



## **Advisory report on the 'legislative proposal regarding the legal status of juveniles in closed juvenile institutions', Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)**

### **Summary**

On 2 July 2020, a legislative proposal regarding the legal status of juveniles in closed juvenile institutions (hereinafter referred to as 'the legislative proposal') was submitted for consultation. The Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (hereinafter referred to as 'the RSJ') has been asked to respond to this legislative proposal.

### **Scope of the legislative proposal**

The legislative proposal has three primary objectives. In the first place, the legislative proposal aims to improve the legal status of juveniles in closed juvenile institutions. Secondly, the aim of the legislative proposal is to harmonise the legal status of these juveniles as much as possible. Finally, the legislative proposal supports the development towards a more small-scale approach in the placement of juveniles in closed juvenile institutions.

The basis of the legislative proposal is formed by three distinct regimes of closed placements for juveniles: 1. the limited closed regime (small-scale residences); 2. the closed regime (secure residential youth care); and 3. the high-security closed regime (juvenile detention centres). All regimes, from the limited closed regime to the high-security closed regime, have different security levels associated with more and more far-reaching possibilities to impose measures restricting freedom. In the high-security closed regime disciplinary sanctions may be imposed on juveniles.

### **Uncertainties regarding four key themes**

The RSJ supports the shift towards harmonisation of the legal status of young people in closed juvenile institutions. In addition, the RSJ is positive about the fact that this legislative proposal provides a formal position to small-scale residences. However, the RSJ concludes that this legislative proposal does not achieve optimal harmonisation. This is primarily due to the fact that Youth Mental Health Care (Jeugd-ggz) has not been involved in this harmonisation process. Secondly, the RSJ observes that legal gaps and ambiguities have arisen since the legislative proposal only partially replaces the Young Offenders Institutions (Framework) Act (Beginselenwet Justitiële Jeugdinstellingen, Bjj) and Chapter 6 of the Youth Act (Jeugdwet) rather than merging them into one umbrella Act.

The RSJ has considered what the situation will look like for juveniles once the legislative proposal becomes law on the basis of four key themes: 1. The basis and objectives of

deprivation of liberty as stated in the legislative proposal; 2. The three closed regime levels; 3. Measures restricting freedom and disciplinary sanctions; and 4. The complaints and appeals procedure.

With regard to the first theme, the RSJ notes that the phrasing of the objectives of deprivation of liberty in the legislative proposal differs from the phrasing of Section 2(2) of the Bjj. As a result of this reformulation, it seems that the rehabilitation of juveniles is no longer the key priority.

With regard to the second theme, the RSJ concludes that more clarity is needed on the placement process and the criteria for placement decisions, both for juveniles placed under criminal law as for juveniles placed under civil law.

With regard to the third theme, the RSJ notes, among other things, that the use of far-reaching measures restricting freedom must be accompanied by greater safeguards. In addition, the RSJ is of the opinion that confinement in a segregation space should no longer be considered as an option and that the maximum duration of confinement should be further limited. Moreover, the RSJ considers confinement in the context of a disciplinary sanction to be undesirable.

With regard to the fourth and final theme, the RSJ notes that key provisions from the Bjj are not included in the legislative proposal. As a result, the legal status of juveniles, particularly those placed under criminal law, appears to have deteriorated rather than improved.

### Advice

In the opinion of the RSJ, the foregoing does not only lead to a deterioration of the legal status of juveniles in closed institutions, but also to additional ambiguities for juveniles and employees of closed institutions. In the opinion of the RSJ, this can be overcome by drafting an umbrella Act concerning the legal status of juveniles in all closed juvenile institutions. The key recommendation of this advisory report is therefore to integrate Chapter 6 of the Jeugdwet and the Bjj into one single Act. In order to ensure complete harmonisation, the relevant provisions of the Mandatory Mental Healthcare Act and the Care and Compulsion Act should also be included.

*This advisory report can be consulted on the RSJ website, [www.rsj.nl](http://www.rsj.nl), under the heading of Advisory reports.*

