

Englisch

# **In Jail** Tips for Prisoners without a German Passport



**Foreword** ..... 2

**Your first source of help in prison:  
the social services (*Sozialdienst*)** ..... 3

**The most important information about HIV and AIDS** ..... 5

The HIV test in prison ..... 5

Does the test result have consequences on your  
residence permit status? ..... 9

Can the HIV infection be treated? ..... 10

Who helps prisoners who have HIV or AIDS? ..... 10

How can you protect yourself and others against HIV? ..... 11

**Questions about life in prison** ..... 15

Can you start or continue medical treatment in prison? ..... 15

Drug therapy instead of prison – is it an option? ..... 15

Is substitution treatment possible in prison? ..... 16

What about food in prison? ..... 16

Can prisoners work? ..... 17

**Questions about the different types of detention** ..... 18

Pre-trial detention (*Untersuchungshaft*) ..... 18

Serving a sentence in prison (*Strafvollzug*) ..... 21

Deportation custody (*Abschiebehaft*) ..... 25

**Expulsion and deportation** ..... 26

What reasons can lead to expulsion? ..... 28

Persons protected from expulsion ..... 29

HIV/AIDS – a reason for being allowed to stay in Germany?

Legal information ..... 30

**Booklets** ..... 35

**Important addresses** ..... 36

You are sent to jail, and don't have a German passport. Especially in the first few days in prison, you will have many questions and concerns: What will happen to me, to my family and to my children? Will I be able to cope with life in prison? What are my rights there? Can I stay in Germany, or will I be deported because of my prison sentence? Moreover, you now have to deal with the issue of HIV and AIDS. For right at the start of your sentence, you will have to take a medical examination, during which you are also offered an HIV test.

Maybe you have someone you can talk to about this. But maybe there is no-one you can talk to. This booklet will help you. For example, it tells you:

- what you need to do at the beginning of your sentence, so that no problems arise when you are released
- what you need to know about the HIV test
- where prisoners can get help if they have an HIV infection or AIDS
- what opportunities and rights you have in prison.

Don't let things get you down. Find out what you can do for yourself, and who can help you. You are not alone, even when it may sometimes seem that way. There are many organisations which provide help and assistance to prisoners and people from other countries. Write to an organisation near you (see the address list on page 36) and ask for a counsellor.

# Your first source of help in prison: the social services (*Sozialdienst*)

The social services in the prison help you when you need to sort out practical matters, or if you have problems. Right after your sentence starts, a social worker will visit you for a first interview. If you need someone to interpret for you, you may have to arrange this yourself. Maybe one of the other prisoners can interpret for you. In your first recreation period in prison you will quickly find out, if there is someone who you can communicate with.

## **Your home**

Before you go to prison, or immediately after your sentence starts, you must inform the employment agency (*Agentur für Arbeit*), the job centre or the social assistance office (*Sozialamt*) that you will be sent to prison, or that you are in prison (for this, a short letter will do). This is important to make sure that you don't lose your home if you are serving a shorter sentence. The authorities mentioned above will pay your rent for up to 6 months if you are needy, and if you put in an application for them to do so.

It may be that you can't keep your home, because you have to serve a longer time in prison. If this is the case, ask the social services in prison to help you, so that your belongings are stored in a safe place. In any case, you should have a place to live before you are released from prison. In most cities, there are associations for prisoners who will support you when you are preparing to be released from prison. The social services in prison can give you the addresses of these associations.

## **Unemployment benefit (*Arbeitslosengeld*), social benefit (*Sozialgeld*), and services for asylum seekers**

Did you receive unemployment benefit (*Arbeitslosengeld*) level I or II, social benefit (*Sozialgeld*) or benefits for asylum seekers (according to the *Asylbewerberleistungsgesetz*) for yourself before you were sent to prison? If this is the case, you must inform the relevant authorities that you are in prison, so that the payments can be stopped for the period of your imprisonment. If you continue to receive these benefits, you could be charged with another offence, and will have to pay the money back later. If you want the prison to inform the relevant authorities, you must contact the social services in prison.

If your family receives financial help from the employment agency, job centre or social assistance office, the type of help they get may change because you are in prison. The authorities mentioned and the associations for prisoners (see the addresses on page 36) offer counselling in this matter.

**If problems arise when you try to sort out these issues, you can write to the council for refugees (*Flüchtlingsrat*) in your federal state (see the addresses on page 36). They will give you the addresses of associations and help centres that will provide further assistance.**

# The most important information about HIV and AIDS

## The HIV test in prison

The preliminary medical examination at the start of your prison term is a requirement in law. This means that you must undergo this examination. But you do not have to take an HIV test. Also in prison, the HIV test is always voluntary, and nobody is allowed to force you to have one. You will have lots of other things to worry about at this time, but even so you should be careful that an HIV test is not carried out without your permission during the preliminary examination. You decide yourself whether you want to be tested, and also when you have the test. You can also take the test later.

### Could I be infected?

If you ask yourself: "Should I take an HIV test?", you should first consider whether you could have been infected with HIV. Maybe you have been given an information leaflet about HIV and AIDS at your preliminary medical examination. Or you have already taken a booklet from an AIDS service organisation (*Aids-hilfe*) or drug counselling centre. If not, here is what you need to know:

### How is HIV not transmitted?

**HIV is a virus which may lead to AIDS. You cannot get HIV just by touching someone, or through the air. That's why there is no risk of infection from everyday contact. If you work or live in a cell with a person who has HIV, you do not need to worry about getting infected.**

**You cannot get HIV from:**

- Shaking hands, hugs, touches
- Coughs or sneezes
- Using toilets, baths or saunas
- Using the same plates, glasses and cutlery
- Insect bites or stings.

**You also cannot get HIV from saliva, tears, sweat, urine or excrement.**

## **How is HIV transmitted?**

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You can become infected with HIV when the blood, sperm (semen) or vaginal fluid of an infected person enters your body, mucous membranes or eyes. Infected mothers can pass the virus onto their children during pregnancy and birth, and when breast-feeding.

