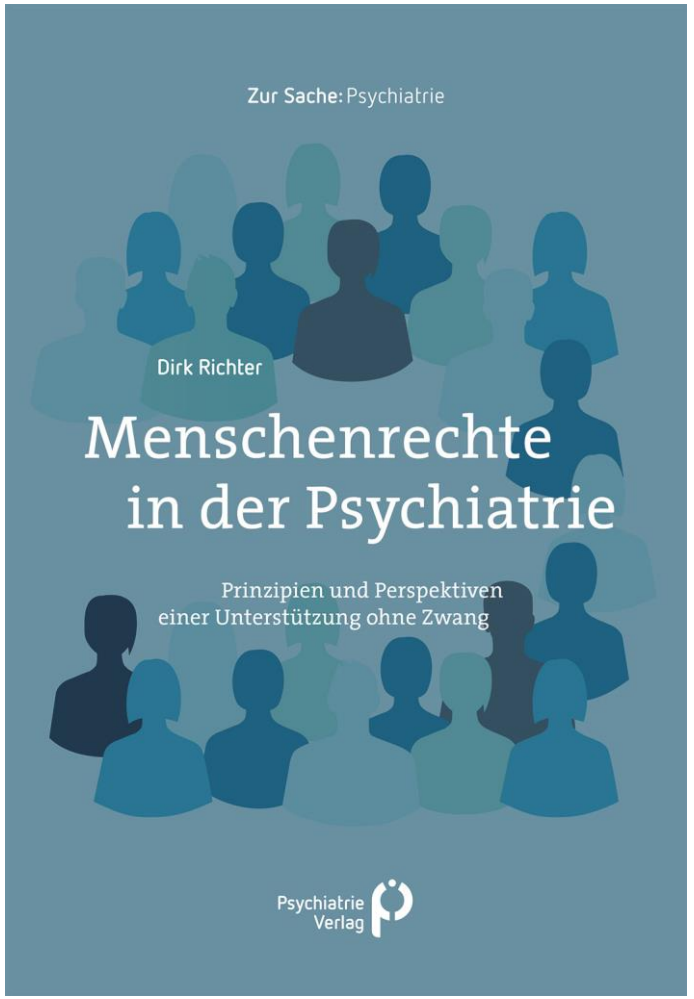
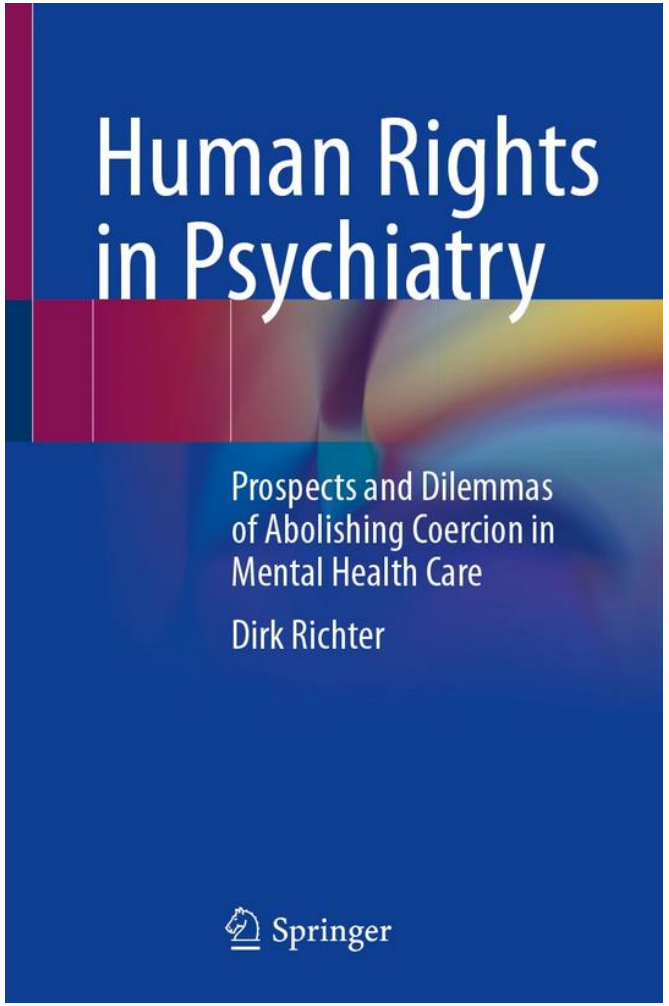
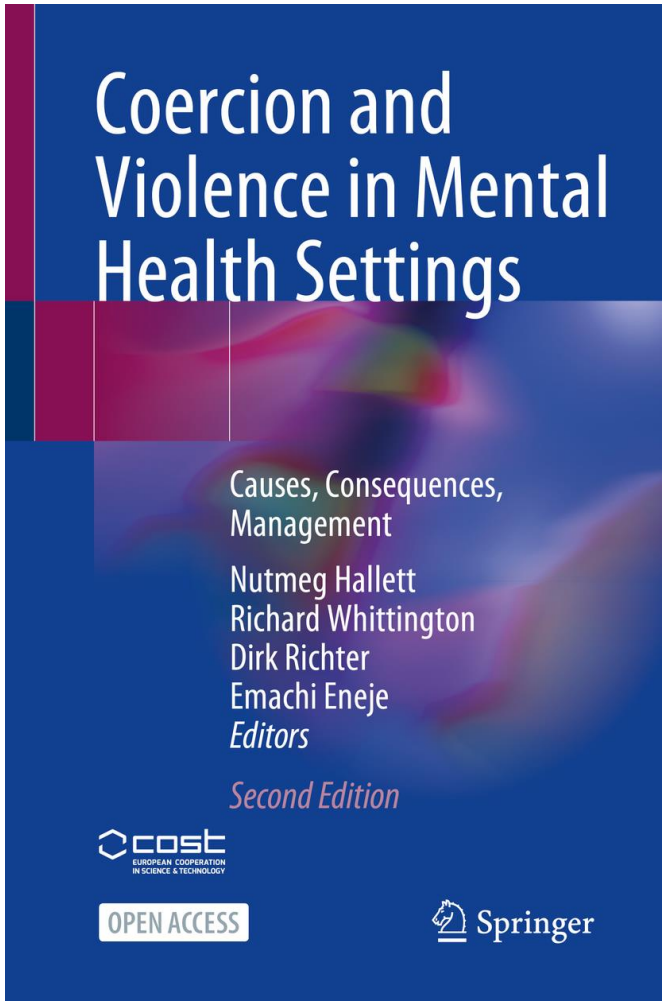
Berner Fachhochschule
Haute école spécialisée bernoise
Bern University of Applied Sciences

