

## Summary

### Background and Objective

01 Detention under a hospital order (hereinafter referred to by the Dutch abbreviation of 'TBS') occupies a special place in Dutch criminal law. Individuals placed under a hospital order (hereinafter referred to as 'TBS patients') are given treatment for their disorder in a Forensic Psychiatric Centre (FPC) with the aim of enabling them to return to society. However, there is a small group of TBS patients for whom it is not possible to reduce the risk of repeat offences to an acceptable level, despite lengthy treatment. Given the current state of knowledge in science and psychiatric practice, there is deemed to be no realistic prospect of being able to treat these patients. In 1999, the first long-stay forensic care facility was created for this group within the Veldzicht FPC. Later, the Pompestichting, a foundation for forensic psychiatry, also set up long-stay facilities at its sites in Zeeland and Vught. The Van der Hoeven Kliniek in Utrecht also took on TBS patients with a long-stay status in the period from 2009 through to 2013. Together, these facilities had a capacity of 182 beds in 2009 (*Forensische zorg in getal, 2006-2010* [Forensic care in numbers, 2006-2010], Custodial Institutions Agency).

02 The key feature of a stay in a long-stay facility is that long-term psychological and medical care is offered without the treatment of the disorder being geared to a return to society. As resocialisation is not an aim, leave is only granted for humanitarian reasons. The focus in a long-stay facility is on maximising the quality of life for the patients with a long-stay status, given that they have no chance of a return to society in the short term and therefore no prospects outside the facility. Within the limited range of options, they are offered a chance to develop.

03 The provision of long-stay facilities and the long-stay status have been established in a policy framework. The first Long-Stay Forensic Care policy framework was submitted to the Lower House of the Dutch Parliament on 23 August 2005. This framework specified the intake criteria for the long-stay departments in the FPCs. It also described the process for the intake, placement, continuation and termination of a stay in a long-stay facility, including the allocation of tasks and roles to the various parties involved.

04 A new Long-Stay Forensic Care policy framework came into effect in 2009. The key changes compared with the 2005 policy framework were:

1. A bolstering of the legal position of TBS patients with a long-stay status through the detailed implementation of a three-yearly review of their long-stay status and the option to appeal against the ensuing placement decision (decision to continue the status). This also involved the formal recognition of the National Placement Advisory Commission (hereinafter referred to by its Dutch abbreviation of 'LAP') as the advisory body with the addition of a lawyer as the chairperson.
2. The introduction of an internal differentiation in the needs assessment with three categories (low, medium and high) for the level of care and security needed.

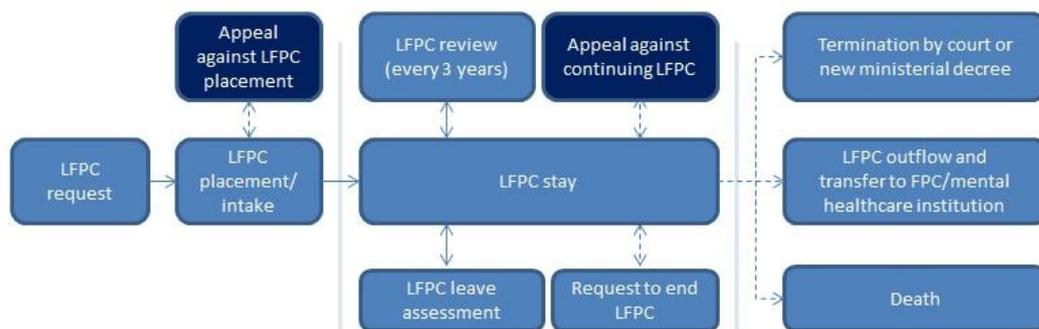
# S I G N I F I C A N T

05 The TBS Leave Rules were amended on 27 May 2012, with the opportunity for leave now being linked to the security level categories as formulated in the policy framework. The new Leave Rules stipulate that TBS patients may only go on escorted leave if the security level is 'low'. Patients no longer qualify for leave if the security level is 'medium' or 'high'.

