



Raad voor
Strafrechtstoepassing
en Jeugdbescherming

Advisory Report on the proposed amendments to the Youth Act

Council for the Administration of Criminal Justice and Youth Protection

Presented to : The Minister of Health, Welfare and Sport
The Minister for Legal Protection
Date : 2 April 2020

Summary

On 5 March 2020, the Minister of Health, Welfare and Sport and the Minister for Legal Protection asked the advisory division of the Council for the Administration of Criminal Justice and Youth Protection (RSJ) to respond to the proposed legislation on 'Amendment to the Youth Act (Jeugdwet) and several other laws in connection with the extension of the duration of foster care and the expiration of the grant decision of the municipality (verleningsbeschikking) in connection with custodial placement orders and secure residential care for young people'. On 2 April 2020, the RSJ issued a response containing the following recommendations.

Recommendations

Clarify the legal position of juveniles in cases of extended foster care

With regard to the topic of foster care, the proposed amendment stipulates the continuance of foster care after the 18th birthday as standard, unless this conflicts with the wishes of the juvenile in question. Juveniles will thereby gain standard entitlement to extended foster care until their 21st birthday. The RSJ views this as a positive development for vulnerable young people over the age of 18 who are not yet fully independent and/or require care and wish to continue living with their foster family. The RSJ does, however, see an area for attention with regard to the legal position of such juveniles as they make the transition from minor foster child to young adult client. This legal status is ambiguous in the current proposal.

The RSJ feels it is important that explicit attention be devoted to this aspect in both the Youth Act and the Explanatory Memorandum.

Embed requirement that all requests for Out-of-Home Placement include substantiated reasoning

Under current legislation, requests for Out-of-Home Placement must include a so-called 'verleningsbeschikking', a grant decision from the municipal administration (*College van B en W*). The proposed amendment calls for the elimination of this requirement, as practical experience has shown that submitting these decisions yields no added value and results in undue administrative burdens, ambiguity and time costs. While the RSJ supports the elimination of this requirement, it also notes that this will deprive juveniles and/or parents of the opportunity to lodge an objection against the decision if they disagree with the youth care being deployed (assessing compliance

with the conditions of necessity, proportionality and subsidiarity). To rectify this, the RSJ recommends drafting legislation that will require all requests for custodial placement to include substantiated reasoning as to whether these conditions have been met.

Establish an additional safeguard for closed youth care placements

A closed youth care placement is the most drastic form of a custodial placement order and therefore merits an additional safeguard. The RSJ recommends that the declaration of approval from an independent behavioural scientist should include explicit justification as to why foster care and other, less-drastring forms of residential care are impossible or no longer appropriate. The RSJ suggests that all substantive requirements for the declaration of consent made by a behavioural scientist must be explicitly set out in the ministerial regulation pertaining to the Youth Act.

Publish agreements relating to youth care funding

The explanatory memo accompanying the legislative proposal states that agreements are currently being reached to secure funding for youth care, including those in connection with court-issued custodial placement orders and secure residential care for young people. In the interest of transparency, the RSJ recommends that these agreements be made public.

This advisory letter can be consulted on the website of the Council for the Administration of Criminal Justice and Youth Protection (www.rsj.nl). For further information, please contact advies@rsj.nl.