

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

***Offenders under a hospital order out of the prison system***

*Recommendation to the Dutch State Secretary of Justice, dated 23 December 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.*

**In 2009, the Dutch Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming*, hereinafter: the Council) visited four prison units for offenders under a hospital order. The units were visited to observe how the accommodation in penal institutions for offenders under a hospital order have been given shape after several years of practice. The Council concludes that treatment of offenders under a hospital order in a prison has a lower quality level compared to treatment in forensic psychiatric clinic. Treatment in prison also has specific disadvantages. Therefore, the Council is of the opinion that the State Secretary of Justice must close down those units within the prison system.**

The capacity within the prison system was created for offenders under a hospital order as an emergency measure in order to deal with the capacity problem in the custodial clinics. Assuming that the places for offenders under a hospital order in prison would only be used temporarily as emergency capacity, the Council recommended this expansion in 2006.

Since 2006, however, a clear development has been visible. The largest units have developed a fairly independent position vis-à-vis the penal institutions, and offer a therapeutic environment and a range of treatments that is almost as good as that in a forensic psychiatric centre. The smaller units, however, do not have fully-qualified treatment teams on site, causing the level of care to be inadequate. Moreover, with respect to many types of support services and organisational aspects, the smaller units are highly dependent on the penal institution that accommodates them. As a result, the therapeutic environment and the range of activities on offer are not up to the standard of the custodial clinic. The limitations identified apply to some extent to all stages of the hospital order.

The most significant conclusion of the Council is that enforcing hospital orders in a penal institution does not provide any added value. The presumed advantages may also be realized - and probably even in a better way - in forensic psychiatric centres. In that light, the advantages of situating such treatment in the penal institution are realized *despite* rather than *thanks to* the penal institution. In addition, smaller units prove to have problems with regard to the flow of patients moving on to a forensic clinic, constituting a delaying link in an otherwise already difficult process.

On account of the various disadvantages, the Council recommends that the smaller units

with fewer than 40 places be closed down as soon as possible. The larger units can stay in operation, provided that those responsible work on further improvement and independence from the penal institutions. Co-operation with other care providers may be useful in their further development. However, if it proves necessary to scale down the capacity for offenders under a hospital order, the larger units in the penal institutions should be the first ones to be closed down. Expansion of capacity for offenders under a hospital order should, if necessary, be realized in future in forensic psychiatric centres or in mental health-care institutions only.

The units in the prisons are deployed, among other things, to remotivate patients whose treatment has come to a standstill. The Council questions this role. Motivating patients is a therapeutic skill, and coercion in the form of poorer accommodation or fewer privileges should not be used to that goal. If a patient is no longer motivated to follow the treatment prescribed, he should be persuaded to choose the treatment by means of a specialized care intervention.