

***Recommendation by the Council for the Administration of Criminal Justice and  
Protection of Juveniles  
Summary for publication***

*title* : Long stay, follow-up recommendations  
*issued to* : the State Secretary of Justice  
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**This recommendation is a supplement to the recommendation entitled 'Long Stay' [*Longstay*] issued on 1 February 2008. The follow-up recommendation partly stems from the discussions that took place at the conference on long-term deprivation of liberty entitled 'The Years Count' [*De Jaren Tellen*] organised by the Council on 6 March 2008. In short, it is the Council's recommendation to opt for de-institutionalisation, in combination with the corresponding reinforcement of legal safeguards.**

In its recommendation issued on 1 February, the Council referred to two possible solutions that could limit the rise in the number of offenders placed in long stay units of custodial clinics:

1. to abandon the long stay policy framework in its present form by means of abolishing long stay units as *external* differentiation; to integrate and de-institutionalise long stay and to introduce a higher level of individualisation of care, treatment and security;
2. to maintain existing policy in respect of long stay, but with the introduction of a more stringent review prior to admission to and continuation of stay in a long stay unit;

At the conference, extensive discussions took place about the fact that current policy in respect of long stay is mainly organisation-oriented. Uniformity within the policy framework means that treatment is rigid and makes it more difficult for the patients in question to progress beyond of this situation. Differentiation is therefore required. The highest level of integration will be achieved if every clinic has the option to provide long-term forensic care. If, however, the decision is made to opt for a specific degree of concentration, it is essential that long-term care units collectively implement a differentiated range of services.

Furthermore, the existing placement procedure incorporates the necessary legal safeguards for the relevant patients. The consequences of placing a patient under long-term care are, however, too far-reaching in nature for this policy decision to be left to the administration. The nature of enforcement varies to such an extent that more extensive *judicial* input would be more appropriate. A further argument for a more *rigorous*, that is to say a more substantive, review of the placement of offenders in long stay units is that this would serve to monitor the intake more effectively. The introduction of a more complex procedure will not, in itself, have a major effect on the volume of patients in long-term care if the underlying policy remains unchanged. If, however, policy is amended in the direction described under 2, it would no longer be a case of (ministerial) placement in a long stay unit with the drastic consequences that this implies.

The Council therefore recommends a combination of the two solutions.

Based on the fact that the legally established objective of the hospital order measure is to re-integrate the patient into society, failure to continue to treat the patient with this objective in mind (however realistic this may be for the patient in question) constitutes a fundamental deviation from normal procedure. Regardless of whether the patient is transferred to another unit within this context, he must be given the opportunity to

oppose this placement. The recommendation of another treating physician would perhaps be more appropriate in this instance than that of a court conducting a review. A judicial review of enforcement is marginal by its very nature. The result is either continuation or termination; the court is not responsible for seeking alternatives. The act of bringing expert knowledge regarding the content of the treatment into the review procedure does not change the nature of the review. It would therefore be better to ensure that changes to the content of the treatment are implemented with the highest possible level of attention to detail, which on its own could lead to a reduction in the number of administrative appeals, by means of enforcing a thorough substantive investigation before allowing any such changes to be made. This could be accompanied by temporary admission to a different unit.

Decisions as to whether or not the hospital order should be extended are currently made after two and six years. The recommendation issued on 1 February 2008 examines the extent to which the courts takes placement in a long stay unit into account when reaching their decision. There is a strong argument for the introduction of a review regarding treatment in addition to this judicial review, the added review to be specifically geared towards the continuation of long-term care. As stated above, this review would be preceded by a temporary transfer back to a treatment unit.

The list provided below summarises the recommendations made in the Long Stay recommendation issued on 1 February 2008 and the follow-up recommendation:

1. to abolish 'long stay' as *external* differentiation
2. to ensure that a wide range of long-term forensic care options are offered, partly in the hospital order sector and partly in other psychiatric hospitals
3. to introduce a less marginal review on the admission of patients to long-term care units based on a clinical opinion (transfer the patient to a treatment unit for a short period of time within the context of this review) and the review carried out by the National Advisory Committee on Placement, in addition to a complaints and appeals procedure;
4. to introduce a periodic review of the continuation of long-term care, in addition to the judicial decision with regard to continuation/termination of the hospital order measure (transfer the patient to a treatment unit for a short period of time within the context of this review)
5. to simplify the procedure for transferring a patient back to a treatment unit from a long stay unit.

*A copy of the recommendation can be obtained from the Council's secretarial office  
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