## “Decriminalization of Homelessness and Extreme Poverty” Input made by [the Freiheitsfonds](https://www.freiheitsfonds.de/).  Please note: this input mainly treats Germany’s criminalization of using public transport without a ticket and serving prison sentences for being unable to pay fines. For further criminalization of homeless people and respective activities of begging, encampment, etc. cf. the [excellent report of the National Federation for the Homeless in Germany](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2F2022-03%2FBundesarbeitsgemeinschaftWohnungslosenhilfe.docx&wdOrigin=BROWSELINK) from 2021.

Point #2: Laws or regulations that allow the detention or imprisonment of individuals who are unable to pay the fine imposed for petty offences:

**German Criminal Code Section 265a “Fraudulent Use of Services”: The Criminalization of People Unable to Afford a Ticket for Public Transport**

Using public transport without a ticket is severely punished in Germany - in the worst case, with a prison sentence. Every year, [up to 10,000 people have to go to prison](https://www.zdf.de/nachrichten/panorama/fahren-ohne-fahrschein-schwarzfahren-freiheitsfonds-100.html) because they can afford neither the ticket nor the fines for using public transport without one. Since the transport companies regularly file charges in such cases, [section 265a of the German Criminal Code](https://www.gesetze-im-internet.de/stgb/__265a.html) (StGB) comes into play, enacted under National Socialism in 1935. This law made so-called "fraudulent use of services" a criminal offense. Using public transport without a ticket is punishable by a fine or up to one year of imprisonment.

If someone gets caught using public transport without a ticket the transport companies first charge a so-called increased transport fee of usually 60 Euro. People who do not pay that fee repeatedly (because they cannot), will be reported to the authorities. The courts then routinely issue judicial fines for riding without a ticket which are significantly higher than the increased transport fee. Those who could not manage to pay the increased transport fee, naturally also struggle with paying the judicial fines. Under the current German criminal law, these judicial fines eventually get translated into a so-called “Ersatzfreiheitsstrafe” (substitute prison sentence cf. the section below).

Most of those affected by this, are unemployed (77%), without a permanent address (21%), suicidal (17%), and suffer from drug addiction (32%) ([cf. Lobitz & Wirth’s study of 2018 for the federal state of North Rhine-Westphalia p.23](https://fragdenstaat.de/dokumente/142091-evaluation-ersatzfreiheitsstrafe-nrw/#%5B%7B%22num%22%3A54%2C%22gen%22%3A0%7D%2C%7B%22name%22%3A%22XYZ%22%7D%2C68%2C756%2C0%5D)). Such criminalization and punishment of poor people in particular is degrading, disproportionate, and senseless. Those affected have to go to prison because societal participation forces them to use public transport, while at the same time, many cities do not provide enough social tickets. All this is not only inhumane but also a huge waste of money, as [experts estimate the costs for the state at 200 million €](https://anwaltverein.de/de/newsroom/fahren-ohne-fahrschein-endlich-entkriminalisieren) per year for the court proceedings, police operations, and the prison sentences themselves. These enormous expenses are completely disproportionate to the damages that amount to a few euros in each individual case. The money would be better invested in cheaper local transport and social services (e.g. social tickets, more social workers, support structures, etc.).

The unlawfulness of traveling without a ticket is negligible – it is categorically different from other criminal offenses and should be part of civil instead of penal law. There is no reason for the state to intervene with criminal law to ensure that people pay their debts to transport companies. Decriminalization of such petty crimes most often committed out of poverty is long overdue.

A large part of the German population also agrees: according to a representative survey by Infratest Dimap published on April 12, 2023, [more than two-thirds of Germans (69%) are in favor of decriminalizing traveling without a ticket](https://fragdenstaat.de/blog/2023/04/12/mehr-als-zwei-drittel-der-deutschen-fur-entkriminalisierung-von-fahren-ohne-fahrschein/). There is support for such a plan across all party lines. Supporters from the Greens to the SPD, FDP, and CDU are clearly in favor of erasing traveling without a ticket from the criminal code. In all age groups, at all levels of education, and among all income groups, as well as in both East and West Germany, a clear majority is in favor of decriminalization.

