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0 SUMMARY

As the percentage of addicts and users of illicit drugs in German correctional institutions cannot be precisely quantified, the number of persons incarcerated as a result of violations of the German Narcotic Drugs Act (Betäubungsmittelgesetz, BtMG) is frequently used as an approximation, even though this estimate must be seen as highly imprecise. As of 31 March 2017, there were a total of 6,506 persons (12.6 % of all inmates) serving time in prison institutions as a result of violations of the BtMG. 12.8 % (388) of imprisoned women and 4.5 % (175) of imprisoned adolescents were serving sentences due to crimes in violation of the BtMG. The proportion of all inmates imprisoned for BtMG offences has been on a downward trend since 2007 both among adults as well as among adolescents and young adults. In 2017, the proportion remained unchanged compared to 2016 (Table 2). From 2007 to 2016, the total number of all inmates increased by 19.95 % whilst the number of inmates serving sentences due to BtMG offences decreased by 32.08 % (Destatis, 2017).

The legislative administration of the penal system in Germany was passed to the *Laender* in 2006. Since then, a separate Prison Act (Strafvollzugsgesetz, StVollzG) has been issued for each *Land*. The absence of binding, nationwide guidelines in the area of drug-related healthcare in detention facilities also leads to differences in the type and availability of treatment services in the *Laender*. The laws in ten *Laender* (Berlin, Brandenburg, Bremen, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia) are based on a template for a uniform Prison Act. Nevertheless, the original Geman Prison Act has not been completely replaced and is still in force for certain aspects of the law. This includes garnishment protection, court remedies as well as the legislative authority for the enforcement of imprisonment for contempt of court, preventive detention and coercive detention for non-compliance with court orders or non-payment of fines (Körner et al., in press).

There is a general obligation under the prison acts of the individual *Laender* to care for the physical and mental health of prisoners. In addition to this, prisoners have a "right to medical treatment, where it is necessary to diagnose or cure a disease, prevent it from deteriorating or alleviate its symptoms". In the StVollzG and in the prison acts of the *Laender*, there are no special statements regarding drugs, substitution or addiction. In particular the principle of equivalence forms the basis of medical care.

On World Drug Day 2017, the German Centre for Addiction Issues (Deutsche Hauptstelle für Suchtfragen e.V., DHS) called for improved medical treatment for imprisoned drug users. In view of the frequently accompanying psychological and physical problems of addicts in prison, there needs to be nationwide access to substitution programmes and a reduction of health risks should be promoted through syringe exchange programmes. Currently the only syringe exchange programme is in the women's prison in Berlin. A right to appropriate medical treatment and healthcare should be recognised and support in the transition as well as a linking of addiction support and offender support services should be guaranteed. Additionally, the DHS calls for the participation of inmates suffering from addiction in internal

prison services (school, training, exercise) which require special privileges and which addicts are often excluded from.

In order to reduce the number of fatal overdoses amongst opiate users following their release from prison, in August 2016 the German Aids Service Organisation (Deutsche Aidshilfe, DAH), in collaboration with Fixpunkt e.V., launched a naloxone dispensing pilot project in which prisoners with current or past opiate use, as well as prisoners currently in substitution, were to be offered training on the effects of drugs and first aid in the form of information sessions (Dettmer and Knorr, 2016). However, this project has as yet not been able to be successfully implemented and will not be pursued for the time being.

Since 2008, the Statistical Report on Substance Abuse Treatment in Germany (DSHS) has been producing a series of tables on external outpatient counselling in prisons, which is not yet available for the reporting year due to a change in the core data set. From the next reporting cycle onwards, external and internal counselling and treatment services in prison will be presented together in a series of tables.

1 NATIONAL PROFILE

1.1 Organisation

1.1.1 Prison services

According to the provisions of the German Prison Rules of Procedure (Vollzugsgeschäftsordnung, VGO, No. 73), a monthly report must be produced by the correctional institutions, containing information about inmates incarcerated at the end of the reporting month as well as on admissions and releases during the reporting month. The German Federal Statistical Office (Statistisches Bundesamt, Destatis) prepares overviews for Germany from those reports, which are aggregated to produce results on a *Land* basis, for three selected calendar months (March, August and November) and publishes them on the internet.[1] The overviews cover the correctional facilities of the *Laender*. Secure psychiatric facilities and youth detention facilities are not included.

According to the annual Destatis report, there were 51,643 inmates in preventive custody or serving time in correctional institutions on 31 March 2017. Of those, 5.9 % (3,034) were women and 30.4 % (15,522) were persons without German citizenship. 71.4 % (36,422) were single, 15.5 % (7,887) married, 1.2 % (627) widowed and 13 % (6,662) divorced. 16.2 % (8,273) of inmates were in an open prison. 0.5 % (230) of those imprisoned under general criminal law were between 18 and 21 years old, 24.8 % (12,650) were between 21 and 29, 33.8 % (17,279) were between 30 and 39 and 33.4 % (17,043) were aged 40 and over.

66.7 % (34,038) of inmates in prison or preventive custody were serving a sentence of up to 2 years, 30.6 % (15,621) had a sentence of over 2 and up to 15 years and 3.6 % of inmates (1,831) were serving a life sentence (Destatis, 2017).

An overview of the number of correctional institutions, their capacity and actual population as of 30 November of each year in the individual *Laender*, is shown in Table 1. According to that data, there were 180 organisationally independent institutions in Germany in 2017 with a total capacity of around 73,603 inmates and which, at 64,351 inmates, were at 87 % capacity at the time of the survey (Destatis, 2018).

[1] Available online at: https://www.destatis.de/EN/FactsFigures/SocietyState/Justice/Justice.html#Tabellen [Accessed: 18 Jun. 2018].