Lassen sich Zwang und restriktive Praktiken in der Suchtbehandlung rechtfertigen? Zwischen Fürsorge, Ethik und Evidenz

Dirk Richter







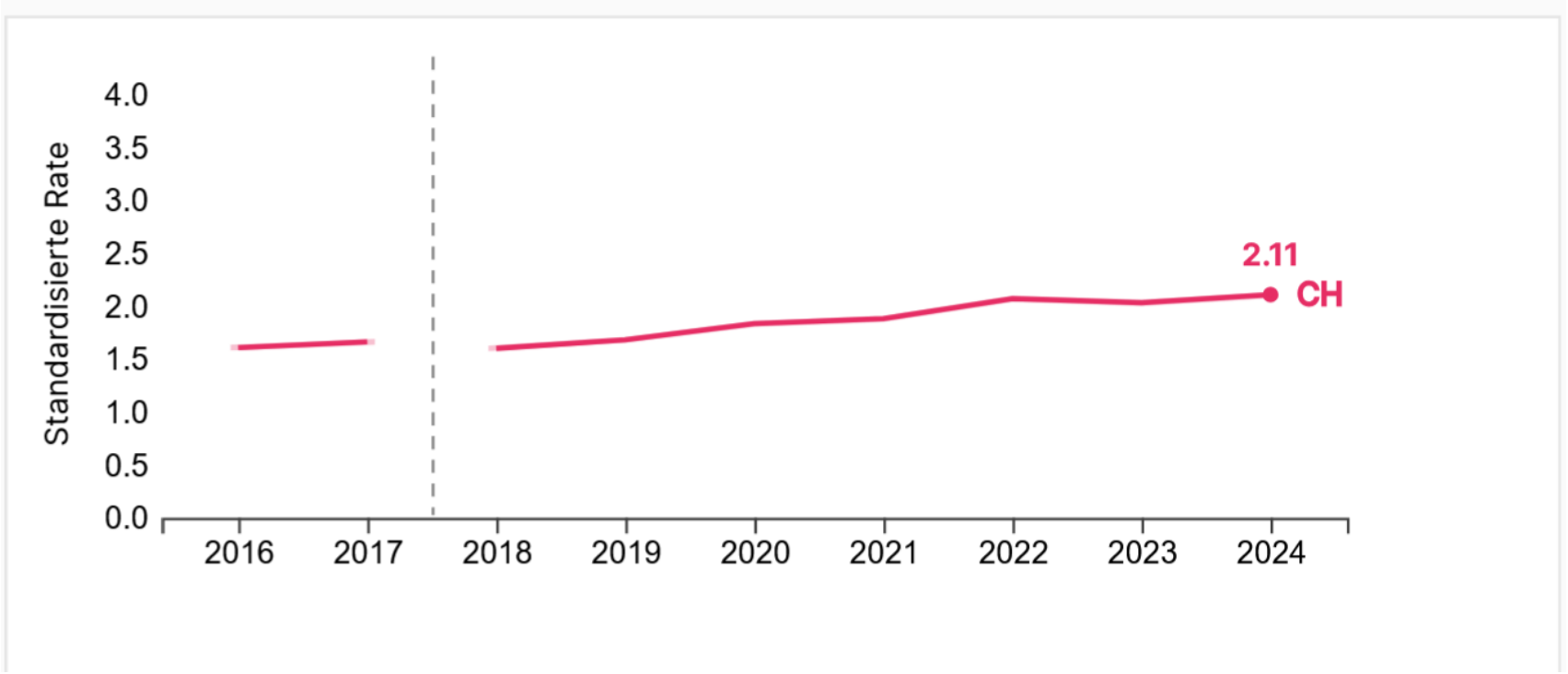
Aktuelle (Open Access) Buch-Publikationen

Zwang in der Suchtbehandlung

- Fürsorgerische Unterbringung mit dem Hintergrund einer Suchtmittel-bezogenen Diagnose
- Unfreiwillige Behandlung von Menschen, die Straftaten mit dem Hintergrund einer Suchtmittel-bezogenen Diagnose begangen haben
- Unfreiwillige Behandlung von Menschen, die keine Straftaten begangen haben und dennoch gegen ihren Willen aufgrund einer Suchtmittel-bezogenen Diagnose behandelt werden

