



Kaiserslautern Legal Services Center  
Legal Assistance Information



## Illegitimate Paternity Rules in Germany

*This information paper provides basic information only, and is not intended to serve as a substitute for a personal consultation with a Legal Assistance Attorney. For an appointment to see an attorney, dial DSN 483-8848 or Civilian 0631-411-8848.*

|   |           |
|---|-----------|
| <b>I. BASICS</b> .....  | <b>1</b>  |
| A. Fact Pattern.....  | 1         |
| B. Presumption of Paternity.....  | 2         |
| <b>II. ESTABLISHMENT OF PATERNITY</b> .....                               | <b>2</b>  |
| A. Paternity established or acknowledged.....                             | 2         |
| B. Paternity Testing.....   | 3         |
| C. Challenging Paternity.....   | 4         |
| <b>III. RIGHTS AND OBLIGATIONS</b> .....                                  | <b>5</b>  |
| A. Custody, Child’s Name and Law of Succession.....                       | 5         |
| B. Support Obligations.....   | 6         |
| C. Visitation Rights.....   | 9         |
| <b>IV. ENFORCEMENT OF SUPPORT ORDERS</b> .....                            | <b>10</b> |
| A. Garnishment.....   | 10        |
| B. UIFSA / URESA / AUG.....   | 11        |
| <b>V. ANNEXES</b> .....   | <b>12</b> |
| A. Child Support Guidelines January 2008 thru January 2010 (new law)..... | 14        |
| B. Conversion of pre-2009 child support orders.....                       | 15        |
| C. Child Support Guidelines January 2002 thru January 2007 (old law)..... | 16        |

## I. BASICS

Effective July 1, 1998 tremendous changes have taken place in the area of the German Family Law. Basically all distinctions between legitimate and illegitimate children have been abolished in Germany. In recent rulings the European Court of Human Rights and the German Constitutional Court have strengthened the rights of fathers with respect to their illegitimate children.

### A. Fact Pattern

a. If a mother names a man as the father of her child, and he does not acknowledge his paternity, he may be sued by the mother herself or by the child (either represented by the mother or the Youth Office as the official legal representative) in the Family Division of the Local Court ("Familiengericht") for the establishment of his paternity. If the Youth Office initiates the procedure IAW § 1712 BGB (Bürgerliches Gesetzbuch, German Civil Code), then the child's mother would neither be the plaintiff nor the child's representative and, therefore, can be a witness in favor or against the man.

b. The consequences of paternity, *e.g.*, child support, can only be asserted when the man acknowledged his paternity or was established as the child's father by a court of competent jurisdiction or was married to the mother at the time she gave birth to the child (§ 1592 BGB). But once paternity has been acknowledged or established, support claims against the child's father may be exercised retroactively, back to the date when the child was born (§ 1613 BGB).

c. § 130 para. 2 FmFGG (Familiensachen und Freiwillige Gerichtsbarkeitsgesetz, Family Matters and Ex-Parte Jurisdiction Act) provides that no judgment shall be entered in paternity proceedings without the court verifying the claim (no default judgment). The German courts have the duty to establish the issue of paternity beyond a reasonable doubt (99.9% likelihood according to the paternity blood test). In the event of remaining doubt, however, a man who had sexual intercourse with the mother during the legal period of conception would be established as the father, on the basis of a legal presumption. However, in no other area of law are more perjuries sworn than by unmarried mothers in paternity actions. Therefore, there are cases where it is proven in court by paternity tests that the "only man who had (allegedly) sexual intercourse with the child's mother" could not be the child's father because paternity is clearly excluded on the basis of paternity tests.

d. If paternity is established by a court of competent jurisdiction, the legal costs, including the costs for the paternity test (on average to approximately €2,000.00) have to be born by the losing party, *i.e.*, if the alleged father is actually found to be the biological father, he has to pay those costs on top of the support payments. The voluntary acknowledgment of paternity is free of charge but almost impossible to be revoked at a later time.

## **B. Presumption of Paternity**

a. **MARRIED MOTHERS.** §§ 1592, 1593 BGB provide that any children who are born during a valid marriage of the mother or within 300 days after her husband's death are considered to be her husband's children. An exception applies where the mother remarried within the 300 days following the finality of her prior marriage. Only in such a case shall the new husband and not the ex-husband be considered the biological father.

b. **SINGLE OR DIVORCED MOTHERS.** It is presumed that a child is fathered by the man who had sexual intercourse with the child's mother during the period from the 181<sup>st</sup> day through the 300<sup>th</sup> day (9½ months) prior to the child's birth (§ 1600d BGB). The presumption does not apply, however, when after evaluation of all circumstances, there remain serious doubts as to the paternity. Therefore, if the mother gives birth to a child, her former husband will no longer be automatically considered to be the biological father of such a child provided the divorce became final before the birth.

c. **PENDING DIVORCE.** Moreover, it has become easier for a man to contest his paternity to any child his wife gives birth to during a pending divorce case on condition that the true biological father agrees to voluntarily acknowledge his paternity and follows the corresponding procedural rules (§ 1599 BGB). Yet, the acknowledgment won't become effective until the divorce is final.

## **II. ESTABLISHMENT OF PATERNITY**

### **A. Paternity established or acknowledged**

a. **VOLUNTARY ACKNOWLEDGMENT.** Paternity may be voluntarily and free of charge acknowledged at any German Youth Office ("Jugendamt") or at the courthouse. An acknowledgment of paternity may be made even before the child's birth (§ 1594 para. 4 BGB). It has to be declared in person (§ 1596 para. 4 BGB) and may not be made subject to any condition or revocation other than that the presumed father first challenges his paternity successfully (§ 1594 para. 3 BGB). Any voluntary acknowledgment is only valid if the consent of the child, usually represented by its mother or by the Youth Office, is obtained as well (§ 1595 BGB). Both the father's acknowledgment and the child's consent must be made by certified declaration before either a German Notar, the local court ("Amtsgericht"), or an authorized Youth Office worker. Where consent is not obtained within a year after the father's acknowledgment, he may revoke his acknowledgment (§ 1597 BGB).

b. **ESTABLISHMENT BY COURT ORDER.** German courts can force an alleged father to take a paternity test (§ 178 para. 1 FamFG, § 372a ZPO, Zivilprozeßordnung, German Code of Civil Procedure). Furthermore, Article 37 of the NATO Status of Forces Supplementary Agreement provides that the military authorities shall secure the member's compliance with a

summons if the member's attendance is compulsory under German law. This means that the commander concerned is required to monitor and ensure the soldier's compliance with the summons. In a given case, the commander is expected to have his subordinate escorted to the appointed place under guard, if that soldier fails to obey the German court order. Alternatively, a member of the US-Forces or civilian component may be imprisoned for contempt of court according Article 34 para. 2 of the NATO Status of Forces Supplementary Agreement. § 178 para. 1 FamFG reads:

"(Examinations to Establish Descent). As far as it is necessary for the establishment of decent, every person has to tolerate a physical examination, particularly the withdrawal of blood samples, unless the physical examination would constitute an unreasonable demand."

c. If the alleged father resides abroad and refuses to take a court ordered blood test, he may be found to be the father nevertheless because he is obstructing the obtaining of evidence (BGH NJW 1986, 2371).

