work towards the claim of Aid/ Help and finally information of the Youth Welfare Office (*Jugendamt*). It shall be highlighted here that the information of the Youth Welfare Office (*Jugendamt*) is only the ultima ratio. It only comes into consideration if the aid assumed cannot eliminate the risk. Despite the narrow wording, because of the purpose of the law, an obligation to inform the Youth Welfare Office (*Jugendamt*) is to be agreed even if the legal guardian is not prepared to seek assistance (see BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 8a Rn. 42-55).

⁶³ The notification from the “*Freier Träger*” should be made in the context of a discussion between the professionals of the “*Freier Träger*” and the Youth Welfare Office (*Jugendamt*) and shall involve the legal guardians and the child as long as the effective protection of the child is not challenged (Section 8a (5) SGB VIII).

⁶⁴ The damages can be claimed if the mandate of protection by the state is insufficiently exercised.

⁶⁵ Employees of the Youth Welfare Office (*Jugendamt*) who have been assigned the care of children must expect criminal prosecution if the child is harmed. A decision from the Local Court of Medebach restated this by condemning a social worker for negligent homicide under Section 222 StGB because in the opinion of the court the professional has not taken the necessary measures to prevent the death of a child (See Local Court decision of Medebach from 04.05.2017 - 6 Ds-411 Js 274/16-213/16 – further details available [here](#)).

B) “Inobhutnahme” (Section 42 SGB VIII)

In the case in which is the Youth Welfare (*Jugendamt*) has the legal obligation according to the SGB VIII to arrange for “*Inobhutnahme*” (the emergency placement of children) Section 42 SGB VIII is to be applicable. This is a provisional measure and thought as a short-term custody measure. There are three scenarios in which the Youth Welfare Office (*Jugendamt*) must act: a) if the child requests to⁶⁶; b) if there is an imminent danger to the well-being of the child⁶⁷ and c) if a foreign minor enters the Federal Republic of Germany unaccompanied⁶⁸.

a. If the child requests to

In the first scenario, in which the child itself requests to be taken into custody, there is no specific form or justification required by law to start this request of the child nor the child has to have the legal capacity to contract (*Geschäftsfähigkeit*) to do this⁶⁹. This means that even children under the age of seven can request to be taken into custody⁷⁰. The Youth Welfare Office (*Jugendamt*) in this case has to examine whether there is actually a risk situation to the well-being of the child⁷¹. If there is a serious request of the child to be taken into “*Inobhutnahme*”⁷² or that there is a sufficient subjective need for protection⁷³, this shall be sufficient for the Youth Welfare Office (*Jugendamt*) to act. In the case the request is made by the child, the legal guardians do not have to agree with the request⁷⁴ and the request can even be made anonymously⁷⁵.

b. Imminent danger for the child

In the second scenario if there is an imminent danger to the well-being of the child the risk is to be examined case by case considering all circumstances that lead to the imminent danger⁷⁶. This taking into “*Inobhutnahme*” is only permissible if the legal guardians do not object to the “*Inobhutnahme*” or if the family court decision to take the child in custody cannot be obtained on time⁷⁷.

c. The child is a foreign minor and enters the German territory unaccompanied

Finally, in the third scenario, in which a foreign minor enters the Federal Republic of Germany unaccompanied the obligation of the Youth Welfare Office (*Jugendamt*) to take the child into “*Inobhutnahme*” is irrespective of whether the minor has submitted an asylum-seeker application or not⁷⁸. This rule does not apply to unaccompanied children travelling on holidays⁷⁹.

⁶⁶ The so called self-reporting under Section 42 (1) Sentence 1 SGB VIII

⁶⁷ Section 42 (1) Sentence 2 SGB VIII

⁶⁸ Section 42 (1) Sentence 1 SGB VIII

⁶⁹ The capacity to contract is the ability to sign contracts effectively. It is graded according to age. The completion of the 18th anniversary brings in principle the full business ability to contract (Section 106 and Section 2 BGB). Children <7 are not able to contract according to Section 104 (1) BGB. In general children conclude contracts with the consent of their legal representatives (Section 104 et seq. of the BGB). Between the age of 7 and 18, a minor under Section 106 BGB has in principle a limited legal capacity.

⁷⁰ A decision of the Administrative Court of Cologne stated that the child capacity to contract shall not be an impediment to ask for *Inobhutnahme* (Decision of 26.05.2017 - 26 L 2299/17)

⁷¹ Decision of the Administrative Court of Cologne from 26.05.2017 - 26 L 2299/17

⁷² In accordance with the decision of the Higher Administrative Court of Lüneburg (Decision of 18.09.2009 - 4 LA 706/07)

⁷³ Decision of the Higher Regional Court of Zweibrücken from 09.02.1996 - 5 UF 13/96

⁷⁴ BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 42 Rn. 2-3

⁷⁵ Wiesner/Wiesner, 5. Aufl. 2015, SGB VIII § 42 Rn. 7-7a

⁷⁶ BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 42 Rn. 4-6.1

⁷⁷ This signifies that despite the immediate referral to the family court, decisions must already be taken to avert a threat to the child well-being. The Youth Welfare Office (*Jugendamt*) intervention to take the child into “*Inobhutnahme*” may only “take place in particularly acute situations of acute danger” (see Higher Regional Court of Berlin-Brandenburg from 28.3.2017 – OVG 6 S 8/17).

⁷⁸ Decision of the Administrative Court of Justice of Munich from 23.9.2014 – 12 CE 14.1833 u. 12 C 14.1865

⁷⁹ BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 42 Rn. 7-9

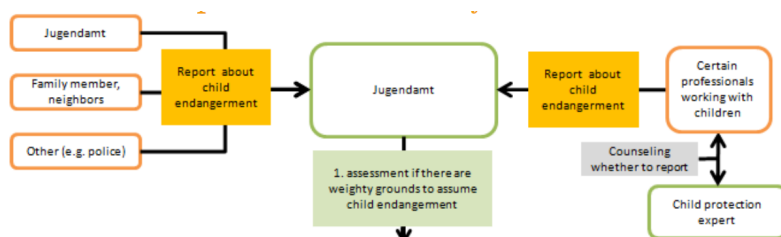
The Youth Welfare Office (*Jugendamt*) must check whether the person taken into “*Inobhutnahme*” has not yet reached the age of eighteen and must make certain that a child is protected. A specific endangerment of the well-being of the child does not have to be examined case by case because the legislator outlined an endangerment on an abstract manner⁸⁰. A guardian must be appointed to the unaccompanied child entering in the German territory as soon as possible after he/ she enters into the German territory⁸¹. Further provisions regarding unaccompanied children are to be found under Section 42a to Section 42f of the SGB VIII.