### **Sex**

HIV is most frequently transmitted during sex. The risk of infection is

- particularly high during anal sex without a condom. This applies for both partners (woman/man and man/man).
- very high during vaginal sex without a condom. When the woman has her period, the risk of infection is increased for both the woman and the man.
- high when sucking the penis (“giving a blow job”) and the man comes in the mouth of his partner.
- low when licking the vagina, as long as only vaginal fluid (and no blood) enters the mouth: vaginal fluid is only present in a small quantity, which is, moreover, “diluted”



by saliva. However, the risk of infection is high when the woman has her period.

The risk of infecting yourself and others with HIV is increased when you have a sexually transmitted disease such as syphilis, gonorrhoea or herpes.

There is no risk of infection

- for the man when he is “getting a blow job” and for the woman who is licked – as long as the partner has no bleeding wounds in his or her mouth
- when kissing – as long as there are no wounds in the mouth
- when touching or massaging each other.

### **Shooting drugs (“getting a fix”)**

People who inject drugs into their veins can easily get infected when they share needles and syringes and other equipment (filters, spoons, water) with other people.

### **Tattooing and piercing**

Tattooing and piercing are not allowed in prison, and are risky anyway, since it is almost impossible to work cleanly using professional tools here. In prison, people usually tattoo and pierce each other, using colours which they have mixed themselves as well as self-made instruments, which are not disinfected before they are used on the next person. This can cause the transmission of all kinds of germs, such as HIV and hepatitis viruses. And since the people in prison are hardly ever professionals, a tattoo can easily go wrong.

See page 11 for information about protecting yourself against HIV.

## Who can give me advice?

Maybe you are not worried, because you have not been at risk from becoming infected with HIV. However, if you are worried that you may have been infected, you should get counselling. The AIDS organisations (*Aidshilfen*), for example, have good counsellors who offer services to people from other countries, or who work with prisoners. Simply write to an organisation near you (see the address list on page 36) and ask for a counsellor. You can also contact a drug counselling centre, the social services in prison, a religious advisor or the prison doctor.

By law, all counsellors must maintain confidentiality (*Schweigepflicht*). This means that they are not allowed to tell anyone what you have discussed with them. If your German is not very good, ask whether somebody can counsel you in your own language, or ask for an interpreter: he or she must also maintain confidentiality.

To receive counselling from the prison doctor, you have to fill in a request form (*Vormelder*, available from the social services in prison or the head officer of your ward), but you don't have to state why you want to see the doctor. You will be able to talk to the doctor in complete privacy. The information you give must be treated in confidence.

## How does the HIV test work?

The prison doctor will do the HIV test during a normal consultation hour. Nobody will find out that you have been for the test. For the test, blood is taken which is then examined in the laboratory. After about a week, you will receive the test result. If you have not been infected, the test result will be "negative". If you

have been infected, the test result will be “positive”. A positive test result must also be treated in confidence.

### **What does a positive test result mean?**

A positive test result means only that the HIV virus has been found in your body. It does not indicate whether, or when, you will get AIDS. HIV damages your body’s immune system, which may lead to AIDS, but it doesn’t have to. If someone has AIDS, his or her body has great difficulty to protect itself against germs (such as bacteria and fungi). That’s why a person with AIDS can get other diseases very easily, which can even become life-threatening.

### **Does the test result have consequences on your residence permit status?**

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The test result, whether negative or positive, has no consequences on whether or not you can stay in Germany. As long as you are in prison, you cannot be deported anyway, even if before your prison sentence you only had exceptional leave to remain (*Duldung*) and this was not extended.

If you are threatened by expulsion or deportation (see p. 26) after your sentence is over, you *may* be allowed to stay in Germany if you have already begun an HIV therapy. In other words, this *will not protect you in all cases*. Deliberately infecting yourself with HIV in the belief that an HIV therapy will help you to remain in Germany would be a mistake that may cost you your life: No cure has yet been found for the HIV infection, and even nowadays, people still die from AIDS – also in Germany. For people without secure permission of residence, AIDS does not offer an added op-

portunity to stay, but will be an added problem. It is therefore never worth the risk of infecting yourself with HIV!

## **Can the HIV infection be treated?**

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Nowadays, there are different therapies available for people with HIV or AIDS. In these therapies, several types of medication are combined. Such a “combination therapy” can improve and extend life with the disease, but it cannot cure it. It is important to start a therapy early. For this reason, people who are at risk from HIV (such as drug users who share needles and syringes with others, men who have sex with men, people from countries where AIDS is widespread) should take the HIV test.

It is also possible to start an HIV therapy in prison (see p. 15). This is no “luxury therapy”, but makes it possible for the patient to live a better and longer life with the HIV infection.

## **Who helps prisoners who have HIV or AIDS?**

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Many people with HIV or AIDS need help – especially when they are in prison. It is important for them to find people whom they can trust, and who know a lot about the disease. For example, people working with the AIDS service organisations (*Aidshilfen*) or drug help centres offer personal support for prisoners (see the addresses on p. 36). The booklet “positiv in Haft” (in German only), which is available from the Aidshilfe, contains a large number of health tips, and informs prisoners about their rights (see the booklets on p. 35).

Prisoners with HIV or AIDS can do a lot to ensure that they don't have to cope with their illness alone. Above all, it is important

that they keep up contact with their family and friends. Some prisons have self-help groups where you can discuss your concerns with other HIV-positive prisoners. If there is no self-help group in your prison, you can set one up yourself, for example with the help of a contact at the Aidshilfe. Most prisons will support the idea of setting up a group like this.

## How can you protect yourself and others against HIV?

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### Sex

Even when it is rarely talked about, sex is part of everyday life in prison, whether it's sex between men in male prisons or sex between women in female prisons. In prison, as well as outside prison, it is important to protect yourself and your partners against HIV:

- Use a condom for anal sex and vaginal sex, ideally in combination with a lubricant. This prevents the condom from tearing during sex. Never use lubricants which contain fat (e.g. Nivea, oil, body lotion, Vaseline): these make tiny holes in the condom so that it no longer provides protection.
- When sucking the penis ("giving a blow job") or when being sucked, make sure that no sperm gets into your or your partner's mouth. To be extra safe, use a condom here as well.
- When licking the vagina, the risk of getting infected is low, except when the woman has her period. Here, a "dental dam" (a latex cloth) or a condom (which has been cut open) spread over the vagina will offer protection.

