

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

- Summary -

Long-Term Supervision

Issued to: State Secretary of Security and Justice

Date : 31 May 2012

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 of Security and Justice has requested the Council for the Administration of Criminal Justice and Protection of Juveniles to advise on the draft legislative proposal concerning long-term supervision, behaviour change and restriction of liberty. The following amendments to the Dutch Criminal Code are proposed: a) extension of the probation periods in the case of conditional release (amendment to Section 15c), b) abolishment of the maximum term of the conditional termination of the compulsory TBS hospitalisation measure (amendment to Section 38j) and c) the introduction of a new behaviour change and restriction of liberty measure for released sex offenders and TBS convicted persons (Section 38z new). In principle, this measure could be lifelong.

a. Extension of the conditional release probation periods

The Council agrees with the starting point, as stated in the Explanatory Memorandum, that sex offenders should be released into the community gradually, carefully and under certain conditions. Therefore, it can agree with the proposals to extend the conditional release probation periods.

b. Abolishing the maximum term of the conditional termination of the compulsory TBS hospitalisation measure

The Council is of the opinion that the necessity of abolishing the maximum term of the conditional termination of the compulsory TBS hospitalisation measure has not been demonstrated for the time being. The effects of the recently taken measures are not yet evident. The Council recommends that an evaluation of the introduction of the extension of the conditional termination of the compulsory TBS hospitalisation measure from three to nine years in 2008 should first be carried out before abolishment of the maximum term is considered. The Council would also refer to the study conducted by the Research and Documentation Centre (WODC), in which it is stated that long-term recidivism among sex offenders in the youngest release cohort is lower than among sex offenders released in the eighties and at the beginning of the nineties. The latter has been taken into account in the figures presented in the Explanatory Memorandum.

c. Introduction of a new sanction modality: behaviour change and restriction of liberty measure

The Council concludes that, in view of the current options available, the proposed measure is not required *directly following the definite termination of a TBS measure*. The

Council concludes that the necessity of the proposed measure *following a prison sentence* has not yet been sufficiently substantiated and is premature. The supervision options available in the area of prison administration were adjusted in the recent past. The Council advises awaiting the developments and results of the recent expansion of these supervision options before considering the introduction of a new, far-reaching and drastic measure following a prison sentence. The Council also recommends further substantiation of whether the proposed measure and its application in practice would always comply with the European Convention on Human Rights (ECHR). Finally, the Council suggests that a further study into whether an expansion of the possibilities for imposition of a partially suspended sentence is an option (Section 14a Dutch Criminal Code), should be considered.

A copy of the Recommendation can be obtained on request from the Secretariat of the Council

P.O. Box 30 137

2500 GC The Hague

+31 (0)70 — 36 19 300,

www.rsj.nl