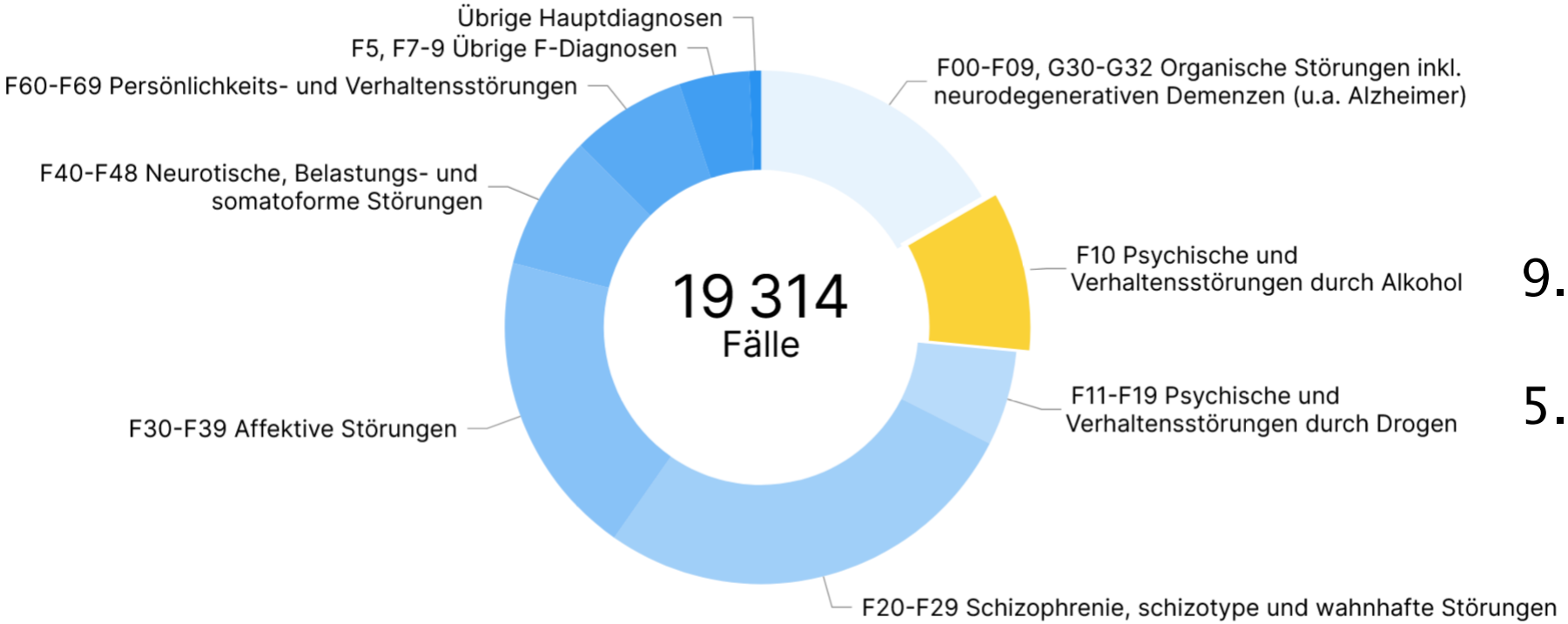
Fürsorgerische Unterbringungen Schweiz

+ ca. 25%



https://ind.obsan.admin.ch/indicator/obsan/fuersorgerische-unterbringung-in-schweizer-psychiatrien (Abruf 03.06.26)

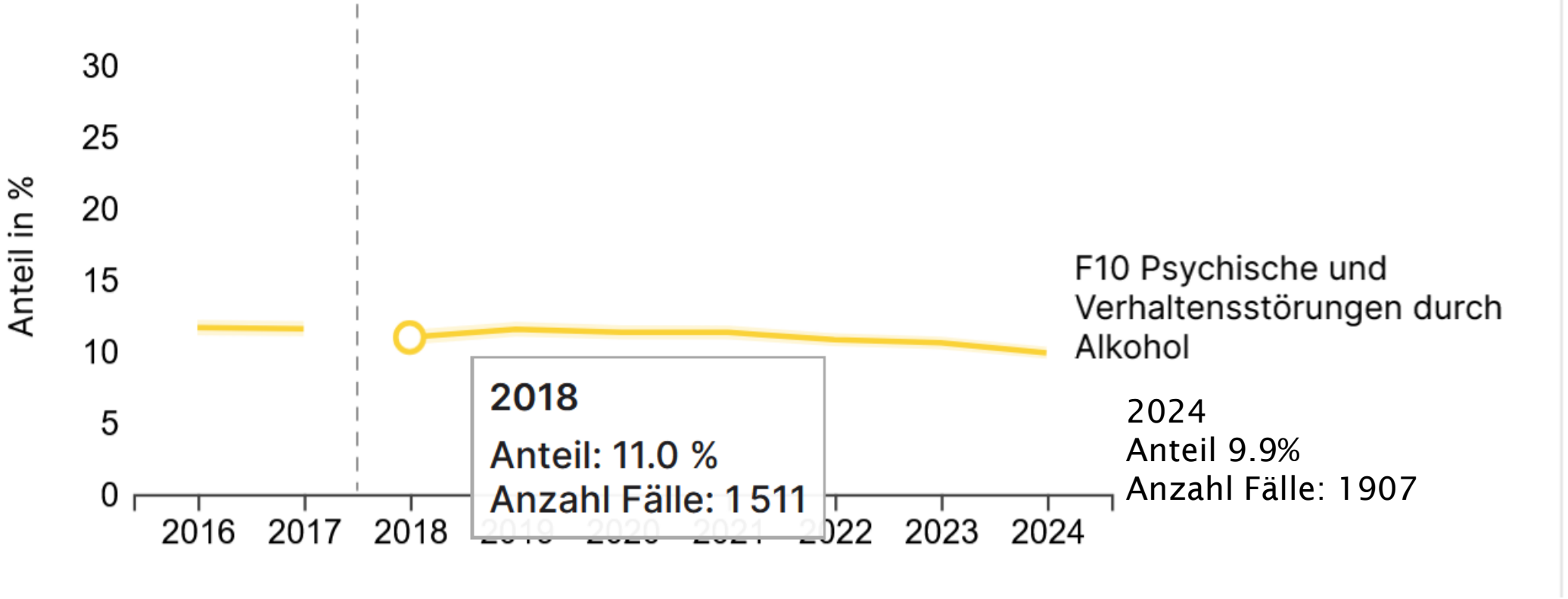
Fürsorgerische Unterbringung 2024 nach Diagnosegruppen