Table 1 Number of institutions and capacity as at 30 November each year

Year	Number of institutions				
	Total	Open prison	Total capacity	Population	Population[1]
2003	205	22	78,753	79,153	101%
2004	202	21	79,209	79,452	100%
2005	199	20	79,687	78,664	99%
2006	195	19	79,960	76,629	96%
2007	195	19	80,708	72,656	90%
2008	193	18	79,713	72,259	91%
2009	194	17	78,921	70,817	90%
2010	188	16	77,944	69,385	89%
2011	186	15	78,529	68,099	87%
2012	186	15	77,498	65,902	85%
2013	185	14	76,556	62,632	82%
2014	184	13	75,793	61,872	82%
2015	183	13	73,916	61,737	84%
2016	182	14	73,627	62,865	85%
2017	180	13	73,603	64,351	87%

(Destatis, 2017)

1) Population as % of total capacity

In spite of the reduced number of correctional facilities in recent years, the situation regarding the available capacity has improved, remaining below 90 % on average since 2010. Nevertheless, care should be taken when evaluating the data, as the capacity situation is presented without distinguishing between type of prison. In Rhineland-Palatinate, for example, there are serious differences in the capacity situation in closed and open male prisons (102.33 % capacity and 54.62 % capacity respectively).

Whereas at the beginning of the 2000s, prisons were still operating beyond their capacity, there is, despite a reduction in total number of prisons available, a maximum capacity utilisation of 75-95 % in most *Laender* today (with the exception of Baden-Württemberg, now at 98 %). A notable increase in capacity utilisation compared to 2016 has been seen in Bremen (from 84 % to 95 %), Brandenburg (70 % to 81 %) and Schleswig-Holstein (72 % to 83 %). Overall, capacity utilisation has increased in ten *Laender* in comparison to last year, while there has been no change in three *Laender* (Rhineland-Palatinate, Berlin and Lower Saxony). In contrast, a decline was recorded in Mecklenburg-Western Pomerania (76 % to 75 %), Saarland (81 % to 78 %) and Saxony-Anhalt (85 % to 80 %). Nevertheless there

remain significant differences in capacity utilisation between types of prison in these *Laender* also.

1.2 Drug use and related problems among prisoners

1.2.1 Prevalence of drug use

As the percentage of addicts and users of illicit drugs in German correctional institutions cannot currently be precisely quantified, the number of persons incarcerated as a result of violations of the BtMG is frequently used as an approximation. This estimate is imprecise, however, since it counts people who, although they have violated the law in connection with drugs, do not consume any illicit substances themselves, as can be the case, for example, with some dealers. On the other side, a large proportion of drug users are not taken into account because, for example, persons who have been sentenced for economic compulsive crimes are listed in the statistics under other categories and not under violations of the BtMG. The figure ascertained in this way thus represent merely an approximation.

As of 31 March 2017, there were a total of 6,506 persons (12.6 % of all inmates) serving time in prison institutions as a result of violations of the BtMG. 12.8 % (388) of imprisoned women and 4.5 % (175) of imprisoned adolescents were serving sentences due to offences in breach of the BtMG. Inmates imprisoned for BtMG offences as a proportion of all inmates has been generally falling since 2007, both among adults as well as among adolescents and young adults and remained constant in 2017 compared to 2016 (Table 2). From 2007 to 2016, the total number of all inmates increased by 19.95 % whilst the number of inmates serving sentences due to BtMG offences decreased by 32.08 % (Destatis, 2017).

Table 2 Imprisoned persons and narcotics offences

		Prisoners and persons in preventive custody			Custodial sentences f. adults		Juvenile punishments		Preventive custody
		Total	Males	Females	Males	Females	Males	Females	
2008	Inmates N	62,348	59,048	3,300	52,308	3,035	6,293	264	448
	BtMG N	9,540	8,939	601	8,517	575	419	26	3
	BtMG %	15.3	15.1	18.2	16.3	18.9	6.7	9.8	0.7
2009	BtMG %	15.0	14.9	16.5	16.2	17.0	5.1	10.5	0.4
2010	BtMG %	14.6	14.5	16.2	15.8	16.7	5.0	10.2	0.2
2011	BtMG %	14.7	14.7	15.4	16.0	15.8	4.6	10.7	0.2
2012	BtMG %	14.0	13.9	15.9	15.2	16.5	3.6	7.5	0.2
2013	BtMG %	13.4	13.3	14.9	14.5	15.3	3.4	7.6	0.0
2014	BtMG %	13.1	13.0	14.3	14.2	14.9	3.2	4.4	0.2
2015	BtMG %	13.0	13.0	13.4	14.1	13.8	3.4	4.3	0.4
2016	BtMG %	12,6	12,6	12,2	13,6	12,6	3,9	3,5	0,2
2017	Inmates N	51,643	48,609	3,034	44,303	2,890	3,746	143	561
	BtMG N	6,506	6,118	388	5,946	384	171	4	1
	BtMG %	12.6	12.6	12.8	13.4	13.3	4.6	2.8	0.2

(Destatis, 2018)

Note: "BtMG N": Number of persons imprisoned due to offences in breach of the BtMG, "BtMG%": Proportion of persons imprisoned due to offences in breach of the BtMG.

1.2.2 Drug related problems among the prison population

No additional information is available on this.

1.2.3 Drug supply in prison

Members of *Laender* parliaments often ask questions about substances found or general questions on drug dealing in prisons. The answers to such questions are then published in the official journals.[2]

A qualitative study on the perceptions of people with first hand experience and experts from the judicial system and law enforcement on the illicit drug market in German correctional

[2] The parliamentary questions from the *Land* of Berlin can be Accessed here, for example: https://www.berlin.de/justizvollzug/aktuelles/parlamentarische-anfragen/suche/ [Accessed: 23 Aug. 2018].

institutions examined the stated motivations for drug trafficking in prison as well as how it is carried out in German prisons. From that study it is clear that drug trafficking in prison has similarities to drug trafficking outside prison: both have a self-organised, small market, which serves mainly to finance personal use. At the same time however, a proportion of the market is very hierarchically structured and has the primary objective of maximising profits. The most commonly stated motives of profit and own use have already been mentioned. It is clear that the various motivations which can underlying drug trafficking in prison are very diverse. For example, it was observed among female respondents in particular that their own dependence was not stated as the motivation, but that of their partner. In order to ensure the partner's supply in prison, a frequently stated practice is vaginal or anal insertion of packaged drugs in order to smuggle them into the respective prison. Especially in the interviews with the experts, it was not only the inmates' partners who were detected as possible smugglers: in some cases, it was stated that prison officials were involved. There are also indications of gender-specific differences in the supply of drugs: according to respondents, there are fewer organised structures for drug trafficking in women's prisons. Instead, drugs which are already available are shared and this develops temporary friendships. The desire for consumption is stated as the underlying motive. The frequently mentioned motivation for supplying and dealing in drugs in men’s prisons for supplying and trafficking drugs, power and profit, play a subordinate role here. (Meier and Bögelein, 2017)

In the area of new psychoactive substances it is now known that smuggling predominantly takes place using paper, which NPS have been poured over and dried (Patzak, 2018a).