## ***B. Paternity Testing***

a. BLOOD TEST. A court ordered blood test will have to be performed in accordance with the German Guidelines for Expert Opinions on Decent ("Richtlinie für die Erstattung von Abstammungsgutachten" published in FamRZ 2002, 1159) by the Robert Koch Institute. It is highly recommended that the baby be at least 8 months old before the blood test is done. In the Kaiserslautern area the Institute for Forensic Medicine of Professor Dr. Christian Rittner („Institut für Rechtsmedizin Prof. Dr. Christian Rittner“) performs the most tests. It is located on Kerststr. 27-31, 67655 Kaiserslautern (Phone: 0631-68045; Email: info@rittner-vaterschaft.de). The costs for a court ordered testing approximately amount to € 1,700.

b. SWAB TEST. State of the art paternity tests are swab tests. They are less expensive than blood tests and less burdensome. Moreover, they are as reliable as blood tests and can even be performed on a newborn baby.

c. DO-IT-YOURSELF-TESTING. If sufficient time is left before a trial the mother and the alleged father as well as the child might work out an arrangement under which they voluntarily take a blood test or swab test and regard its outcome as final and binding. Such a test costs less money than a court-ordered paternity test and there are no court costs involved<sup>1</sup>. German test kits may be bought or ordered on the economy at any German Drug Store ("Apotheke"), online or simply ask your medical doctor for his/her rates<sup>2</sup>. If the results from the voluntary test are negative, the alleged father should be off the hook. At least he can calmly await any court hearing. Otherwise the father is best advised to quickly sign a voluntary acknowledgment of paternity if the voluntary test result is positive, proving his paternity.

---

<sup>1</sup> More information can be obtained on the internet page: <http://www.mbc.org> The Minnesota based Memorial Blood Centers is an organization that charges \$495.00 for a paternity test (\$165 per person).

□ The Frankfurt based company Humatrix sells their swab test kits for €20.00. Yet, the test itself will cost around €740.00.

### **C. Challenging Paternity**

a. If paternity has been established by court order, it can no longer be challenged once the appeal time (30 days following the service of the order) has run out.

b. The father can challenge his voluntarily acknowledged paternity in court IF he can provide reasons for his non-paternity. The Statute of Limitation for any action is two years after the father first became aware of the specific fact on which he bases his challenge (§ 1600b BGB). The father then has the full burden of his non-paternity, which practically would require a negative paternity test. In such a case the contesting father would be the petitioner and would have to make a security payment in the amount of at least €2,500.00 for the costs of the lawsuit and paternity test before the court will accept his complaint. If the father was aware of his non-paternity but nevertheless acknowledged paternity voluntarily, he may still contest/challenge his paternity but might remain financially liable to provide child support (Judgment of October 25, 2001, OLG Köln, 14 UF 106/01).

c. If the mother is married to another man when she gave birth to the child or that man acknowledged his paternity and there exists a family like relationship between that man and the child, then the child's biological father cannot challenge that man's paternity (§ 1600 para. 2 BGB). Instead that man, the mother or the mother on behalf of the child need to take some action first, before the actual father can acknowledge his paternity or before it can be established in a court of law. The Statute of Limitations for each of these persons is two years as well. However, for the child the time is tolled until it turns 18 (§ 1600b BGB).

d. Secretly done paternity tests or those without the expressed consent of all parties concerned (alleged father, mother, child) are not admissible in German court (BGH NJW 2005, 497). However, if the mother acknowledges thereafter having slept with other men, a retrial may be granted (BGH NJW 2006, 1742). Yet, if the father had known this for two years, the Statute of Limitations (§ 1600b BGB) has run out (BGH 2006, 1734).

e. § 1598a BGB allows all parties concerned (father, mother, child) to request a paternity test to clarify any decent issues. Yet, any negative outcome will not remove the paternity automatically. Paternity still needs to be challenged in a separate legal action.

### III. RIGHTS AND OBLIGATIONS

#### A. Custody, Child's Name and Law of Succession

a. CUSTODY. If the mother agrees, it is also possible for the father to get joint custody (§ 1626 a BGB). However, this does in no way affect a parent's support obligations. Further, in most cases the mother will disagree for it does not seem plausible to have joint custody if the parents will soon live on different continents and if there has never been enough common ground for a joint life of the parents in the first place. Based on § 58a SGB VIII (Sozialgesetzbuch VIII, German Code of Social Law Title VIII) the mother(!) can obtain a so-called “negative joint-custody certificate” from the Youth Welfare Office that has jurisdiction over her place of residence.

b. The European Court of Human Rights in Strasbourg declared the German version of automatic(!) sole custody to the mother to be in violation of Art. 14 in connection with Art. 8 European Human Rights Convention (EMRK), requiring the German legislator to modify §1626a BGB in the near future (Judgment of December 3, 2009, EGMR, V Section, Case # 22028/04, Zaunegger vs. Germany; EGMR NJW 2010, 501; Campbell/Haußleiter NJW-Spezial 2010, 324). Subsequently, the German Constitutional Court came to a similar conclusion (Judgment of July 21, 2010, BVerfG 1 BvR 420/09; BVerfG NJW 2010, 3008). Consequently, the father of an illegitimate child is now allowed to file a petition for joint (or even sole) custody with the Court if the mother refuses to give him any custody rights voluntarily. Yet, the decisive factor for the court will be: “What is in the best interest of the child?”. Therefore, it cannot be ruled out that the aforementioned arguments of geographical and emotional distance between the unmarried parents may be reintroduced to justify the mother's sole custody.