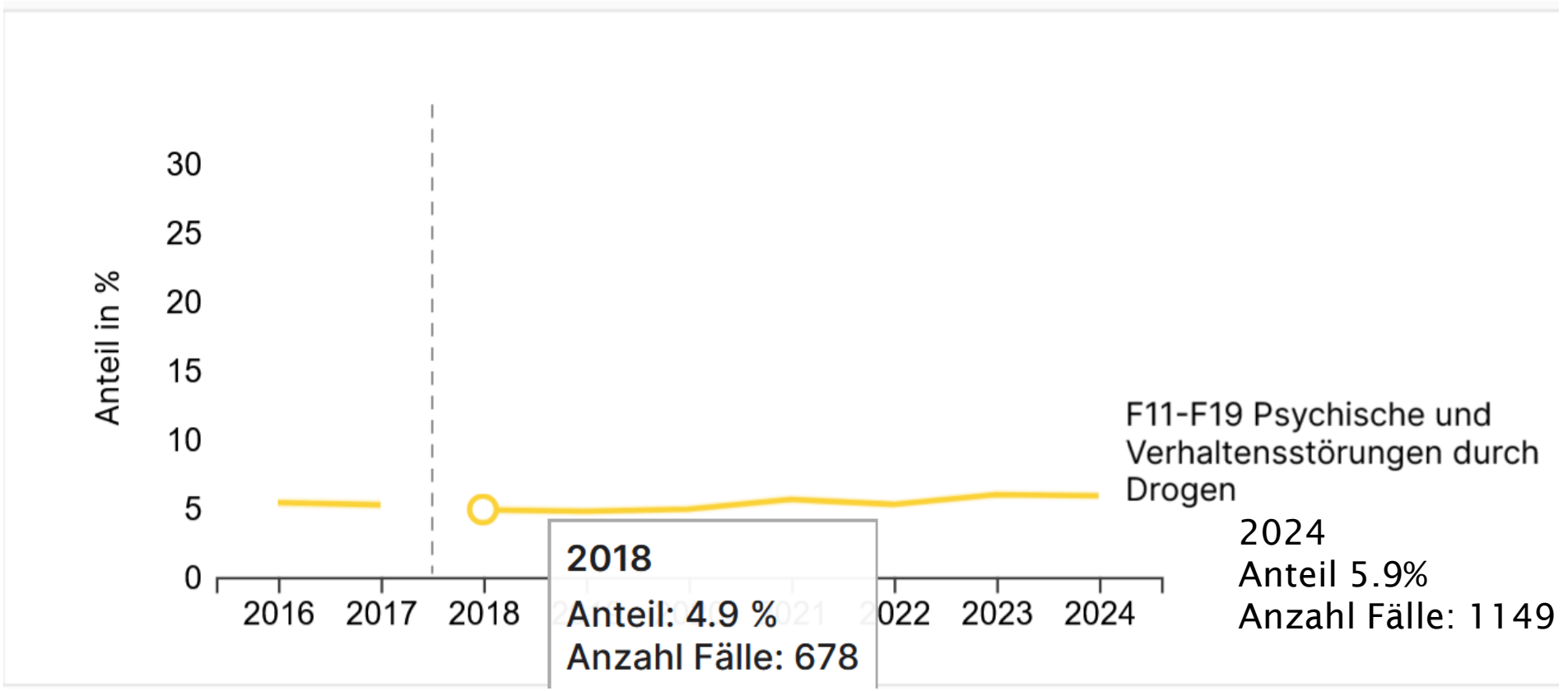
9.9%, N=1907

5.9%, N=1149

FUs Diagnosegruppe F10, 2016-2024



FUs Diagnosegruppe F11-F19, 2016-2024



Was sind die ethischen Voraussetzungen für die Anwendung von Zwang in der Medizin/Psychiatrie?

- Feststellung einer Krankheit/psychischen Störung

- Benefizienz → Die Betroffenen müssen von der Behandlung profitieren.
- Non-Malefizienz → Die Betroffenen dürfen durch die Behandlung nicht geschädigt werden
- Achtung der Autonomie → Die Entscheidungen der Betroffenen müssen berücksichtigt werden
- Gerechtigkeit → Alle Gruppen von Betroffenen müssen fair und gleich behandelt werde

Beauchamp TL, Childress JF: Principles of Biomedical Ethics. 8th ed., New York/Oxford: Oxford UP 2019

UN-BRK Art. 12 – Gleiche Anerkennung vor dem Recht

- (1) Die Vertragsstaaten bekräftigen, dass Menschen mit Behinderungen das Recht haben, überall als Rechtssubjekt anerkannt zu werden.
  (2) Die Vertragsstaaten anerkennen, dass Menschen mit Behinderungen in allen Lebensbereichen gleichberechtigt mit anderen Rechts- und Handlungsfähigkeit genießen. (…)

- (4) Die Vertragsstaaten stellen sicher, dass zu allen die Ausübung der Rechts- und Handlungsfähigkeit betreffenden Maßnahmen im Einklang mit den internationalen Menschenrechtsnormen geeignete und wirksame Sicherungen vorgesehen werden, um Missbräuche zu verhindern. Diese Sicherungen müssen gewährleisten, dass bei den Maßnahmen betreffend die Ausübung der Rechts- und Handlungsfähigkeit die Rechte, der Wille und die Präferenzen der betreffenden Person geachtet werden, es nicht zu Interessenkonflikten und missbräuchlicher Einflussnahme kommt, dass die Maßnahmen verhältnismäßig und auf die Umstände der Person zugeschnitten sind, dass sie von möglichst kurzer Dauer sind und dass sie einer regelmäßigen Überprüfung durch eine zuständige, unabhängige und unparteiische Behörde oder gerichtliche Stelle unterliegen.

UN-BRK Art. 14 (Freiheit/Sicherheit) /15 (Freiheit von Folter)

Art 14: (1) Die Vertragsstaaten gewährleisten,

a) dass Menschen mit Behinderungen gleichberechtigt mit anderen das Recht auf persönliche Freiheit und Sicherheit genießen;

b) dass Menschen mit Behinderungen gleichberechtigt mit anderen die Freiheit nicht rechtswidrig oder willkürlich entzogen wird, dass jede Freiheitsentziehung im Einklang mit dem Gesetz erfolgt und dass das Vorliegen einer Behinderung in keinem Fall eine Freiheitsentziehung rechtfertigt.