1.3 Drug-related health responses in prisons

Irrespective of statutory regulations, several key measures are listed below, that are carried out in many correctional institutions:

- The medically supervised care/detoxification of intoxicated inmates and the treatment of addiction-related illnesses is performed by the medical departments of the respective prisons or inpatient in separate prison hospitals.
- Existing substitution treatments are, where needed, continued in the correctional institutions by addiction professionals and where applicable supported by psychosocial care.
- Where needed, substitution treatments are introduced in prisons and where applicable supported by psychosocial care.
- Prior to release from prison, inmates receiving substitution treatment see a substitution doctor, who continues the substitution treatment following their release.
- In many German correctional institutions, various addiction support agencies are active in providing counselling and support for inmates with addiction problems and in preparing the transition to external inpatient and outpatient addiction withdrawal treatments. Some *Laender* have their own addiction counsellors in the correctional institutions.

- In some German correctional institutions, groups are offered by way of preparation for external inpatient and outpatient addiction withdrawal treatments.
- In some German correctional institutions, separate areas have been set up for inmates who already have a desire to achieve abstinence or to encourage such a desire. This is then accompanied by abstinence control programmes using urine or saliva testing.
- In some German correctional institutions, measures for abstinence control (urine or saliva testing) are carried out in order to be able to assess inmates' drug use.
- In some German correctional institutions, education and prevention measures are provided for drug-using inmates, in particular on the topic of infection protection.

1.3.1 National policy or drug strategy

Legal framework conditions

Since 2006, all German *Laender* have gradually introduced their own prison acts. These regulate "the execution of custodial sentences in correctional institutions and measures of rehabilitation and prevention involving imprisonment" (Sec. 1 StVollzG). Since the reform of the federal system which was passed by the German Bundestag on 30 June 2006 and came into force on 1 September 2006, legislative power has been devolved from the Federal Government to the *Laender*. The StVollzG has been gradually been replaced in part by the respective prison acts and administrative regulations in the Länder (Sec. 125a German Constitution (Grundgesetz, GG)). As described above, the StVollzG continues to apply for special types of imprisonment. All German *Laender* now have their own prison acts. The *Laender* laws are, however, largely based on the national StVollzG and mostly differ only in terms of individual details. For example, the type and scope of the provision of services in the area of healthcare in the *Laender* are based on the German Code of Social Law, Volume 5, (Sozialgesetzbuch V, SGB V).

Healthcare for inmates is governed by a different section depending on the *Land* prison act. This is described below using the example of the Bavarian StVollzG. As a general rule, there is an obligation to care for the physical and mental health of prisoners (Sec. 58 Bavarian Prison Act, BayStVollzG). In addition to this, prisoners have a "right to medical treatment, where it is necessary to diagnose or cure a disease, prevent it from deteriorating or alleviate its symptoms". This means, amongst other things, treatment by a doctor and the supply of pharmaceuticals, dressings, medicines and medical aids (Sec. 60 BayStVollzG). The provisions of SGB V apply in respect of the type and scope of services (Sec. 61 BayStVollzG). There are no special remarks in the individual prison acts regarding drugs, substitution or addiction. Inmates' medical care is paid for by the ministries of justice of the *Laender*. In the case of work related accidents, the statutory health insurance providers or the respective *Land* accident insurance scheme assumes the costs (Bundesministerium der Justiz, 2009).

Although the *Laender* laws scarcely differ from the StVollzG or from each other, there are nevertheless subtle differences. The Hessian prison law stipulates a right on the part of inmates to psychological or psychotherapeutic treatment or care (Sec. 26 (2) Hessian Prison Act, Hessisches Strafvollzugsgesetz, HStVollzG). In addition, in Lower Saxony, Berlin, Hesse and Baden-Württemberg preventive measures are explicitly mentioned. In Lower Saxony, the right of prisoners to vaccinations (Sec. 57 (1) Lower Saxony Prison Act, Niedersächsisches Justizvollzugsgesetz, NJVollzG) is codified in law. In Hesse and Baden-Württemberg, the need to educate inmates about a healthy lifestyle is also set down in law (Sec. 23 (1) HStVollzG and Sec. 32 (1) Prison Code for Baden-Württemberg, JVollzGB). The prison acts of Hesse and Baden-Württemberg state in addition that it is possible to use controls to combat abuse of addictive substances (Sec. 4 HStVollzG and Sec. 64 JVollzGB).

In a comprehensive analysis by the Associations of Addiction Professionals for 2009, it was shown that for a large number of rehabilitation patients in addiction treatment who have been released from prison (39 % alcohol and 77 % drugs), no health insurance was in place at the beginning of the treatment and that this could only be obtained in some cases after several weeks (Drogen- und Suchtrat, 2013)). To solve this problem, clarification is needed as early and as unbureaucratically as possible as to which institution is responsible in terms of the point in the process, the geographical area and the specialist competence (job centres, health insurance providers). That can only be achieved if respective requests or applications are made prior to the end of the prison sentence. In preparing for outpatient or inpatient rehabilitation measures, the assumption of costs must always be clarified by the pension insurance funds, the health insurance which is suspended during imprisonment, or the job centre. No rehabilitation can be offered without this clarification. Re-entry into the health insurance system must be arranged as an essential task of transition management, and the health insurance providers are urged to issue a resumption confirmation and thus ensure a smooth passage to medical care for people released from prison.

Other interventions in the criminal justice system

There is the possibility at all levels of criminal proceedings, to cease proceedings under certain conditions. In many cases, a few hours of community service is the first response of authorities in dealing with problem behaviour in connection with drugs. In order to reduce drug crime as well as economic compulsive crime, many cities have created the legal possibility of issuing banning orders or dispersal orders to drug addicts for particular locations in order to counteract the emergence of open drug scenes.