The Youth Welfare Office (*Jugendamt*) has to clarify the situation that led to this “*Inobhutnahme*” together with the child as well has to present to the child ‘s the existing support and help possibilities⁸². The Youth Welfare Office (*Jugendamt*) shall provide provisional accommodation of a child with a suitable person or in a facility or another supervised form of living⁸³. Furthermore, the child must be given the opportunity without delay to contact a person of his or her trust⁸⁴, as well as to take care of the child's well-being, maintenance⁸⁵ and health⁸⁶. Moreover, the Youth Welfare Office (*Jugendamt*) must inform the legal guardians of the “*Inobhutnahme*” and estimate with them the risk of danger⁸⁷. If the legal guardians contradict the “*Inobhutnahme*” the Youth Welfare Office (*Jugendamt*) has to immediately: hand over the child to the legal guardian if, in the opinion of the Youth Welfare Office (*Jugendamt*), the child's well-being is not endangered or the legal guardians are willing and able to avert the danger or the Youth Welfare Office (*Jugendamt*) has to bring the case to the Family Court⁸⁸.

The “*Inobhutnahme*” or short-term custody measure ends if the conditions established under Section 42 (4) SGB VIII are met⁸⁹. However, it shall be noted, that the “*Inobhutnahme*” does not end if the child is placed in a care home or if the Youth Welfare Office (*Jugendamt*) hand over the child to the other parent who is not entitled to determine the place of residence⁹⁰. The withdrawal and cancellation of the “*Inobhutnahme*” is based on Section 44 of the SGB X. Section 42 (5) SGB VIII predicts that the Youth Welfare Office (*Jugendamt*) can deprive the child of his/ her liberty in detention if and to the extent necessary to avert danger to the life or limb of the child or of others⁹¹.

To conclude we will describe shortly the child protection system path.

1. The Youth Welfare Office (*Jugendamt*) receives a complaint in which it is reported that a child is in danger. This complaint can be exercised on the one hand by professionals working with children on the other hand either by the family members, the child itself or others such as the police.



⁸⁰ Higher Administrative Court of Munich from 23.9.2014 – 12 CE 14.1833 u. 12 C 14.1865

⁸¹ Section 42 (3) Sentence 4 SGB VIII

⁸² Section 42 (2) Sentence 1 SGB VIII

⁸³ Section 42 SGB VIII (1) E.g.: Family on call

⁸⁴ This can be a friend, relative, neighbour, teacher, etc... Section 42 (2) Sentence 2 SGB VIII

⁸⁵ Section 39 (4) SGB VIII applies accordingly

⁸⁶ Section 42 (2) Sentence 3 SGB VIII

⁸⁷ In the case that the legal guardians do not reject the Youth Welfare Office (*Jugendamt*) offer, an assistance planning procedure must be initiated immediately

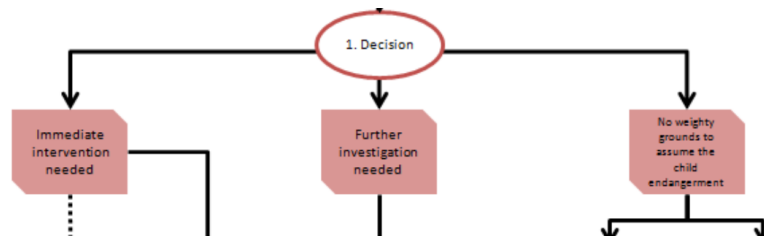
⁸⁸ Section 42 SGB VIII (3). If the legal guardians cannot be reached the family court will be activated

⁸⁹ Either when there is a handover of the (in German *der Übergabe des Kindes*) to the legal guardians or when under the Social Code a decision grants the assistance. Wiesner remind us that on the first case described this handover can also mean that the child does not return to the parental household but is housed for example either in a boarding school or a reception center (Wiesner/Wiesner, 5. Aufl. 2015, SGB VIII § 42 Rn. 52).

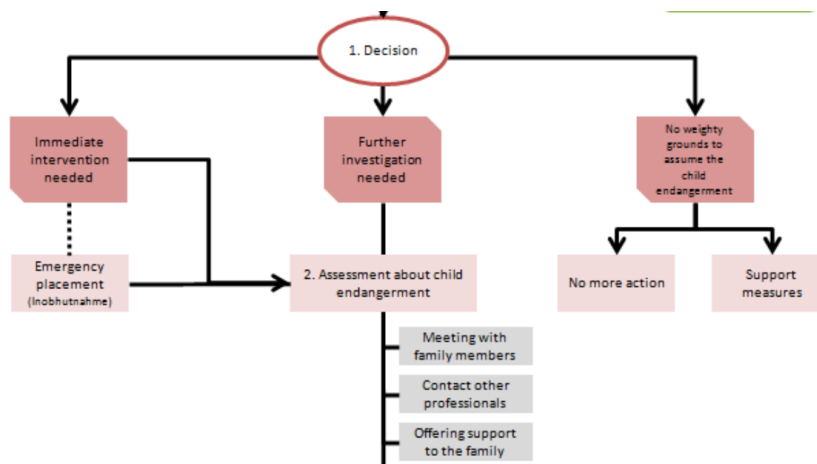
⁹⁰ see Case law decision of the Administrative Court of Neustadt a. D. Weinstraße from 22.02.2017 - 4 L 165/17

⁹¹ This measure must be revoked unless a court decision has been reached by no later than midnight on the following day (Section 42 (5) p. 2 SGB VIII)

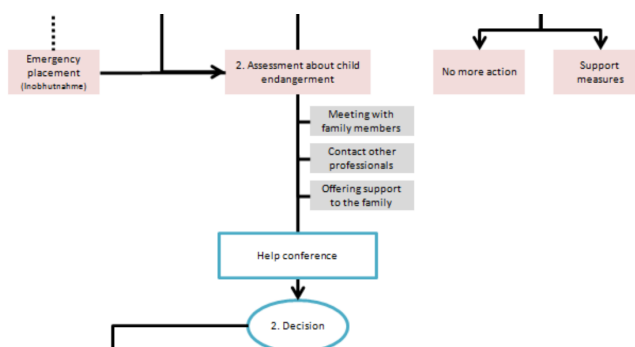
2. The Youth Welfare Office (*Jugendamt*) will make a first assessment to understand if there are reasons to assume child endangerment. This leads to three possibilities:
- there are no reasons to assume the endangerment of the child;
 - further investigation is needed and;
 - there is an immediate need to intervene.