**Condoms and dental dams also reduce the risk of contracting hepatitis (see p. 13) as well as other sexually transmitted diseases such as syphilis, gonorrhoea or herpes. It is important that these infections are diagnosed and treated as early as possible, since some of them can have serious effects for your health. They also make it easier to contract HIV, since they cause lesions which the virus uses as an “entrance door”. The following applies to all sexually transmitted diseases: sexual partners must also be treated, to avoid infecting each other over and over again.**

Condoms and lubricants are available free of charge in many prisons, for example from the medical or social services, or from counsellors of AIDS service organisations (*Aidshilfen*). In some prisons, you can buy them. You will have to ask how you can get condoms and lubricants in your prison.

### **Drug use**

If you cannot live without drugs, or don't want to, you should try to keep the risk of infection as low as possible. For example, by snorting drugs instead of injecting them, or by smoking them from a piece of foil, using only your own tube.

If you want to keep injecting:

- Always use your own syringes/needles and equipment (filters, spoons, water)
- Never pass on your used syringes and needles to other people. Never use syringes and needles already used by other people.

In this way, you will protect yourself and others against HIV, as well as against hepatitis (see below).

If you only have syringes which have already been used, you should at least disinfect them:

- clean the syringe (including plastic syringes) thoroughly and rinse it out with cold water.
- dismantle your syringes and place all parts in boiling water for at least 15 minutes. It is not enough just to rinse your syringes with water!

### **Tattooing and piercing**

Only new, sterile instruments (such as needles) will provide safe protection against HIV and hepatitis. If none are available, you should at least clean used instruments thoroughly each time before use. To do this, rinse the individual parts in running water and then place them in boiling water for at least 15 minutes. You will find further information on this topic in the booklet "Tattoo und Piercing in Haft" (in German only, see p. 35).

## **Protection against hepatitis – basic information**

Hepatitis is an inflammation of the liver which is very often caused by viruses. Infection with the hepatitis B and hepatitis C virus is particularly dangerous: These viruses can destroy the liver cells, and can cause liver cirrhosis. A long-term result may be cancer of the liver ("liver cell carcinoma").

**You can reduce the risk of being infected with hepatitis by following these rules:**

- Always wash your hands thoroughly after using the toilet.
- When injecting drugs, always use your own syringes/needles and equipment (spoons, filters, water). When snorting or smoking drugs, always use your own tubes. Never pass on used syringes/needles and equipment to other people. If no clean syringes/needles are available, the used ones should always be disinfected (see p. 13).
- Use condoms during sex, and make sure that no blood, sperm, vaginal fluid or excrement enters your mouth, wounds, mucous membranes or eyes.
- Only use sterile instruments for piercing and tattooing. If none are available, always disinfect used instruments each time before they are used on someone else (see p. 13).
- Never share razor blades, toothbrushes, razor accessories or nail scissors.

**You can get yourself vaccinated against hepatitis A and B.** Many prisons offer a hepatitis B vaccination. Ask your prison doctor whether you can get this. Unfortunately, there is no vaccination against hepatitis C. This means that you must follow the protection rules listed above even when you have been vaccinated against hepatitis A and B. More information about hepatitis you will find, for example, in the booklets “positiv in Haft”, “Drogenkonsum und Hepatitis. Übertragungswege, Vorbeugung und Behandlung” and “virus hepatitis. info + für Berater/innen und interessierte Laien” (in German only, see p. 35).



# Questions about life in prison

Prisoners must be treated equally – regardless of whether someone has a German or a foreign passport, whether someone is HIV-positive or has AIDS, or whether someone is HIV-negative. There are no special regulations in German prisons for one group or another. However, sometimes your residence status may affect what you can or cannot do. If you have problems, you should contact one of the organisations listed in the address section (see p. 36), either in writing or by phone.

If you don't have any money to pay for a lawyer or your trial, you can apply for financial support to help pay the legal fees (*Prozesskostenhilfe*). To do this, you will need the form „*Erklärung über die persönlichen und wirtschaftlichen Verhältnisse*“ (declaration regarding personal and financial circumstances). This form must be filled in and given to the court. You can ask your counsellor to help you with this matter.

## **Can you start or continue medical treatment in prison?**

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Yes. This applies to all therapies which are medically necessary, including HIV therapy, regardless of where you come from, what your residence status is, and how long you will stay in Germany. There is a law which says that all people who need help must be given help, so no-one can say that you cannot be given treatment for HIV just because you are going to be deported.

## **Drug therapy instead of prison – is it an option?**

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If you have been sentenced because of drugs (in other words, because you broke the German legislation on narcotics (*Betäubungsmittelgesetz, BtmG*), you can sometimes avoid going to prison by

agreeing to a drug therapy. Ask your lawyer, a drugs counselling centre or an AIDS service organisation (*Aidshilfe*) whether “therapy instead of punishment” (*Therapie statt Strafe*”, § 35 BtmG) is an option. This depends on the length of your sentence, on your residence status and on whether someone will pay for your therapy.

For prisoners with a German passport the health or pension insurance (*Krankenversicherung, Rentenversicherung*) will pay for the drug therapy. However, they will not cover any costs if your residence status has not yet been decided, or if you are actually supposed to leave the country and are only staying in Germany to serve out your prison term. In these cases, you need a drug therapy institution which will provide free treatment. Ask for advice about which of these institutions might be right for you.

## **Is substitution treatment possible in prison?**

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If you are in prison because of drugs, you can consider whether you want a substitution treatment (a treatment with a substance which replaces the drug). In prison, similar conditions apply for the substitution as they do “outside”, and people without a German passport are treated in exactly the same way as Germans.

The regulations regarding substitution vary from federal state to federal state. Ask the doctor how substitution is handled in your prison. Do you want to find out more about substitution? Then order the booklet *“Substitution in Haft”* (in German only, see p. 35).

## **What about food in prison?**

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If your religion forbids you to eat certain foods, you have the right to provide yourself the foods you need (§ 21 of the Prison

Act [*Strafvollzugsgesetz*]). The prison also has to let you observe religious codes on eating and drinking, such as fasting during Ramadan.

The same applies to certain illnesses if the doctor has prescribed a certain diet. If this applies to you, you should discuss with the prison doctor which food and drinks you need for your illness.