Art 15: (1) Niemand darf der Folter oder grausamer, unmenschlicher oder erniedrigender Behandlung oder Strafe unterworfen werden.

Das Genfer Patt

- The existence of a disability shall not in itself justify a deprivation of liberty but rather any deprivation of liberty must be necessary and proportionate, for the purpose of protecting the individual in question from serious harm or preventing injury to others. It must be applied only as a measure of last resort and for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law (GC35, *International Covenant on Civil and Political Rights* para 19).

- The Committee has established that [CRPD] Article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment. However, legislation of several States parties, including mental health laws, still provide instances in which persons may be detained on the grounds of their actual or perceived impairment, provided there are other reasons for their detention, including that they are deemed dangerous to themselves or others. This practice is incompatible with [CRPD] Article 14; it is discriminatory in nature and amounts to arbitrary deprivation of liberty (G14, *CRPD*, para. 6).

Martin W, Gurbai S: Surveying the Geneva impasse: Coercive care and human rights. International Journal of Law and Psychiatry, 2019, 64, 117-128

Deutscher Ethikrat – Stellungnahme ‘Zwang in Sorgebeziehungen’ 2018, S. 80, 93

- Die jeweilige Zwangsmaßnahme muss auf die Entwicklung, Förderung oder Wiederherstellung der selbstbestimmten Lebensführung der betroffenen Person im Rahmen der gegebenen Möglichkeiten und der hierfür elementaren leiblichen und psychischen Voraussetzungen abzielen. → Autonomie
- Die Zwangsmittel müssen zu diesen Zielen geeignet, erforderlich und angemessen (d. h. im Blick auf Eingriffstiefe und Eingriffsdauer verhältnismäßig) sein. → Wirksamkeit, Verhältnismässigkeit, geringstmögliche Einschränkung
- Die Abwehr eines primären Schadens darf nicht unangemessene andere womöglich irreversible Schäden erzeugen („sekundäre Vulnerabilität“). → Non-Malefizienz
- Der Schaden darf sich nicht anders abwenden bzw. das Ziel nicht anders erreichen lassen → Ultima Ratio
- Die jeweilige Maßnahme sollte auf die Zustimmung der adressierten Person stoßen, wäre diese aktuell zu einer freiverantwortlichen Entscheidung fähig. → Wohl der Person

Die bisherige konventionelle Rechtfertigung von Zwang in der Psychiatrie

«The simple combination of diagnosis of a mental health condition and risk to self and others has often been considered a sufficient legal and medical justification for coercion in psychiatry (…).»

Mahdanian AA et al: Human rights in mental healthcare: A review of the current global situation. International Review of Psychiatry, 2022, DOI: 10.1080/09540261.2022.2027348

Psychische Störung/ Krankheit + **Gefahr/ Risiko** =

Zwangsmassnahme
Effektive Behandlung
Geringstmögliche Einschränkung
Ultima Ratio

→

Zum Wohle der Person
Subjektive Bewertung
Wiederherstellung der Autonomie

Voraussetzung für psychiatrischen Zwang – Die Feststellung einer ‘wahren’ psychischen Störung

Winterwerp v Netherlands 6301/73 [1979] ECHR 4 (Europ. MR-Gerichtshof)

In the court’s opinion, except in emergency cases, the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of ‘unsound mind’. The very nature of what has to be established before the competent national authority – this is, a true mental disorder – calls for objective medical expertise. Further, the mental disorder must be of a kind or degree warranting compulsory confinement. What is more, the validity of continued confinement depends upon the persistence of such a disorder.

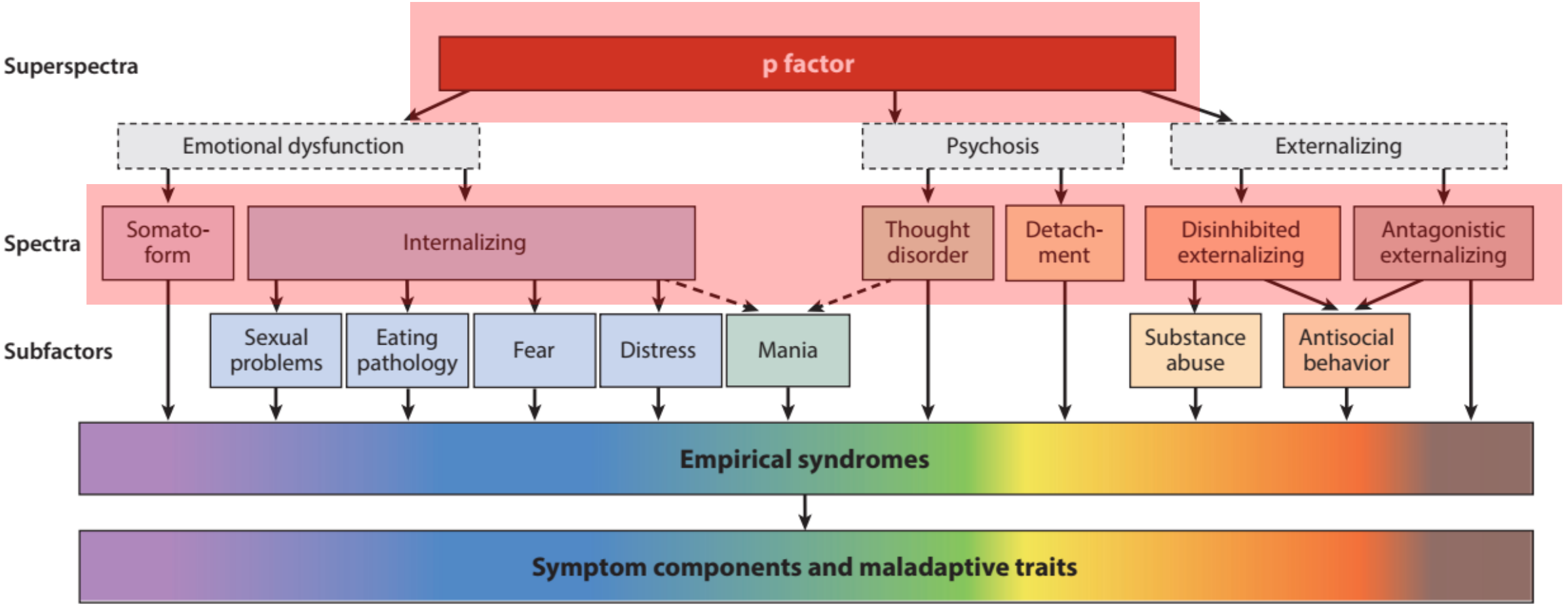
Table 1. Brief details of identified models.

