

Recommendations from the Council for the Administration of Criminal Justice and Protection of Juveniles

Title : Compulsory treatment within the context of the enforcement of sentences and placement orders
Issued to : The State Secretary of Justice
Date : 4 February 2008

The recommendation relates to the proposal to amend the Hospital Order Act [*Beginselenwet verpleging terbeschikkinggestelden*], the Youth Custodial Institutions (Framework) Act [*Beginselenwet justitiële jeugdinstellingen*] and the Penal Institutions Act [*Penitentiaire beginselenwet*] in order to introduce the statutory possibility of compulsory treatment in custodial institutions.

The Council endorses the introduction of a compulsory treatment scheme within the context of the enforcement of sentences and placement orders, in accordance with the Psychiatric Hospital Act [*Wet Bijzondere opnemingen in psychiatrische ziekenhuizen*, Bopz].

For the Council, the key factor in this is the principle of equivalence. Individuals who are suffering from a psychiatric disorder or other illness whilst serving a sentence or placement under a hospital order should be provided with care that is equivalent to the level of care that they would have access to outside of the institution. Under certain circumstances and conditions this may mean that an offender will receive compulsory treatment. In addition to the content of the care, the principle of equivalence also has an effect in terms of the safeguarding of legal rights and the provision of due care.

The Council made critical comments on the motive behind the legislative proposal. The explanatory memorandum fails to provide a clear insight into the extent to which grounds for compulsory treatment occur within the context of the enforcement of sentences and hospital orders, and also fails to discuss potential alternatives within existing legislation.

The aim of the new scheme is to tie in with the equivalent under the Bopz with regard to compulsory treatment; however, it deviates from this legislation in a number of important areas. These include the preconditions for compulsory treatment in a custodial institution such as diagnostics, the drawing up of treatment plans, sufficiently qualified staff and professional treatment. The Council believes that these provisions are absolute preconditions for the application of compulsory treatment and recommends that the Bopz scheme be followed in this area. The Council therefore deems (compulsory) treatment only to be feasible in (one or more) institutions that meet the abovementioned conditions and that are specifically designated for this purpose. In the event that compulsory treatment is going to take place on a long-term basis, the offender in question should be transferred to an appropriate institution belonging to the Dutch Mental Health Care Association [*Geestelijke Gezondheidszorg Nederland*] as soon as possible.

Taking the principle of equivalence as a starting point, the Council therefore believes that compulsory treatment should also be an option in the case of minors under the abovementioned conditions. The Council currently rejects the use of compulsory treatment in correctional institutions for juvenile offenders. The basic principle in this regard must be that if it is necessary to apply compulsory treatment to a young offender, he or she will be transferred to an institution that belongs to the Dutch Mental Health Care Association.

The Council is of the opinion that the diagnosis of a psychiatric disorder that constitutes a danger and justifies compulsory treatment — as is the case under the Bopz — must be based on a court judgment.

The Council endorses the importance of the principles of subsidiarity, proportionality and fitness for purpose with regard to compulsory treatment, and recommends that these principles be defined and therefore enshrined in the law at the same time.

The Council recommends that the results of compulsory treatment within the context of the enforcement of sentences and placement orders be assessed. In this regard, it should also be examined to what extent compulsory treatment ultimately leads to voluntary treatment.

The recommendation can be obtained from the secretariat of the Council

Postbus 30 137

2500 GC The Hague

+31 (0)70 - 36 19 300,

www.rsj.nl