3. On the last scenario the child is placed in “*Inobhutnahme*” and a new assessment about the endangerment shall take place. This new and second assessment shall also take place in the second scenario described above under b). On the second assessment the Youth Welfare Office (*Jugendamt*) will meet with the family of the endangered child, the family will be offered with support measures; and the Youth Welfare Office (*Jugendamt*) will contact professionals (experts) to assess the risk of endangerment in accordance with the law.

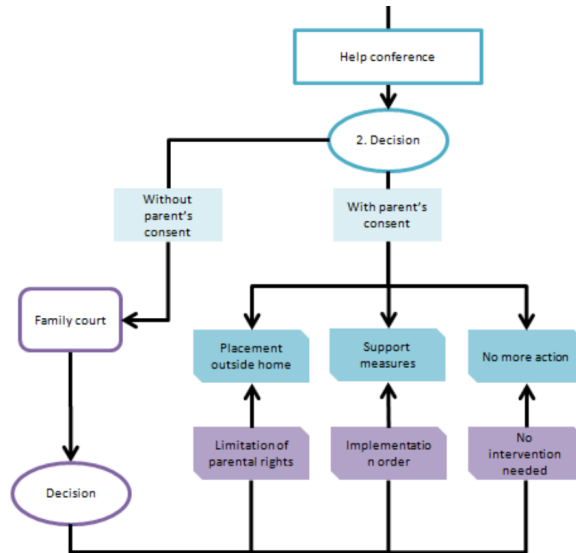


4. After this, a help conference will take place, then a second decision is formed.



There are two aspects that shall be taken into account:

- A) either the parents or legal guardians consent the help measures provided by the Youth Welfare Office (*Jugendamt*) and in this scenario three options remain
- the child is placed outside of the family,
 - support measures will be implemented or
 - there will be no more actions taking place) or,



- B) the parents or legal guardians do not consent an intervention and the family court will have to decide:
- if support measures,
 - placement outside of the family or
 - no action is the path to follow.

It is important thought, to highlight here, that the above described path is a standard procedure and that it may vary on a case by case⁹².

1.3 Support Services

The existing support services which are offered by the Youth Welfare Office (*Jugendamt*) are varied and range from preventive services to interventions in case of child endangerment but are mainly “tailored to the individual needs of the family”⁹³. As Kindler states the Child Welfare system in Germany is a “family service-oriented because families in need are entitled to request family support services”⁹⁴. The Welfare Office offers forms of voluntary support for parents or legal guardians to help them to raise their children⁹⁵.

As so, the Youth Welfare Office (*Jugendamt*) offers support services to expectant and newly parents⁹⁶. In many regions families also have visits shortly after the birth of their child in order to welcome new-born children and to inform parents about regional counselling and support services⁹⁷. The German law also predicts support services if some parents/ carers fails to take care of a child for health reasons⁹⁸. Other services available are the Counselling centres for children, adolescents and parents⁹⁹.

⁹² To have a visual characterisation of the procedure check Annex 3. Available under the following [link](#)

⁹³ Galm & Derr (2011: 32)

⁹⁴ Kindler (2008:319)

⁹⁵ As disclosed by Sections 16 to 26 SGB VIII

⁹⁶ Section 16 SGB VIII, and Section 2 (1) KKG. The so-called “Angebote Früher Hilfe ”

⁹⁷ Section 2 (2) KKG

⁹⁸ Section 20 SGB VIII

⁹⁹ Section 17 SGB VIII

Furthermore, and as Section 27 SGB VIII envisages parents/ carers can have educational assistance while upbringing their children¹⁰⁰. Other support services are: social pedagogical family help, individual support and group work for children and juveniles, specialist day care for children, residential care and foster care.

Youth Welfare Offices (*Jugendamt*) have the legal obligation to plan, organise and monitor the services provided either by themselves or contract charities (*Freier Träger*) to fulfil the needs of families and young people and their municipalities. In the Land Hesse, and according to Section 12 HKJGB the “recognized institutions of the *Freier Träger* as well as the municipalities and associations of municipalities, which are not local sponsors but provide services of youth welfare, are to be involved in the youth welfare planning from the beginning”¹⁰¹.

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth in a publication of 2014 referred that there are several support services for children and families living under a crisis and enumerates these (see Annex 1¹⁰²).

In case of the child endangerment there are different types of interventions which are to be considered as support:

- counselling for parents and/or children
- social pedagogical family assistance¹⁰³
- foster care settings¹⁰⁴

Galm & Derr give some examples in which interventions in the case of the child endangerment take place although children are not removed from their families¹⁰⁵. The examples presented are:

- Education and Family Service Offices (*Erziehungs-und Familienberatungsstellen*)
- Partial inpatient support measures such as daycare centers
- Psychotherapeutic field (healthcare)

The authors describe also that when minors are removed from the family there are various possibilities for intervention being one of them adoption¹⁰⁶, another one being fulltime foster care or even in terms of institutional placement, residential group homes and communities.

Over the last years new projects were implemented in certain *Länder* the so called early warning system (*Frühwarnsystem*)¹⁰⁷. This Early warning system (*Frühwarnsystem*) include “all systematically actions of collection, evaluation and forwarding of information or facts, in order to enable purposeful planning and realization of prompt reaction strategies”¹⁰⁸. This system consists for example visits to the family house, compulsory check-ups, midwife visits up to one year after birth are in place to monitor the situation and context of life of families¹⁰⁹. The system strengths lie on a pool of resources within a local context¹¹⁰.

¹⁰⁰ The assistance can be as described on SGB VIII Sections 27 to 35

¹⁰¹ The text of the law states in German „Die anerkannten Träger der freien Jugendhilfe und deren Zusammenschlüsse sowie die kreisangehörigen Gemeinden und Gemeindeverbände, die nicht örtliche Träger sind, aber Leistungen der Jugendhilfe erbringen, sind an der Jugendhilfeplanung von Beginn an zu beteiligen“ (§ 12 (2) HKJGB).

¹⁰² The publication is entitled *Kinder- und Jugendhilfe Achtes Buch Sozialgesetzbuch* and is available [here](#).

¹⁰³ Social workers cooperate provide advice and practical support for family members (Blüml 2006).

¹⁰⁴ In the case in which children are placed outside of the family foster care is one option to be considered. A child can be placed outside the family (with the consent of the legal guardians) even when the threshold for child endangerment is not met, if it is considered supportive for the child’s development (HESTIA White Paper).

