

in different ways, both Germany and Russia have made much progress in erecting legal safeguards. However, the risks to our patients remain universal and ever-present in practice (Robertson & Walter, 2010; Bark, 2014; Mendes dos Santos *et al.*, 2014; van Voren, 2014).

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# Mental health law in Germany

Jürgen Zielasek<sup>1</sup> and Wolfgang Gaebel<sup>2</sup>

<sup>1</sup>Department of Psychiatry and Psychotherapy, Medical Faculty, Kliniken der Heinrich-Heine Universität, Düsseldorf, Germany

<sup>2</sup>LVR-Klinikum Düsseldorf, Kliniken der Heinrich-Heine Universität, Düsseldorf, Germany, email wolfgang.gaebel@uni-duesseldorf.de

**There is no national mental health law in Germany: the 16 German states are responsible for legislation concerning forced admissions, while the German Civil Code covers non-acute care, in particular for those not able to care for themselves. In forensic psychiatry, both federal and state laws apply. This article describes this situation and provides figures about detentions and other aspects of mental health law in Germany.**

## Relevant historical issues

Mental healthcare institutions developed in Germany in the late 19th century. Since the development of the 'welfare state' in the early 20th century, mental healthcare has been covered by health insurance, or the state for those who are not insured, although restrictions apply for some special services such as psychotherapy. The National Socialist era (1933–45) saw the forced sterilisation of people with a mental illness and the nationwide euthanasia programme ('T4 action'). After 1945, restructuring led to a strengthening of the German federal states and a weakening of the central legislature. The states became responsible for mental health legislation (*Psychisch Kranke-Gesetze*, abbreviated to PsychKG), other than:

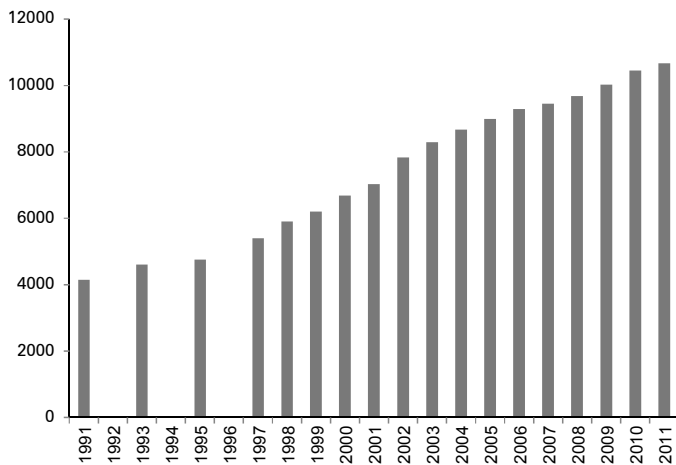
- under the Federal Penal Code, or *Strafgesetzbuch* (StGB), detention following a criminal conviction, leading to forensic psychiatric care
- under the Federal Civil Code, or *Bürgerliches Gesetzbuch* (BGB), detention to avoid imminent self-harm due to a mental disorder.

With German reunification in 1990, the West German mental health regulations were introduced in the East German states and each of the former East German states introduced its own PsychKG. A recent update on the general developments in German mental healthcare and increasing mental healthcare utilisation was provided by Gaebel & Zielasek (2012).

## Legislation controlling detention in hospitals and grounds for detention

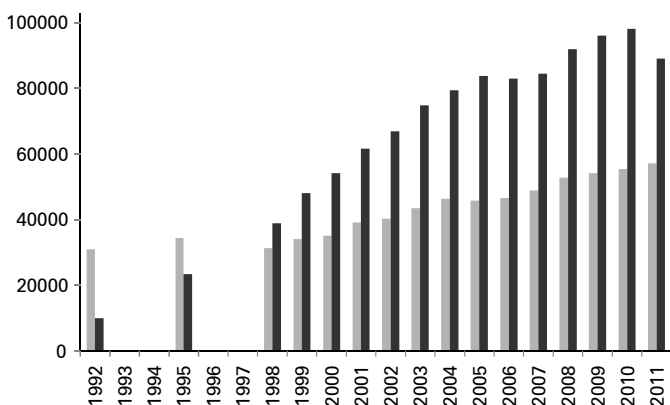
There are three routes to involuntary detention in hospital due to a mental disorder.