## Can prisoners work?

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Employment is the only area where a difference is made between foreign prisoners and German prisoners. In prison just like outside prison, Germans will be given preference when jobs or training courses are offered which are funded by the Agency for Employment (*Agentur für Arbeit*). Prisoners without a German passport may also be able to get work, however. Go to your social services in prison and ask about the opportunities that are available for you.

You do not need a work permit to work in prison. Aside from that, you are obliged to work in prison. You do not have the right to refuse work.

If you are allowed to leave the prison at particular times (*Freigang*), you have the same access to the employment market as German prisoners if you have been granted permanent residency (*Niederlassungserlaubnis*) or have a limited residence permit (*Aufenthaltserlaubnis*) which entitles you to work in Germany. If you have another residence status, you are only allowed to work when the Federal Agency for Employment (*Bundesagentur für Arbeit*) has authorised you to do so. This applies when no Germans are available to do the work in question.

# Questions about the different types of detention

What you are entitled to depends in part on whether you are in pre-trial detention (*Untersuchungshaft*), if you have been found guilty and sentenced to prison (*Strafvollzug*) or if you are in deportation custody (*Abschiebehaft*). Here are the most important things you need to know about these different types of detention:

## Pre-trial detention (*Untersuchungshaft*)

Pre-trial detention is ordered, if someone is accused of a crime. However, being accused of a crime is not a good enough reason for being imprisoned. Clear indications are required that you are guilty ("*dringender Tatverdacht*") and that you may try to leave Germany before the trial ("*Fluchtgefahr*"). Pre-trial detention is also ordered when they fear that you will destroy evidence ("*Verdunklungsgefahr*") or repeat the crime ("*Wiederholungsgefahr*").

Often, people are suspected to leave the country when they originally come from another country, when they speak another language besides German, and when they may have contacts in their country of origin. However, simply believing or fearing that you will leave the country is not a good enough reason to put you into pre-trial detention: what is needed are facts. You should bring forward the following in your defense:

- Solid family connections in Germany
- Job or career here
- No opportunities in the country of origin
- Permanent home is Germany.

### Can you be released until the trial starts?

When you are held in pre-trial detention, you can apply for a detention appraisal (*Haftüberprüfung*) from the committing magis-

trate (*Haftrichter*) at any time. A reason for this appraisal might be to check if there really is a risk of you leaving the country, or to see if you can be released on bail (*gegen Kaution*, in other words you or someone else leaves a certain sum of money as security).

### **How long can pre-trial detention last?**

The pre-trial detention may not last longer than 6 months for the same crime. Under certain circumstances, a longer pre-trial detention period may be possible – for example, when the main trial started before the 6 months have expired and no verdict has been reached, or when the investigation into the crime takes a particularly long period of time.

### **What are my rights in pre-trial detention?**

#### **Accommodation**

In pre-trial detention, you are held on your own in a cell (*Einzelhaft*). If you find it difficult to cope with being alone, you can apply to be held with other prisoners.

#### **Contact with your defense counsel**

The court will usually ask if you want to have a lawyer, and if so, which one. You can, however, write to a lawyer, who will check for you whether you are entitled to an assigned counsel (*Pflichtverteidigung*). If you need an interpreter for your contact with your lawyer, the state will pay for this. However, you can also ask the higher regional Bar Council (*Anwaltskammer der Oberlandesbezirke*) whether they can give you a lawyer who speaks your language.

Conversations and correspondence between yourself and your lawyer will not be monitored or checked. For letters, it is

important that you write "*Verteidigerpost*" on the envelope, so that they are not read by the committing magistrate (*Haftrichter*). Unfortunately, you are not entitled to have telephone conversations with your lawyer.

### Visits

In pre-trial detention, you are given a form on which you can enter the names of the relatives and friends you would like to see. The court will then tell these people that you have been arrested, where you are now, and that you would like them to visit you. The persons who want to visit you must ask the court or the prosecution authorities (*Staatsanwaltschaft*) for permission to visit (*Besuchserlaubnis*).

In pre-trial detention, visits are supervised. This means that all conversations are monitored, and any objects which are brought in are checked. In many pre-trial detention centres, only German may be spoken during visits, even if you cannot speak German. If another language is used, visits may be stopped immediately. You can avoid this by applying for an interpreter to interpret for the supervisory staff. The state will pay the cost of the interpreter for visitors who are your closest relatives (mother, father, husband or wife, children). For other visitors, you will have to pay for the interpreter yourself.

### Letters

All letters which you send or receive are checked (except for letters to and from your lawyer, see above). If you want to send a letter, you must put it into an *open* envelope. Letters in other languages are translated for the judge. That is why it often takes so long until letters in other languages are received.

### Packages

All packages are also checked. You are only entitled to three packages each year: two on the Christian holidays of Christmas and Easter, and one at a time chosen by you. If you have a different religion, you can select two important holidays from your religion when you would like to receive packages, instead of Christmas and Easter. Each prison has its own regulations regarding what may be included in the packages. Ask the social services in your prison.

### Religion

You have the right to observe the rules of your religion. These also include contact with a religious advisor, and the right to take part in religious events.

The prison also has to enable you to observe religious codes on eating and drinking, such as fasting during Ramadan. You have the right to eat food which complies with the rules of your religion.

## Serving a sentence in prison (*Strafvollzug*)

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If you have been found guilty and sent to prison as punishment, the German Prison Act (*Strafvollzugsgesetz, StVollzG*) states how the prison term is to be served, and what rights you have as a prisoner.

### What are my rights in prison?

#### Visits

If you want to see visitors, you can write an application for a visit (*Vormelder*). This is then sent to the people you want to see. You

can get the application form from the social services in the prison or from the head officer of your ward. Make sure that the applications really are sent out.

During visiting hours, you can talk to your visitor in the prison visitors' room without being disturbed. Normally, your conversations *should not* be monitored here. However, the prison has the right to decide otherwise.

### **Packages**

See "Pre-trial detention" on p. 21.

### **Letters**

You can send and receive as many letters as you like. Your letters might be checked. A check is made to see whether objects have been included which are not allowed (such as drugs or money).

You will usually have to pay for the stamps for your letters yourself. Any very important letters, for example to the authorities, *may* be paid for by the prison, but you cannot demand this.

### **Telephone calls**

Telephone calls *may* be permitted, but you do not automatically have a right to them. If your relatives live abroad or far away, telephone calls can be allowed if you apply for them.