¹⁰⁵ Galm & Derr (2011: 30)

¹⁰⁶ Considering that in case of adoption the legal guardians must consent the adoption, this option is rather rare

¹⁰⁷ Berlin, North Rhine Westphalia

¹⁰⁸ Ministry of Health, Social Affairs, Women and Family of the North Rhine Westphalia - *Ministerium für Gesundheit, Soziales, Frauen und Familie des Landes Nordrhein-Westfalen* - (2005: 7) Available [here](#)

¹⁰⁹ Dahme & Wohlfahrt (2018:232)

¹¹⁰ Ministry of Health, Social Affairs, Women and Family of the North Rhine Westphalia - (2005: 10)

1.4 Information on the needs

1.4.1 Information on the needs of children victims of domestic violence

At a municipal level Round Tables are established to improve cooperation to support victims of domestic violence. These Round Tables are composed by a network of professionals which include the police, women's shelters and counselling services, the Child and Youth Welfare Authorities, family, judges, men's counselling and child protection institutions¹¹¹. For example, in the municipality of Kassel in the Region of Hessen a Round Table on the topic of domestic violence includes members of a Kindergarten¹¹², the Youth Welfare Office (*Jugendamt*), Women's representatives, physicians, amongst others¹¹³.

1.4.2 Information on the needs of refugee children

Refugee children are often perceived primarily as refugees and not as children. Their situation varies, depending on whether they arrive in Germany accompanied by their legal guardians or carers or as unaccompanied minor (hereinafter UMA). These children's living conditions are characterised by accommodation in shelters, initial reception centers or temporary home. In these institutions, the awareness about children's rights is not in the frontline that is why the Federal Ministry of Family Affairs supports the program "Strengthening a child-friendly environment and ensuring child protection in refugee shelters in Hamburg" („Stärkung einer kinderfreundlichen Umgebung und Sicherstellung des Kinderschutzes in Hamburger Flüchtlingsunterkünften“)¹¹⁴.

Based on the fact that UMA receive a legal guardian the Federal Ministry of Justice created a working group dealing with the topic "Family court measures in case of endangering the well-being of the child" (in German *Familiengerichtliche Maßnahmen bei Gefährdung des Kindeswohls*) which addresses fundamental questions and challenges faced by those guaranteeing guardianship.

The Hessian Ministry for Social Affairs and Integration (*Hessische Ministerium für Soziales und Integration*) and the Kübel Stiftung für Kind und Familie (a foundation) started at the beginning of 2017 a counseling service for refugee children at the Kindergarten (in German „Beratungs- und Servicestellen Kinder mit Fluchthintergrund in der Kindertagesbetreuung in Hessen“). The aim is to support professionals working in Kindergarten by providing information for them on topics of relevance for their work¹¹⁵.

1.4.3 Information on the needs of LGBT Children

At the *Länder* level we highlight two developments in terms of measures which improve the support of LGBT children.

The first development is from Berlin. In Berlin the Senate Department for Labour, Integration and Women (*Senatsverwaltung für Arbeit, Integration und Frauen*) and the National Agency for Discrimination Against Discrimination (*Landesstelle für Gleichbehandlung gegen Diskriminierung*) took the lead on an action plan against homo- and transphobia. This Action plan has different fields of action. Regarding the field focused on education and youth welfare it is important to mention that the measures of the action plan envisaged to provide a basis for mitigating discrimination, harassment and violence, in particular regarding lesbians, gays, bisexuals, transgender and intersex people (LGBTI).

Examples of the measures are: the evaluation of interdisciplinary sex education, evaluation of the implementation of the references to sex education in schools and the creation of various materials for professionals working in the educational field. This action plan also foresees that at each school in the *Land* Berlin a teacher will be available as a contact person for sexual and gender diversity¹¹⁶.

¹¹¹ BMFSFJ, Kavemann & Hagemann- White, 2004: 863

¹¹² The Kindergarten which belongs to the Round Table created a model of procedure to act in case of domestic violence which can be found in Annex 2. Check also the [link](#)

¹¹³ *Runder Tisch gegen häusliche Gewalt im Landkreis Kassel* (2009: 9). Available [here](#)

¹¹⁴ For example Plan International Germany has developed a manual for child protection in refugee accommodation

¹¹⁵ Further information can be found on the [Link](#).

¹¹⁶ For further information see the [Link](#)

In the region of Hesse, the Action plan for Acceptance and Diversity (*Hessischer Aktionsplan für Akzeptanz und Vielfalt*) started in 2015. The plan includes comprehensive recommendations to take action to look closer to the situation of the LGBT * IQ community, to improve as well as reduce discrimination. This plan finances for example the project SCHLAU, an education and anti-discrimination offer for school children. The organisation SCHLAU provides workshops in schools and encourages adolescents and young adults, young lesbian, gay, bi, trans *, asexual and queer people to talk about their coming-out, their own biography and personal discrimination experiences¹¹⁷.

In terms of policy the National Working Committee of the Federal Land Youth Offices (BAGLJÄ) referred that Sexual orientation is for the child and youth services a relevant topic (Resolution from April 11, 2003) According to this resolution each service should „in the sense of normalisation deal with the subject of sexual orientation in a manner that is free from discrimination”¹¹⁸ [translated, D.H.]“ (Bundesarbeitsgemeinschaft der Landesjugendämter BAGLJÄ 2003: 2)

2. ANALYSIS OF CHILD PROTECTION SYSTEM ACCORDING TO THE 10 PRINCIPLES OF INTEGRATED CHILD PROTECTION SYSTEMS

Question: Is the existing model rights-based?

The existing model of child protection in Germany is partially a child rights-based model because it considers the involvement and participation of the child in some procedures of the child protection, namely in when at *“Inobhutnahme”* shall regard the complaint of a child seriously when the child asks for help (Section 42 SGB VIII). Furthermore, and on the case of the child endangerment the child is to be listened to at the moment of the risk assessment (Section 8a (1) SGB VIII). Besides this, the model of child protection aims to grant the promotion of children’s individual and social development (Section 1 SGB VIII). Likewise, this same Section states that this promotion of the child individual and social development shall contribute to avoid or reduce discrimination (Section 1 SGB VIII). Supplementary, the child protection model is preventive and aims to protect children from abuse, neglect and violence. The best interest of the child is to be regarded by those working with children (Section 8b SGB VIII¹¹⁹).