- A court may determine that a person with a mental disorder or a substance misuse disorder found guilty of a crime (under the auspices of the Federal Penal Code) will be admitted to a forensic psychiatric treatment unit rather than sent to prison. Normally, such rulings are based on expert testimonies by psychiatrists. Mental healthcare for forensic psychiatric units is governed by state-specific laws. Detention usually lasts several years. If treatment is successful, the latter parts of the treatment process may occur in the community, accompanied by regular visits to an out-patient forensic service. In treatment-refractory cases, courts may order preventive detention following the period of forensic psychiatric detention. Currently, approximately 500 persons are imprisoned under this law (Steinböck, 2009; Basdekis-Jozsa *et al.*, 2013).
- If a person with a chronic mental disorder, who already has a legal guardian (previously determined by a court following expert



**Fig. 1**  
Numbers of detained persons following court orders under the Federal Penal Code

Source of data: Statistisches Bundesamt: *Strafvollzugsstatistik. Im psychiatrischen Krankenhaus und in der Entziehungsanstalt aufgrund strafrechtlicher Anordnung Untergebrachte (Maßregelvollzug)*, 2013



**Fig. 2**  
Numbers of approved court rulings for admission to a psychiatric hospital (para. 1906 (1) BGB; lighter bars) and involuntary treatment or detention (para. 1906 (4) BGB; darker bars) under the Federal Civil Code, which involves participation of a legal custodian

Source of data: [http://www.bundesanzeiger-verlag.de/fileadmin/BT-Prax/downloads/Statistik\\_Betreuungszahlen/Betreuungsstatistik2011.pdf](http://www.bundesanzeiger-verlag.de/fileadmin/BT-Prax/downloads/Statistik_Betreuungszahlen/Betreuungsstatistik2011.pdf)

psychiatric evidence), is becoming endangered by a deteriorating mental health condition, he or she may become subject to detention in a closed mental healthcare unit following a court order, under the auspices of the Federal Civil Code. In acute cases, the process can be shortened. Detention times, usually limited to 4–6 weeks, may be extended following a renewed court hearing. An expert psychiatric witness, not involved with the actual treatment, is required if a 12-week period is exceeded. Community treatment is not possible, since admission to a mental healthcare in-patient unit is necessary for this law to be applicable.

- In cases of acute mental illnesses or acute exacerbations of chronic mental illness, a person may be forcibly admitted to a closed mental healthcare service under state mental health laws. Two necessary conditions apply in general: the person must have a mental disorder and, due to the mental disorder, must be an acute danger to

himself or herself or to the public. As this type of involuntary admission is governed by state mental health laws, there are considerable differences in the details of the regulation of the process. In general, either police or municipal authorities must rule that an acute psychiatric admission is necessary, a medical doctor must testify that a mental disorder is the cause, and within a very short time of the admission a regional or local court must confirm the rightfulness of the psychiatric admission, following expert psychiatric testimony. For example, in the state of Northrhine-Westphalia, a court order must be obtained on the day following the admission. Detention times may range from days to weeks. Community mental healthcare is not possible in these cases since the law applies only to cases in which there is acute danger.

Because the courts are involved in the process, the degree of adherence to these laws in Germany is probably very high. Medical doctors who do not follow these rules and admit or even treat patients against their will without obtaining the appropriate court permission would be subject to severe legal punishment. The states have visiting commissions composed of patients, medical doctors and administration officials which regularly visit mental hospitals to check that the legal procedures are adhered to.

Families do not play any formal role in the process, although they can apply for involuntary admission of a family member under the Federal Civil Code, or they can be installed as legal guardians by a court following state codes.

### Danger, involuntary treatment and custodians

Where a person with a mental disorder represents an extreme and acute danger, the Federal Penal Code allows acute help to be provided by any person, including of course staff members of mental healthcare units. Indeed, a medical staff member who has recognised the acute danger but has not provided help may even be punished for neglect of professional duties, or claims may be made by any third parties which have been damaged. In such cases, forced detention or forced administration of medication may be necessary. Generally, if the need arises, the mental healthcare institution would then obtain a court ruling or initiate guardianship in order to continue with the detention. However, some state legislation (e.g. in Berlin) does not allow forced treatment in such situations, leaving forced detention without treatment as the only legal option. In forensic psychiatric units, forced treatment is usually given only in acute situations. Otherwise, a voluntary treatment plan is usually agreed with the patient, but if he or she declines any treatment, no forced treatment is allowed.

The same applies to patients involuntarily admitted to a mental hospital following rulings of a court under the Federal Civil Code. This requires

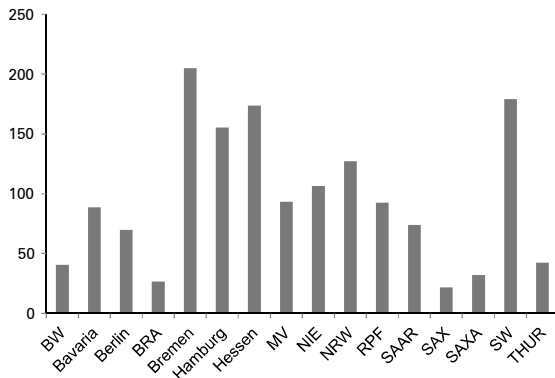
**Table 1**

Numbers of cases at court for detention orders (under para. 1906 of the Federal Civil Code) or due to acute involuntary admission to psychiatric hospitals under state mental health laws (PsychKG), 2000 and 2011