c. Whether a child is illegally retained in or removed from a country depends on a violation of custodial rights (Judgment of October 5, 2010, EuGH C-400/10 PPU; NJW-Spezial 2011, 101). If the other parent does not (yet) have custodial rights, a petition based on endangerment of the child's welfare (§ 1666 BGB) could be considered to stop the custodial parent's actions, given appropriate factual circumstances.

d. CHILD'S NAME. If all parties involved agree, the child may take the father's last name; otherwise the child shall take the mother's last name (§ 1617a BGB).

e. LAW OF SUCCESSION. The parents can inherit from the child should the child pre-decease. Yet, the child's inheritance right against the estate of the father in the event of his death usually is subject to the laws of the state of the father's domicile (Art. 25 EGBGB, Einführungsgesetz zum Bürgerlichen Gesetzbuch, Introductory Code to the German Civil Code). In Germany, illegitimate children have the same right to inherit from both their parents like legitimate children (§ 1924 BGB). Art. 9 of The European Convention in the Legal Status of Children born out of Wedlock of 15 October 1975 reads:

“A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father’s or mother’s family, as if it had been born in wedlock.”

## **B. Support Obligations**

a. **GENERAL.** As a rule, the rights of an illegitimate child to claim support and, in the case of its mother, to claim certain support payments prior and subsequent to the child’s birth, are governed by German law if the child has its general place of abode or habitual residence within the Federal Republic of Germany. Note, Art. 1 of the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors (Hague Convention # 10) empowers the State of the habitual residence of an infant to take measures directed to the protection of his/her person or property. Furthermore, under Art. II of the NATO Status of Forces Agreement (NATO SOFA), all US soldiers, US civilians of the Armed Forces and their dependents to the jurisdiction of the receiving state / host country (here: Germany), unless otherwise provided, *e.g.*, Art. VII NATO SOFA. There is no immunity or extraterritoriality of US soldiers and their dependents, as is sometimes mistakenly assumed, nor are US barracks or US housing areas extraterritorial. They are property of the Federal Republic of Germany and are governed by (German) Federal Fund Administration (Art. 48 of the Supplementary Agreement of NATO SOFA agreement).

b. **SUPPORT TO THE MOTHER.** Even though the father is not married to the mother, he may also be required to support the child's mother during the period from six weeks before the birth through eight weeks after giving birth, and to pay the cost of the delivery, unless there exists - as is typically the case for working mothers - insurance coverage. Moreover, the support payments for the mother may be extended where necessary, to start 4 months before the child's birth and to continue for up to 3 years in extreme circumstances, *e.g.*, for a handicapped child, even longer after the child's birth where the mother cannot work because she has to raise the child (§ 1615 I BGB). This also applies if the mother’s marriage fails because of the illegitimate child (OLG Bremen NJW 2004, 1601). If the alleged father financially cannot afford to pay support, his parents may become responsible for these payments (§ 1607 BGB).

c. **CHILD SUPPORT.** How much child support is owed, depends on the father's income and the applicable German child support guidelines. The most cited guideline is called "Düsseldorfer Tabelle" (Duesseldorf chart). It is revised every two years in accordance with the cost of living index. At a minimum a child can claim support as specified in the net income group 01. (See, below) (§ 1612a BGB), which is also referred to as Regular Support (“Regelunterhalt”). The German courts regard these charts as mandatory and will disregard any agreement on a smaller amount.

f. **DUESSELDORF CHART.** As of January 1, 2011, child support according to the Duesseldorf chart amounts to: (Note, the child support amounts remain unchanged since January 2010 but the amounts for personal requirement (PR) have slightly been increased.)

|     | Net income Group | Child's Age Group |      |       |      | %    | PR      |
|-----|------------------|-------------------|------|-------|------|------|---------|
|     |                  | 0-5               | 6-11 | 12-17 | 18   |      |         |
| 01. | Up to € 1,500    | €317              | €364 | €426  | €488 | 100% | 770/950 |
| 02. | €1,501 - €1,900  | €333              | €383 | €448  | €513 | 105% | 1,050   |
| 03. | €1,901 - €2,300  | €349              | €401 | €469  | €537 | 110% | 1,150   |
| 04. | €2,301 - €2,700  | €365              | €419 | €490  | €562 | 115% | 1,250   |
| 05. | €2,701 - €3,100  | €381              | €437 | €512  | €586 | 120% | 1,350   |
| 06. | €3,101 - €3,500  | €406              | €466 | €546  | €625 | 128% | 1,450   |
| 07. | €3,501 - €3,900  | €432              | €496 | €580  | €664 | 136% | 1,550   |
| 08. | €3,901 - €4,300  | €457              | €525 | €614  | €703 | 144% | 1,650   |
| 09. | €4,301 - €4,700  | €482              | €554 | €648  | €742 | 152% | 1,750   |
| 10. | €4,701 - €5,100  | €508              | €583 | €682  | €781 | 160% | 1,850   |
| 11. | more than €5,101 |                   |      |       |      |      |         |

e. NET INCOME CALCULATION. The calculation is based on your average monthly gross income during the past 12 months. Base pay plus BAH, BAS, COLA plus any extra pay or other source of income that make up your gross amount. If the Army provides free housing in the Barracks a fictitious amount will be added. Thereafter, your gross pay is reduced by taxes and social security (only). No other debts are taken into consideration. That balance is reduced by another 5% for work-related expenses (at most €150.00) as well as a reasonable amount for the creation of wealth. The resulting figure constitutes the net income and is multiplied by the official exchange rate (US Dollar \$ / Euro €). Look to the above list to find your net income group.

f. Yearly average conversion rates:

| Year | US Dollar | Euro   | (€1 = DM 1.95583) | Euro | US Dollar |  |
|------|-----------|--------|-------------------|------|-----------|--|
| 2006 | \$1       | €0.80  |                   | €1   | \$1.25    |  |
| 2007 | \$1       | €0.73  |                   | €1   | \$1.37    |  |
| 2008 | \$1       | €0.68  |                   | €1   | \$1.47    |  |
| 2009 | \$1       | €0.72  |                   | €1   | \$1.38    |  |
| 2010 | \$1       | €0.755 |                   | €1   | \$1.32    |  |
| 2011 | \$1       |        |                   | €1   |           |  |

g. CHILD SUPPORT & "KINDERGELD". If the mother is an ordinary resident of Germany she draws Child Allowance ("Kindergeld") from the German Labor Office. For the first and second child, she receives €184.00 per month in Kindergeld per child. According to the German Institute for Youth Human Services and Family Law ("Deutsches Institut für Jugendhilfe und Familienrecht – DIJuF") US fathers can have their support obligation reduced, by getting half of the Kindergeld credited towards their support obligation IAW § 1612b para. 1 BGB, if they do not qualify for the US child tax credit because the child resides with the mother receiving German Kindergeld (U 1.432 USHQ/DI, 11 July 2000).