### **Contact to diplomatic missions**

The diplomatic missions from your country of origin (embassy, consulate) can only be told that you are in prison with your permission. If you want to contact your embassy or consulate, the prison must let you do so.



### Training courses and education

Prisoners *should* be allowed access to training and education: to learn a profession, to improve their professional skills, to learn a new trade or to participate in other training courses. This could include the following:

- a German course
- training in the prison workshops
- a correspondence course (*Fernstudium*)
- taking a school leaving examination if you do not have one.

You can get information about training courses from the social services in the prison.

### Books

You have the right to use books. If there are no books in your language in the prison library, you can write an application for some to be obtained.

### Holidays

Although prisoners do not have a right to take holidays, they can be allowed to take a holiday for up to 21 calendar days each year. Prisoners from other countries who are to leave the country on release ("*vollziehbare Ausweisungsverfügung besteht*") do not usually get holidays.

If a relative has a life-threatening illness or dies, a holiday, day release or accompanied visit may be granted. This holiday may last up to 7 days, and is not included in the calculation of the normal holiday days.

## Religion

See "Pre-trial detention" on p. 21.

## Carrying out your sentence in your own country

If you prefer to serve your sentence in your country of origin, rather than in Germany, you can apply to do so. A lawyer can give you advice on this matter. The ministries of justice will also provide information about this issue.

## Early release

If you are not threatened with expulsion, and you have permission to reside in Germany, an automatic check is made to see whether you can be released from prison early after serving  $\frac{2}{3}$  of your term. However, you can also apply to be released after you have served half of your sentence. You will then be on probation (*auf Bewährung*) for the rest of your term.

## How do I make sure I get my rights?

The first step is to apply for something, or to state your opposition to something, and then to try to reach an agreement with the prison management. If no agreement is reached, you can file an objection (*Widerspruch einlegen*; this applies if you are in prison in Baden-Württemberg, Bremen, Hamburg, Nordrhein-Westfalen or Schleswig-Holstein) or you apply for a court ruling (*gerichtliche Entscheidung*; this applies in all the other German federal states). Since procedures like this are usually very complicated, you should get help from a counsellor.

You can file a disciplinary complaint (*Dienstaufsichtsbeschwerde*) for problems which are not regulated in the Prison Act (*Strafvollzugsgesetz*), for example, if you feel that you have

been insulted by a prison officer. Disciplinary complaints against prison officers are submitted to the prison management, while those against the prison management are submitted to the legal authority (*Justizbehörde*). You do not need a special form to do this: all you need to do is write a letter on normal letter paper, and write “*Dienstaufsichtsbeschwerde*” at the top. You then write a short description of what you are complaining about. You can ask your counsellor to help you with this.

## Deportation custody (*Abschiebehaft*)

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People who do not have a German passport and who are to be deported from Germany are taken into deportation custody. This can be ordered as security detention (*Sicherungshaft*) or as preparatory detention (*Vorbereitungshaft*).

- You should not be kept in deportation custody for more than 6 months. In certain cases, this can be extended by up to 12 months, for example when your country of origin is unwilling to accept you.
- You do not need to have committed a crime to be taken into deportation custody. For this reason, the courts have to be very careful when they decide to order it. You have the right to request an examination by the court to see whether you should be kept in custody (§ 10, section 2 FEVG).
- You have the right to use an interpreter for all matters relating to deportation custody.
- In deportation custody you have the same rights as people in prison.

# Expulsion and deportation

In Germany, expulsion and deportation are two different things:

- If expulsion (*Ausweisung*) is ordered, you are obligated to leave the country, but you can make your own arrangements on how you leave.
- If deportation (*Abschiebung*) is ordered, the obligation to leave the country is forcibly carried out. This means that you are deported if you don't leave the country voluntarily.

Expulsion is the most severe measure taken by the immigration authorities (*Ausländerbehörde*) in order to end your stay in Germany (see p. 28 for reasons). If you are told to leave the country

- you no longer have a right of residence and you must leave Germany
- you are not allowed to enter Germany again and to stay there – even when you would otherwise be entitled to a right of residence. The refusal of entry (*Einreiseverbot*) usually applies for an unlimited period of time. However, upon request the refusal is limited in most cases to a fixed period of time which will then start when you leave the country. You will only be allowed to enter Germany again when the date stated has passed.

In the case of expulsion you will receive an official letter, in which you will be requested to leave the country, and that you will be deported if you don't do so. Before you are deported you must be invited to a hearing (*Anhörung*). If after the hearing deportation is ordered, you can file an objection (*Widerspruch einlegen*) in writing to the immigration authorities within one month. If the immigration authorities do not accept your objection, you can bring your case to the administrative court (*Verwaltungsgericht*).

### **You may be deported only**

- if you have been officially ordered to leave the country (“*rechtskräftig ausgewiesen*”) but have not yet left even though you are not permitted to be there.
- when it is assumed that you will not leave the country voluntarily.
- when a final date for leaving the country has been set, and when you have been threatened with deportation. However, prisoners are not threatened with deportation and no final date for leaving the country is set, since they are unable to leave the country voluntarily.
- when the time which you were given to leave the country has run out.

Most people who are deported come into one of the following categories:

- they do not have any money
- they have not left the country within the term set
- they do not have a valid passport (for example, when their passport has already expired)
- the immigration authorities are obliged to expel them from the country (see p. 28)
- they give false information on ending their stay, or refuse to give information
- they give to understand that they will not leave the country
- they are in prison (before or after a trial)

When people are to be deported from prison, the deportation is supervised.

## What reasons can lead to expulsion?

The reasons for expulsion are regulated in the German legislation on immigration (*Aufenthaltsgesetz, AufenthG*). Depending on the individual case, someone may be told to leave the country simply because he or she receives welfare benefits. However, the most frequent reason for being expelled is probably being found guilty of a crime.

An expulsion must be carried out (*zwingende Ausweisung*) when

- a sentence of at least three years' imprisonment or juvenile imprisonment is given for one or more wilful criminal acts
- a sentence of at least two years' imprisonment or juvenile imprisonment is given (without probation, *ohne Bewährung*) due to a wilful criminal act related to narcotics legislation (*Betäubungsmittelgesetz*) or due to a breach of the peace (*Landfriedensbruch*)
- a sentence of imprisonment is given (without probation) for bringing illegal immigrants into the country.

