

## Summary

### **Conversions and revocations of conditional orders for forensic psychiatric patients**

#### **What factors contribute to success and failure?**

In the Netherlands, individuals with a mental disorder who have committed a serious crime, can be sentenced to *terbeschikkingstelling* (the TBS order, or disposal to be treated on behalf of the state). Upon sentencing the TBS order, there are two possibilities. Either the judge chooses a conditional TBS order, in which the patient is obliged to abide by certain conditions and (usually) resides in the community, or the patient is sentenced to an unconditional TBS order with mandatory inpatient treatment in a closed forensic psychiatric hospital.

The conditional TBS order may involve conditions such as obligatory treatment at an outpatient clinic or prohibition of drug and alcohol use. The first term of this TBS order is two years after which it can be prolonged up to a maximum of nine years (each time for one or two years) when the patient still poses a threat to society.

Hospitalization is in fact imposed conditionally: when the patient does not abide by the conditions that are set up for him or when he imposes too much of a threat to society, involuntary inpatient treatment may be imposed. This is called a 'conversion' (*omzetting*) of the conditional TBS order into the unconditional TBS order.

The unconditional TBS order involves mandatory treatment in a closed forensic psychiatric hospital. The first term of this TBS order is two years after which it can be prolonged indefinitely (each time for 1 or 2 years) when the patient still poses a threat to society. On average, a patient is treated for 7.5 years in a inpatient facility. During this treatment, the forensic psychiatric patient goes on leave, which is gradually increased from short-term leave with a lot of security measures to long-term leave with little to no security measures. At the end of the inpatient treatment phase, many patients leave the inpatient hospital on a Conditional Release order.

The TBS order is still in place, however, the mandatory inpatient treatment is ended conditionally. The patient on a CR order usually resides in society and conditions upon his return to society are set up. When the patient does not abide by the conditions that are set up for him or when he imposes too much of a threat to society, the CR order may be revoked and again, involuntary inpatient treatment may follow. This is called a 'revocation' (*hervatting*) of a conditional TBS order into an unconditional TBS order.

Both judicial orders in which forensic psychiatric patients have to abide by the conditions that are set up for them, during the conditional TBS order and during the CR order, are the subject of the present study. Conversions and revocations are thought to be associated with resistance against treatment and possibly with a longer duration of stay in a forensic psychiatric hospital. The rationale behind the study was the clinical impression that the number of conversions and revocations had increased in recent years. However, there were no official numbers to corroborate these clinical impressions. The present study focused on this niche. The prevalence rates of conversions and revocations were determined and factors that may result in a conversion or revocation were studied. It was expected that this knowledge could contribute to a better imposition of both types of the TBS order, the conditional and the unconditional TBS order. Further, it was expected that the present study might offer clues on how to improve the execution of the TBS orders in forensic psychiatric practice. Therefore, the goal of the study was: to describe and

analyze 1) the number of conversions and revocations and 2) the factors that are related to conversions and revocations.

## Methods

The research questions were:

- 1 What is the prevalence rate of
  - a Conversions?
  - b Revocations?

For this question we looked at forensic psychiatric patients who were sentenced to a conditional TBS order or a conditional release order between 1. January 2000 and 31. December 2012. We looked at absolute numbers as well as relative numbers and hereby we were able to determine the chance that a conversion or revocation occurs.

- 2 Which factors are connected to conversions and revocations? We mainly studied demographic, diagnostic and crime-related factors and in addition, the set-up of the conditional framework was examined. Also, considerations from the public prosecutor to apply for a conversion or revocation and considerations by the judge to sentence someone to a conditional TBS order, a CR order, a conversion or a revocation were noted. The factors that were studied fall into three phases: the previous history (Phase I), the phase in which the conditional TBS order or the CR order was imposed (Phase II), and the phase in which the orders are carried out (Phase III). In order to determine the factors that are connected to conversions and revocations, possible differences were examined between:
  - a forensic psychiatric patients with a conversion and those without;
  - b forensic psychiatric patients with a revocation and those without;

For this research question we looked at forensic psychiatric patients who were sentenced to a conditional TBS order or a conditional release order between 1. January 2000 and 31. December 2014. Finally, we examined if there was any overlap between factors related to conversions and revocations.