Model of mental health problem	Description
Anti-psychiatry	A critical approach that denies the existence of mental illness
Biology	A comprehensive but exclusively biological approach for understanding mental health problems
Biology—culture	A joint approach focussing on biological and cultural issues related to mental health problems
Biopsychology	Joint biological and psychological perspectives
Biopsychosocial/medical	Approaches that stress the interplay between biological, psychological, and social factors as a means to understanding mental health problems
Cognitive psychology	An approach that stresses the importance of internal mental processes for understanding mental health problems
Computational neuroscience	An approach that utilizes mathematical models and theories to understand the determinants of mental health problems
Critical realist	An approach that proposes the existence of a reality that is ontologically separated from experienced mental health problems
Developmental—biopsychosocial	Approaches that stress the interplay of biological, psychological, and social factors for understanding developmental mental health problems
Ethnopsychology	An understanding of mental health problems informed by the culture of particular ethnic communities
Evolutionary/Darwinian	Approaches that stress the evolutionary origins of mental health problems
Existentialism	A philosophically based approach that seeks to understand existential issues related to the human condition to understand mental health problems
Genetics—evolutionary	A joint approach that focusses on the interplay between genetic and evolutionary mechanisms which lead to mental health problems
Gut microbiota	A biological approach that stresses the importance of gut microbes for developing mental health problems
Mad studies/neurodiversity	Approaches that propose normalizing perspectives of mental health issues and which reject illness concepts
Network—psychology	An approach that explains mental health problems through mapping the interplay of psychological symptoms
Network/biopsychology	A joint network and biopsychological approach
Neurophenomenology	A joint neurological and phenomenological approach
Neuropsychology	Joint neurological and psychological approach for understanding mental health problems
Neuroscience/neurobiology	A neuroscientific and biological approach for understanding mental health problems
Phenomenology	An approach that understands mental health problems through analysing structures of consciousness and other mental phenomena
Power-threat-meaning framework	A model which views mental health problems as an understandable protective response to adverse environments.
Property cluster	An approach that proposes that networks of mechanistic clusters cause mental health problems
Psychoanalysis	A set of psychological theories, originating from Freud, which focuses on the role of the unconscious mind as the cause of mental health problems
Psychosocial	Joint psychological and social perspectives on mental health problems
Radical approach	An approach that asks for a radical liberatory change when dealing with mental health problems
Recovery	An approach aimed at enabling people with mental health problems to define what recovery means to them so they can live a meaningful life
Salutogenesis	An approach that endorses health and well-being rather than illness
Social disability	An approach that stresses the socially induced disabling constraints on people with mental health issues
Spiritual	A spiritual perspective on mental health problems
Systems/Chaos theory	Approaches that stress the non-deterministic emergence of mental health problems in biological and psychological realms
Theory development/application	Approaches that propose the need for new models of mental health problems through demonstrating fields of application
Traditional/spiritual	Traditional and spiritual perspectives on mental health problems
User/survivor studies	Approaches that stress the centrality of the experiences of people who have been treated in mental health services and are normally critical in nature.

Hat die Psychiatrie ein valides Krankheitsmodell?

Richter D, Dixon J. Models of mental health problems: a quasi-systematic review of theoretical approaches. Journal of Mental Health. 2022, doi: 10.1080/09638237.2021.2022638

Taxonomischer Forschungsstand



Kotov R et al: The Hierarchical Taxonomy of Psychopathology (HiTOP): A Quantitative Nosology Based on Consensus of Evidence. Annual Review of Clinical Psychology 2021. 17:83–108

Störungen durch Substanzgebrauch: Dimensional vs. kategorial

Should substance use disorders be considered as categorical or dimensional?

Bengt Muthén

First published: 08 August 2006 | https://doi.org/10.1111/j.1360-0443.2006.01583.x |

VIEW METRICS

Bengt Muthén, University of California, Los Angeles, CA, USA. E-mail: bmuthen@ucla.edu

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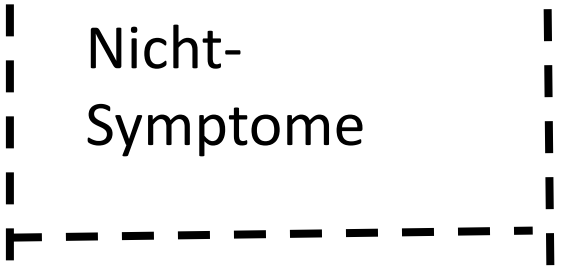
Das dreifache Problem der Grenzziehung



„Die Grenzen zwischen krank und gesund erfordern, wie in der gesamten Medizin, soziale Entscheidungen im Hinblick auf die Festlegung von Schwellenwerten für Störungen, die quantitative Abweichungen von der Gesundheit darstellen.” (Übersetzung DR)

Hyman St: Psychiatric Disorders: Grounded in Human Biology but Not Natural Kinds. Perspectives in Biology and Medicine, Volume 64, 2021, 6-28, p. 23

Effektivität von freiwilliger Pharmakotherapie bei Alkohol-Störungen

Table. Summary of Findings and Strength of Evidence From Trials Assessing Efficacy of Medications With at Least Low Strength of Evidence for Benefit for Alcohol Use Disorder[a]