An expulsion should be carried out (*Regelausweisung*) when

- a sentence of at least two years' imprisonment or juvenile imprisonment is given for wilful criminal acts
- there is a well-founded belief that the person concerned
  - belongs to a terrorist organisation, or supports such an organisation
  - poses a threat to the free and democratic order of the Federal Republic of Germany
  - makes public calls for violence, or threatens the use of violence

- belongs to an illegal organisation which has violated penal provisions or the free and democratic order of the Federal Republic of Germany.

An expulsion can be carried through when a person

- spreads ideas which support crimes against humanity, or which present a threat to public safety and order
- provokes others to hatred or violence against sections of the population
- provides false or incomplete information when applying for a visa.

When an expulsion should or can be ordered, the immigration authorities examine the individual case (*Ermessensprüfung*).

## Persons protected from expulsion

Even if an expulsion *must* be carried out (*zwingende Ausweisung*) certain persons can only be deported after the immigration authorities have examined their case. This rule applies for

- citizens of countries within the European Union
- persons from non-EU states
  - with a permanent residency permit (*Niederlassungserlaubnis*) who have been living in Germany for at least five years
  - or with a limited residency permit (*Aufenthaltserlaubnis*) who were born in Germany or who entered Germany as a child and have been living in Germany for at least five years
  - or the partners of such people (the requirement here is a marriage or registered partnership [*eingetragene Partnerschaft*] for same-sex couples), when these partners have a

limited residency permit and have been living in Germany for at least five years

- foreign relatives of German citizens
- persons under 18 whose parents are legally living in Germany
- persons entitled to asylum in accordance with the Geneva Convention
- 18–21 year-olds with a permanent residency permit
- persons under 18 who have a permanent or a limited residency permit.

## **HIV/AIDS – a reason for being allowed to stay in Germany? Legal information**

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If you are living with HIV or AIDS and are receiving HIV treatment which cannot be continued in your country of origin, you can take legal action against an expulsion. Your local AIDS service organisation (*Aidshilfe*), together with the refugee advisory council (Flüchtlingsrat) will offer you support in this matter (see the addresses on page 36).

### **Filing an objection (*Widerspruch einlegen*)**

As soon as the immigration authorities announce an expulsion or deportation, you should immediately file an objection in writing. The reason for the objection should be stated as follows: *“Wegen der HIV-Infektion/Aids-Erkrankung liegt ein Abschiebungsverbot nach § 60 Aufenthaltsgesetz vor. Durch eine Abschiebung wird die Lebenserwartung gefährlich verkürzt, weil im Zielstaat wegen unzureichender medizinischer Behandlung eine Verschlimmerung der Krankheit droht.”* (“Due to HIV/AIDS, a deportation is unlawful in accordance with § 60 of the Aufenthaltsgesetz. Depor-



tion would lead to a dangerous reduction in life expectancy, since in the country of destination the disease would aggravate due to the lack of adequate medical treatment.”) It is important to state the reason in full; otherwise, you may be at a disadvantage when the court considers your case.

For the objection, you will need

- a doctor's report (*ärztliches Attest*) which informs about the progress of your medical treatment, and
- at least one expert opinion (*Gutachten*), which confirms that the medical treatment in your country of destination cannot be continued, and gives the reasons for this.

Important: The objection should be sent as a registered letter with return receipt (*Einschreiben mit Rückschein*) to the immigration authorities (*Ausländerbehörde*) who announced the expulsion. The immigration authorities will not then be able to say that they have not received your objection. You should keep the return receipt in a safe place.

At the same time, you should get in touch with the refugee advisory council immediately, and ask them to help you with a case of “*humanitärer Härtefall wegen einer HIV-Infektion/Aids-Erkrankung*” (“humanitarian hardship due to an HIV infection or AIDS”) and if necessary, due to further causes of hardship (*weitere Härtegründe*). What they can do for you depends on the federal state you are living in. Usually, there will be a petition board (*Petitionsausschuss*) in the state assembly (*Landtag*), as well as a committee for hardship cases (*Härtefallgremium*). The refugee advisory council will help you to find suitable lawyers.

If your expulsion has been announced officially, and you come from a country where you can easily continue your med-

ical treatment, you will probably have to leave Germany if your objection cannot be justified for a reason other than the HIV infection or AIDS. This applies to all EU states, but also to countries such as the USA, where medical treatment will not be provided free of charge if you do not have health insurance, or if your health insurance is inadequate. The German court ruling will assume that you will receive the support you need from AIDS service organisations in the USA.

Whenever the immigration authorities have the discretion to grant or to refuse the right of residence, an objection will have little chance of succeeding. It is a different story if you are married to a German citizen, or if you are living with a German in a “registered partnership” (*eingetragene Partnerschaft*, for same-sex couples). Even if you have to leave the country initially, the immigration authorities must grant you the right to return to your German partner after a specified period of time. This period usually depends on the length of your sentence, and can sometimes double the period of separation. In this case, you are entitled to file an objection on humanitarian grounds.

### **Impediments to deportation related to the country of destination**

Most people who have begun HIV therapy in Germany and who come from a poor country are granted the right to remain, even when their sentence has ended. However, this is not always the case, since the legislation in Germany also leaves room for other decisions to be made.

Article 3 of the European Convention on Human Rights (ECHR) applies also in Germany. According to the convention,

“no person may be subjected to torture, or to inhuman or degrading punishment or treatment”. Stopping a life prolonging treatment by forcing someone to leave the country can be interpreted and officially recognised as “degrading treatment” (as was the case with a judgement issued by the European Court of Human Rights on 2.5.1997 – 146/1996/767/D/The United Kingdom regarding a deportation order issued in the United Kingdom). Also the German legislation on immigrants frequently recognises an HIV therapy as a reason why someone cannot be deported, in accordance with § 60 of the AufenthG (judgements which were made on the basis of the former immigration legislation can be used as a legal argument), when an asylum seeker will be in danger in his or her country of origin. The term used here is “impediments to deportation related to the country of destination” (*“zielstaatsbezogene Abschiebehindernisse”*). In this case, § 60, section 7 of the AufenthG applies when stopping the HIV therapy is considered and recognised as a “concrete and significant risk” (for example, the judgement issued by the Federal Office for the Recognition of Foreign Refugees regarding an asylum seeker from Togo, dated 12.5.2000, ref. 2046487-246). Paragraph 60, section 1 of the AufenthG can also apply in connection with Article 3 of the ECHR when it can be proved that “the state of destination or a powerful state-like force in the country of destination deliberately targets a specific person”, for example, persecutes gay men.