However, in certain circumstances the German system of child protection is focused on the family and gives a great weight of the decision making regarding the child to the parents or legal guardians¹²⁰. This is the case for example, of child endangerment in which the legal guardians are to be consulted by the Youth Welfare Office (*Jugendamt*) for the assessment of risk (Section 8a (1) SGB VIII), or when other institutions outside the Youth Welfare Office (*Jugendamt*) are involved in the risk assessment (Section 8 (3) SGB VIII). Another example is in the framework of the *“Inobhutnahme”* that the Youth Welfare Office (*Jugendamt*) shall, together with the legal guardians estimate with the risk of danger¹²¹.

Furthermore, the child protection system does seem to be differentiating between German nationals from foreigner persons (Section 42 SGB VIII) in terms of the application of the *“Inobhutnahme”*¹²².

Question: Are Children enabled to participate?

Children are enabled to participate at the German Child protection system, at least according to the law, there are specific norms determining a consultancy with the child. Under Section 8a (1) SGB VIII the Youth Welfare Office (*Jugendamt*) must include the child in the risk assessment of the child endangerment¹²³.

¹¹⁷ For further information on the Hessian Plan see the [link](#). For information on the SCHLAU project access the following [link](#).

¹¹⁸ Translated by the authors

¹¹⁹ Under the same Section it is stated that those working with children shall protect them from violence (Section 8b SGB VIII)

¹²⁰ According to Section 27 SGB VIII in relation to education and support help the law is directed to parents as users of support offers and to the children

¹²¹ Section 42(3) SGB VIII

¹²² The UN Committee on the Rights of the Child recommended that Germany takes all the necessary measures to improve the situation of children seeking asylum and children in situations of migration (Point 8 CRC/C/DEU/CO/3-4)

¹²³ The involvement of the child shall be based on their level of development and their role in the family structure

Another scenario that demonstrate this ability to participate of the child is the one predicted under Section 42 SGB VIII in which a child can itself request to be taken into “*Inobhutnahme*”. The child is here seen as an active subject and there is an obligation of the Youth Welfare Office (*Jugendamt*) to take the child complaint seriously independent of his/ her age. Moreover, in the case of “*Inobhutnahme*” the Youth Welfare Office (*Jugendamt*) has to clarify the situation that led to this “*Inobhutnahme*” an involve the child in the process and it shall show the child which support and help possibilities are available to him /her¹²⁴. In order to decrease the endangerment of the child the Youth Welfare Office (*Jugendamt*) shall guarantee that the child contacts a person of his or her trust¹²⁵.

Question: To what extent has feedback from children been collated as part of any monitoring systems?

In terms of data collection there seems to be few data available which collects the feedback of children. There are some authorities which help to monitor child protection in Germany. The first example is the Federal Parliament’s Children’s Commission (*Kinderkommission*) (an institutional working group of the Bundestag Committee for Families Affairs, Senior Citizens, Women and Youth) focus on advocacy for children and adolescents. The Children’s Commission intends to represent the interests of children and adolescents inside and outside of the parliament and in to set up children's policies. The also sets as goal the cooperation with associations, organisations and institutions that are committed to represent the interests of children and young people.

Furthermore, another monitoring body is the National Human Rights Institute the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*) which has a monitoring body for the implementation of the UN CRC in Germany. The Monitoring Mechanism helps promote awareness of children’s rights. When necessary, it reminds individuals and institutions that work with children to comply with the terms of the Convention.

There are some studies which analyse the implementation of a law which established new paradigms in child protection¹²⁶ or of projects¹²⁷ but they do not collect the feedback from children. In fact, studies from Non-governmental agencies such as Geolino¹²⁸, the World Vision Study¹²⁹ which are known to involve children have as sample the collection of opinions from both children and their parents and not only of children’s alone. The 2015 LBS Child – Barometer¹³⁰ focused only on children.

Question: To what extent is data on violence against children available and is it disaggregated and are children’s opinions documented?

Data on violence against children are provided by the German Federal Statics Office¹³¹ and by the German Police Crime Statistics¹³². There is no information available which demonstrates children’s opinions when documenting the data.

¹²⁴ Section 42 (2) Sentence 1 SGB VIII

¹²⁵ Section 42 (2) Sentence 2 SGB VIII

¹²⁶ For example, in 2015 there has been an evaluation of the BKiSchG. The evaluation is available under the [Link](#). One other example is the report from German Federal Statistical Office (Destatis) about the Implementation of the Child and Youth Welfare Act (available online under the [link](#)).

¹²⁷ The study “Soziale Frühwarnsysteme: Evaluation des Modellprojekts in Nordrhein-Westfalen (Soziale Praxis)” from 2008 evaluates the implementation of the early warning system in Nord Rhine Westphalia

¹²⁸ This study monitors children’s values children. The sample includes questionnaires to 1.012 Children with ages between 6 and 14; 1.002 Mothers and 846 fathers of the children participating in the study. The study is available under the [link](#)

¹²⁹ The 2013 World Vision Study confirms that children in Germany have limited opportunities for participation. The study is available online under the [link](#)

¹³⁰ This report involved 10,657 children who provided information on more than 100 current aspects of their lives. The report is available under the [link](#)

¹³¹ The German Federal Statistical Office (Destatis) releases yearly statistical reports on the number of children involved on the child and youth welfare system (the data collected varies between adoption, educational assistance, provisional protective measures, amongst others). In German [Link](#) In English [Link](#)

¹³² The 2016 report of the German Police Crime Statistics indicates the number of children victims of violence in the same year. The report is available [online](#)

Are there gaps and weaknesses in the system?

As stated above there are major gaps in the system related to unaccompanied minors and refugees¹³³ as well as migrant children and to involving children in the decision making. Furthermore, there continues to be a great dichotomy between west and east Germany, there are systematic differences related to the educational system and finally there are many children affected by poverty. The situation and the needs of LGBT-Children are not recognized in most of the Youth Offices as well as the "*Freie Träger*" carrying out services¹³⁴

10 Principles of the child integrated protection system

In terms of the 10 principles of the child integrated protection system we will make an analogy to the principles and demonstrate if these have been applied in Germany.

1. Every child is recognised, respected and protected as a rights holder, with non-negotiable rights to protection.

Although under the child protection system children are recognised, respected and protected as a rights holder parents and legal guardians are to be involved and informed in a number of occasions which deal with the child protection and as described above¹³⁵.

2. No child is discriminated against.

Even if the text of the law describes under Section 1 SGB VIII that the Welfare services shall contribute to avoid or reduce discrimination both the UN CRC Committee on its concluding Observation to the joint 3rd and 4th Periodic Report (CRC/C/DEU/CO/3-4) and reports from the Federal government¹³⁶ portray that discriminatory practices against children are observed.

3. Child protection systems include prevention measures.

Furthermore, the child protection system includes several prevention measures and assigns these prevention measures to the "*Freier Träger*" (see above).

