



Raad voor
Strafrechtstoepassing
en Jeugdbescherming

Summary

Advisory report 'Restrictive measures in open residential youth care? Context and guidance for the future'

Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)

Under the Youth Act (Jeugdwet), restrictive measures are not allowed in open residential youth care, however, they are applied in practice. The state secretary of the Ministry of Health, Welfare and Sport (VWS) has asked the RSJ to issue an advisory report on the application of restrictive measures in open residential youth care. This request for advice should, in part, be seen in the context of the phasing out and conversion of secure residential youth care.

Restriction of freedom in open residential youth care facilities is a complex subject on which opinions are divided. In this advisory report, the RSJ therefore first outlines the background and broad context before formulating conclusions and recommendations.

In the first place, the RSJ concludes that the restriction of freedom of young people is regulated inconsistently in Dutch law, namely under: chapter 6 of the Youth Act, the Mandatory Mental Healthcare Act and the Care and Compulsion Act. The RSJ recommends designing a single legal regulation for the care and support of young people by harmonising these three laws.

The RSJ is aware that such a system revision takes time. For this reason, the RSJ formulates several recommendations, for the near future, to create a situation in which the position and legal protection of young people in open residential youth care are strengthened.

The RSJ endorses the widely shared view that the use of restrictive measures should be avoided as much as possible. At the same time, the RSJ believes that when these measures are applied in exceptional cases, the juvenile should be protected by means of legal safeguards. As long as these legal safeguards have not been realised, the RSJ advises that restrictive measures may not be applied in open residential youth care, with the exception of an emergency situation. Confinement should not be applied at all, even in case of emergency situations.

Medium- and long-term recommendations:

1. Draft one legal regulation for care and support of young people;
2. Make judicial assessment of a placement in care compulsory, when restrictive measures are deemed necessary;
3. Formalise the 'no, unless' principle with regard to restrictive measures, whilst excluding the most far-reaching forms of restrictive measures in open residential youth care;
4. Apply preconditions for the application of restrictive measures:
 - a. Introduce quality requirements in the case of restriction of freedom and a more far-reaching obligation for the registration of institutions for open residential youth care that may apply restrictive measures;
 - b. Apply an expert test for the care plan (or when the care plan is changed);
 - c. Register and justify all restrictive measures applied;
 - d. Create an effective and accessible complaints mechanism for young people.

The full advice including all recommendations can be consulted on the [RSJ website](#).
For questions about this advisory report, please contact advies@rsj.nl.

