

Briefing on the German Child Protection System

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During the last decades, discussions and awareness about the rights and well-being of children have increased in Germany. In particular, sexual and physical abuse, as well as neglect, has been widely discussed in public which has led to an increased effort to prevent child maltreatment and promote children's well-being. Nevertheless, the need for intervention by the state was recognised over a century ago in 1900 with the legal definition of the term, "endangerment of the child's wellbeing" (Kindeswohlgefährdung) being written into the German civil code (§ 1666 BGB).

Since then, the legal definition has been subject to many changes, but is still the key concept used in child protection in Germany. 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). According to the general definition of the Federal Court (BGH, English: Federal Supreme Court), 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 (BGH, 1956; Schmid und Meysen 2006). To consider there to be child endangerment three criteria have to be met: weighty grounds to assume current endangerment, significant impact of the endangerment on the child's current or future health and wellbeing and certainty of the prognosis of the impact (Schmid und Meysen 2006). The law does not differentiate what form of child maltreatment causes the danger. Yet, in practice, policy and research the definitions of different types of child maltreatment – sexual, physical and emotional abuse and neglect - are widely used.

The "child protection system" – not explicitly named so in Germany and seldom organised in a special unit – consists of many institutions with a legal obligation to protect children and adolescents from maltreatment and to offer help and support if they have been maltreated. Yet, the main responsibility lies with the child and youth welfare system. The different institutions and their responsibilities in the protection of children and adolescents will be briefly outlined in this paper.

Legislation

Due to the federal structure of Germany, laws regarding child protections are passed on different levels: the federal government level and the state government (Bundesländer) level. The federal law overrides the state law, and sets the overall framework for key legal concerns in the field of child protection, such as intervention in parental rights and data protection. The states have some rights and obligations, e.g. to decide on some organisational structures and procedures. Within each state child and youth welfare services are organised by the municipalities, which decide on the structure and support offered by the local child and youth welfare agencies. There are about 580 Jugendämter in total across all cities and districts that work and support families on a local level.

Jugendamt

The Jugendamt has many responsibilities in the child and youth welfare system which are not directly related to child protection. The obligation of the Jugendamt is to provide services for children and families (§ 2 SGB VIII) which includes support of youth work (§§ 11, 12 SGB VIII), youth social work (§ 13 SGB VIII), educational child and youth protection (§ 14 SGB VIII),¹ general support of childrearing in families (§ 16 SGB VIII), counseling

¹ Provision of support that enables children and adolescents to protect themselves, and parents to protect their children, from threat and dangerous situations.

and support services for parents in certain situations e.g. during divorce, single parenthood (§§ 17, 18 SGB VIII), support of the development of children in day care (§§ 22-25 SGB VIII) and support for childrearing (§ 27-35 SGB VIII) including family support, foster care and residential care. The Jugendämter do not have to provide all these services themselves, they can work together with child and youth welfare organizations, that are supported by the state but run by non-governmental organisations (freie Träger der Kinder- und Jugendhilfe). In regard to child protection the Jugendamt has the following duties and obligations:

- > *Carrying out investigations to determine whether a child is endangered (§ 8a SGB VIII)*
- > *Emergency placement of children and adolescents (Inobhutnahme) (§ 42 SGB VIII)*

A report to the Jugendamt about child endangerment can be made by anybody. The person making a report may also choose to remain anonymous. Children have the legal right to counseling without knowledge of their parents if necessary due to conflict or plight (§ 8 III SGB VIII). Professionals working with children and adolescents, e.g. physicians, kindergarten teacher, have the right to contact a child protection expert (Insoweit erfahrene Fachkraft, § 8a SGB VIII) and share information about the child and family with anonymised names, in order to decide if the child's wellbeing is endangered or in severe cases will report to the Jugendamt immediately. This possibility enables professionals working with children and adolescents to maintain a close relationship and trust which would be likely to deteriorate once a report has been made to the Jugendamt.

Immediately after the report, a first assessment of the risk of child endangerment takes place. During the risk assessment, there are many decisions to be made which might burden a single case worker (Lillig 2006), so it is recommended that the case worker discusses the case with co-workers (§ 8a I SGB VIII). Following consideration of the urgency of the case, different steps may be taken. In severe cases in which there is an immediate danger to the child an emergency placement (German: Inobhutnahme) is arranged, which is considered a short-term and preliminary solution during crisis and also triggers an investigation into child endangerment (German: § 8a SGB VIII Verfahren). In other cases in which the child is not in immediate danger (e.g. hospital stay) but there are weighty grounds to assume child endangerment, there is a further investigation (§ 8a SGB VIII Verfahren). In some cases, there might be no further investigation as