| <u>Kindergeld</u><br>( <u>[German]</u><br><u>monthly Child</u><br><u>Allowance</u> ) | <u>1<sup>st</sup> Child</u> |       | <u>2<sup>nd</sup> Child</u> |       | <u>3<sup>rd</sup> Child</u> |       | <u>4<sup>th</sup> Child</u> |           |
|--|-----------------------------|-------|-----------------------------|-------|-----------------------------|-------|-----------------------------|-----------|
| 2002-2008  | €154                        | (€77) | €154                        | (€77) | €154                        | (€77) | €154                        | (€77)     |
| 2009   | €164                        | (€82) | €164                        | (€82) | €170                        | (€85) | €195                        | (€97,50)  |
| 2010-2011  | €184                        | (€92) | €184                        | (€92) | €190                        | (€95) | €215                        | (€107,50) |
|  |                             |       |                             |       |                             |       |                             |           |

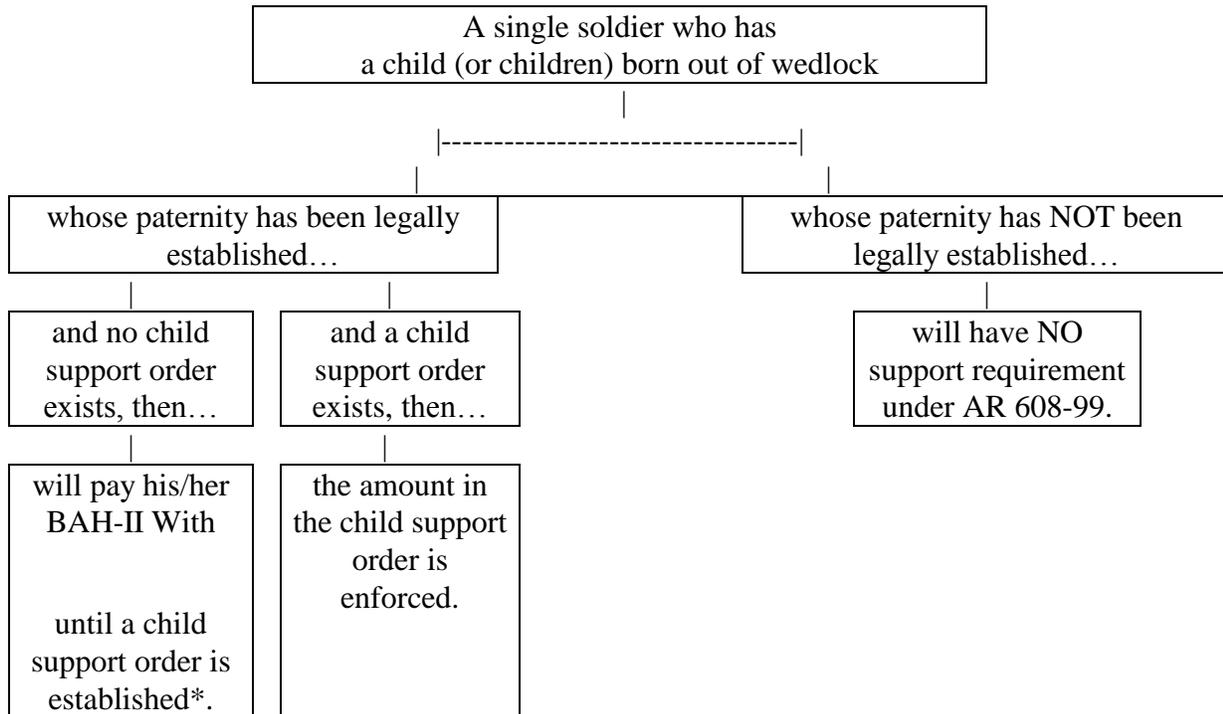
h. DURATION OF CHILD SUPPORT. Under German law parents are obligated to support their children (and the other way around) throughout their lives when the children (or the parents) cannot reasonably support themselves. If the parents cannot support the child, their parents or relatives will have to render support IAW § 1607 BGB, *e.g.*, if the biological father cannot support his child anymore, then his parents, the child's grandparents, may have to step in. Practically this means that standard support can be charged until the children reach the age of eighteen years. Afterwards specified support according to proven need may be charged, *e.g.*, if the child goes on to university. The child must be provided the necessary schooling and skills. Quite a number of German students are 30 years old before they finish their professional training and are not "in need of support" anymore. This means that fathers often have to support such a child for 30 years. However, these cases are rare in the given fact pattern. On the other hand, adult "children" are also responsible under German law to support their old and enfeebled parents. §§ 1601, 1602 BGB read as follows:

"Relatives [by blood or adoption] in lineal descent [grand parents - parents - children - grand children] are obligated [for life] to support each other when another relative in lineal descent is unable to support himself or herself."

i.. Child support orders can be created free of charge at any German Youth Office ("Jugendamt"). They can also be revised if the underlying circumstances change (§ 239 FamFG) (BGH NJW 2011, 1874; Graba NJW 2011, 1854).

j. ARMY REGULATION (AR) 608-99 (29 October 2003). In the absence of a (compulsory) court order or a (voluntarily signed) German Youth Office notarial deed, establishing paternity and directing support, a soldier has no obligation under AR 608-99 para. 2-2a to provide financial support to a child or its mother. Yet, a soldier who admits paternity and agrees to provide financial support may, under certain circumstances obtain BAH II. Furthermore, a support order will be enforced under AR 608-99 once it is in existence, even if the support specified therein is higher than the BAH II (AR 608-99 para. 2-4). Foreign court orders on financial support will also be enforced if they are either recognized by a court within the USA or they are issued by a German court and the servicemember is stationed in Germany (AR 608-99 para. 2-4c).

