# SIRG restrictive practices

The Netherlands

Care and Coercion Act

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# Third session: (back to) legislation and ethics

- Focus of third session is legislation, ethics and involuntary care
- What do we have in common? What is different? What can we learn from each other?

- Theme 1: What is the role of legislation in reducing involuntary care?

- Thema 2: (Different) Definitions, attitude and knowledge of professionals about involuntary care with consequences for the rights of clients

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# Theme 1: role of legislation

*Different roles/meanings of legislation*:

- New law with a clear vision (in the Netherlands)
- Enshrine prohibition of involuntary care in a law (e.g. fixation, separation) Or that all doors in an institution should be opened, instead of closed
- Involving the role of director/care provider with special obligations
- Detailed law?
- Registration of involuntary care

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# Theme 2a: definitons, attitudes

- Since 2008, the Dutch Health Care Inspectorate has applied a very broad definition of restrictions on freedom, being “all physical and verbal measures that restrict the freedom of clients”. This definition was designed to promote greater awareness in practice of all the possible ways in which freedom can be restricted; in other words, not only the forms of restraint and seclusion but also lesser forms of restriction (i.e. those not specified in this Act), such as not being allowed to drink coffee, having to hand in cigarettes, or not being allowed to go outside.

- The Care and Coercion Act (2020), refers to “involuntary care”, which, means “care resisted by the client or his representative”. Involuntary care is thus used as an umbrella term for all major and minor restrictions on freedom. Involuntary care is subdivided in the Care and Coercion Act into nine categories. These nine categories can be interpreted very broadly.

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# Theme 2b: definitions, attitudes

- Reporting of use of coercive measures from a Dutch perspective (https://research.vu.nl/ws/portalfiles/portal/77029000/)
- Former Act, lack of a legal definition and no formalities for reporting involuntary care
- Under the new Act only reporting if a client shows resistance
- *Therefore, the researchers discuss whether the legal position of clients is protected if care providers register only those forms of involuntary care where there is obvious resistance. In this case, many forms of resistance are overlooked, which may be to the detriment of the legal protection of clients with intellectual disabilities. However, the system in the UK shows that it can be quite complicated to develop a clear definition of involuntary care that is usable in practice, without giving rise to an enormous amount of bureaucracy and thus distracting from the real issue: protecting the legal position of clients with an intellectual disability.*

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**Conclusion**

Our review of the literature demonstrates that external reporting of involuntary care has not yet become properly established, either in the Netherlands or elsewhere such as in the UK. The experts in this study fully endorse the importance of standardized, real-time external reporting. However, they do not believe that this objective will be achieved if the Dutch legislator continues to adhere to the wording as currently used in the text of the Care and Coercion Act. The meeting with experts also illustrates that a lot of factors remain unclear, which is in line with the on-going discussion about the system of DOLS in the UK. The primary question posed to a group of experts in the care of people with an intellectual disability was: Which forms of involuntary care should be externally reported and how is this external reporting influenced by environmental and other factors? For the purposes of this study, reporting was taken to mean an external reporting system that can be accessed at any time by the Health Care Inspectorate. Although the experts' answers to this question were not unequivocal, they indicated that a client's resistance to involuntary care must in any event be reported, while the administration of fluids, food or medication, as well as the imposition of restraint, separation or seclusion, should also always be reported, regardless of whether the measure is resisted. These findings reiterate the need for more concrete definitions of involuntary care and the legislator's nine categories, if uniform and reliable reporting of involuntary care is to be achieved in a manner that will help protect clients' legal position. The challenge is to ensure that the beneficial effects of the protective function of reporting involuntary care are not diminished by the inevitable bureaucratic elements of the reporting system.

# Role of external reporting

- Important for protecting client's legal position?
- Clear definition is needed
- Attitudes/knowledge of professionals is needed
- Bureaucratic elements less

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