there are not weighty grounds to assume child endangerment. In this case the Jugendamt nevertheless might offer support to the family. There are certain standards required by law for any intervention by the Jugendamt (§ 8a I SGB VIII): 1) parents have to be included in the process, unless their participation might put the child's wellbeing at risk (e.g. if they are perpetrators in cases of child sexual abuse), 2) the investigation has to be carried out by more than one professional, 3) if necessary, the child has to be seen during a home visit, 4) if the Jugendamt considers support services useful for the family, it has to offer these to the family. During the investigation they also might not only talk to the family, but also contact other professionals in contact with the family to gather further information. At the end of an investigation, which does not need to be conducted within a certain time frame by law, it is decided what steps are necessary to prevent future child endangerment and a support plan is devised. Options are discussed with parents, and parents have a right to choose between comparable support measures. If parents are unwilling or unable to cooperate the Jugendamt can call upon the family court to intervene in parental rights (§8a II SGB VIII).

In cases in which there is no further investigation, due to there being no weighty grounds to assume child endangerment, the family might still be offered some support services like counseling, early help programs or support by a social worker. The most common support measures are offered by Freie Träger. In providing help for the child and the family the social worker has to consider help and support from other subsystems of the welfare state, such as social welfare, debt counseling, help to find work, help and support in cases of disability or addiction, help to overcome social hardship, and help to avoid homelessness (Blüml 2006). Furthermore, social workers might work with the family to find help for health or mental health problems.

Freie Träger

As mentioned above, the Jugendamt does not have to provide all the services themselves (§ 4 II SGB VIII) if freie Träger can provide the support. Jugendämter should only take over tasks themselves if provision by the freie Träger is not available. The Jugendämter have to grant funding for services to freie Träger and are responsible for ensuring that the demands of children and families are met (§§ 79, 80 SGB VIII). Freie Träger are non-governmental organisations which are financially supported by the government and in order to be able to provide social services have to meet certain standards.

Which institutions and organisations are recognised as freie Träger is decided upon in the Landesjugendamt of each state (§ 75 SGB VIII). The requirements are the provision of services in child or youth welfare to a professional standard and recognition of the rights of the German Constitution (§ 75 I SGB VIII). Every organization has a right to be recognised as freier Träger after meeting the requirements for at least three years (§ 75 II SGB VIII). Religious groups governed by public law as well as federal welfare service organisations are acknowledged as freie Träger (§ 75 III SGB VIII).

Certified agencies offer various help and support measures in response to child endangerment:

Different types of counseling for parents and/or children and social pedagogical family assistance, as well as different foster care settings. Social pedagogical family assistance was established in the 1960s: Social workers cooperate with the family very closely, visiting them almost every week, providing advice and practical support for the family members (Blüml 2006).

When a child is placed outside the family, there are various options, which should be carefully considered taking into account the age and developmental stage of the child, his or her social network and the possibilities to change the child rearing conditions for the child in the family (§ 33 SGB VIII):

Foster care is one option to place children outside the family. A child can be placed outside the family with the consent of the parents even when the threshold for child endangerment is not met, if it is considered supportive for the child's development. Foster care settings can also be short-term, e.g. a child is placed in a foster family during an emergency placement, or during the absence of the parents (Blüml 2006).

Children's homes or other residential care settings are more often chosen for adolescents (Blüml, 2006). The staff provides support and help for children or adolescents and either prepares them to return to their family, to become the member of a new family, or for independent living (§ 34 SGB VIII).

If parents agree with the placement of their child with a foster family, they remain the legal guardian of their child, but the foster parents are allowed to make decisions in everyday situations (Küfner und

Schönecker 2011). If a child is placed in foster care on a voluntary basis the parents can end the placement at any time, yet the Jugendamt has the obligation to consider if the child is in danger in his or her original family (Küfner und Schönecker 2011).

There are some institutions that are specialised in child protection, like the Kinderschutzzentren or the Deutsche Kinderschutzbund. The Kinderschutzzentren provide counseling and therapy for parents, children and adolescents as well as crisis intervention. In addition, they provide training and workshops for professionals as well as supervision and counseling of professionals working on child protection cases. The agencies normally work very closely with the Jugendamt.

Criminal justice system

In general, reporting of suspected child abuse to the criminal justice system is not required in Germany. In cases where the protection of the child cannot be otherwise ensured, the Jugendamt has the right and obligation to report to the police (§ 8a IV SGB VIII) if this does not interfere with child and youth welfare services being provided (§ 64 II SGB VIII). If weighty grounds to assume child endangerment are reported to the police, they have to investigate the case (§ 152 II STPO; also referred to as the principle of legality). In cases in which the Jugendamt needs data from the police to confirm a suspicion or to assess the extent of a problem, the details of the case should not be revealed (Gerber 2006).

