

***Recommendation from the Council for the Administration of Criminal Justice and
Protection of Juveniles
- Summary -***

Amendment to the Leave Review Framework for Offenders under Hospital Order 2009

Recommendation to the Dutch State Secretary of Justice, dated 28 January 2009

Placement under a hospital order (in Dutch 'Terbeschikkingstelling' or tbs) is a court-imposed treatment measure for persons having committed a serious offence while suffering from a psychiatric illness or disorder. The aims of tbs are treatment of the disorder and protection of society. Tbs may or may not be imposed in combination with a prison sentence, depending on the person's degree of accountability.

According to plan, the leave review framework for offenders under hospital order will be revised now that the Tbs Leave Review Advisory Board (Adviescollege Verloftoetsing Tbs — AVT) has been established. The revised leave review framework gives substance to the new manner of reviewing leave. The amendment is also in line with the forensic psychiatric centres' need for a more consistent classification.

The Council deems that the leave review framework is structured clearly and that applying leave has become more flexible in a number of aspects. It gives a good overview of the leave opportunities and the rules for applying for, evaluating, and terminating leave.

The Council is of the opinion that the revision will improve the leave policy on the following points:

- Supervised leave, including group leave, is also possible for long-stay patients;
- Leave is currently also possible for persons with a prison sentence for life that stay in a forensic clinic;
- The mere fact of *being suspected* of having committed an offence (for which pre-trial detention is allowed by law) is no longer sufficient ground for the authorisation for leave to lapse by operation of law; it is currently required that the offender under a hospital order is *prosecuted* for such an offence. This is a positive development in view of legal status and treatment

The Council maintains its views and recommendations adopted previously, namely:

- To include the terms for both the Minister of Justice and the institutions from the review framework of April 2005 fully in the revised review framework;
- In case of a combined sentence (imprisonment and placement under a hospital order): to provide for the possibility to start a leave programme as soon as this is desired and sensible in view of treatment, irrespective of whether the early release date has already passed.

The Council furthermore makes the following recommendations:

- Continue the original authorisation for leave until the decision on a new authorisation has been made if the institution issues a positive leave evaluation prior to the original authorisation lapsing by operation of law and there is no new authorisation yet;
- Cancel the authorisation for leave after a year if the institution has not yet applied for a renewal;

- Extend the authorisation for leave in principle after a transfer if the treatment is continued with a favourable prognosis, unless there are substantive objections. In such favourable cases, the receiving institution is to have the option to suspend the execution of the leave in the initial period after admission;
- Explain the importance and implications of the qualification of ‘offender under a hospital order *with a long-stay assessment*’. The potential implications for leave opportunities are particularly important.