4. Families are supported in their role as primary caregiver.

In line with the 10 Principles families are supported in their role as primary caregivers and have a duty to under the GG in which it is stated that the institution family is under special protection of the State and that parents have a natural right and a primary duty to provide educate and take care of their children.

5. Societies are aware and supportive of the child's right to freedom from all forms of violence.

In accordance with the BGB the Article 1631 guarantee children have the right to a nonviolent upbringing. Physical punishment, psychological injuries and other degrading measures are considered inadmissible. There is no specific mention to societies but to those caring for their children. Nonetheless, there is an obligation for those offering activities in which children spend a part of their day or receive accommodation to ensure the child best interest and to protect children against violence (Section 8b) SGB VIII).

¹³³ During the period of the initial registration facility children of asylum seekers are not able to attend child day care facilities (which are under the auspices of the Youth Welfare Office (*Jugendamt*) and are one of the offers of help to children)

¹³⁴ Kress/Oldemeier 2015, Munich

¹³⁵ Section 42 and section 8a SGB VIII

¹³⁶ For example, the 15th Child and Youth Report - Report on the living conditions of young people and the benefits of child and youth services in Germany. The report is available under the [link](#)

6. Child protection systems ensure adequate care

The child under the child protection system is supported and protected but the fact that there are a lot of actors involved in the child protection system and the fact that the child protection system is multiple and separated amongst the sixteen *Länder* makes it difficult to demonstrate the adequacy of the measures implemented or if the reporting mechanisms are in place.

7. Child protection systems have transnational and cross-border mechanisms in place.

The same as under Principle 6 applies to Principle 7

8. The child has support and protection

The child has support and protection especially when the Youth Welfare Office (*Jugendamt*) is obliged to take action under Section 8a and 42 SGB VIII.

9. Training on identification of risks

In terms of training of professionals, the text of the law describes that the providers of the Youth Welfare Office (*Jugendamt*) shall deliver training and practical advice to the staff of the Youth Office and the State Youth Office. The legislative justification for the training delivery is based on the fact that "persons entrusted with youth welfare tasks should be sufficiently informed and able to use effective methods to gain new insights and developments in their field. The legal protection of training and practical advice therefore serves to strengthen the professionalism of youth welfare". The provision is designed as a "must" rule, however, it does not contain any explicit provision on the scope of the offer of training and practical advice¹³⁷. There is not one central institution providing training related to the identification of risks in the framework of child protection. As explained above there are a multiplicity of actors playing a role at the Youth Welfare system and this is portrayed also in terms of the offers of training. However, the Child Protection Centers (*Kinderschutz zentren*) offer different training possibilities for professionals¹³⁸. We will focus on the region of Hessen and will give examples of trainings offered generally to professionals working with children. One example was the training on child protection with a focus on prevention of sexual violence for experienced professionals (*Vertiefungsseminar Kinderschutz mit dem Schwerpunkt Prävention von sexueller Gewalt für Insoweit erfahrene Fachkräfte*¹³⁹) which also draw attention to the assessment of risks. Other trainings were organized by Child Protection League^{140 141}.

10. There are safe, well-publicised, confidential and accessible reporting mechanisms in place

Finally, the reporting mechanisms are confidential as there are several legal recommendations in terms of data protection. For example, the Youth Welfare Office (*Jugendamt*) must observe the data protection laws when collecting information for the assessment of risk of the child endangerment under Section 8a SGB VIII. Due to the principle of data protection law, the information is to be collected by the person concerned (Section 62 (2) sentence 1 SGB VIII)¹⁴². Due to the data protection requirement principle, only the information necessary for the estimation of the risk of danger may be collected¹⁴³. Nonetheless, there is no independent report which evaluates the safety, confidentiality nor the accessibility of the reporting mechanisms of child protection.

¹³⁷ BeckOGK/Jox, 1.12.2017, SGB VIII § 72 Rn. 21-25

¹³⁸ See the Homepage of the Child Protection Centers under the [link](#).

¹³⁹ Description of the training can be found online under the [link](#)

¹⁴⁰ The 2016 yearly report states that in 2016 the organisation organised 12 trainings of professionals working in early child care in which 162 professionals participated. The report can be found online under the [link](#)

¹⁴¹ In the region of North Rhine Westphalia the Institut für Sozialpädagogische Forschung Mainz gGmbH: offers a certificate for professionals working in the child protection system. Details can be found under the [link](#)

¹⁴² See also Section 62 (3) SGB VIII for further information on data protection

¹⁴³ BeckOK SozR/Winkler, 47. Ed. 1.12.2017, SGB VIII § 8a Rn. 10-16

3. GOOD PRACTICE EXAMPLES

The national legal framework allows national, regional and local authorities to outsource child protection services to the private sector and/or to subcontract private actors including civil society organisations, as so, there are a multiplicity of actors and good practice examples which could be identified. We will make a division of the examples between those with impact on a national level and those whose impact is predicted on a *Länder* level. It shall be noted though, that none of the below examples follow in its plenitude the Lundy model of child participation and in some cases only one or two stages of the model are achieved.

On a national level:

Nummer gegen Kummer

Is an umbrella organisation of the largest free telephone counselling service for children, adolescents and parents throughout Germany. The association's goal is to be a conversation partner for all children and adolescents, their parents and other educators. Children can find support via telephone (from Monday to Saturday between 2 pm and 8 pm) or e-mail¹⁴⁴. If it is necessary, the child can receive information about local support structures which can be of help for the child. In particular in Hessen there are six locations of the child and youth telephone (*Kinder- und Jugendtelefon*) and three locations of the parent telephone (*ElternTelefon*). These are partly sponsored by *Freier Träger*. Alone in the region of Hesse in 2016 there were over 40,000 calls taken¹⁴⁵. It shall be highlighted here that in Wiesbaden and Giessen there is an additional peer counselling service "Young people advise young people" (in German „Jugendliche beraten Jugendliche“).

Kinderschutzzentrum - Child Protection Center

In Germany there are also twenty-eight Child Protection Centers¹⁴⁶, whose main task is to serve as counselling centers for families affected by violence problems (including child maltreatment, child neglect and sexual abuse). The goal of these Child Protection Centres is to reduce and prevent violence against children, child maltreatment, child neglect and sexual abuse.