AR 608-99 and the single soldier:



\* If the soldier is supporting multiple children who reside in different family units, each child who is not covered by a child support order will receive a “pro-rata share” of the soldier’s BAH-II with (AR 608-99 para. 2-6e(1)(a)-(e)).

j. The DoD Per Diem, Travel and Transportation Allowance Committee has changed the terminology used to describe what has been referred to as BAH II; the table is now published as BAH RC/T (= reserve component transit) Rate. The BAH II tables represented the BAO rates in effect at the time the Army switched from BAQ und BAH. They have been adjusted each year to reflect the increase in housing costs. The language at the bottom of the chart regarding what BAH RC/T is and who it applies to is the same. The BAH RC/T rates should be applied wherever AR 608-99 specifies BAH II.

k. Failure to provide support can lead to recoupment by DFAS if you are getting a benefit for having dependents, but not supporting the dependents. The standard for recoupment is a failure to provide adequate support, *i.e.*, BAH DIFF (see AR 608-99 para. 1-7 and DOD 7000.14-R, vol. 7A, Ch 26, para. 260406, especially subpara. A, B & E).

**C. Visitation Rights**

a. As of July 1, 1998 the father has a right and an obligation(!) to exercise his visitation rights (§ 1684 BGB). It is a constitutionally protected parental right (BVerfG NJW 1983, 2491).

Each parent shall refrain from impairing the child's relationship with the other parent (Haußleiter NJW-Spezial 2007, 151). Furthermore, the visitation right also applies to the child's grandparents, the child's brothers and sisters as far as it is necessary for the child's well being (§ 1685 para. 1 BGB). The visitation right even extends to any person close to the child that maintains or has maintained a family like relationship with the child (§ 1685 para. 2 BGB). The decisive argument is what is in the child's best interest.

b. Should the parents fail to agree on visitation times, they may seek mediation at the “Sozialer Dienst”, a German social agency that closely works together with the Youth Office (§ 165 FamGG). Should they still disagree thereafter or if one parent refuses to participate in mediation, then the matter must be decided in court. Compulsory levy or direct constraint may be imposed against any parent in violation of an order regulating visitation rights; however, the child cannot be forcefully taken (§ 90 para. 3 FamGG). Yet, the custodial parent may endanger his/her own support (Palandt-Brudermüller, BGB, 69<sup>th</sup> Ed. 2010, § 1579 No.6 BGB Rn 31).

c. Courts may not only specify and modify visitation rights, the judge can also limit the visitation rights where it is necessary, *e.g.*, if the father behaves unreasonably (§ 165 para. 5 FamGG, §§ 1666, 1671, 1696 BGB). Often German courts and juvenile authorities fear parental kidnapping and child abduction to the USA. However, the United States and Germany have both signed an international treaty called "The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction" (Hague Convention #28). It has been implemented into the US Parental Kidnapping Prevention Act and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) making swift operations by the German courts and police or their American counterparts possible to prevent such acts.

## IV. ENFORCEMENT OF SUPPORT ORDERS

### A. Garnishment

a. SOFA. Article 34 of the SOFA Supplementary Agreement reads:

“A payment due to a member of a force or of a civilian component from his Government shall be subject to attachment, garnishment or other form of execution ordered by a German court or authority to the extent permitted by the law applicable in the territory of the sending State. ...”

b. AER 37-8 (28 January 2010) directs the Civil Process Section at International Law and Operations Division at OJA in Heidelberg to forward the garnishment order to Military Pay Division, PCE, 266<sup>th</sup> FMC, Unit 23122, APO AE 09227-3122 (AER 37-8 para. 5 d). The garnishment will be based on 42 U.S.C. § 659 or 5 C.F.R § 581 respectively.

c. Subject to garnishment are: base pay, special pay, incentive pay, accrued leave payments, readjustment pay, severance pay, lump-sum reserve bonus, inactive duty training pay,

retired pay, and retainer pay. NOT subject to garnishment are: BAS, BAH, FSA, and all station allowances,...

d. As a general rule a maximum of 50% of the garnishable net pay is taken out if the member concerned is supporting a spouse or dependent child other than a spouse or dependent child with respect to whose support the legal process is issued. This amount is increased to 60% if no spouse or dependent child is supported. An extra 5% is added on the 50% or 60% if arrearages exist.

## **B. UIFSA / URESA / AUG**

a. The Uniform Interstate Family Support Act (UIFSA) and the Uniform Reciprocal Enforcement of Support Act (URESAs) respectively as well as their German counterpart, the "Auslandsunterhaltsgesetz" (AUG, Foreign Maintenance Act), enable the parent having custody of the child to seek and enforce a judgment regarding child support or collecting arrears of child support where the non-custodial parent no longer lives in Germany but has returned to the USA. In Germany, such claims are processed through the Central Agency ("Zentrale Behörde"). Its address reads as follows:

Bundesamt für Justiz  
 - Zentrale Behörde -  
 Adenauerallee 99-103  
 53113 Bonn  
 Germany  
 Phone: +49 (0)228-99410-40  
 Fax: +49 (0)228-99410-5207  
 Email: [auslandsunterhalt-1@bfj.bund.de](mailto:auslandsunterhalt-1@bfj.bund.de)  
<http://www.bundesjustizamt.de>

b. Where an official guardian has been appointed (usually the German Youth Office), a different approach has to be taken. The Youth Office generally works through the "Deutsches Institut für Jugendhilfe und Familienrecht" in Heidelberg (<http://www.dijuf.de>) rather than the "Zentrale Behörde".

c. When dealing with maintenance claims in Germany the primarily governing laws as of June 18, 2011 are:

- The (Hague) Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, EU Official Journal (OJ) No. L 331, 16 December 2009, p. 19 ("Haager Protokoll über das auf Unterhaltungspflichten anzuwendende Recht", HUP).
- Council Regulation (EU) 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, Official Journal (OJ) No. L 7, 10

January 2009, p. 1 (“Verordnung (EG) Nr. 4/2009 über die Zuständigkeit, das anzuwendende Recht, die Anerkennung und Vollstreckung von Entscheidungen und die Zusammenarbeit in Unterhaltssachen”, EuUntVO)

- Implementing regulations in the German Foreign Maintenance Act ("Auslandsunterhaltsgesetz", AUG) as amended (see, Andrae NJW 2011, 2545).

d. The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention # 38) is not in force yet. It is supposed to replace the Hague Convention of 2 October 1972 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations (Hague Convention #23) as well as the UN Convention of 20 June 1956 on the Recovery Abroad of Maintenance.