At public prosecutor level, there is the possibility under the German Youth Courts Act (Jugendgerichtsgesetz, JGG, Sec. 45 and Sec. 47) to refrain from prosecuting crimes committed by adolescents and young adults, who could fall under criminal law relating to young offenders, or to discontinue proceedings. In these cases, instead of prosecution, sanctions are frequently applied, such as participation in the "Early Intervention in First-Offence Drug Consumers – FreD" (Frühintervention bei erstauffälligen Drogenkonsumenten,

see also 1.3.1). This is usually the case with respect to BtMG offences where they involve only small quantities of illicit drugs.

Under adult criminal law there is also the possibility of ceasing or refrain from prosecution or bringing of action by the public prosecutor. The corresponding provisions are set out in Sec. 153 - 154a German Code of Criminal Procedure (Strafprozessordnung, StPO).

The BtMG allows the cessation of proceedings in cases involving minor guilt as well as a lack of public interest in prosecution (Sec. 31a BtMG). This primarily concerns offences in connection with personal consumption, in particular when they occur for the first time and no third parties are involved. The application of these regulations differs from region to region, as shown by a study carried out by Schäfer and Paoli (Schäfer und Paoli, 2006). As far as the prosecution of consumption-related offences involving cannabis is concerned, there has been a trend towards increasing changes to the definitions of threshold values for determining the "small quantity" by the *Laender*, in line with the requirements issued by the German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG). Most recently, Thuringia raised the threshold to 10g. Most other *Laender* thresholds remain at 6g, with Berlin already traditionally at 15g. Further details can be found in the Legal Framework workbook, section 1.1.2.

In nearly all *Laender*, local prevention projects, such as the widespread FreD programme, are used as a way of avoiding a court case or prison. The programme is aimed at 14 to 18-year-olds but also at young adults up to 25 years old who have come to the attention of the police due to illicit drug use for the first time (for a more detailed description of the FreD programme, see Dammer et al. 2018).

Alternatives to prison sentences

Under Sec. 63 and Sec. 64 of the German Criminal Code (Strafgesetzbuch, StGB), it is possible under certain circumstances to place mentally ill or addicted offenders under a hospital treatment order in secure psychiatric units.

Moreover, it is possible to defer the execution of a prison sentence of up to two years following pronouncement of the sentence if the drug addict verifiably undergoes outpatient or inpatient addiction treatment ("treatment not punishment", Sec. 35 BtMG).

The study, funded by the German Federal Ministry of Health (Bundesministerium für Gesundheit, BMG), entitled "Medical rehabilitation of drug addicts under Sec. 35 BtMG, ("treatment not punishment"): Effectiveness and Trends" was conducted up to April 2013 in the *Laender* Hamburg, Schleswig-Holstein and North Rhine-Westphalia. The results of the study show that the housing of drug addicted criminals in a withdrawal facility as per Sec. 64 StGB, i.e. secure psychiatric unit, increased enormously from 2001 to 2011. It also became clear that after the end of a rehabilitation measure, drug addicts were increasingly being handed over to the probation service under Sec. 35, Sec. 36 BtMG and the remaining sentence was thus commuted to probation. A proper completion of the therapy was achieved by 50 % of the Sec. 35 BtMG group, thus this group was more successful than the group

without this condition, of which 43 % completed the therapy properly. A more detailed presentation of the study can be found in the REITOX Report 2013.

1.3.2 Structure of drug-related prison health responses

Resolution 37/194 of the General Assembly of the United Nations (Office of the United Nations High Commissioner for Human Rights, 1982) stated that health-care personnel in prisons have a duty to support prisoners in maintaining their physical and mental health and, if inmates become ill, to treat them under the same quality standards as afforded to those who are not imprisoned or detained. In dealing with prisons and detained persons, the Council of Europe recommends, under the heading, "Equivalence of care", that health policy in prisons be in line with national health policy and that it be integrated into it. Furthermore, conditions in prison which violate the human rights of inmates cannot be justified by a lack of resources (2010). This principle of equivalence enshrined in the prison acts ensures this is the case in all *Laender*. One example would be the cost-intensive therapies involved in the treatment of hepatitis-C, which is a typical concomitant disease among drug addicts and which is possible in all *Laender*.

In Germany, the prison acts regulate what medical services prisoners are entitled to and refer, with regard to type and scope, to SGB V (Meier, 2009). Under these provisions, prisoners are, in certain circumstances, not entitled to the entire spectrum of health services which statutory health insurance providers (gesetzliche Krankenversicherung, GKV) are obligated to provide. The restriction of care is, for example, possible where a prison term is too short or where there are safety concerns (Lesting, 2018).

In 2011 a male, long-term heroin addict born in 1955 applied for substitution treatment during his imprisonment in a Bavarian prison as well as, in the alternative, an assessment of the medical necessity of substitution by a doctor specialised in addiction disorders. The prison denied the request on the grounds that there was no medical necessity for the substitution and also that this was not a suitable method for rehabilitating the prisoner. In 2012, the Regional Court of Augsburg agreed with this reasoning and added that no assessment by an addiction expert was necessary. At the appeal stage, the Appeal Court of Munich also rejected the prisoner's request. The BVerfG dismissed the man's appeal in 2013 without stating reasons (Decision No. 2 BvR 2263/12). Following his release from prison in 2014, the man was prescribed substitution treatment by his doctor. The European Court of Human Rights concluded in its judgment of 1 September 2016 (with reference to the principle of equivalence) that the line taken by the prison and courts was a breach of Article 3 of the European Convention on Human Rights (ECHR).[3] The court did not rule on whether the inmate should have received opioid substitution therapy. However, the prison and in particular the courts involved should have consulted an independent doctor with expertise in addiction treatment, in order to have the state of the man's health assessed. Due to the

[3] The judgment is available online at http://hudoc.echr.coe.int/eng?i=001-165758 [Accessed: 19 Jun. 2018].

actions of the prison and courts, the patient had to suffer physically and psychologically. However, the judges in Strasbourg rejected the man's request for compensation (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2010).

