



## Summary

### **Advisory report on ministerial regulations regarding measures taken as a result of the case of Michael P.**

### **Council for the Administration of Criminal Justice and Protection of Juveniles**

On 10 June 2021, the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (hereinafter referred to as the RSJ) issued an advisory report concerning amendments to the Regulations on Selection, Placement and Transfer of Detainees (Rspog), the Regulations on Temporary Leave from Custodial Institutions (Rtvi) and the Forensic Care Regulations (Rfz). These amendments lay down in law a number of measures that have already been taken stemming from the case involving Michael P. The scope of this advisory report is limited to the proposed amendments to the Rtvi.

#### **Amendments to the Rtvi**

The amendments to the Rtvi concern the relocation of detainees to a forensic care institution and the granting of leave during said relocation. The director of the penitentiary institution (PI) bears final responsibility for this. A placement and freedoms committee will issue advice to the director concerning the relocation of the detainee and the granting of leave. If the detainee in question has been convicted of a serious violent or sexual offence, measures will be taken to further reduce the risk involved in reintegration leave. In such cases, the director will conduct a risk inventory and an offence analysis as part of their decision and the Probation Service will advise with regard to special conditions.

#### *Possible undesirable secondary effects of the regulations*

The RSJ is concerned about possible undesirable secondary effects of the new regulations concerning the transfer of detainees to a forensic care institute at the end of their custodial sentence. The RSJ recommends that such detainees are monitored, and if so, to determine what secondary effects there are. If the necessary forensic care is not provided or a shorter period of forensic care is provided, this can result in a higher security risk when the detainee returns to society after a custodial sentence. In the event they are relocated, detainees will receive any necessary treatment, e.g. for addiction. The amendments could result in the issue of security risks becoming an excessively predominant factor, which could result in a drastic reduction in the number of relocations to forensic care institutions. Another consequence could be that the relocation and treatment are conducted later and for shorter periods due to the prolonged period required to conduct a risk assessment and offence analysis. An evaluation showed that

the total number of relocations has dropped by 70% in recent years, from 100 in 2018 to 30 in 2020.

*Responsibilities of directors in the event of relocation*

The RSJ also believes that the responsibilities of the directors in question have not been sufficiently established. Although the director of the penitentiary institution in question bears final responsibility for the relocation and the granting of leave, they do not have any powers to make corrective measures other than refusing the leave. In such situations, the director of the forensic care institution has the most insight into the detainee's conduct and situation. The RSJ wonders what role the director of the forensic care institution plays in these situations and recommends further explanation of both directors' responsibilities and the mutual relationship between the directors.

The RSJ also recommends the following measures:

- Ensure sufficient resources and qualified staff (including behavioural experts) are provided and clear lines of communication with the forensic care institution are established.
- Ensure that the behavioural expert who is appointed to the placement and freedoms committee has not been involved in the detainee's treatment for at least one year.
- Ensure that the party authorised to decide whether to award leave on humanitarian grounds to detainees convicted of serious violent or sexual offences who have been temporarily relocated in line with Article 15(5) of the Custodial Institutions (Framework) Act (Penitentiare beginselenwet) is also specified in Article 32(3) of the Rvti.

*The full advisory report (in Dutch) can be consulted on the RSJ website.*