Prepared by Joerg C. Modellmog, German Attorney-Advisor

## V. ANNEXES

THIS PAGE INTENTIONALLY LEFT BLANK

**A. Child Support Guidelines January 2008 thru January 2010 (new law)**

**January 1, 2008**

DUESSELDORF CHART. As of January 1, 2008, child support according to the Duesseldorf chart amounts to:

|     | Net income Group | Child's Age Group |      |       |      | %    |         |
|-----|------------------|-------------------|------|-------|------|------|---------|
|     |                  | 0-5               | 6-11 | 12-17 | 18   |      |         |
| 01. | Up to € 1,500    | €279              | €322 | €365  | €408 | 100% | 770/990 |
| 02. | €1,501 - €1,900  | €293              | €339 | €384  | €429 | 105% | 1,000   |
| 03. | €1,901 - €2,300  | €307              | €355 | €402  | €449 | 110% | 1,100   |
| 04. | €2,301 - €2,700  | €321              | €371 | €420  | €470 | 115% | 1,200   |
| 05. | €2,701 - €3,100  | €335              | €387 | €438  | €490 | 120% | 1,300   |
| 06. | €3,101 - €3,500  | €358              | €413 | €468  | €523 | 128% | 1,400   |
| 07. | €3,501 - €3,900  | €380              | €438 | €497  | €555 | 136% | 1,500   |
| 08. | €3,901 - €4,300  | €402              | €464 | €526  | €588 | 144% | 1,600   |
| 09. | €4,301 - €4,700  | €425              | €490 | €555  | €621 | 152% | 1,700   |
| 10. | €4,701 - €5,100  | €447              | €516 | €584  | €653 | 160% | 1,800   |
| 11. | more than €5,101 |                   |      |       |      |      |         |

**January 1, 2009**

DUESSELDORF CHART. As of January 1, 2009, child support according to the Duesseldorf chart amounts to:

|     | Net income Group | Child's Age Group |      |       |      | %    |         |
|-----|------------------|-------------------|------|-------|------|------|---------|
|     |                  | 0-5               | 6-11 | 12-17 | 18   |      |         |
| 01. | Up to € 1,500    | €281              | €322 | €377  | €432 | 100% | 770/990 |
| 02. | €1,501 - €1,900  | €296              | €339 | €396  | €454 | 105% | 1,000   |
| 03. | €1,901 - €2,300  | €310              | €355 | €415  | €476 | 110% | 1,100   |
| 04. | €2,301 - €2,700  | €324              | €371 | €434  | €497 | 115% | 1,200   |
| 05. | €2,701 - €3,100  | €338              | €387 | €453  | €519 | 120% | 1,300   |
| 06. | €3,101 - €3,500  | €360              | €413 | €483  | €553 | 128% | 1,400   |
| 07. | €3,501 - €3,900  | €383              | €438 | €513  | €588 | 136% | 1,500   |
| 08. | €3,901 - €4,300  | €405              | €464 | €543  | €623 | 144% | 1,600   |
| 09. | €4,301 - €4,700  | €428              | €490 | €574  | €657 | 152% | 1,700   |
| 10. | €4,701 - €5,100  | €450              | €516 | €604  | €692 | 160% | 1,800   |
| 11. | more than €5,101 |                   |      |       |      |      |         |

**January 1, 2010**

DUESSELDORF CHART. As of January 1, 2010, child support according to the Duesseldorf chart amounts to:

|     | Net income Group | Child's Age Group |      |       |      | %    |         |
|-----|------------------|-------------------|------|-------|------|------|---------|
|     |                  | 0-5               | 6-11 | 12-17 | 18   |      |         |
| 01. | Up to € 1,500    | €317              | €364 | €426  | €488 | 100% | 770/990 |
| 02. | €1,501 - €1,900  | €333              | €383 | €448  | €513 | 105% | 1,000   |
| 03. | €1,901 - €2,300  | €349              | €401 | €469  | €537 | 110% | 1,100   |
| 04. | €2,301 - €2,700  | €365              | €419 | €490  | €562 | 115% | 1,200   |
| 05. | €2,701 - €3,100  | €381              | €437 | €512  | €586 | 120% | 1,300   |
| 06. | €3,101 - €3,500  | €406              | €466 | €546  | €625 | 128% | 1,400   |
| 07. | €3,501 - €3,900  | €432              | €496 | €580  | €664 | 136% | 1,500   |
| 08. | €3,901 - €4,300  | €457              | €525 | €614  | €703 | 144% | 1,600   |
| 09. | €4,301 - €4,700  | €482              | €554 | €648  | €742 | 152% | 1,700   |
| 10. | €4,701 - €5,100  | €508              | €583 | €682  | €781 | 160% | 1,800   |
| 11. | more than €5,101 |                   |      |       |      |      |         |

**January 1, 2011**

- see page 6.

**B. Conversion of pre-2009 child support orders**

Conversion of pre-2009 child support judgments IAW § 36 No. 3 EGZPO:

1<sup>st</sup> step:

(Child Support + ½ of the Kindergeld) x 100

----- = X%

Minimum support for the child's age group

2<sup>nd</sup> step:

Minimum support for the child's age group x X% = amount to be rounded to the next full €

Example for age group 0-5:

| 1 <sup>st</sup> step | 2 <sup>nd</sup> step                              |
|----------------------|---|
| (€196 + €77) x 100   |   |
| ----- = 97.8%        |   |
| €279                 | €279 x 97.8% = €272,86 → €273 - €77 = <u>€196</u> |

A useful US website link: <http://www.supportguidelines.com>

**C. Child Support Guidelines January 2002 thru January 2007 (old law)**

**January 1, 2002**

a. DUESSELDORF CHART. From January 1, 2002 until June 30, 2003 the child support according to the Duesseldorf chart amounted to:

|            | Net income Group       | Child's Age Group |             |             | %           |
|------------|------------------------|-------------------|-------------|-------------|-------------|
|            |                        | 0-5               | 6-11        | 12-17       |             |
| 01.        | Up to € 1,300          | €188              | €228        | €269        | 100%        |
| 02.        | €1,300 - €1,500        | €202              | €244        | €288        | 107%        |
| 03.        | €1,500 - €1,700        | €215              | €260        | €307        | 114%        |
| 04.        | €1,700 - €1,900        | €228              | €276        | €326        | 121%        |
| 05.        | €1,900 - €2,100        | €241              | €292        | €345        | 128%        |
| <b>06.</b> | <b>€2,100 - €2,300</b> | <b>€254</b>       | <b>€308</b> | <b>€364</b> | <b>135%</b> |
| 07.        | €2,300 - €2,500        | €267              | €324        | €382        | 142%        |
| 08.        | €2,500 - €2,800        | €282              | €342        | €404        | 150%        |
| 09.        | €2,800 - €3,200        | €301              | €365        | €431        | 160%        |
| 10.        | €3,200 - €3,600        | €320              | €388        | €458        | 170%        |
| 11.        | €3,600 - €4,000        | €339              | €411        | €485        | 180%        |
| 12.        | €4,000 - €4,400        | €358              | €434        | €512        | 190%        |
| 13.        | €4,400 - €4,800        | €376              | €456        | €538        | 200%        |
| 14.        | more than €4,800       |                   |             |             |             |