In the study into the prevalence rate (research question 1) we had to take into account a minimum first term of the conditional TBS order or the conditional release order of two years. Also, we had to consider that the list of possible forensic patients eligible for the study was acquired in the spring 2015 and that the database that lists these forensic psychiatric patients is valid and reliable from 2000 onwards. This means that for the study into the prevalence rate only those forensic psychiatric patients who started their order between 1. January 2000 and 31. December 2012 could be studied. It was found that 674 forensic psychiatric patients with a conditional TBS order and 731 patients with a conditional release order met these criteria. Only irrevocable verdicts were studied (there were no more appeal possibilities). The prevalence rate hereby can be seen as a chance that a conversion or revocation occurs and as these are all patients with these orders, this chance may be generalized to the entire population of forensic psychiatric patients.

For the file study (research question 2), it was possible to include more recently started forensic psychiatric patients, those who started between 1. January 2000 and 31. December 2014. This is due to the fact that all forensic psychiatric patients with a start and end date could be included and we did not need to consider a minimum time at risk. This applied to 679 forensic psychiatric patients with a conditional TBS order and 841 forensic psychiatric patients with a conditional release order. Due to the fact that these groups were too large to examine in full, we randomly selected a subset of forensic patients to study in more detail. This consisted of 120 forensic patients with a conditional TBS order and 111 forensic psychiatric patients with

a conditional release order. The study is explorative in nature, therefore we studied a relatively large number of factors and conducted a relatively large number of analyses. In this manner, the possibility may have arisen that some of the results are coincidental and a repetition of the study is warranted.

## Results

### Conditional TBS order and conversions

A conditional TBS order has been possible ever since the first laws concerning this topic in the Netherlands in 1928 (Psychopathic laws, *Psychopathenwetten*). The order has known somewhat different names and also different provisions throughout the years. Amendments were made in 1988, 1997 and the latest amendments were made in 2010. In the last amendments it became possible to combine the conditional TBS order with a prison sentence of five years instead of three years (from 1997 to 2010) or one year (until 1997). Also, from the start of the conditional TBS order a possible conversion is taken into account because the criteria for sentencing a person to a conditional TBS order have become equal to those criteria set for sentencing someone to an unconditional TBS order.

Most forensic psychiatric patients are men (83%), have a DSM-IV Axis I disorder (53%), an Axis II disorder (75%) and abuse alcohol or drugs (60%). The average age at the start of the conditional TBS order is 33.6 years (SD=10.9) and most forensic psychiatric patients with a conditional TBS order have an average (29%) or low-average IQ (27%). The comorbidity of disorders varies between 21-46%. Prior to committing the index offence for which they were sentenced to the conditional TBS order, 80% of these forensic psychiatric patients had already committed multiple crimes (M=7.5; SD=12.2). The index offence also consists of more than one crime (M=3.0; SD=2.4) and mainly consists of (attempts to) commit a violent crime (47%), arson (24%), a sex crime (25%) or murder or manslaughter (23%, in 3% with a deadly victim). All crimes that were committed are counted, therefore these percentages may not be added up. At the start of the conditional TBS order a forensic psychiatric patient usually starts with seven individually imposed conditions, such as cooperation with probation services (84%), or a condition that limits the use of alcohol, drugs or gambling (56%). Of all forensic psychiatric patients with a conditional TBS order 69% starts with a clinical admission in a forensic psychiatric hospital.

Of all forensic psychiatric patients with a conditional TBS order that started between 2000-2012 and who were followed for at least two years, 177 conditional TBS orders were converted into an unconditional TBS order. This is a prevalence rate of 26.3% of all conditional TBS orders that meet the in- and exclusion criteria of the present study. The conversion on average happens after 636 days (well over 1.7 years) and most conversions happen within three years (84%).

A number of factors are significantly associated with a conversion, 11 significant differences were found. One difference has a large effect size: forensic psychiatric patients with a conversion are younger at the start of their conditional TBS order than forensic psychiatric patients without a conversion (with 29.5 years, they are 8.1 years younger than those without a conversion). One difference has an average to large effect size: forensic psychiatric patients on average have more Axis II personality disorders than those without a conversion. Three findings have an average effect size: forensic psychiatric patients with a conversion less often misuse alcohol and more often misuse poly/harddrugs, the public prosecutor less often claims a conditional TBS order and more often claims an unconditional TBS order is better, and the judge more often states that the person involved has been convicted prior

