

**Preliminary study evaluating the  
effects of Section 2.3 of the Forensic  
Care Act  
(Dutch title: *Wet forensische zorg*)**

Oberon Nauta  
Bram van Dijk

14 September 2012

**SUMMARY**



For a number of years, the Ministry of Security and Justice (previously Justice) and the Ministry of Health, Welfare and Sport have been working to improve forensic care, *inter alia* by renewing the legislation in this area.

As part of this process, Section 2.3 of the Forensic Care Act (Dutch title: *Wet forensische zorg* or 'Wfz') - in combination with Section 37 of the Dutch Criminal Code, which is set to be amended - incorporates a new method for imposing mandatory care in a civil law context at several points of the criminal law process. Furthermore, the enactment of the Mandatory Mental Healthcare Act (Dutch title: *Wet verplichte geestelijke gezondheidszorg* or 'WvGGZ') will widen the scope of the care authorisation. The danger criterion will be replaced by the harm criterion and this latter Act will offer options for different (and lighter) forms of mandatory care.

The question is: to what extent will both legislative changes lead to changes in the stream of litigants requiring care to mandatory mental health care in a civil law context? It is important to both the Ministry of Security and Justice and the Ministry of Health, Welfare and Sport to obtain a clear picture of these changes in a study. In order to obtain an idea of the feasibility of such a study, a preliminary study has been carried out, commissioned by the Scientific Research and Documentation Centre (WODC).

To start with, documentation was analysed and key figures interviewed in order to establish the possible effects.

The first primary effect is that the criminal courts will use Section 2.3 of the Forensic Care Act to impose authorisations under the Psychiatric Hospitals (Mandatory Admission) Act [in Dutch: *bopz*]. Four further effects may occur as a result of that primary effect:

- The stream of litigants to mandatory care may shift from the pre-judicial to the criminal process.
- Decisions not to prosecute and suspensions of pre-trial detention may decrease in favour of care authorisations under the Psychiatric Hospitals (Mandatory Admission) Act by the criminal courts.
- After a penalty or order ends, rather than an authorisation under the Psychiatric Hospitals (Mandatory Admission) Act being given by the civil courts, such an authorisation or a care authorisation may be issued by the criminal court.
- The amendment to the Forensic Care Act may lead to a different (more aggressive) type of client at ordinary GGZ mental healthcare facilities.

An investigation was then made of the extent to which those effects can be measured using the current registration systems.

The most important conclusion of this preliminary study is that it is not possible to produce a scientifically sound evaluation of the effects of the amendment to Section 2.3 of the Forensic Care Act in combination with the enactment of the Mandatory Mental Healthcare Act. This is because it is not possible in the context of this evaluation to maintain a design in which an experimental group is compared with a control group, since the legislative amendments are being introduced simultaneously.

The second conclusion is that it would only be possible to measure effects (limited in the sense of that there would be no control group) if certain data were to be registered that have not been recorded in the current registration system until now. The data required are as follows:

*Uniform registration of all persons on whom the court has imposed mandatory care, i.e. authorisations under the Psychiatric Hospitals (Mandatory Admission) Act and care authorisations, broken down as follows:*

- Per authorisation: type of court that imposes the authorisation (civil or criminal)
- Per authorisation: party requesting authorisation (*ex officio* by public prosecutor or at the request of a third party)
- Per authorisation: background that led to the authorisation (including pre-trial status of police decision not to prosecute and the judicial (conditional) decision not to prosecute and conditional suspension)
- Per authorisation: a number of unique identification variables that can be used where necessary to link up with other systems, including the register recording incidences of aggression (preferably number from municipal population database [A-number] or citizen service number [BSN]).

The obvious option would be to record the aforementioned data in existing systems. In that case, the GGZ ARGUS system and the Public Prosecution Department's GPS system would be the most suitable.

However, before deciding to systematically record the aforementioned data, a decision must be taken on whether creating the possibility of a limited evaluation of effects is worthwhile, given the time and effort that it will take to record the data systematically. Instead, a decision may be taken to record only the authorisations under the Psychiatric Hospitals (Mandatory Admission) Act and care authorisations (including the identity of the party requesting the authorisation and the type of court) in order to obtain an idea of the primary effect of evaluating the effects. The secondary effects would not then be measured systematically, although they could be identified on an indicative basis using interviews.

It would be advisable for the Ministries involved to decide very quickly on whether or not to record the desired registration items because it will only be possible to carry out a baseline measurement if sufficient data regarding authorisations under the Psychiatric Hospitals (Mandatory Admission) Act under the old legislation are recorded prior to the introduction of the Act.