



## Summary

### Advisory report 'Risk assessment in the application of criminal law'

On November 3<sup>rd</sup> 2021 the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles in the Netherlands (after this referred to as the RSJ) issued an advisory report on risk assessment in the application of criminal law.

#### Introduction

With a view to the safety of society the recidivism risk of offenders is taken into account in criminal justice decisions, for example with regard to granting leave. This involves the application of a risk assessment. In recent decades, there has been significant investment in professionalising risk assessment, including by developing tools for this. Risk assessment is now applied in all sectors of criminal law and the scope of its application has been broadened from predicting the recidivism risk to assessing and registering other forms of (undesirable) behaviour of offenders, for example during detention.

#### Application

The professionalisation of risk assessment and the use of risk assessment tools offer possibilities and opportunities, but also pose challenges. The RSJ believes that it is very important to make policy-makers, 'decision-makers' and 'users' aware of these challenges. In particular the RSJ aims to raise awareness about methodological limitations, practical attention points, ethical issues and aspects relating to the legal position of the parties involved. For example:

- In practice, risk assessments are performed by behavioural experts, who then inform 'decision-makers', for example judges, of their findings. The process of 'translating' the findings of risk assessment reports to a (legal) decision is not always easy.
- Risk assessment plays a major role in the advice and decisions on matters such as granting leave or ending an order imposed on an offender. Given the significant public interest in incidents and recidivism, staff at forensic hospitals and custodial institutions experience considerable pressure. This can lead to the exercise of greater caution, resulting in restraints to end measures or to grant leave to detainees.

#### Conclusion

All things considered, risk assessment is a highly complex process that supports decision-making in the administration of criminal justice. However, risk assessment also poses a number of challenges, and must therefore be applied responsibly, with appropriate scepticism, prudently and with the utmost care, particularly as the decisions made in part on the basis of these assessments can have a major impact on the offenders concerned and on the safety of society.

## **Recommendations**

The advisory concludes with the following recommendations.

1. Take steps to ensure that all (relevant) actors in the administration of criminal justice have sufficient knowledge and training to fully understand, weigh up, and make use of the findings of risk assessments, which includes being aware of the limitations of these assessments. Examples of such steps include providing training and continuing education for professionals that covers the limitations of risk assessment tools and communication of the findings.
2. Exercise caution when assessing future risks on the basis of statistical risk factors for which it is unknown whether they have a (causal) relationship to the behaviour the assessment aims to predict, particularly when offenders have (or had) no influence over these factors. Determine on a case-by-case basis whether such statistical risk factors should be included in the risk assessment.
3. Inform the offender that a risk assessment may be performed or has been performed, including when the risk assessment is being or has been drawn up without the offender's cooperation. Also inform the offender about the purposes for which the risk assessment is used.
4. Inform the offender about the contents of the risk assessment report and discuss these with the offender, as is already standard practice at many institutions. Include the views of the offender in the risk assessment, which is likewise already standard practice at many institutions, so that decision-makers are aware of those views and can choose to consider them in their decision-making.
5. Ensure the availability of legal means to challenge all decisions that are made in part on the basis of risk assessments, unless this unnecessarily juridifies the clinical relationship.

*You can consult the advisory report on the website of the Council for the Administration of Criminal Justice and Protection of Juveniles.*