For example, Meysen stated: "The separation between child protection and prosecution is central to the German approach to child maltreatment" (Hagemann et al. 2010, p. 45) and continues: "Child protection is based on the view that for effective protection and assistance, it is vital to win the trust and cooperation of the families whenever possible. Criminal prosecution may impair this relationship, especially if the abuse occurred within the family" (Hagemann et al. 2010, p. 45). Cases in which the Jugendamt will work together with the police are (Gerber 2006): when access to the child or the home is denied in situations of high likelihood of danger to the child; in cases of emergency placement; a (potentially) endangered child goes missing; the child endangerment can only be ended by reporting to the police.

According to binding guidelines for the police (PDV 382, 1997) the Jugendamt has to be notified without delay of a child considered to be in danger or if it has

become evident during police investigations that child and youth welfare services might be required. For example, the police informs the Jugendamt in cases of domestic violence when children are living in the household.

The police may intervene to avert danger to the child, a decision in which the endangerment of the child needs to be balanced with the rights of the parents. Thus, the police will protect the child and enable an emergency placement in cases in which the legal guardians are untraceable, the legal guardians do not want the child back in the household, living in the household endangers the well-being of the child, or the child can give a plausible reason as to why he or she does not want to return to the household (PDV 382, 1997). The police have to inform the Jugendamt, but can act on their own if they cannot reach the Jugendamt (PDV 382, 1997). The legal basis for such police interventions can be found in general provisions to avert danger in the police law of the Bundesländer (Gewaltschutzgesetz).

Family court

Only family courts are allowed to intervene in parental rights (§ 1666 I BGB). Exceptions are made for cases of serious emergency, in which police and the Jugendamt may temporarily ensure protection through emergency placement (§ 8a II SGB VIII). If parents are neither willing nor able to cooperate in cases of child endangerment or disagree with an emergency placement, the Jugendamt must appeal to the family court (§ 8a II SGB VIII) and the family court has to hear the Jugendamt (§ 162 FamFG).

The family court can employ a range of measures to avert child endangerment: It may order the uptake of services offered by child and youth welfare or by health care institutions (implementation order; § 1666 III (1) BGB) or a prohibition against a family member, either temporary or for an indefinite time, to enter the family home or any other dwelling, to go within a certain radius of the home or to visit other places where the child usually spends time (§ 1666 III (3) BGB). The court may also impose restraining orders and prohibit abusers from contacting the child (§ 1666 III (4) BGB). Finally, the court may additionally make legal declarations in lieu of the parental custodian, or suspend or withdraw child custody in part or completely (§ 1666 III (5) (6) BGB).

Suspending only the parent's right to decide on the child's residence is a frequent instrument of enforcing protection measures. If parental custody

is withdrawn wholly or in part, the court appoints a guardian or curator who decides on the appropriate support for the child or adolescent.

The court has an obligation to act in accordance with the principle of proportionality (§1666a BGB). There are some regulations regarding the court proceedings (e.g. there must be a hearing with the child, if he/she is above the age of three), that specify that the parents and also the Jugendamt have to be heard, or that the court has the possibility to appoint an expert witness to answer some questions relating to evidence. In cases of immediate danger to the life or health of the child the family court does not need to hear the family members, but has to hear them as soon as possible in a main hearing (Haase 2006).

A measure to avert a danger to the child's best interests must be terminated by the court if the child's best interest is no longer in danger or the measure is no longer necessary (§ 1696 II BGB; § 166 I FamFG). These decisions are not final and may be amended at any time. The family court has to review the decision ex officio (§ 166 II FamFG), for example on the suggestion or formal application of the parents or any other person affected by the court order.

Health system

The health care system is involved in child protection in terms of detection of child endangerment and treatment of maltreated children and adolescents, as well as parents, with mental health problems. Early help programs in Germany often rely on the fact that families with infants are frequently seen by health care professionals and thus low threshold prevention measures can be delivered or facilitated by professionals who the parents already trust. Help for maltreated children such as psychotherapy in inpatient and outpatient settings is also provided by health care professionals. Yet, in some regions there are not sufficient therapists resulting in long waiting lists.

The cooperation between the health system and the child and youth welfare system as well as possible difficulties, such as different definitions of child endangerment and work practices, insufficient role clarity and high expectation of other professionals, misconception about data privacy and insufficient resources for networking and communication, are frequently discussed (Koch 2006; Fegert 2013-2014).

Educational System

Teachers can report child endangerment to the Jugendamt and also have, as do health care professionals, the right to be counseled by a child protection expert (§ 8a SGB VIII). Professionals from the educational system are frequently contacted by the social workers of the Jugendamt during an investigation, as they have contact with the child almost every day.

also includes the provision of early help and even measures which support the well-being and participation of children in general.