to the index offence or that there are *ad informandum* facts (crimes that are not prosecuted separately but nonetheless weighted in the sentencing). Most of the differences (6 out of 11) have a small to average effect size. These are, forensic psychiatric patients with a conversion more often have an (attempt to) property crime in their criminal record prior to the index offence, more often have had a measure of Placement in a Judicial Youth Facility (*PIJ-maatregel*) and the number of forensic psychiatric patients with at least one Axis I disorders is higher for forensic psychiatric patients with a conversion as compared to those without a conversion. Finally, forensic psychiatric patients with a conversion have less often committed an (attempt to) commit arson as their index offence, the judge less often states that he follows the recommendations by the behavioral experts and forensic psychiatric patients with a conversion more often start with a clinical admission in a forensic psychiatric hospital.

### **Conditional release order and revocations**

The conditional release order (CR) is possible since 1928. At the time it was only possible to be sent on conditional release at the discretion of the Minister of Justice. In 1997 this was altered when the judge was granted the possibility to conditionally release forensic psychiatric patients who had previously been sentenced to an unconditional TBS order. In 2008, 2013 and 2017 alterations were made in de CR order. With these changes it is now possible to infinitely prolong the CR order (since 2017) after this was previously limited to a maximum of three years before 2008 and a maximum of nine years between 2008 and 2016. Also, since the changes in the law in 2013 it has now become obligatory for most forensic psychiatric patients on an unconditional TBS order to be conditionally released prior to final discharge.

Almost all forensic psychiatric patients on conditional release are men (96%) with an Axis I disorder (42%), an Axis II personality disorder (80%) and misuse alcohol/drugs (65%). The comorbidity of different disorders varies from 14-55%. The average age at the time of the start of CR is 40.0 years (SD=8,9) and the IQ usually is low-average (29%) or average (28%). Many forensic psychiatric patients on CR (79%) have committed a crime prior to the index offence (M=7.8; SD=11.9). The index offence also usually consists of more than one crime (M=2.6; SD=1.8). The index offence usually is an attempt at manslaughter or murder (52%, of which 28% involve a deadly victim), a violence crime (43%), or a sex crime (21%). Since each crime is categorized into type of crime and usually more than one crime has been committed by each forensic psychiatric patient, these percentages cannot be added. At the start of CR on average each patient has 10 conditions to abide by, such as cooperation with the demands of the probation services (90%), or a condition limiting the use of alcohol/drugs or gambling (73%). For 90% of the forensic psychiatric patients on CR the execution of their CR starts in society without security measures or in protective housing. Of all forensic psychiatric patients with a CR that has started in 2000-2012 and who were followed at least two years, 52 have had a revocation of their CR. This is a prevalence rate of 7.1% of all CR orders that meet the in- and exclusion criteria of the present study. On average, it takes 650 days (1.8 years) before a revocation occurs and almost all revocations are within three years (98%). Different factors are significantly associated with a revocation, there are 15 significant differences. Two differences have an average to large effect size: there are more forensic psychiatric patients who abuse drugs or alcohol and prior to the actual revocation, the district attorney has more often submitted a request for a revocation that was not granted by the judge. An average effect size was found for six significant differences: forensic psychiatric patients with a revocation have committed more property offences prior to their index offence, they more often have

comorbidity of alcohol or drug misuse and Axis II personality disorders, they more often have to have additional conditions set up for them by the judge, they have been on different stages of leave less often (transmural leave, trial leave and the combination of transmural and trial leave). The other significant differences (7 out of 15) have a small to average effect size: forensic psychiatric patients with a revocation more often have committed offences prior to their index offence, have committed more violent crimes in their judicial past, more often have a history of homelessness in their past, have –on average– a shorter conditional prison sentence as punishment for their index offence, more often have a condition that limits alcohol or drug use or gambling and more often start their CR in a clinical setting.