Kein Raum für Missbrauch - No Room for Abuse

„No Room for Abuse“ is an initiative of the Independent Commissioner of the Federal Government on issues of child sexual abuse (Unabhängigen Beauftragten der Bundesregierung für Fragen des sexuellen Kindesmissbrauchs). The aim is to prevent abuse in places where children and adolescents are spending their time. Furthermore, it intends to put children into contact with persons working in these settings to when they are in need of help. The project develops and implements protection concepts against sexual violence at institutions and organizations such as schools, kindergartens, homes, sports clubs, clinics etc¹⁴⁷.

„Trau dich!“ – Just Dare

The goal of the "Nationwide Child Sexual Abuse Prevention Initiative - Just Dare!" (in German "Bundesweiten Initiative zur Prävention des sexuellen Kindesmissbrauchs „Trau dich!“) is to empower and promote children in a positive overall education concept. The initiative is based on the UN Convention on the Rights of the Child and on a comprehensive concept of sex education. Meaning that it emphasizes the rights of children to protection against violence, abuse and exploitation, physical integrity and dignity, and their right to security, support and help. Children are encouraged to seek help and provided with information about to seek help independently if necessary. Another component of the initiative is to increase the knowledge and competence of parents and educational staff in schools on sexual abuse as well as in dealing with concrete cases of abuse. The focus of the programme lies on the following goals: 1. Educate and inform children, involving parents and educational and

¹⁴⁴ The call is free of charge and anonym

¹⁴⁵ See report available under the [link](#)

¹⁴⁶ Stand on 01.02.2018. For a mapping of the centres check the [link](#)

¹⁴⁷ Information on the project can be found online under the [link](#)

psychological professionals 2. Announce counselling and help support 3. Train educational professionals and develop prevention strategies at the institutional level 4. Create awareness raising of the overall issue in the society¹⁴⁸.

On the Länder level

Land Hesse

Independent Ombudsman for the Rights of the Child and Adolescents in Hesse (*Ombudstelle für Kinder und Jugendrechte in Hessen*).

The independent Ombudsman for the Rights of the Child and Adolescents in Hessen support children (under 18) if they have difficulties with / in Youth Welfare institutions, guardians, authorities, parents and foster parents. It works as an advisory office which supplies fast and unbureaucratic advice, information and support - absolutely independent and free of charge for children. In addition to counselling and mediation, it is the task of the ombudsman to actively promote children and youth rights and to strengthen the interests of young people. The Ombudsman's Office also contributes to prevention and child protection through its information task¹⁴⁹.

Frankfurter Kinderbüro

This children's office was established as a municipal advocacy group for children living in Frankfurt. The children's office offers the children a platform which represents children's rights as a cross-cutting task. The children's office is partisan for children.¹⁵⁰

"Ben sagt nein!" "Lena sagt nein!" ("Ben says no!" ; "Lena says no!")

This project strengthens the children's self-confidence and encourages them to express their wishes and demands as well as to fight to obtain what they want. The project demonstrates difficult everyday situations as well as highpoints the issue of protection against sexual violence. The aim of the project is to make it clear to the children that there are people who listen to them, take them seriously in their perception of the feelings and strengthen their perception¹⁵¹.

MamMut – Mitmachen macht Mut. Gemeinsam gegen Gewalt (MamMut – participation builds courage. Together against violence)

»MamMut – participation builds courage. Together against violence« [»MamMut – Mitmachen macht Mut. Gemeinsam gegen Gewalt«] is an interactive educational program for six- to twelve-year-olds with the goal of preventing violence against women, girls, and boys. It has its roots in Latin America, where it was first implemented in Ecuador in 2012 under the Spanish title "Ruta Participativa." On a children's rights-oriented and thus acceptance-borne and dialog-oriented basis, the university-trained, qualified learning guides supported the boys and girls in questioning their own gender-specific roles and talking about various forms of violence and its consequences. Due to the prevailing inequalities between adults and children in terms of power structures, girls and boys are often not perceived as self-sufficient actors. Only those who perceive themselves as accepted can accept others as equals. Therefore, the educational program focuses on promoting respectful and appreciative dealings with others. A total of 8,200 children in Bolivia, Ecuador, Paraguay, and Peru have participated in MamMut to date and learned to say "No!" to violence. Now girls and boys in Germany will also be given the chance to learn more about (gender- and generation-specific) violence and to process their previous experiences in this regard. Based on the collaboration between the GIZ and the RheinMain University of Applied Sciences, MamMut was first successfully implemented at elementary schools in the Wiesbaden/Mainz area in 2015 by a group of university students¹⁵².

¹⁴⁸ Information on the project can be found under the [link](#)

¹⁴⁹ Further information about the Ombudstelle can be found under the [link](#)

¹⁵⁰ Further information about the Frankfurter Kinderbüro are available [here](#)

¹⁵¹ Further information on the project can be found [here](#)

¹⁵² Further information about the project can be found under the [link](#)

Länder North-Rhine-Westphalia and Saarland

From the Hänsel and Gretel Foundation there are some prevention projects worth mentioning:

ECHT SCHÄTZE! (Real Treasure)

Is a project targeted at day care centers and aims to give tools for educators and parents to empower children and give them prevention tools to suppress violence. The Strong-things-box (Starke-Sachen-Kiste) is tailored to the day-to-day care. It focuses on individual prevention principles. Central to this are self-esteem and the development of a positive self-concept¹⁵³.

ECHT KLASSE!

This is a primary school exhibition targeting primary school children from the 5th and 6th grade to give tools to children on how to recognize and protect themselves from abuse. Girls and boys are informed about sexual assaults in six child-friendly stages, with this, they strengthen the knowledge of their rights and competences. This is a prevention programme which was implemented in the region of North-Rhine-Westphalia, in Saarland and in Karlsruhe.

Notinsel

The Hänsel & Gretel Foundation implemented a child protection project for public spaces and created a sign with the emergency island that offers children safe havens. At 228 locations throughout Germany there are around 19,000 shops carrying the Notinsel symbol on the door which symbolizes that when children get to these spaces "Where you are here, you are safe"¹⁵⁴.

Land Berlin

Echt Fair (A real Fair)

Is a project from BIG e.V. and it is based on an interactive exhibition for the prevention of (domestic) violence for children attending the 5th to 8th grade. The exhibition is divided into six stations on the topics: "Violent", "Controversial", "With Emotion", "Me and You", "Help" and "Rightly". Support and help offers are shown. The exhibition concept of ECHT FAIR refers in this way to a holistic view of causes and effects of violence in schools¹⁵⁵.

Land Brandenburg

From Association Pro Familia we will mention two prevention projects against sexual abuse¹⁵⁶:

Ziggy zeigt Zähne (Ziggy shows her teeth)

The project is aimed at teachers, parents and children from the 3rd and 4th grade primary school and makes a professional contribution to the qualification of educators and parents, to educate, empower and protect children from sexual violence.