	Acamprosate	Baclofen	Disulfiram	Gabapentin	Naltrexone 50 mg/d, oral	Naltrexone 100 mg/d, oral	Naltrexone Injection	Naltrexone Any dose	Topiramate
Return to any drinking									
No. of studies	20	8	3	3	16	3	2	25	1
Results effect size (95% CI)		RR, 0.88 (0.83-0.93)		RR, 0.83 (0.70-0.98)		RR, 1.03 (0.90-1.17)	RR, 0.92 (0.83-1.02)		RR, 0.93 (0.87-0.99)
Number needed to treat (95% CI)[c]		11 (1-32)							18 (4-32)
Strength of evidence		Moderate		Low		Low (no effect)	Low		Moderate
No. of participants	2496	483	0	522	3170	858	615	4645	170
Results effect size (95% CI)	RR, 0.99 (0.94-1.05)	RR, 0.92 (0.80-1.06)		RR, 0.90 (0.82-0.98)	RR, 0.81 (0.72-0.90)	RR, 0.93 (0.84-1.01)	RR, 1.00 (0.82-1.21)	RR, 0.86 (0.80-0.93)	Topiramate, 10%; placebo, 14%
Number needed to treat (95% CI)[c]					11 (5-41)				
Strength of evidence	Moderate (no effect)	Low (no effect)	Insufficient	Low	Moderate	Low (no effect)	Low (no effect)	Moderate	Insufficient
Percentage of drinking days									
No. of studies	14	5	2	1	15	3	2	24[d]	8
No. of participants	4916	714	290	112	1992	1023	467	4021	1080
Results effect size (95% CI)[b]	WMD, −8.3 (−12.2 to −4.4)	WMD, −5.55 (−18.79 to 7.69)	No significant difference	No significant difference	WMD, −5.1 (−7.16 to −3.04)	WMD, −2.3 (−5.60 to 0.99)	WMD, −4.99 (−9.49 to 0.49)	WMD, −4.51 (−6.26 to −2.77)	WMD, −7.2 (−14.3 to −0.1)
Strength of evidence	Moderate	Low (no effect)	Insufficient	Insufficient	Moderate	Low	Low	Moderate	Moderate

McPheeters M, O'Connor EA, Riley S, et al. Pharmacotherapy for Alcohol Use Disorder: A Systematic Review and Meta-Analysis. *JAMA.* 2023;330(17):1653–1665. doi:10.1001/jama.2023.19761

Effektivität freiwilliger psychosozialer Behandlung bei Substanz-Störungen

such as treatment-as-usual. In all, the psychosocial treatments for substance use disorders included in this meta-review have shown to be at best moderately effective over inactive controls in the short term. Nevertheless, further trials are needed as well as meta-analyzes

Psychiatry Research 326 (2023) 115318

Contents lists available at ScienceDirect

Psychiatry Research

journal homepage: www.elsevier.com/locate/psychres

Review article

Meta-review on the efficacy of psychological therapies for the treatment of substance use disorders

Laura Dellazizzo [a,b], Stéphane Potvin [a,b], Sabrina Giguère [a,b], Clara Landry [a,b], Nayla Léveillé [a,b], Alexandre Dumais [a,b,c,*]

Evidenz für eine unfreiwillige Behandlung von Personen, die keine Straftaten begangen haben

Conclusions: Evidence for the involuntary treatment of adult nonoffenders with SUD suggests limited benefits, with voluntary treatment consistently outperforming involuntary treatment. The use of involuntary treatment

Cooley, Emily; Bahji, Anees; Crockford, David MD. Involuntary Treatment for Adult Nonoffenders With Substance Use Disorders?. The Canadian Journal of Addiction 14(2):p 25-31, June 2023. | DOI: 10.1097/CXA.0000000000000172

Übersicht über die Ergebnisse systematischer Reviews zur unfreiwilligen Suchtbehandlung

Study	Focus	Key findings
Werb et al. (2016)	Systematic review of compulsory treatment effectiveness for substance use	No consistent evidence supporting superior efficacy of compulsory treatment in reducing substance use or criminal recidivism. Some studies noted marginal improvements in treatment retention.
Bahji et al. (2023)	Systematic review examining substance use disorder outcomes	Limited evidence that compulsory treatment outperforms voluntary treatment. Some studies observed slight improvements in retention rates.
Pacheco-Ferreira et al. (2019)	Systematic review of compulsory crack use treatment	Found that treatment aggressive and ineffective overall, raising ethical concerns linked to human rights violations.

Kisely S, Bull C, Gill N. Extending the reach of involuntary treatment to substance use disorders: Is it 'compassionate' or coercive care? *Australian & New Zealand Journal of Psychiatry*. 2024;58(12):1017-1019. doi:10.1177/00048674241299215

Evidenz der Wirkung unfreiwilliger Suchtbehandlungen

High-level summary of key findings

High-level summary of outcomes of involuntary substance-use

- From seven evidence syntheses and 53 single studies, we found:
  - outcomes related to care experiences were mixed, with some studies noting concerns of violence and violation of human rights, and some studies not endorsing of the involvement of the criminal justice system in treatment
  - conflicting findings for substance-use outcomes, with patients in mandated treatment being two to 10 times more likely to complete treatment, but evidence of reducing substance-use and relapse rates showed either no beneficial effect of involuntary treatment or an effect that was similar to those from voluntary treatment
  - worse health-related outcomes in involuntary treatment as compared to voluntary treatment, including increased risk of non-fatal overdose after follow-up and increased risk of dying after discharge
  - moral distress in providers of involuntary treatment as well as a perception of it being ineffective and inconvenient for establishing a therapeutical environment with the participant
  - conflicting findings for social outcomes related to crime (criminal recidivism and arrests) and employment.

Vélez M, Waddell K, DeMaio P, Bain T, Ali, A, Bhuiya A, Alam S, Cura J, Phelps A, Wilson MG. Rapid synthesis: Use and regulation of involuntary substance-use treatment for adults. Hamilton: McMaster Health Forum, 11 August 2023.