## Conclusions

### Conditional TBS order and conversions

- 1 *The prevalence rate of the number of conversions is 26.3%.*
- 2 *From the onset of the conditional TBS order, forensic psychiatric patients who later have to deal with a conversion, are known to have more serious (behavioral) problems than forensic psychiatric patients without a conversion.* A number of the significant findings point to this conclusion. Forensic psychiatric patients with a conversion as compared to those without a conversion, more often have had a measure of Placement in a Judicial Youth Facility (*PIJ-maatregel*) in their past, on average have more Axis II personality disorders, more often misuse poly/hard drugs and they more often have a forensic an Axis II personality disorder. Other factors that may be related to more serious problems in forensic psychiatric patients who later deal with a conversion are that they are younger and that these forensic psychiatric patients more often start their conditional TBS order with an intramural phase in a forensic hospital. It also appears that there is more or more serious criminal behavior: the judge states that there are more *ad informandum* facts (crimes that are not prosecuted separately but nonetheless weighted in the sentencing) and/or that there are more prior convictions in forensic psychiatric patients with as compared to those without a conversion.
- 3 *The effect size for the differences that were found was large for age: forensic psychiatric patients with a conversion are younger than forensic psychiatric patients without a conversion.* Besides this finding, four findings have an average effect size: forensic psychiatric patients with a conversion on average have more Axis II personality disorders, more often misuse poly/hard drugs, the public prosecutor less often claims a conditional TBS order and more often claims an unconditional TBS order and the judge, in his decision to sentence the person to a conditional TBS order, more often states that the person involved has been sentenced before or that there are *ad informandum* facts (crimes that are not prosecuted separately but nonetheless weighted in the sentencing).
- 4 *The most important phase for leads on how to improve the conditional TBS order is the phase in which the person involved is sentenced.* This is due to the fact that all significant differences between forensic psychiatric patients with and without a conversion are related to the phase of their previous history and to the phase of sentencing, however, the previous history cannot be altered.
- 5 *In 14 out of 60 (23%) of forensic psychiatric patients with a conversion, a relatively light new crime is part of the reasons to convert the conditional TBS order into an unconditional TBS order.* The forensic psychiatric patient is almost never sentenced separately for committing this new crime. In all forensic psychiatric patients with a new crime, other conditions are violated as well, and together this is the reason for the conversion.

### **The conditional release order and revocations**

- 1 *The prevalence rate of the number of revocations is 7.1%.*
- 2 *From the onset of the conditional release order, forensic patients who later have to deal with a revocation, are known to have more serious (behavioral) problems than those whose CR order is not revoked.* There are a number of indications to corroborate this conclusion. Forensic psychiatric patients with a revocation more often have a history of homelessness, more often have to start their CR order with a clinical phase, there are more forensic psychiatric patients who abuse alcohol or drugs and they more often have comorbidity of drug abuse and Axis II personality disorders. It also appears that they have more or more serious criminal behavior, because they more often have committed crimes before the index offence, have committed more crimes in their judicial past and have committed more violent crimes in their previous history.
- 3 *The effect size is large for two of the significant findings: there are more forensic psychiatric patients who abuse drugs and prior to the actual revocation, the public prosecutor more often has claimed an unconditional TBS order is warranted but the judge does not agree with this claim.* An average effect size is found for six of the significant findings: there are more property offences in the judicial past, there is more often comorbidity of drug use and Axis II personality disorders, more often additional conditions are set up, and they have been on different stages of leave less often (transmural leave, trial leave and the combination of transmural and trial leave).
- 4 *Prior to the revocation there are a number of indications that the execution of the CR order is problematic.* Forensic psychiatric patients with a revocation more often have additional conditions set up. Also, prior to the actual revocation, the public prosecutor more often has claimed an unconditional TBS order is warranted but the judge does not agree with this claim. Forensic psychiatric patients with a revocation less often have gone through the different stages of leave, while this gradual leave process is associated with less recidivism. They have less often gone on transmural leave, trial leave and the combination of transmural and trial leave.
- 5 *The significant differences between forensic psychiatric patients with and those without a revocation are found in all three examined phases.* Due to the static character of the phase of the previous history, clues to improve the CR order can be found in the sentencing phase and the phase of the execution of the CR.
- 6 *A revocation is not declared lightly.* In 19 out of 51 forensic psychiatric patients with a revocation (37%), a relatively serious new crime is part of the reasons why the CR order is revoked. In almost half of these cases (9 out of 19, 47%) the forensic psychiatric patients are sentenced separately for this new crime, besides the revocation. For all patients with a revocation, besides the new crime, also other conditions have been violated that constitute to the revocation.
- 7 *The two periods of the TBS order under conditions, during the conditional TBS order and during the CR order, show more differences than similarities.* During the conditional TBS order as well as during the CR order, the forensic psychiatric patient has to abide by certain conditions, however, the way the violation of the conditions and the way the conversions and revocations usually occur, differs.