

Second memorandum of amendment to the Compulsory Mental Health Care Act (Wvggz)
Recommendation of the Council for the Administration of Criminal Justice and Protection of Juveniles

issued to : the Ministers of Health, Welfare and Sport (VWS) and Security and Justice (VenJ) and the State Secretaries of VWS and VenJ
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The second memorandum on the amendment to the Compulsory Mental Health Care Act (referred to below as the memorandum of amendment) relates not only to the draft legislative proposal for the Compulsory Mental Health Care Act (*Wet verplichte ggz, Wvggz*), but also - with a view to improving the alignment of the three Acts - proposes substantial amendments to the draft legislative proposals on the Forensic Care Act (*Wet forensische zorg, Wfz*) and the Care and Compulsion (Psychogeriatric and Intellectually Disabled Patients) Act (*Wet zorg en dwang psychogeriatrische en verstandelijk gehandicapte cliënten, Wzd*). The Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming, RSJ*) is of the opinion that this memorandum of amendment will bring the Wvggz and the Wzd closer together and improve harmonization with the Wfz. The RSJ warmly welcomes the objective of this, which is to facilitate the flow of forensic patients through the mental healthcare system.

The recommendation draws attention to the general preconditions for the execution of the three legislative proposals on compulsory healthcare (Wvggz, Wfz, Wzd). As well as a clear regulatory framework, meeting the objectives of these legislative proposals will call for sufficient capacity, financial resources and careful implementation (including a well-considered implementation period).

In view of the RSJ's advisory domain, the recommendation relates mainly to the alignment between the Wvggz and the Wfz. The following conclusions have been drawn regarding the criteria operated by the RSJ for the assessment of this memorandum of amendment:

- *continuity of care between forensic healthcare and standard mental healthcare is not yet being sufficiently guaranteed or promoted.*

The RSJ notes that the continuity of care will be improved by harmonising the Acts and making an amendment to section 2.3 of the Wfz. The ability of the criminal court to impose a care order if necessary is expected to make it possible to quickly (or more quickly) place people in care. Since the regulatory framework is inherently complex, difficult to implement and still contains numerous unclear points, the RSJ is of the opinion that continuity of care is not yet sufficiently guaranteed.

- *there is not yet sufficiently clear provision regarding the legal position of forensic patients that come under the Wvggz (and Wzd).*

The judicial review provided for in the memorandum of amendment generally has a favourable effect on legal protection. The creation of new categories has resulted in a lack of clarity concerning the internal legal position of forensic patients in the mental healthcare sector. Should it prove impossible to eliminate the differences between legal positions (which will sometimes be the case), it is of particular importance to be perfectly clear about which internal legal position applies to whom and why, and when this is the case. The RSJ would also like to draw attention to the importance of a good regulatory framework concerning the storage of (medical and other) information at the Public Prosecution Service and access to and exchange of this information.

- *the equivalence of care for detainees and care for people in standard healthcare (equivalence principle) cannot yet be assessed.*

The Wvggz legislative proposal provides only for the alternatives and preconditions of compulsory healthcare. It is not possible to ascertain on the basis of this memorandum of amendment whether the exceptions made for people within the judicial framework are justifiable because it is not yet clear which procedures with which guarantees are applicable to which judicial titles in which situations and with which background.

- *the content of the care requirement takes precedence, taking note of the guarantees for the safety of society. The balance between the judicial system/healthcare is a matter of concern.*

More options are being created to have forensic patients treated in the mental healthcare sector and to place mental health patients in a forensic psychiatric centre.

At the same time the role of the minister (the granting of permission) is open to question when there is not (or is no longer) a judicial title in place. In view of the substantial role of the minister (for discharge, the granting of leave and transfer) and the enhanced role of the Public Prosecution Service, the balance with healthcare authorities (including medical directors) should be monitored by means of clear cooperation agreements and arrangements for disputes.

The memorandum of amendment clarifies and improves certain points of the legislative proposal. Despite that, the RSJ is of the opinion that the legislation is not yet sound, cohesive and transparent and does not lend itself to straightforward practical implementation. Although the legislative process has already been ongoing for some years, it is important to make proper provision for compulsory healthcare and to avoid a lack of clarity and unnecessary complexity coming about owing to the pressure of time. The RSJ attaches importance to complete transparency regarding who bears responsibility and emphasises that sufficient time and capacity will be needed to implement the proposed changes. This is a matter of 'more haste, less speed'.

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