However, sometimes the German immigration authorities, and even the courts, take the position that HIV infections are “endemic” in certain countries, i.e. that a large number of people are affected there. According to this view, an HIV infection or AIDS would not be anything special, but simply “normal”. This

was the case for a citizen of Togo, for example, who went to the Administrative Court in Augsburg. For the court, it was sufficient that around 5 % of the population of Togo were allegedly infected with HIV. Therefore, deportation and stopping therapy would not represent “inhuman treatment” in the spirit of Article 3 of the ECHR, since for states which were “still underdeveloped”, this was not the intention of the state organs. On this basis, § 60 of the AufenthaltG could also not apply, since the country of origin did not plan and provoke the HIV infections among its citizens. Even if treatment was potentially available there, but was too expensive for the people who need it, Germany could not be held responsible. According to this view, general risks in the country of destination would only be taken into account when the Federal Minister of the Interior had officially requested a halt to deportation for people from certain countries in accordance with § 54 of the AuslG (which corresponds to § 60 of the actual AufenthaltG). However, to date, this has never been the case with endemic HIV infections and AIDS. (The Administrative Court in Augsburg, judgement of 25. 2. 1999 – Au 7 K 98.30453/Au 7 K 98.31120)

However, you should not allow yourself to be discouraged by the legal situation. There is a far greater number of legal judgements which have found in favour of people living with HIV or AIDS, and who come from poor countries. One example is the judgement issued by the Administrative Court in Frankfurt/Oder regarding an asylum seeker from Cameroon, dated 10. 2. 2000 (4 L 98/00.A), or the judgement issued by the Federal Administrative Court (*Bundesverwaltungsgericht*) dated 27. 4. 1998 (9C 13/97). Legal advisors can refer to these judgements, and to other successful court cases.

The Deutsche AIDS-Hilfe e.V. or the local AIDS service organisations (*Aidshilfen*, see addresses on p. 36) will give you free booklets about HIV infection and AIDS. Here are some examples:

## **in several languages:**

- *HIV and AIDS*  
(this booklet contains basic information, and is available in German, English, French, Portuguese, Russian, Spanish and Turkish)
- *therapy? Basic information on treating HIV infection*  
(in German, English and French)

## **in German:**

- *Gesundheitstips für Frauen im Knast*
- *Gesundheitstips für Männer im Knast*
- *positiv in Haft. Ein Ratgeber für Menschen mit HIV/Aids*
- *Substitution in Haft*
- *Tattoo und Piercing in Haft*
- *Test? – Informationen rund um den HIV-Test*
- *Drogenkonsum und Hepatitis. Übertragungswege, Vorbeugung, Behandlung*
- *virus hepatitis. info<sup>+</sup> für Berater/innen und interessierte Laien*

The Bundesarbeitsgemeinschaft Straffälligenhilfe, the federal working group which supports prisoners and released prisoners (Oppelner Str. 130, 53119 Bonn), will send you the booklet

- *Wegweiser für Inhaftierte, Haftentlassene und deren Angehörige*  
for 1 Euro, plus the cost of postage.

## AIDS service organisations

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Contact to a AIDS service organisation near to you can be arranged through:

**Deutsche AIDS-Hilfe e.V.**  
Dieffenbachstr. 33  
10967 Berlin  
Tel. 030 / 69 00 87-0  
Fax 030 / 69 00 87-42  
dah@aidshilfe.de  
<http://www.aidshilfe.de>

## Refugee advisory councils

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**Baden-Württemberg:**  
**Arbeitskreis Asyl  
Baden-Württemberg e.V.**  
Landesgeschäftsstelle  
Urbanstr. 44  
70182 Stuttgart  
Tel. 0711 / 55 32 83-4  
Fax 0711 / 55 32 83-5  
akasyлкоordination@web.de  
<http://www.akasyil-bw.de/>

**Bavaria:**  
**Bayerischer Flüchtlingsrat**  
Augsburger Str. 13  
80337 München  
Tel. 089 / 76 22 34  
Fax 089 / 76 22 36  
bfr@ibu.de  
<http://lola.d-a-s-h.org/bfr/bfr/>

**Berlin:**  
**Flüchtlingsrat Berlin e. V.**  
Georgenkirchstr. 69–70  
10249 Berlin  
Tel. 030 / 2 43 44-57 62  
Fax 030 / 2 43 44-57 63  
buero@fluechtlingsrat-berlin.de  
<http://www.fluechtlingsrat-berlin.de/>

**Brandenburg:**  
**Flüchtlingsrat**  
Eisenhartstr. 13  
14469 Potsdam  
Tel. + Fax 0331 / 71 64 99  
fluechtlingsratbrb@jpbberlin.de

**Bremen:**  
**Verein Ökumenischer  
Ausländerarbeit im Lande  
Bremen e.V. (Flüchtlingsrat)**  
Vahrer Str. 247  
28329 Bremen  
Tel. + Fax 0421 / 8 00 70 04  
f

**Hamburg:**  
**Flüchtlingsrat Hamburg e.V.**  
c/o Werkstatt 3  
Nernstweg 32–34, 3. Stock  
22765 Hamburg  
Tel. 040 / 43 15 87  
Fax 040 / 4 30 44 90  
info@fluechtlingsrat-hamburg.de

**Hessen:**

**Hessischer Flüchtlingsrat**

Frankfurter Str. 46  
35037 Marburg  
Tel. 06421 / 16 69 02  
Fax 06421 / 16 69 03  
hfr@fr-hessen.de  
<http://www.fr-hessen.de/>

**Mecklenburg-Vorpommern:**

**Flüchtlingsrat**

Postfach 11 02 29  
19002 Schwerin  
Tel. 0385 / 5 81 57 90  
Fax 0385 / 5 81 57 91  
flue-rat.m-v@t-online.de  
<http://www.fluechtlingrat-mv.de/>