b. Example C: if the father is in net income group 3 and he has to support a 3 year old child for which the mother receives Kindergeld, whereas the father cannot use his US child tax credit, then he needs to pay child support in the amount of €177.00, calculated as follows:

| Example C: <u>New Law</u> (as of January 1, 2001)   | <b>Old Law (pre 2001 cases)</b>  |
|---|--|
| € 254.00 (child support for a 0-5 year old baby, father is in net income group <b>6!!</b> )<br>- € 215.00 (minimum support in child age group 1 if father is in net income group <b>3</b> )<br>-----<br>€ 39.00 (balance)<br><br>€ 77.00 (half of the Kindergeld, € 154 : 2)<br>- € 39.00 (balance from above)<br>-----<br>€ 38.00 (Kindergeld balance)<br><br>€ 215.00 (child age group 1, net income group 3)<br>- € 38.00 (Kindergeld balance)<br>-----<br><b>€ 177.00 (actual child support owed)</b> | € 215.00 (child support for a 0-5 year old baby if father is in net income group <b>3</b> )<br>- € 77.00 (half of the Kindergeld)<br>-----<br>€ 138.00 (actual child support owed under the old law) |

**July 1, 2003**

a. DUESSELDORF CHART. From July 1, 2003 until June 30, 2005, child support according to the Duesseldorf chart amounted to:

|            | Net income Group       | Child's Age Group |             |             | %           |
|------------|------------------------|-------------------|-------------|-------------|-------------|
|            |                        | 0-5               | 6-11        | 12-17       |             |
| 01.        | Up to € 1,300          | €199              | €241        | €284        | 100%        |
| 02.        | €1,300 - €1,500        | €213              | €258        | €304        | 107%        |
| 03.        | €1,500 - €1,700        | €227              | €275        | €324        | 114%        |
| 04.        | €1,700 - €1,900        | €241              | €292        | €344        | 121%        |
| 05.        | €1,900 - €2,100        | €255              | €309        | €364        | 128%        |
| <b>06.</b> | <b>€2,100 - €2,300</b> | <b>€269</b>       | <b>€326</b> | <b>€384</b> | <b>135%</b> |
| 07.        | €2,300 - €2,500        | €283              | €343        | €404        | 142%        |
| 08.        | €2,500 - €2,800        | €299              | €362        | €426        | 150%        |
| 09.        | €2,800 - €3,200        | €319              | €386        | €455        | 160%        |
| 10.        | €3,200 - €3,600        | €339              | €410        | €483        | 170%        |
| 11.        | €3,600 - €4,000        | €359              | €434        | €512        | 180%        |
| 12.        | €4,000 - €4,400        | €379              | €458        | €540        | 190%        |
| 13.        | €4,400 - €4,800        | €398              | €482        | €568        | 200%        |
| 14.        | more than €4,800       |                   |             |             |             |

b. Example A: if the father is in net income group 1 and he has to support a 7 year old child for which the mother receives Kindergeld, whereas the father cannot use his US child tax credit, then he needs to pay child support in the amount of €241.00, as calculated below.

c. Example B: if the father is in net income group 3 and he has to support a 3 year old child for which the mother receives Kindergeld, whereas the father cannot use his US child tax credit, then he needs to pay child support in the amount of €192.00, as calculated below.

| Child Support Guideline – 030701: Example A:  | Example B:   |
|---|--|
| € 326.00 (child support for a 6-11 year old child, father is in net income group <b>6!!</b> )<br>- € 241.00 (minimum support in child age group 1 if father is in net income group <b>1</b> )<br>-----<br>€ 85.00 (balance)<br><br>€ 77.00 (half of the Kindergeld, € 154 : 2)<br>- € 85.00 (balance from above)<br>-----<br>€ 0.00 (Kindergeld balance)<br><br>€ 241.00 (child age group 2, net income group 1)<br>- € 0.00 (Kindergeld balance)<br>-----<br><u>€ 241.00</u> (actual child support owed) | €269 (child support: 0-5 year old, father: net income group <b>6!!</b> )<br>- €227 (minimum support: child age group 1, father: net income group <b>3</b> )<br>-----<br>€ 42.00 (balance)<br><br>€ 77.00 (½ Kindergeld: €154 : 2)<br>- € 42.00 (balance from above)<br>-----<br>€ 35.00 (Kindergeld balance)<br><br>€227 (child age group 1, net income 3)<br>- € 35 (Kindergeld balance)<br>-----<br><u>€192.00</u> (actual child support owed) |

**July 1, 2005**

a. DUESSELDORF CHART. From July 1, 2005 until June 30, 2007, child support according to the Duesseldorf chart amounts to:

|            | Net income Group       | Child's Age Group |             |             |             | %           |  |
|------------|------------------------|-------------------|-------------|-------------|-------------|-------------|--|
|            |                        | 0-5               | 6-11        | 12-17       | 18          |             |  |
| 01.        | Up to € 1,300          | €204              | €247        | €291        | €335        | 100%        |  |
| 02.        | €1,300 - €1,500        | €219              | €265        | €312        | €359        | 107%        |  |
| 03.        | €1,500 - €1,700        | €233              | €282        | €332        | €382        | 114%        |  |
| 04.        | €1,700 - €1,900        | €247              | €299        | €353        | €406        | 121%        |  |
| 05.        | €1,900 - €2,100        | €262              | €317        | €373        | €429        | 128%        |  |
| <b>06.</b> | <b>€2,100 - €2,300</b> | <b>€276</b>       | <b>€334</b> | <b>€393</b> | <b>€453</b> | <b>135%</b> |  |
| 07.        | €2,300 - €2,500        | €290              | €351        | €414        | €476        | 142%        |  |
| 08.        | €2,500 - €2,800        | €306              | €371        | €437        | €503        | 150%        |  |
| 09.        | €2,800 - €3,200        | €327              | €396        | €466        | €536        | 160%        |  |
| 10.        | €3,200 - €3,600        | €347              | €420        | €495        | €570        | 170%        |  |
| 11.        | €3,600 - €4,000        | €368              | €445        | €524        | €603        | 180%        |  |
| 12.        | €4,000 - €4,400        | €388              | €470        | €553        | €637        | 190%        |  |
| 13.        | €4,400 - €4,800        | €408              | €494        | €582        | €670        | 200%        |  |
| 14.        | more than €4,800       |                   |             |             |             |             |  |

b. Example A: if the father is in net income group 1 and he has to support a 7 year old child for which the mother receives Kindergeld, whereas the father cannot use his US child tax credit, then he needs to pay child support in the amount of €241.00, as calculated below.

