

***Advisory report on the 'draft legislative proposal for the USB Implementing Act'
Council for the Administration of Criminal Justice and Protection of Juveniles***

Presented to : The Minister for Legal Protection
Date : 29 March 2019

Summary

The Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming*; hereinafter referred to as 'the RSJ') has issued an advisory report on the draft legislative proposal for the Review of Criminal Sanctions Enforcement Implementing Act (*Invoeringswet herziening tenuitvoerlegging strafrechtelijke beslissingen*, or *Invoeringswet USB*). In this recommendation, the RSJ focuses on two elements: abolishing the limitation periods for the enforcement of penalties and measures, and streamlining the measures of placement in an institution for juvenile offenders (pij) and detention under a hospital order (tbs).

Abolishing the limitation periods for the enforcement of criminal sanctions

As a result of abolishing the limitation periods for the enforcement of criminal sanctions, it will always be possible in principle to enforce a penalty or measure imposed by and included in a court decision or penalty order. The RSJ agrees that a failure to enforce penalties may affect the credibility of the criminal justice system and the trust of citizens in the rule of law. At the same time, the need for punishment diminishes as time goes by. The legislator has expressed this circumstance, while also taking the interests of victims of serious crimes and next-of-kin into account, in the different limitation periods for enforcement. Adjusting the limitation periods for the enforcement of criminal sanctions certainly appears to be appropriate in cases of convicts consciously avoiding sanctions. The RSJ is of the opinion that improving the enforcement process should remain the key area for attention. There may furthermore be undesirable side effects to a total abolition of the limitation periods for enforcement. For some of the outstanding penalties and measures, especially minor ones, enforcement will usually cease to serve a purpose if a long or very long time has passed. This situation will also result in years of legal uncertainty. In addition, late or very late enforcement of minor or very minor penalties may affect the credibility of the criminal justice system. The RSJ therefore recommends that the abolition of the limitation periods for the enforcement of criminal sanctions should be evaluated after three years. In any case, the RSJ advises to retain the limitation periods for the enforcement of criminal sanctions for juveniles and young adults, which are shorter under current law than the limitation periods for adults.

Juvenile criminal law puts the interests of children first and upholds the key principle of a pedagogical objective in the enforcement of penalties and measures.

Streamlining the measures of placement in an institution for juvenile offenders (pij) and detention under a hospital order (tbs)

The explanatory memorandum to the draft legislative proposal states that the changes to the regulations on the placement in an institution for juvenile offenders measure are of a technical nature. However, the RSJ concludes that the proposed changes to the detention of juveniles under a hospital order will substantively and fundamentally alter the measure in a number of ways. The RSJ is of the opinion that an implementing act is not the correct vehicle for making changes to the basic principles of juvenile criminal law, and to the placement in an institution for juvenile offenders measure in particular, which instead demand further research and thorough debate. It recommends in any case retaining the pedagogical basis for decisions on the extension of the measure and on detention under a conditional hospital order. Possibilities for a customized approach would be restricted as a result of the proposed changes, since the extension or conditional termination of the measure would only be allowed at intervals of one or two years at a time. The RSJ recommends that the possibilities for the application of a customized approach should be retained.

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