On World Drug Day 2017 the DHS called for improved medical treatment of imprisoned drug users(Deutsche Hauptstelle für Suchtfragen (DHS), 2016). In view of the frequently concomitant psychological and physical problems of addicts in prison, nationwide access to substitution programmes should be ensured and a reduction of health risks should be promoted through syringe exchange programmes. A right to appropriate medical treatment and healthcare should be recognised and support in the transition as well as a linking of addiction support and offender support services should be guaranteed. Additionally, the DHS calls for the participation of inmates suffering from addiction in internal prison services (school, training, exercise) which require special privileges and which addicts are often excluded from.

1.3.3 Opioid substitution treatment in prison

Data presented by the WHO on substitution treatment in prison indicates that individual *Laender* present very different numbers on opiate substitution treatments (OST). Figures for OST in prison are known for 14 *Laender*. However, these are snapshot figures recorded at a given date in the *Laender*, with the numbers originating from 2016 and 2017. In North Rhine-Westphalia, 14 inmates were undergoing substitution therapy on the date in question, in Hesse it was 318. Only one person was reported as receiving substitution therapy in Saxony, while in Saxony-Anhalt and Thuringia it was 40 and 31 inmates respectively. Rhineland-Palatinate reported 60 inmates in OST, Mecklenburg-Western Pomerania 2 and Baden-Württemberg 800. Bremen recorded 100 inmates on the reporting date, Saarland 2 and Bavaria 35. Berlin's 1,068 was the highest number of inmates being provided OST. In Hamburg the number was around 150 and in Schleswig-Holstein it was 122. In all *Laender* today, permanent substitution treatment as per the Medical Association (Ärztekammer) guidelines is possible for inmates (World Health Organisation, 2018).

In 2010, the DAH organised the first expert discussion on "Administering heroin in prison – new challenges and opportunities for the penal system". Staff from the ministries of health and justice, AIDS services and prison doctors took part. The catalyst for the meeting was that outside of prisons, administration was to pass over to regular healthcare, hence allowing the administration of diamorphine in detention facilities was discussed. The meeting of experts came to the conclusion that the required conditions for this would be the widening of substitution treatment on site within correctional institutions as well as sufficient political backing. (Deutsche AIDS-Hilfe e.V., 2010a) Additionally, attitudes of staff towards drug users in prison would have to be addressed and reflected upon to a greater extent. Since 2011, on site substitution with diamorphine has been possible within correctional facilities in the *Land* Baden-Württemberg.

In a study by the Robert Koch Institute carried out between 2012 and 2014, the research group investigated, among other things, differences in opioid substitution treatments among inmates in Germany. The eleven participating *Laender* (Bavaria, Berlin, Bremen, Hamburg, Mecklenburg-Western Pomerania, Lower Saxony, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia) made their data available. During the study period (January 2012 to March 2013), all 97 participating prisons and prison hospitals, which at that point in time housed 34,191 inmates, were supplied with medication for OST by three pharmacies. Of the prisons included in the study, 58 % were supplied with medication for OST. The overall OST treatment prevalence recorded in this study was 2.18 %. It is also indicated, however, that injecting drug use, mostly opioid use, is present in 22-30 % of inmates. This would mean that only around 10 % of these inmates receive substitution treatment. According to the initial analyses of the "National Survey on Substance Related Addiction Problems in Prison", however, it would seem that 70 % of opiate-dependent inmates could be in substitution treatment (Abraham, 2018).

In this context, the large range of treatment prevalence should be noted, between 0 % in Saarland and 7.9 % in Bremen, which suggests that substitution is implemented very differently from *Land* to *Land*. In particular, the northern *Laender* report high OST rates, which underlines their more liberal policy aimed at harm reduction. In Saarland, Bavaria and the eastern *Laender*, in contrast, only a few prisons are supplied with OST resources. The lacking or low treatment prevalence in Saarland and Bavaria points to an exclusive use of withdrawal treatment instead of substitution and a policy oriented strongly towards abstinence in those prisons (Schmidt et al., 2018). More detailed information on the study can be found in section 1.2.5 "Further aspects of inpatient drug treatment provision" in the Treatment workbook. The framework conditions of OST in Germany are also described in greater detail in the same workbook under section 1.4 "Treatment modalities" (see Bartsch et al., 2018).

Since detailed information is only available from some *Laender*, and much of it is relatively outdated, it is not possible to make any firm statements regarding either the current situation or trends in availability of, and conditions surrounding, the provision of OST in German correctional institutions. With help from the national complete survey on ICD-10 diagnoses in German correctional institutions however, this data can be presented in the future.

1.3.4 Availability and provision of drug-related interventions in prisons

In a systematic review by Hedrich et al. (2012) an overview was published on the effectiveness of opioid maintenance treatment (OMT) in prison. The results show that the advantages of OMT in prison are comparable with those in the general population. OMT represents an opportunity to motivate problem opioid users to submit themselves to treatment, to reduce illegal opioid use and risk behaviour in prison and possibly also to minimise the number of overdoses following release from prison. If there is a link to a treatment programme which is close to the community, OMT in prison also facilitates the continuity of treatment and helps with the achievement of long-term, positive effects.

The series of tables produced by the DSHS since 2008 for external outpatient counselling in prisons will, from the reporting year 2017 onwards, be presented as a collective series of tables for both external and internal counselling and treatment provision in prison. Due to the changes to the German core data set, this data cannot yet be used for this year's reporting cycle and will be included once more from 2019 onwards.

The distribution of substances among those who had never sought treatment prior to their prison stay is different from those who have previously had experience with the addiction support system. Inmates with a primary diagnosis of hypnotics/sedatives was the group which utilised the opportunity for intramural treatment, at 36 %, closely following by those with the primary diagnosis cannabinoids (31 %), cocaine and stimulants (29 % each). Opioid users were most rarely represented in the group being treated for the first time (at 7 %) and therefore were the users most often in contact with addiction support before or during their imprisonment.

Prevention, treatment and dealing with infectious diseases

Detailed information on prevention, treatment and dealing with infectious diseases in prisons can be found in the Selected Issue Chapter 11 of the REITOX Report 2011 (Pfeiffer-Gerschel et al., 2011).

Prevention of overdoses after release from prison

In its action plan on the implementation of the HIV/AIDS strategy, the Federal Government established that prisons represent a setting that requires special health promotion measures. In particular, the transition from incarceration to life on the outside carries a special risk of overdosing.