**Niedersachsen:**

**Niedersächsischer Flüchtlingsrat e.V.**

Langer Garten 23 B  
31137 Hildesheim  
Tel. 05121 / 1 56 05  
Fax 05121 / 3 16 09  
nds@nds-fluerat.org  
<http://www.nds-fluerat.org/verein/index.htm>

**Nordrhein-Westfalen:**

**Flüchtlingsrat NRW e.V.**

Asienhaus Essen  
Bullmannaue 11  
45327 Essen  
Tel. 0201 / 8 99 08-0  
Fax 0201 / 8 99 08-15  
info@frrnw.de  
<http://www.frrnw.de>

**Rheinland Pfalz:**

**Arbeitskreis Asyl**

Postfach 2851  
55516 Bad Kreuznach  
Tel. 0671 / 8 45 91 53  
Fax 0671 / 25 11 40  
info@asyl-rlp.org  
<http://www.asyl-rlp.org/>

**Saarland:**

**Saarländischer Flüchtlingsrat e.V.**

Kaiser-Friedrich-Ring 46  
66740 Saarlouis  
Tel. 06831 / 4 87 79 38  
Fax 06831 / 4 87 79 39  
fluechtlingrat@asyl-saar.de  
<http://www.asyl-saar.de/>

**Sachsen:**

**Sächsischer Flüchtlingsrat e.V.**

Kreischauer Str. 3  
01219 Dresden  
Tel. 0351 / 4 69 26 07  
Fax 0351 / 4 69 25 08  
sfrev@t-online.de  
<http://saechsischer-fluechtlingrat.de/>

**Sachsen-Anhalt:**

**Flüchtlingsrat**

Schellingstr. 3–4  
39104 Magdeburg  
Tel. 0391 / 5 37 12 79  
Fax 0391 / 5 37 12 80  
frsa-magdeburg@web.de  
<http://www.fr-sa.de/>

### **Schleswig-Holstein:**

#### **Flüchtlingsrat**

Oldenburger Str. 25  
24143 Kiel  
Tel. 0431 / 73 50 00  
Fax 0431 / 73 60 77  
office@frsh.de  
<http://www.frsh.de/>

### **Thüringen:**

#### **Flüchtlingsrat Thüringen**

Warsbergstraße 1  
99092 Erfurt  
Tel. 0361 / 2 17 27-20  
Fax 0361 / 2 17 27-27  
info@fluechtlingsrat-thr.de  
<http://www.fluechtlingsrat-thr.de/>

## **Other support organisations**

#### **Bundesarbeitsgemeinschaft für Straffälligenhilfe e.V. (BAG-S)**

Oppelner Str. 130  
53119 Bonn  
Tel. 02 28 / 6 68 53 80  
Fax 02 28 / 6 68 53 83  
bag-s@bag-straffaelligenhilfe.de

*At the BAG-S office and in the Internet  
[www.bag-straffaelligenhilfe.de](http://www.bag-straffaelligenhilfe.de) you  
can get addresses of local organisa-  
tions which offer counselling to pris-  
oners and released prisoners.*

### **PRO ASYL**

Postfach 160624  
60069 Frankfurt/Main  
Tel. 069 / 23 06 88  
Fax 069 / 23 06 50  
proasyl@proasyl.de  
<http://www.proasyl.de/index.html>

### **terre des femmes**

Konrad-Adenauer-Str. 40  
72072 Tübingen  
Tel. 07071 / 7 97 30  
Fax 07071 / 79 73 22  
tdf@frauenrechte.de  
<http://www.terre-des-femmes.de/>

### **terre des hommes**

**Deutschland e.V.**  
Ruppenkampstr. 11a  
49084 Osnabrück  
Tel. 0541 / 71 01-0  
Fax 0541 / 70 72 33  
info@tdh.de  
<http://www.tdh.de/>

### **UNHCR**

The High Commission for Refugees  
of the United Nations  
– German Office –  
Wallstr. 9–13  
10179 Berlin  
Tel. 030 / 20 22 02-00  
Fax 030 / 20 22 02-20  
gfrbe@unhcr.ch  
<http://www.unhcr.de/>



**Verband für interkulturelle Arbeit  
VIA e.V.**

Bundesgeschäftsstelle  
Hochemmericher Str. 71  
47226 Duisburg  
Tel. 02065 / 5 33 46  
Fax 02065 / 53 35 61  
via@via-bund.de

**VIA Berlin/Brandenburg e.V.**

Petersburger Str. 92  
10247 Berlin  
Tel. 030 / 4 22 20 66  
Fax 030 / 29 00 71 54  
info@via-in-berlin.de

**AKAM**

Health information and advice  
for immigrants  
Petersburger Straße 92  
10247 Berlin  
Tel. 030 / 29 00 69 49  
Fax 030 / 29 00 71 54  
akam@via-in-berlin.de

**Afrikaherz**

Health and Migration  
Petersburger Straße 92  
10247 Berlin  
Tel. 030 / 4 22 47 06  
Fax 030 / 29 00 71 54  
afrikaherz@via-in-berlin.de

**Advice for drug users**

*A large number of drug counselling centres offer advice in several languages. You can get their addresses from the Deutsche Hauptstelle für Suchtfragen e.V. (DHS) or in the internet under [http://www.optiserver.de/dhs\\_db/dhs-suche.php](http://www.optiserver.de/dhs_db/dhs-suche.php). You can ask the social services in your prison, for example, to give you the addresses.*

**Deutsche Hauptstelle  
für Suchtfragen e.V.**

Westenwall 4, 59065 Hamm  
Tel. 0 23 81 / 90 15-0  
Fax 0 23 81 / 90 15-30  
info@dhs.de

**Counselling for gays  
and lesbians**

*You can get the addresses of organisations which offer counselling to gay men and lesbians from:*

**Lesben- und Schwulenverband  
in Deutschland (LSVD)**

Pipinstraße 7  
50667 Köln  
Tel. 0221 / 92 59 61-0  
Fax 0221 / 92 59 61-11  
lsvd@lsvd.de  
<http://typo3.lsvd.de/30.0.html>

© **Deutsche AIDS-Hilfe e.V.**

Dieffenbachstraße 33  
10967 Berlin  
Internet: <http://www.aidshilfe.de>  
E-Mail: [dah@aidshilfe.de](mailto:dah@aidshilfe.de)

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