[At its fall 2022 conference, the Conference of the federal Ministers of Justice](https://www.justiz.nrw.de/JM/jumiko/beschluesse/2022/Herbstkonferenz_2022/TOP-II_19---Aufhebung-der-Strafbarkeit-des-Fahrens-ohne-Fahrschein.pdf) also called for abolishing the criminalization of using public transport without a ticket. The justice ministers *"agree that the legal situation can be sustainably and fundamentally improved in the future solely by abolishing the punishability of using public transport without a ticket."*

**“Ersatzfreiheitsstrafen” (Substitute Prison Sentences)
In case the convicted people cannot pay their fines, the “Ersatzfreiheitsstrafe” comes into play (**[cf. German Criminal Code / StGB section 43](https://www.gesetze-im-internet.de/stgb/__43.html)**), which puts poor people in prison for a vast array of petty crimes (using public transportation without a ticket accounting for about a fourth of these). Every year, more than 50,000 people go to German prisons, because they – most often – cannot afford to pay their fines, and it has become Germany’s most common prison sentence (cf.** <https://ersatzfreiheitsstrafe.de/>**). The number of people imprisoned for not being able to pay their fines has vastly grown in the last two decades. An** [exemplary case study of the federal state of North Rhine-Westphalia](https://fragdenstaat.de/dokumente/142091-evaluation-ersatzfreiheitsstrafe-nrw/) **shows how between 2003 and 2017 the number of inmates serving such a sentence has almost doubled. In the same state, every fifth person serving such an “Ersatzfreiheitsstrafe” reports being homeless.
Many times, the issuing of a penal order and the ensuing Ersatzfreiheitsstrafe lead to the fact that people are sentenced to prison without a formal hearing – especially if the affected person has no permanent residence (cf.** [Blessing and Daiqui 2022](https://verfassungsblog.de/ohne-anhorung-ins-gefangnis/)**).
This year, the FDP-led Ministry of Justice has already decided to halve these substitute prison sentences (cf.** [the law here](https://www.recht.bund.de/bgbl/1/2023/203/VO.html)**). While this is a step in the right direction, many experts see this as not enough, since it does not resolve the original problem of the criminalization of poor people and their "desocialization" ensuing imprisonment (cf.** [the statement of German Lawyers Association / Deutscher Anwaltsverein](https://anwaltverein.de/de/newsroom/ersatzfreiheitsstrafe-abschaffen-wegsperren-hilft-nicht-gegen-armutskriminalitaet)**, as well as** [Semsrott 2023](https://www.bundestag.de/resource/blob/942566/d34caf20447680e02b57ac56601ddc2c/Stellungnahme-Semsrott_ofkn-data.pdf)**). There will not be less effected substitute prison sentences, but just shorter ones. Many of the criminalized poor people thus condemned are already undergoing deep crises in their lives. Going to prison, they in turn often lose their apartment, employment, their social network, as well as their place in therapy programs and support structures, and endanger their livelihood**[[1]](#footnote-1)**.
The ministry’s original plan was to effect the halving of the prison sentence on 10/1/2023. Instead,** [the amendment law](https://www.recht.bund.de/bgbl/1/2023/218/VO.html)’s **operative effect now has been postponed to the 2/1/2024. The stated reason for this delay given by the federal states is that they require more time to adjust their IT systems. It cannot be that poor people receive double the punishment because the IT departments of some of Germany’s federal states are not able to properly assume their responsibilities. The “coalition for the abolishment of the ‘Ersatzfreiheitsstrafe’” now demands to immediately stop the application of the substitute prison sentence, as well as the collective pardoning of all people currently serving such a sentence, and the full abolishment of the “Ersatzfreiheitsstrafe” (**[cf. their latest statement](https://www.justice-collective.org/de/justice-collective-blog/it-versagen-der-regierungen-darf-nicht-zu-lasten-der-gefangenen-fallen)**).**

**Leading legal experts such as the “Deutscher Anwaltsverein” (German Lawyer Association) also demand an abolishing of the system of Ersatzfreiheitsstrafen (substitute prison sentences for failing), which in Berlin alone accounts for almost a third of all imprisoned people. At 226€ for a day in prison, the cost of imprisoning about 14,000 people unable to pay their fines in the last five years in Berlin alone amounts to more than 3 million € (**[cf. the statement of the German Lawyer Association’s website](https://anwaltverein.de/de/newsroom/ersatzfreiheitsstrafe-abschaffen-wegsperren-hilft-nicht-gegen-armutskriminalitaet)**). This money would be more wisely spent on preventive and supportive means for the impoverished victims to ensure their basic human rights and social participation).**

Point #4 Information concerning initiatives to change the response of law enforcement officials and of the criminal justice system from penalization, punishment or detention, towards facilitating social inclusion of persons living in poverty or experiencing homelessness.