Klinische Konsequenzen unfreiwilliger Einweisungen

- "Involuntary admission can lead to significant improvement in symptoms of mental illness and function in the community, which can sometimes exceed that seen in voluntary controls. This may be because people admitted involuntarily displayed poorer function and worse symptoms at admission and so benefited to a greater degree than voluntary admissions as a result of regression to the mean. (…) However, this review has found that involuntary admission may in and of itself be associated with a number of harms. (…) In addition, we found little evidence that involuntary admission was protective against suicide, and some evidence that it may in fact be a risk factor for inpatient suicide."

Corderoy, A. et al: (2024). The benefits and harms of inpatient involuntary psychiatric treatment: a scoping review. *Psychiatry, Psychology and Law*, 1–48. https://doi.org/10.1080/13218719.2024.2346734

Ambulante Zwangsbehandlung/Community Treatment Orders

- "This shows that the evidence for the benefits of CTOs on subsequent health service use was mixed and showed a clear decline with increasing strength of study design. Whereas UBA evidence suggested that CTOs increased follow-up with mental health services and reduced inpatient admissions, more rigorous CBA [Controlled Before/After, DR] studies using matching or multivariate analysis reported mixed benefits, and RCTs no effect on inpatient service use. There were similar patterns for clinical, psychosocial and forensic outcomes. The only consistent benefit was an increase in community contacts. However, it could be argued that the latter is a process measure rather than a final result, since the hypothesised method of achieving the outcome is by requiring people to attend community or outpatient services."

  Kisely St et al: The benefits and harms of community treatment orders for people diagnosed with psychiatric illnesses: A rapid umbrella review of systematic reviews and meta-analyses. Australian & New Zealand Journal of Psychiatry 2024, Vol. 58(7) 555–570

Ist psychiatrischer Zwang zum Wohl der betroffenen Person?

- "The identified literature strongly suggests that seclusion and restraint have deleterious physical or psychological consequences. (…) Subjective perception has high interindividual variability and can be positive, with feelings of safety, help, clinical improvement, or evaluation as necessary. However, seclusion and restraint are mostly associated with negative emotions, particularly feelings of punishment and distress. (…) "Conclusions on protective or therapeutic effects of seclusion and restraint are more difficult to draw. Our results provide little evidence for these outcomes, but further research is clearly necessary."

Chieze M et al. Effects of Seclusion and Restraint in Adult Psychiatry: A Systematic Review. Frontiers in Psychiatry. 2019 Jul 16;10:491.

- "The results from this study indicate that the majority of patients in the reviewed studies associated the use of coercive measures with 'negative perceived impact.'"

Tingleff EB et al: "Treat me with respect". A systematic review and thematic analysis of psychiatric patients' reported perceptions of the situations associated with the process of coercion. Journal of Psychiatric and Mental Health Nursing. 2017;24:681–698

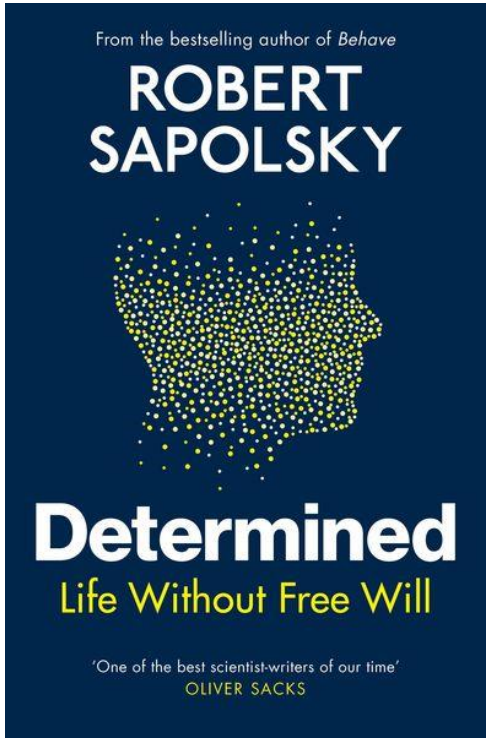
Haben Menschen einen freien Willen/ Autonomie, der/die wiederherstellbar ist?

Grundfrage: Wie kompatibel ist die Annahme des freien Willens mit neurobiologischen Kausalannahmen?

Freier Wille + Determinismus	Kein freier Wille + Determinismus
Freier Wille + Indeterminismus	Kein freier Wille + Indeterminismus

"What we call free will is the biology that has not been discovered yet."

R. M. Sapolsky: Neuroscience and the Law. University of St. Thomas Journal of Law and Public Policy 2021,15, 138-161



Der empiriebezogene Basis-Dissens über die Legitimation von Zwang in der Psychiatrie

Dissent hypotheses on the justification of coercion in psychiatry.

There is disagreement about whether…	Argument against justification (Richter)	Argument in favour of justification (Steinert)
…it is relevant for the general justification of coercion as an option that the majority of people affected by coercion experience the measure as unhelpful.	This removes the legitimisation.	The circumstances of the individual case are always decisive for all ethical and legal considerations.

Richter D, Steinert T. Can coercion in psychiatry be justified? A theoretical adversarial collaboration approach. International Journal of Law and Psychiatry. 2026;105:102171. DOI: 10.1016/j.ijlp.2025.102171.

Warum Zwang in der Suchtbehandlung kaum noch gerechtfertigt werden kann

- Das normative soziokulturelle Konstrukt der psychischen/substanzbezogenen Störung kann keine Grundlage für die Rechtfertigung einer medizinischen Massnahme gegen den Willen einer Person sein
- Freiwillige therapeutische Interventionen sind in der Suchtbehandlung allenfalls moderat wirksam
- Die Wirksamkeit bei Interventionen gegen den Willen sind – allein schon aus motivationalen Gründen – noch weniger wirksam
- Die meisten Zwangsbetroffenen erleben die Massnahmen eher als schädlich denn als nützlich
- Die Annahme der Wiederherstellung der Autonomie ist äusserst fragwürdig

- Zwang in der Suchtbehandlung ist ethisch fragwürdig und empirisch kaum wirksam

Merci

dirk.richter@bfh.ch