In sum, the strength as well as the weakness of the German child protection system, is the individuality of Jugendämter within the self-governed municipalities and districts as well as the principle of subsidiarity with respect to the provision of services, resulting in a diversity of services and policy approaches on a local level. On the plus side, this leads to flexible service provision based on the socio-demographic structure of the region that incorporates existing traditions. On the negative side, changes in the child protection system might take more time to reach the practice level and it might be confusing for other professionals and families as services as they vary between sites.

Conclusion

The structures and responsibilities described in this policy briefing are a short description of the main actors in the field of child protection, if it is defined in a narrow sense. However, in politics, practice, and research the term child protection in Germany often

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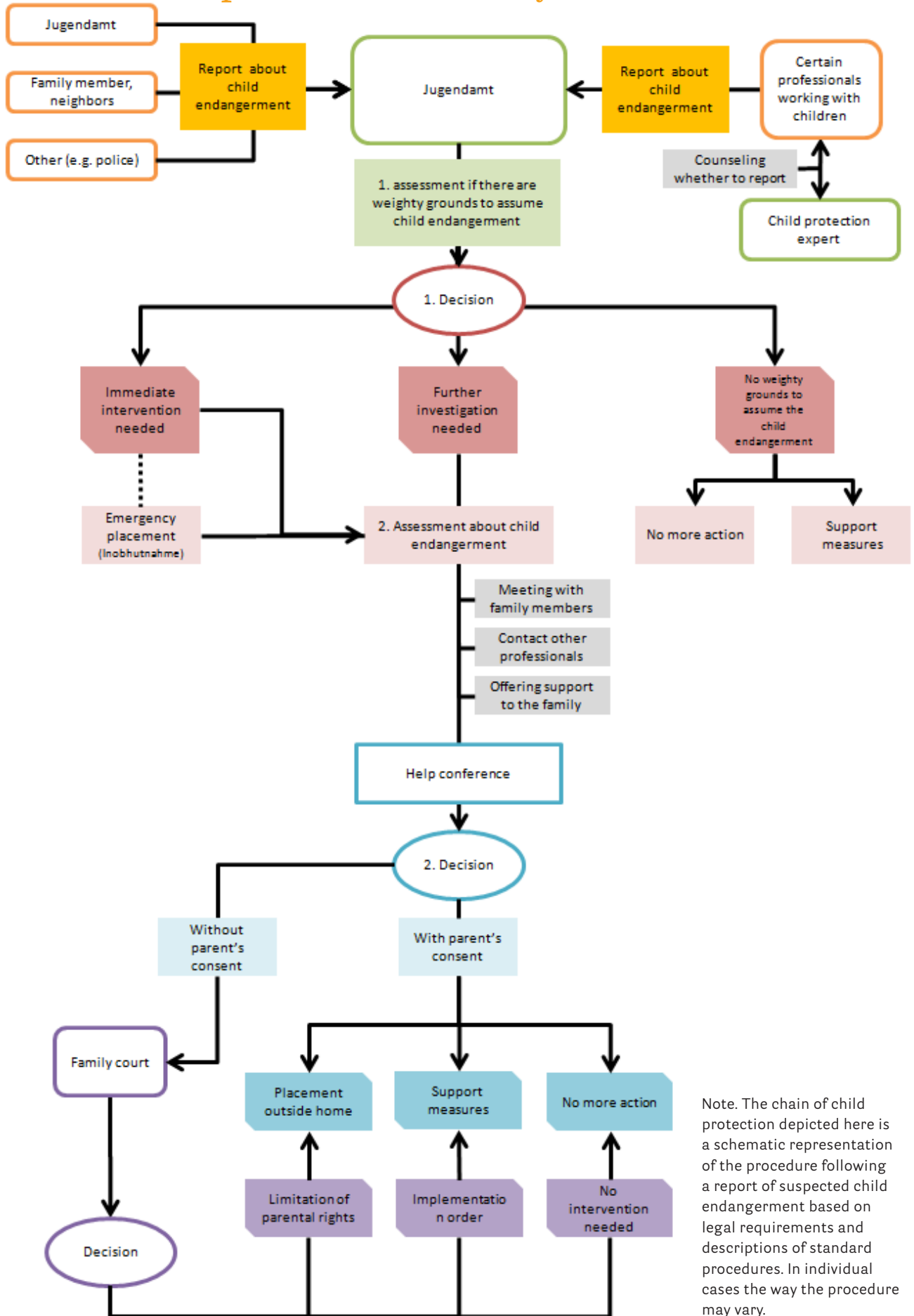
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Chain of child protection in Germany



Note. The chain of child protection depicted here is a schematic representation of the procedure following a report of suspected child endangerment based on legal requirements and descriptions of standard procedures. In individual cases the way the procedure may vary.

