

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

Best not to abolish the Fokkens Regulation .

Recommendation to the Dutch State Secretary of Justice, dated 2 February 2010

Placement under a hospital order (in Dutch 'Terbeschikkingstelling' or tbs) is a court-imposed treatment measure for persons who have 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.

The State Secretary for Justice intends to abolish the Fokkens Regulation. This regulation provides that convicted persons with a combined verdict, i.e. the combination of an unconditional prison sentence and a hospital order, are, in principle, eligible for placement in a Forensic Psychiatric Centre after one third of their prison sentence.

The Council for the Administration of Criminal Justice and Protection of Juveniles is of the opinion that the Fokkens Regulation should be maintained. The regulation contributes to the main objective of the hospital order: keeping society safe. Persons subject to a hospital order are, after all, (chronic) psychiatric patients, who, as regards successful reduction of the risk of offending, mainly benefit from high-quality care and a quick start of treatment.

The term of treatment of convicted persons subject to a combined verdict can increase further as a result of the abolition of the Fokkens Regulation. Moreover, the chance of a transfer to a long-stay department consequently increases as well. In view of the fact that the term of treatment has already increased significantly in recent years, the Council has established that an impairment now exists with regard to the legal position of those placed under a hospital order.

The State Secretary states that the treatment of those placed under a hospital order is stagnating as a consequence of the Fokkens Regulation. This is, according to the State Secretary, because the Fokkens Regulation provides that convicted persons, who are placed more quickly in a Forensic Psychiatric Centre on the basis of the regulation, cannot be granted leave until the date of conditional release has passed (therefore after two-thirds of the prison sentence). The State Secretary emphasises the importance of leave for hospital orders in this context. The Council understands the position of the State Secretary, but points out that persons under a hospital order are not granted their first leave until they have undergone a relatively long term of treatment.

The State Secretary also refers to changed perceptions in society as regards retribution. A prison sentence has to be served in full as a result of this changed social view. In this connection, the Council emphasises that the hospital order has been made considerably more severe in recent years. This is mainly caused by the increasing duration of treatment and the significantly increased chance of placement in a long-stay department. The Council is of the opinion that the State Secretary passes this over when she bases her position on views held by society.