

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

***Draft proposal for a Compulsory Psychological Care Act and
Draft proposal for a Forensic Care Act***

Recommendation to the Dutch Minister of Justice, dated 30 januari 2009

The principal question addressed in the recommendation is whether the implementation of these proposals will ensure better care to offenders in need of care. That means: do the Acts provide an equal basis for care and needs assessment, irrespective of where the offender is detained and irrespective of the ground of this detention?

The Council concludes that the Forensic Care Act (*Wet forensische zorg*) (hereinafter: *Wfz*) provides a broad framework for the purchase and organisation of forensic care to adults. The Council, however, wonders whether the *Wfz* provides sufficient basis for *continuity* of care and it makes several recommendations for improvement. One recommendation is to align the provision for placement pursuant to Section 2.3 of the *Wfz* fully with the procedure contained in the Compulsory Psychological Care Act (*Wet verplichte geestelijke gezondheidszorg*) (hereinafter: *Wvggz*).

The Council sees insufficient arguments to keep juvenile offenders outside the scope of this Act. If forensic care for juvenile offenders is covered by the *Wfz*, this would give the juvenile court the possibility to also render a decision on the individual need of care and, in addition, this would result in the right to adequate treatment and improved alignment with the *Wvggz*.

Insofar as alignment with existing legislative frameworks, structures, authorisations and responsibilities is concerned, the Council doubts, as stated above, whether the current provisions will suffice and it therefore recommends the Minister to provide further explanation, at least on a few points. An example of this is the question whether the list included in Section 2.2 of the *Wfz* (in which cases it is possible to provide forensic care) is limitative.

A last important point is the fact that internal legal positions are not made uniform simultaneously with the implementation of the Acts. This results in a lack of clarity on the legal positions of offenders detained in an institution, which positions may differ within one unit. This will result in unclear situations in practice. The Council therefore recommends regulating uniform legal position at the same time.