c. Example B: if the father is in net income group 3 and he has to support a 3 year old child for which the mother receives Kindergeld, whereas the father cannot use his US child tax credit, then he needs to pay child support in the amount of €192.00, as calculated below.

| Child Support Guideline – 050701: Example A:  | Example B:   |
|---|--|
| € 334.00 (child support for a 6-11 year old child, father is in net income group <b>6!!</b> )<br>- € 247.00 (minimum support in child age group 1 if father is in net income group <b>1</b> )<br>-----<br>€ 87.00 (balance)<br><br>€ 77.00 (half of the Kindergeld, € 154 : 2)<br>- € 87.00 (balance from above)<br>-----<br>€ 0.00 (Kindergeld balance)<br><br>€ 247.00 (child age group 2, net income group 1)<br>- € 0.00 (Kindergeld balance)<br>-----<br><u>€ 247.00</u> (actual child support owed) | €276 (child support: 0-5 year old, father: net income group <b>6!!</b> )<br>- €233 (minimum support: child age group 1, father: net income group <b>3</b> )<br>-----<br>€ 43.00 (balance)<br><br>€ 77.00 (½ Kindergeld: €154 : 2)<br>- € 43.00 (balance from above)<br>-----<br>€ 34.00 (Kindergeld balance)<br><br>€233 (child age group 1, net income 3)<br>- € 34 (Kindergeld balance)<br>-----<br><u>€199.00</u> (actual child support owed) |

**July 1, 2007**

a. DUESSELDORF CHART. As of July 1, 2007, child support according to the Duesseldorf chart amounts to: (Please note, for the first time the amounts were slightly reduced compared to the previous chart of July 1, 2005!)

|            | Net income Group       | Child's Age Group |             |             |             | %           |
|------------|------------------------|-------------------|-------------|-------------|-------------|-------------|
|            |                        | 0-5               | 6-11        | 12-17       | 18          |             |
| 01.        | Up to € 1,300          | €202              | €245        | €288        | €389        | 100%        |
| 02.        | €1,300 - €1,500        | €217              | €263        | €309        | €389        | 107%        |
| 03.        | €1,500 - €1,700        | €231              | €280        | €329        | €389        | 114%        |
| 04.        | €1,700 - €1,900        | €245              | €297        | €349        | €401        | 121%        |
| 05.        | €1,900 - €2,100        | €259              | €314        | €369        | €424        | 128%        |
| <b>06.</b> | <b>€2,100 - €2,300</b> | <b>€273</b>       | <b>€331</b> | <b>€389</b> | <b>€447</b> | <b>135%</b> |
| 07.        | €2,300 - €2,500        | €287              | €348        | €409        | €471        | 142%        |
| 08.        | €2,500 - €2,800        | €303              | €368        | €432        | €497        | 150%        |
| 09.        | €2,800 - €3,200        | €324              | €392        | €461        | €530        | 160%        |
| 10.        | €3,200 - €3,600        | €344              | €417        | €490        | €563        | 170%        |
| 11.        | €3,600 - €4,000        | €364              | €441        | €519        | €596        | 180%        |
| 12.        | €4,000 - €4,400        | €384              | €466        | €548        | €629        | 190%        |
| 13.        | €4,400 - €4,800        | €404              | €490        | €576        | €662        | 200%        |
| 14.        | more than €4,800       |                   |             |             |             |             |

b. CHILD SUPPORT & "KINDERGELD". If the mother is an ordinary resident of Germany she draws Child Allowance ("Kindergeld") from the German Labor Office. For each child, up to three, she receives €154.00 per month in Kindergeld per child. § 1612b para. 3 BGB stipulates that all child support payments up to net income group 6 are to be reduced if the father is entitled to Kindergeld as well. According to the German Institute for Youth Human Services and Family Law ("Deutsches Institut für Jugendhilfe und Familienrecht – DIJuF") US fathers can have their support obligation reduced if they do not qualify for the US child tax credit because the child resides with the mother receiving German Kindergeld (U 1.432 USHQ/DI, 11 July 2000).

c. Example A: if the father is in net income group 1 and he has to support a 7 year old child for which the mother receives Kindergeld, whereas the father cannot use his US child tax credit, then he needs to pay child support in the amount of €241.00, as calculated below.

d. Example B: if the father is in net income group 3 and he has to support a 3 year old child for which the mother receives Kindergeld, whereas the father cannot use his US child tax credit, then he needs to pay child support in the amount of €192.00, as calculated below.

| Child Support Guideline – 070701: Example A:   | Example B:   |
|--|--|
| € 331.00 (child support for a 6-11 year old child, father is in net income group <b>6!!</b> )<br>- € 245.00 (minimum support in child age group 1 if father is in net income group <b>1</b> )<br>-----<br>€ 86.00 (balance)<br><br>€ 77.00 (half of the Kindergeld, € 154 : 2)<br>- € 86.00 (balance from above)<br>-----<br>€ 0.00 (Kindergeld balance) | €273 (child support: 0-5 year old, father: net income group <b>6!!</b> )<br>- €231 (minimum support: child age group 1, father: net income group <b>3</b> )<br>-----<br>€ 42.00 (balance)<br><br>€ 77.00 (½ Kindergeld: €154 : 2)<br>- € 42.00 (balance from above)<br>-----<br>€ 35.00 (Kindergeld balance) |

|   |  |
|---|--|
| € 245.00 (child age group 2, net income group 1)<br>- € 0.00 (Kindergeld balance)<br>-----<br><u>€ 245.00</u> (actual child support owed) | €231 (child age group 1, net income 3)<br>- € 35 (Kindergeld balance)<br>-----<br><u>€196.00</u> (actual child support owed) |
|---|--|

Prepared by Joerg C. Modellmog, German Attorney-Advisor