

Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)
Advice on the provision of medical data on defendants who refuse to participate in pre-trial forensic psychiatric assessment

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By introducing regulations mandating the provision of medical data on defendants who refuse to participate in pre-trial forensic psychiatric assessment to a multidisciplinary committee, the Minister is aiming to do justice to the interests of the defendant, the position of victims and their next of kin and the safety of society. The RSJ anticipates that in specific cases the regulations will be able to provide the extra information required to enable forensic behavioural experts to issue a psychiatric report on the mental state of defendants. This will put judges in a better position to decide on whether or not to impose treatment in a forensic psychiatric hospital under a tbs judicial treatment order.

However, the RSJ is of the opinion that there is insufficient need for medical files to be handed over in their entirety. The issuance of medical data to the multidisciplinary committee ought to be limited to concrete documents of a medical file, such as diagnoses, treatment plans and discharge letters. This will keep breaches of medical confidentiality to a minimum and proportional and enhance the utility and reliability of the data. The RSJ recommends that in all cases the data be destroyed if the multidisciplinary committee rules that none of the data is of use. Moreover, in such cases it would hold that handing over a file in its entirety – subject to the parole appeals division's authorisation – will undermine the crux of the regulations. Finally, the RSJ endorses the Minister's fundamental principle of only using the regulations as a last resort. The RSJ advises primarily focusing efforts on accompanying policy and clarifying the last-resort nature of the regulations in the guidance for them so as to mitigate the risk of increasing usage thereof. In addition, the RSJ advises careful monitoring and assessment of the introduction and use of the regulations.

This advice can be consulted on the Council for the Administration of Criminal Justice and Youth Protection website www.rsj.nl under the header Recommendations (Advisering).