When transitioning from outpatient substitution treatment to a hospital setting, rehabilitation measure, imprisonment or another form of inpatient accommodation and vice versa, the continuity of treatment should be ensured by the institution taking on the patient. In addition, for inmates with an expected high risk of relapse or mortality following release from prison, it is certainly possible to introduce OST for opioid dependent inmates not currently using prior to their release (Bundesärztekammer, 2017).

In order to reduce fatal overdoses amongst opiate users following their release from prison, in August 2016 the DAH, in collaboration with Fixpunkt e.V., initiated a naloxone dispensing pilot project in which prisoners with a current or past opiate use, as well as prisoners currently in substitution, were to be offered training on the effects of drugs and first aid in the form of information sessions (Dettmer and Knorr, 2016). However, this project could not yet be successfully implemented and will not be pursued for the time being.

Reintegration of drug users after release from prison

The legal framework stipulates that inmates must be provided with support at release (e.g. Sec. 79 BayStVollzG in conjunction with Sec. 17 BayStVollzG), the objective of which is to

assist with reintegration into society after release from prison. In order to achieve this aim, prison services have to cooperate across departments (e.g. Sec. 175 BayStVollzG).

Moreover, social welfare providers should work together with groups which have shared goals as well as other bodies involved, with the aim of mutually complementing each others' work (Sec. 68 (3) SGB XII and Sec. 16 (2) SGB II). Corresponding strategies and measures are developed and implemented under the term transition management. On the one side, attempts are made to place those being released, both in prison and after release, as smoothly as possible into training, employment or occupational activity; on the other side, efforts are made to tackle problems associated with the incarceration and the past criminal careers. The main task of transition management is to improve the situation of the clients by offering them counselling and care but also opportunities to obtain qualifications and be placed on training courses and in jobs. Although, from a historic viewpoint, efforts in this vein date back many years to the introduction of "assistance for offenders" over 150 years ago and to the introduction of the probation service in the 1950s, there is still a great need for improvement in the discussion and implementation of transition management, whereby the preparation for release has already been brought more strongly into focus in the *Laender* prison acts.

It is currently a challenge for addiction support services to be able to offer people at risk of addiction or people suffering from dependence an adequate service upon release from prison. For this reason, the Professional Association on Drugs and Addiction (Fachverband Drogen- und Suchthilfe e.V., fdr) issued a recommendation on transition management which contained, amongst other things, the following elements (Fachverband Drogen- und Suchthilfe e.V., 2013):

- Improvement of the addiction medicine care situation, including substitution treatment in prison and drug emergency training sessions
- Participation in work and training opportunities within prison also for inmates suffering from addiction
- Step by step support during transition and a linking of addiction support and offender support services, e. g. placement in assisted living, outpatient clinics etc.
- Provision of outpatient rehabilitation during imprisonment, beginning around 6 months prior to release, in a treatment centre outside prison and continued after release.

Since these calls were made in 2013, it appears that the situation is beginning to show improvements in various areas. Firstly, the situation regarding medical care for addiction has been optimised and participation in internal prison measures, privileges, accommodation in open prison among other things has markedly improved, specifically for inmates receiving substitution. In addition, it is possible to receive outpatient treatment through suspending enforcement of punishment as per Sec. 35 BtMG or by implement the treatment in the scope of special privileges. A further condition is the placement of substituting patients in external follow-on substitution treatment (Abraham, 2018).

1.3.5 Additional information

No additional information is available on this point.

1.4 Quality assurance of drug-related health prison responses

1.4.1 Treatment quality assurance standards, guidelines and targets

In Germany there are numerous institutions whose work covers quality assurance of healthcare outside of prisons, such as the associations of SHI-accredited doctors (Kassenärztliche Vereinigungen, KV), the statutory health insurance providers (gesetzliche Krankenversicherung, GKV) and the medical associations. In Germany, the responsibility for monitoring healthcare in prisons, and thus for ensuring the quality of drug-related services, lies with the ministries of justice. The German prison system maintains its own healthcare system, comparable with the healthcare system for the police or the army (Stöver, 2006). This means that healthcare provided to patients within these systems differs from that provided to the general population. For example, inmates do not have the ability to choose their doctor freely.

Due to the special structure of prisons, supervision of medical services within German correctional institutions is regulated differently than it is outside them. In this respect, the director of the facility is not entitled to issue medical related instructions to the facility doctor (Keppler et al., 2010). The doctor is subject to professional supervision, however, which can be regulated as follows:

- The specialist in the ministry (expert medical advisor) in charge of supervision is a doctor.
- The specialist in charge of supervision in the ministry is not a doctor, but for example a lawyer or psychologist. In the case of technical medical questions, this person obtains specialist knowledge from medical experts who are not part of the ministry of justice, for example staff at the Ministry of Health or external doctors who are not affiliated with any public institution.
- Supervision is not the responsibility of any one specialist advisor (staff member of the Ministry of Justice), rather it is the responsibility of external doctors, for example experienced facility doctors from another *Land*, doctors from the Ministry of Health or retired doctors.

The CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) functions as external consultant. The European Treaty on this issue stipulates that prison facilities be visited on a regular basis (European Commission, 2002). The last visit by the CPT in Germany took place between 25 November and 7 December 2015, in the course of which 16 facilities were visited. Statements made in the CPT report in connection with "healthcare" are only based on three facilities, however, and thus cannot be viewed as being representative. The main criticism was that there was not always a sufficient number of qualified care staff available and that medicinal drugs were not dispensed by medically trained personnel but by prison officers. In addition it was pointed out

that dealing with mentally ill persons, i.e. including addicts, was frequently seen as problematic. Transfer to prison hospital is evidently often refused due to a lack of beds. In addition, the varying levels of access to substitution treatment across the different institutions was criticised. According to the CPT, this is not in line with the principle of equivalence of care (Europäischer Ausschuss zur Verhütung von Folter und unmenschlicher oder erniedrigender Behandlung oder Strafe, 2017).

In North Rhine-Westphalia, the monitoring of medical activities is regulated by the technical supervision of the supervisory authorities (Husmann, 2010) as laid down in the "Recommendations for Treatment by Doctors Providing Medical Treatment for Opioid Dependency in Prison". It issues orders if the limits of conscientious medical discretion are exceeded or incorrectly exercised. Orders issued by the technical supervisory body are restricted to specific individual cases.