**The Freiheitsfonds (Freedom Fund)**

[The Freiheitsfonds](https://www.freiheitsfonds.de/) is a volunteer and donation-based initiative founded in 2021 to buy people out of jail who are serving substitute prison sentences (“Ersatzfreiheitsstrafen”) for using public transport without a ticket. Since December 2021, the initiative has bought a total of 838 imprisoned people out of jail and collectively eliminated 156 years of incarceration. The resulting reduction in incarceration costs has saved the state treasury 12.1 million €. At the same time, the initiative publicly scandalizes the unjust workings of the German penal law and works towards more just laws and practices, in particular a complete decriminalization of traveling without a ticket by erasing the relevant phrase of section 265a referencing the

Today, the majority of the average 100 applications per month to the Freiheitsfonds are not submitted by the prisoners themselves, but by state institutions. Prison employees in particular, but also court staff and police officers, turn to the Freiheitsfonds for help in getting those affected released. In some prisons, officials provide Freiheitsfonds forms at the entrance during registration.

This shows that it has long been recognized, even by the state, that the German Criminal Code Sections 265a and 43 unjustly criminalize poor people undergoing severe crises – which are further exacerbated. However, it should not be the task of a voluntary initiative such as the Freiheitsfonds to ensure poor people’s freedom and to prevent disproportionately severe punishments. This must be the task of the state.

Through the work of the Freiheitsfonds, it becomes clear in which case people have to serve a substitute prison sentence in particular. What all of them have in common is that the people concerned live through severe long-term crises, which are significantly aggravated by imprisonment. Those affected lose their jobs, their place in a treatment/therapy program, or their residence as a result of imprisonment. The Freiheitsfonds regularly receives letters in which victims report that they would have committed suicide in prison if they had not been released by the initiative. The following selection of individual cases from the Freiheitsfonds shall further illustrate how the affected people’s lives are vastly deteriorated by their imprisonment:

*- A young mother in a mother-child flatshare in Saxony, who is facing a substitute prison sentence for travelling without a ticket from 2019. There is an open warrant for her arrest. She is not able to pay the fine, an installment payment was refused, and community service is not possible because of her being on maternity leave. She is supposed to hand over her 10-week-old baby to the Youth Welfare Office in order to start the imprisonment.*

*- A woman in a women's shelter in the state of Hessen, who fled from her violent ex-partner together with her child. The facility convinces the mother to file a complaint with the police against the ex-partner. In the process, it becomes apparent that there is still an open warrant for her arrest for driving without a ticket. The mother is taken into custody, the child has to stay in the women's shelter.*

*- A man in Lower Saxony, whose father and sister have died and who alone cares for his demented mother. Because he has made several trips to a social institution, he was imprisoned as he was unable to afford a bus ticket and then the fine. In a letter to the Freedom Fund, he asks to be freed so he can care for his mother again.*

*- A hearing-impaired man in Baden-Württemberg, Germany, was imprisoned for two months for traveling without a ticket. He was unaware that he was entitled to free local transportation because of his disability. The prison is not prepared to deal with people with hearing impairments and repeatedly asked the Freiheitsfonds to release the man.*

*- A severely ill man in North Rhine-Westphalia who was bought out by the Freiheitsfonds in 2022 and died a few months later. According to a relative, he was not fit for detention, but their applications to suspend the substitute prison sentence for traveling without a ticket were unsuccessful. By paying for his fine and thus his release, he was at least able to die in freedom.*

These cases from the work of the Freiheitsfonds are only a small sample of the day-to-day work in this area. In all these cases, a substitute prison sentence neither had a preventive character nor led to resocialization. On the contrary, those affected were severely traumatised by the threat, or execution of imprisonment alone. They were taken away from their social environment and often faced with homelessness after their imprisonment.