Year	Para. 1906 cases <sup>a</sup>	PsychKG cases <sup>b</sup>	Total admissions to psychiatric hospital <sup>b</sup>	Para. 1906 cases relative to all admissions to psychiatric hospital	PsychKG cases relative to all admissions to psychiatric hospital
2000	87 606	57 051	650 574	13.4 %	8.8 %
2011	146 190	78 147	800 122	18.3 %	9.8 %
Change	+67 %	+37 %	+23 %	+37 %	+11 %

<sup>a</sup>Figures from *Betreuungszahlen 2011*, pp. 28 and 29 ([http://www.bundesanzeiger-verlag.de/fileadmin/BT-Prax/downloads/Statistik\\_Betreuungszahlen/Betreuungsstatistik2011.pdf](http://www.bundesanzeiger-verlag.de/fileadmin/BT-Prax/downloads/Statistik_Betreuungszahlen/Betreuungsstatistik2011.pdf))

<sup>b</sup>Source of data: [http://www.gbe-bund.de/oowa921-install/servlet/oowa/aw92/WS0100/\\_XWD\\_PROC?\\_XWD\\_102/3/XWD\\_CUBE.DRILL/\\_XWD\\_130/D.000/3722](http://www.gbe-bund.de/oowa921-install/servlet/oowa/aw92/WS0100/_XWD_PROC?_XWD_102/3/XWD_CUBE.DRILL/_XWD_130/D.000/3722)

**Fig. 3**

Numbers of persons (per 100 000 population) admitted to mental health facilities following court orders under state mental health laws (PsychKG) in 2011

Abbreviations: BW = Baden-Württemberg; BRA = Brandenburg; MV = Mecklenburg-West Pommern; NIE = Lower Saxony; NRW = North Rhine-Westphalia; RPF = Rhineland-Palatinate; SAAR = Saarland; SAX = Saxony; SAXA = Saxony-Anhalt; THUR = Thuringia.

Source of population data: [http://www.statistik-portal.de/Statistik-Portal/de\\_jb01\\_jahrtab1.asp](http://www.statistik-portal.de/Statistik-Portal/de_jb01_jahrtab1.asp)  
Source of state PsychKG data: [http://www.bundesanzeiger-verlag.de/fileadmin/BT-Prax/downloads/Statistik\\_Betreuungszahlen/Betreuungsstatistik2011.pdf](http://www.bundesanzeiger-verlag.de/fileadmin/BT-Prax/downloads/Statistik_Betreuungszahlen/Betreuungsstatistik2011.pdf)

the provision of a legal custodian and, until the summer of 2012, the custodian's agreement to treatment was sufficient. A legal controversy and ensuing uncertainties about the legal procedures for this substitution of patient permission by a custodian's permission arose in 2012 following rulings of the German Supreme Court. In early 2013, new legislation was introduced, so that now several factors need to be ascertained before a legal custodian can agree to any type of treatment: the person affected by the mental disorder must be admitted to a mental healthcare unit and be lacking the capacity to recognise or act according to the medical measures. These measures must be necessary to avoid imminent and considerable damage to the health of the affected person. Alternative measures must not be available and the benefit of the planned measure must exceed any potential danger due to the measure. Also, it must be documented that the affected person had been informed about these aspects in advance. In all cases, a special court ruling for the planned therapeutic measures must be obtained, which must be described in full detail, and the permission only of a legal custodian is not sufficient: expert psychiatric testimony is necessary. Usually, the time allowed for involuntary treatment is 2 weeks only. If longer treatment periods are necessary, new court rulings must be applied for.

## The power to discharge and the right to appeal

Usually, the courts ordering forensic treatment or detention and treatment in general psychiatric units will set time limits for the respective legal measures, which may be extended following renewed expert testimony and court hearings. If a mental disorder subsides, the treating physicians may also initiate accelerated – usually immediate – termination of the legal detention or forced treatment measures by the responsible court. Any court rulings may be appealed by the patient.

## Current issues

There are three major issues (Gaebel & Zielasek, 2012):

- the forced treatment of people with a mental illness who require, but refuse, treatment for somatic disorders
- the increasing number of mental health detentions, both criminal (Fig. 1) and civil (Fig. 2)
- the unpredictable consequences of new funding arrangements for mental hospitals.

When considering statistical findings, one must bear in mind that the admission rate to in-patient mental healthcare in Germany has increased considerably. Therefore, per capita population quotas must be viewed also in relation to per capita admission rates to in-patient mental healthcare. We calculated these figures for the numbers of cases admitted following court orders under state legislation (Fig. 3) (cases at court, not necessarily decided yet) and the German Civil Code (para. 1906, only court-decided cases) for 2000 and 2011 (Table 1).

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