Ziggy das Puppenspiel (Ziggy – Puppetry)

Since the beginning of 2016 another prevention programme was developed by Pro Familia Association offering a similar project as above but to parents, teachers and children of lower and middle grades in schools.

¹⁵³ The project was implemented in Karlsruhe, Saarland, Pforzheim, amongst other locations. Further information about the project can be found under the [Link](#)

¹⁵⁴ Information on this project can be found under the [link](#)

¹⁵⁵ Further information can be found under the [link](#)

¹⁵⁶ Information on both projects can be found under the [link](#)

Land Baden-WürttembergGegen Gewalt an Kindern - Gemeinsam für mehr Kinderschutz bei häuslicher Gewalt - Against Violence Against Children - Working Together for More Child Protection in Domestic Violence

The project Against Violence Against Children - Working Together for More Child Protection in Domestic Violence was carried out on a *Länder* level to develop and implement concepts and contents for low-threshold prevention and information services for affected children. The main objective of the project was to inform children affected by domestic violence about child violence and their consequences, and to facilitate access to the help system for them and their relatives and confidants¹⁵⁷.

¹⁵⁷ The project was implemented by the Foundation of the Region Baden-Württemberg Further information can be found under the [link](#)

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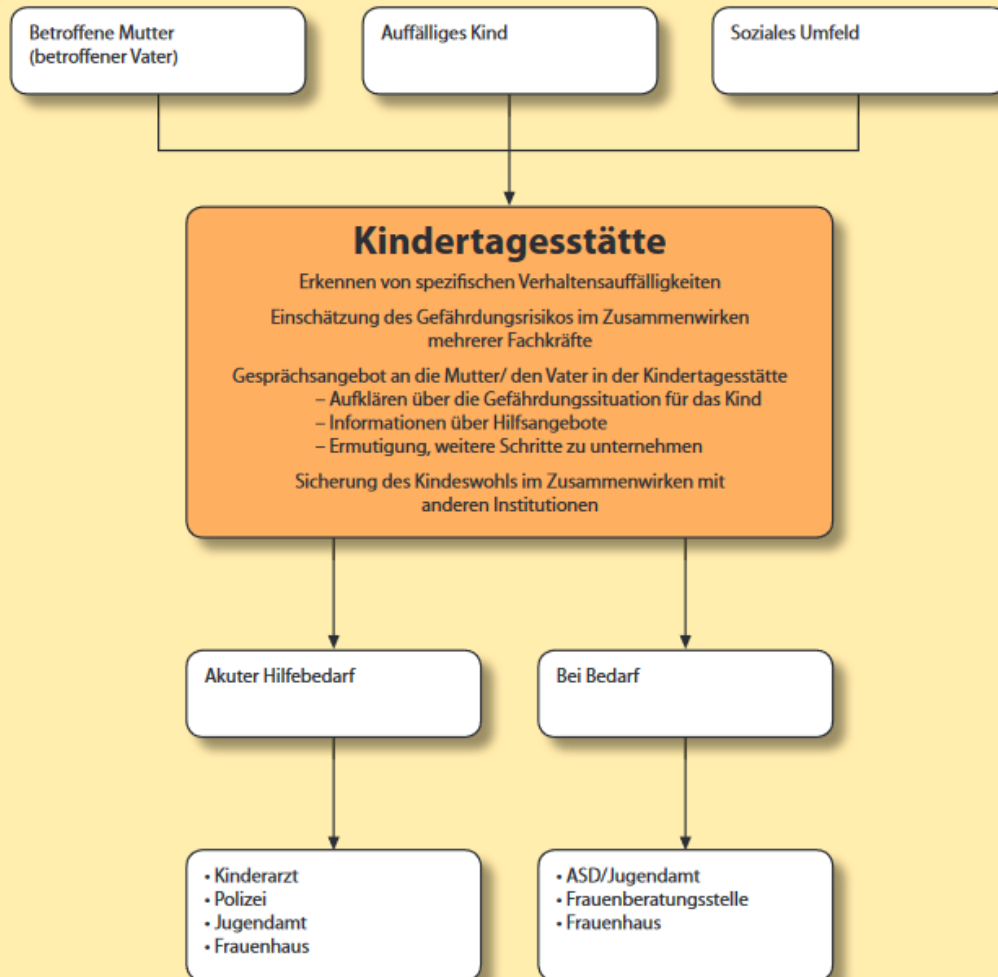
Annex 1

Arbeitsformen	Angebote	Hauptzielgruppen
Familienunterstützende Hilfen	Erziehungsberatung	Eltern mit Kindern aller Altersgruppen
	Sozialpädagogische Familienhilfe	Familien mit jüngeren Kindern
	Soziale Gruppenarbeit	Ältere Kinder und Jugendliche
	Erziehungsbeistände	Ältere Kinder und Jugendliche
Familienergänzende Hilfen	Gemeinsame Wohnformen für Mütter/Väter und Kinder	Alleinerziehende Eltern mit Kindern unter sechs Jahren
	Tagesgruppen	Kinder bis 14 Jahre
	Sozialpädagogische Tagespflege	Kinder im Vor- und Grundschulalter
Familienersetzende/-ergänzende Hilfen	Vollzeitpflege	Insbesondere jüngere Kinder
	Heimerziehung/sonstige Wohnformen	Kinder/Jugendliche/junge Volljährige
	Intensive sozialpädagogische Einzelbetreuung	Jugendliche und Heranwachsende

Familienunterstützende Hilfen	Gruppenorientierte Hilfen	Einzelfallorientierte Hilfen
Vollzeitpflege in Pflegefamilien	Heimerziehung und sonstige betreute Wohnformen	Intensive sozialpädagogische Einzelbetreuung
<ul style="list-style-type: none"> ■ Pflegefamilien ■ Professionelle Pflegefamilien ■ Verwandtenpflege 	<ul style="list-style-type: none"> ■ Erziehungsstellen (professionelle Heimerziehung in Familien) ■ Kinderhäuser ■ Kleingruppen in Heimen (8–10 Kinder) ■ Wohngruppen ■ Erlebnispädagogische Projekte ■ Betreutes Einzelwohnen ■ Flexible Betreuung 	<ul style="list-style-type: none"> ■ Flexible Formen der Betreuung ■ Flexible Einzelbetreuung ■ Betreutes Einzelwohnen

Annex 2

Vorgehensweise der Kindertagesstätten Baunatal bei häuslicher Gewalt



Annex 3