The Freiheitsfonds regularly receives letters by affected people who report that they would have committed suicide in prison – had they not been bought out by the initiative ([cf. the Freiheitsfond’s statement concerning the reform of the substitute prison sentence](https://www.bundestag.de/resource/blob/942566/d34caf20447680e02b57ac56601ddc2c/Stellungnahme-Semsrott_ofkn-data.pdf)).

**Decriminalization of Traveling without a Ticket**

The most effective means of actually reducing the enforcement of substitute prison sentences is to decriminalize petty offenses, such as the traveling without a ticket. There is widespread consensus that no one should serve a prison sentence just because, for example, they have taken a bus or train a few times and not being able to pay for the ticket. Treating this as a criminal offense is disproportionate. Therefore, in particular the fraudulent use of services under Section 265a of the German Criminal Code should be decriminalized.

This alone could reduce the number of substitute prison sentences by a quarter. This decriminalization would save the state at least 200 million € per year in costs for the incarceration, as well as the judiciary and prosecution procedures. This money would then be more wisely spent. Decriminalizing traveling without a ticket is not only an international standard, it is also shared by [the conference of justice ministers](https://www.justiz.nrw.de/JM/jumiko/beschluesse/2022/Herbstkonferenz_2022/TOP-II_19---Aufhebung-der-Strafbarkeit-des-Fahrens-ohne-Fahrschein.pdf), by a vast array of [civil society initiatives](https://ersatzfreiheitsstrafe.de/#buendnis), the [German lawyers association](https://anwaltverein.de/de/newsroom/ersatzfreiheitsstrafe-abschaffen-wegsperren-hilft-nicht-gegen-armutskriminalitaet), and experts in this legal field (cf. [Ronen Steinke](https://www.sueddeutsche.de/projekte/artikel/gesellschaft/justiz-wer-nicht-zahlt-muss-in-haft-e330313/?reduced=true), [Mitali Nagrecha](https://www.bundestag.de/resource/blob/942600/4a993597eb02394617a014d0b721558d/Stellungnahme-Nagrecha_Justice-Collective-data.pdf) / the Justice Collective 2023). On top of this it aligns with the most recent Guiding Principles on Extreme Poverty and Human Rights ([A/HRC/21/39](https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F21%2F39&Language=E&DeviceType=Desktop&LangRequested=False)), adopted by Human Rights Council resolution 21/11 in September 2012 – as states should *"review sanctions procedures that require the payment of disproportionate fines by persons living in poverty, […] and consider abolishing prison sentences for non-payment of fines for those unable to pay*". If a penalty is more socially harmful than the crime / petty offense it is supposed to penalize, it should be eliminated (cf. [Kube / Vos 2023](https://verfassungsblog.de/wenn-das-gesetz-sozialschadlicher-ist-als-die-straftat/)). Professor for commercial criminal law and criminology Hefendehl (cf. [his statement on a proposed reform from 2023](https://www.bundestag.de/resource/blob/953596/81d31a2e8f081772d2156d3b40a46bc8/Stellungnahme-Hefendehl-data.pdf)) sees section 265a not only as causing more harm than the penalized crime. In light of the principle of proportionality and judging penal law as ultima ratio he sees it as constitutionally imperative to decriminalize traveling without a ticket by erasing the respective parts of German Criminal Code Section 265a. Since the Ministry of Justice under FDP-politician Marco Buschmann has announced reviewing and reforming this section in 2023, it is high time to decriminalize the petty offense of traveling without a ticket and the so called “fraudulent use” of public transport and instead enable societal participation for the poor and homeless.

1. **At times, imprisonment for people under such severe circumstances can aggravate their crises and correlates with suicide – as people in prison are 8 times more likely to commit suicide than the general population (cf.** [Nagrecha / the Justice Collective’s report 2023 p.3](https://www.bundestag.de/resource/blob/942600/4a993597eb02394617a014d0b721558d/Stellungnahme-Nagrecha_Justice-Collective-data.pdf)**)**  [↑](#footnote-ref-1)