Imprisonment continues to carry the risk that substitution treatment already commenced prior to entering a penal institution will not be continued (Stöver, 2010). Guidelines and rules could help counteract uncertainty and ignorance on the part of prison healthcare personnel. In order to provide prison doctors with greater certainty, the framework conditions, e. g. treatment strategies, accompanying psychosocial therapy or criteria for discontinuation, should be clearly described. These must especially take the specific conditions in prison into account. At an international level, there are, amongst other things, the declaration on "Prison Health as part of Public Health" (World Health Organization (WHO), 2003), adopted by the WHO European region in 2003 as well as the treatment recommendations, "Opioid Substitution Treatment in Custodial Settings" (Kastelic et al., 2008).

In the medical treatment recommendations regarding medicinal treatment for opioid dependence in prison in North Rhine-Westphalia (2010) the positive effect of substitution treatment in prison is stressed, with regard to both the progression of opioid dependence and to the achievement of the correctional objective. Hence, one stated objective is "to increase the number of substitution treatments in prisons significantly". According to the recommendations for treatment, the objectives are:

- the prevention of deaths as a result of reduced tolerance in prison and following release from prison,
- the reduction of illegal and subculture activities,
- the improvement of physical and mental health and
- permanent abstinence.

Similar to the situation outside prison, the patient has to sign a treatment agreement prior to starting treatment, in which the rules are laid out. Among other things, that document sets out in writing when the treatment will be discontinued (for example in the event of repeated problem concomitant use, drug dealing/trafficking or violence in connection with the OST) and that discontinuation does not necessarily mean permanent exclusion from OST. The decision to cease treatment is made by the medical service; there are no set conditions with

respect to recommencement. In North Rhine-Westphalia the general rule is that patients who are already receiving substitution when entering prison will continue to be treated, while the length of the sentence must not have any influence on the indication for treatment. It is recommended that a place for continued substitution should be secured in cases of substitute treatment on remand and prison sentences of less than two years. A place for further treatment should be secured, at the latest, at the time of release from prison.

Substitution in prisons has, since 2002, been regulated in an administrative code issued by the Baden-Württemberg Ministry of Justice. It contains clear statements on the general objectives of OST as well as requirements regarding indication, exclusion, admittance, implementation, documentation and termination of substitution treatment. In addition, substitution with diamorphine has also been possible since the revised and amended version of the administrative code came into force on 15 July 2011 (Justizministerium Baden-Württemberg, 2011).

The foundation for substitution treatment in prison in Lower Saxony is a decree from 2003[4] (Deutscher Bundestag, 2016) which for the most part is based on the respective provisions in the BtMG and the Guidelines on the Evaluation of Doctors' Examination and Treatment Methods (Bewertung ärztlicher Untersuchungs- und Behandlungsmethoden, BUB-Richtlinien). The decree sets out the requirements and stipulates how substitution is to be performed. As with all treatments by doctors, it is the attending doctor who is responsible for the indication for substitution and who establishes, by means of an individual examination, whether the substitution treatment is warranted and whether the intended purpose cannot be achieved in any other way. In line with the principle of equivalence, substitution is provided under the provisions of SGB V and the respective guidelines.

In addition, in line with the principle of equivalence, the guidelines issued by the German Medical Association (Bundesärztekammer, BÄK) on the substitution-assisted treatment of opiate addicts, revised in 2017, also apply within prisons (Bundesärztekammer, 2017). The guidelines apply to all doctors who perform this treatment. Under the guidelines, it must be ensured, when patients move to hospital treatment, rehabilitation, imprisonment or another form of inpatient care, that the treatment is provided on a continuous basis. Moreover, substitution treatment can also be initiated in individual cases, where warranted, in accordance with ICD 10 F11.21 (opiate dependency, abstinent at present, but in a protected environment – such as a hospital, therapeutic community or prison). Where other psychotropic substances are also being used, the underlying cause thereof, such as inadequate dosage or selection of substitution drug or a co-morbid mental or somatic illness, should first be determined and if possible remedied. If this concomitant use jeopardises the substitution treatment, withdrawal of the additional psychotropic substance must be initiated.

[4] Medical and paramedical guidelines and rules in the Lower Saxony prison system; here: Medikamentöse Substitution bei opiatabhängigen Gefangenen, Decree of 1 April 2013 - 4558 - 303.2.13.

Training of prison officers

Compared to other occupations, prison officers are confronted to a much greater degree with people who use drugs. Hence, that profession is predestined to receive special training on dealing with, and risk awareness in connection with, drug users. The ministries of justice have reacted to this with corresponding programmes of education and further training.

The handbook "Harm reduction in prisons" ("Schadensminimierung im Justizvollzug"), issued by the Scientific Institute of the German Medical Association (Wissenschaftliches Institut der Ärzte Deutschlands, WIAD) and the result of a project funded by the European Commission, serves to provide further training of staff working in prisons (Wiegand et al., 2011). The handbook provides information on how the negative impact of certain types of behaviour can be reduced, such as the transmission of infectious diseases during injecting (i.v.) drug use through the sharing of syringes or needles. These concepts play a role primarily in correctional institutions, as those places are concerned with the preservation of the human rights of prisoners, the protection of public health and not least the proven cost effectiveness of preventive measures compared to the costs of treatment, for example after an infection has been contracted. The handbook provides information on the topic of infectious diseases and their different routes of transmission as well as on drug use and related risk behaviour. The intention is, among other things, that prison officers are sensitised to the special challenges of drug consumption. Moreover, attitudes and understanding of prison officers surrounding drug use and drug users should be explored.

Baden-Württemberg reported that in 2010, 17 facilities provided advice and counselling for staff in the penal system (Reber, 2011). In addition, training of this target group in how to deal with drug-related emergencies was carried out in several Berlin prisons (Deutsche AIDS-Hilfe e.V., 2010b). In that training, both appropriate behaviour in the event of drug-related emergencies as well as special risks, such as the use of drugs following abstinence, are addressed. The administration of naloxone, an opiate antagonist, also plays a role in this context. In addition, the topic of addiction plays an important role in the basic training for the general prison service, for example in Berlin. Other *Laender* also devote time to this topic in the course of their training.

2 TRENDS

Above all, the increase in use of new psychoactive substances in German correctional institutions and the increase in use of crystal meth in some *Laender* presents new challenges to the prison system as a whole (Abraham, 2018).

3 NEW DEVELOPMENTS

3.1 New developments in drug-related issues in prisons

NPS project in the Wittlich prison

In 2016, a project was introduced in the Wittlich prison in Rhineland-Palatinate to identify drug use, specifically in the area of NPS, the use of which is not detectable in rapid tests. The idea was for prison staff to report inmates who guards believe, based on the inmate's behaviour, have possibly taken drugs. Following an assessment by specially trained personnel, if NPS use is suspected a urine test is carried out for various NPS and repressive, preventive and counselling measures are taken. In 2017, as a result of the project, ten prisoners tested positive for drug use, following the suspicions of trained personnel. An analysis of the urine tests was able to identify five different NPS. In addition, regular urine or saliva tests continued to be performed, for the purposes of monitoring abstinence or proving drug use (Patzak, 2018b).

Data collection on ICD-10 diagnoses in German detention facilities

As a result of a lack of information or information which is of little meaningful value on the proportion of inmates suffering from addiction and other questions on the problem of addiction in German detention facilities, representatives at the 115th Conference of the *Laender* prison committee initiated a nationwide collection of data, the aim of which was retrospectively to diagnose and record inmates from all 16 *Laender* on the basis of ICD-10 for their drug use (in total 64,397 prisoners, as at reference date 31 March 2016) and from that point forward to do so on an ongoing basis. The second data collection was conducted on 31 March 2017. In most *Laender*, the majority of prisoners was included in the data collection, total coverage could not be achieved, however. Accordingly, the *Land* representatives decided, at the 125th Conference of the *Laender* prison committee in May 2017, to perform the data collection for a further two years in all *Laender*, to take into account the problems which had so far arisen in the implementation and where possible to remedy them. The data from satisfactory Germany-wide snapshot and continuous data collections has as yet not been delivered due to validation problems in the data collection carried out so far (Abraham, 2017). The reference date collection of data in 2018 has apparently already been carried out with a higher quantity and quality, so that a publication of the data is expected shortly in the form of nationwide results.

The parole process and reintegration of offending addicts

The Regional Authority of Westfalen-Lippe (Landschaftsverband Westfalen-Lippe, LWL) carried out a study on the effectiveness of treatment of addicted offenders in secure psychiatric facilities, in order to draw conclusions on reoffending and addictive substance use after release from detention (Dimmek et al., 2010). In a retrospective catamnesis, 160 patients were surveyed three years after their release from secure psychiatric facilities. The sample studies showed significant biographical risk characteristics, such as first use at an

early age (43 % used cannabis before they were 16 years old), a lack of school leaving or occupational qualifications (35 % and 63 %) and violence in the family setting (40 %). The main reasons for being sent to a secure psychiatric facility amongst addicted patients were robbery (37.7 %) and violations of the BtMG (32.1 %). 42.4 % of delinquents reoffended within the period studied, mainly with property or road traffic offences or violations of the BtMG (Bundesministerium der Justiz, 2009).

4 ADDITIONAL INFORMATION

4.1 Additional sources of information

No additional sources of information are available on this.

4.2 Further aspects

No additional sources of information are available on this.

5 SOURCES AND METHODOLOGY

5.1 Sources

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5.2 Methodology

Prison statistics of the German Federal Statistical Office (Destatis)

The statistical report covers all inmates of penal institutions involved in the enforcing of prison sentences, juvenile sentences and preventive custody (institutional level) as well as prisoners and people in preventative custody, annually on the reference date of 31 March. The statistical report on the penal system is a full census; for this reason no sampling approach has been used.

The statistical report was introduced in the early 1960s, with comprehensive results available for the former territory of Germany from 1965, and for Germany as a whole from 1992. The preparation and publishing of the statistics is carried out annually. Since 1965, the Federal Statistical Office has published the results in a comparable format.

Generally, the findings in the statistical report on the penal system are of a good to very good quality. Firstly, the information for the statistical report is obtained from data which has been collected for administrative and monitoring purposes. Secondly, the statistics data in the *Laender* is subject to automatic auditing routines; the statistics are extensively internally checked for plausibility and compared against external data. Any inconsistencies in the data are clarified through enquiries from the *Laender* statistics offices to the reporting units. Nevertheless, individual missing or false information in the statistics data cannot be ruled out.

The survey characteristics and guidelines as well as the processes for preparing the data are uniform across all *Laender*. It is therefore possible to compare data across regions. All findings on the reference date from the statistical report on the penal system contain an inherent methodological distortion: Inmates handed short sentences are underrepresented compared to long-term prisoners. The shorter the custodial or juvenile sentence is, the lower the probability is of being included in the annual census, carried out only once a year. This factor has an influence on the results in that in most cases the structural data (e.g. age group, type of offence, number of previous convictions) can be different for short-term prisoners than long-term inmates (Destatis, 2017).

Statistical Report on Substance Abuse Treatment in Germany (Deutsche Suchthilfestatistik, DSHS)

The DSHS is a national documentation and monitoring system in the area of addiction support in Germany. As a documentation system, the DSHS has the task for all data which is recorded in all of the institutions which participate in the DSHS, of collating it, archiving it, analysing it with respect to the core results, of highlighting important changes in the area of addiction support as well as in the treated population or the treatment itself and of making it available to the public in an appropriate format.[5]

[5] www.suchthilfestatistik.de/ [Accessed: 18 Jun. 2018].

The DSHS core data set (Kerndatensatz, KDS) provides the basis for the uniform documentation in outpatient and inpatient facilities, in which persons with substance related disorders as well as non substance-related forms of addiction in Germany are counselled, cared for and treated.

By default, a facility-related missing quota (= proportion of missing information within the overall information in the respective table) of 33 % or less is required for all tables with single-choice questions in order for them to be included in the overall evaluation. Facilities with a missing quota of more than 33 % in such a table are therefore not taken into account when the data is collated in order to prevent the overall data quality being disproportionally impacted by a few facilities with a high missing quota. Although this inevitably leads to a reduction of the facility sample (N) for the respective table, this can be accepted in the interpretation of the results due to the higher validity of the included data.

6 TABLES