06 The objectives of this evaluation study are as follows:

1. To show the extent to which the 2009 Long-stay Forensic Care policy framework is being implemented as intended, as well as identifying problems and/or unforeseen side effects. In doing this, we are focusing in particular on:
  - a. The changed the procedures for continuing and terminating the long-stay status (with regular checks, or reviews, of the need to be kept in a long-stay facility) and the associated option to appeal against continuation. The intention of these changes was to improve the legal position of long-stay TBS patients.
  - b. The procedure for differentiating between patients according to the level of care and security.
2. To show the extent to which the changes in the leave rules for long-stay TBS patients are implemented in practice and the effects and side effects of these rules in terms of the needs assessment and reluctance to request a placement in a long-stay ward.
3. To provide information on the results (so far) of the implementation of the 2009 Long-Stay Forensic Care policy framework. These results concern the question of whether the requirements for security and care of the various subgroups within the long-stay population are being met.

07 A process evaluation was used to investigate how this policy was implemented. The central issue was how the policy is being implemented, whether this is as planned and what problems have been encountered. A process evaluation is not primarily aimed at making statements about a policy's effectiveness. This process evaluation shows how the policy framework and Leave Rules are being applied in practice. The study follows the steps in the long-stay process (see Figure 1).



LFPC = long-term forensic psychiatric care

Figure 1: Diagram showing the processes in long-stay forensic psychiatric care

# S I G N I F I C A N T

- 08 The evaluation took the form of:
- c. A limited study of documentation;
  - d. A total of 16 interviews with individuals representing the Placement department of the Custodial Institutions Agency, FPCs with a long-stay ward, FPCs with treatment wards, the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP), the LAP, the TBS Leave Assessment Advisory Board and the Council for the Administration of Criminal Justice and Youth Protection, plus two lawyers;
  - e. An expert meeting with individuals representing the Custodial Institutions Agency, the FPCs, the NIFP, the LAP, the TBS Leave Assessment Advisory Board and the Council for the Administration of Criminal Justice and Youth Protection;
  - f. An observation of a meeting of the TBS Leave Assessment Advisory Board;
  - g. A study of case files and information provided by the Custodial Institutions Agency.

## **Introduction of the policy framework and Leave Rules**

09 Most of the people interviewed said that the introduction of a review of the long-stay status every three years and the addition of a lawyer to the LAP are seen as positive developments. Introducing a point in time with a check of the situation has improved TBS patients' legal position. However, there is criticism of the suggested differentiation of the care level and security level using the categories 'low', 'medium' and 'high'. There is no information or assessment instrument for applying the concepts of care level and security level in practice. In addition, the interviewees say that the number of TBS patients with a long-stay status is too small to allow a detailed differentiation.

10 There is also criticism of the Leave Rules, both in terms of the underlying principle and the practical application. The objection to the principle is that the restriction in the leave opportunities is in conflict with a humane implementation of the TBS order and the guiding principle that TBS patients should retain the prospect of a return to society. One practical objection is that security levels had not been determined for all TBS patients when the new rules were introduced. Up to then, security levels had concerned internal security within the clinic, but the new Leave Rules attached external implications for leave to the security level.

## **Differentiation according to the levels of care and security**

11 The policy framework came into effect officially on 1 June 2009. However, it had yet to be implemented at that point and there was a lack of clarity concerning the practical application of the concepts of care level and security level. In 2009, the ministry felt the substance of these concepts should be filled in by the behavioural experts whereas the behavioural experts were expecting the ministry to provide a clear explanation of the concepts. By now (early 2013), the clinics, NIFP and LAP have reached some agreement on the way in which the concepts of care level and security level should be used, but there is still no official clear-cut definition or operationalisation.

# S I G N I F I C A N T

12 The categorisation of the care level and security level into 'high', 'medium' and 'low' as envisaged in the policy framework is seen as undesirable by the people representing the clinics as it does not provide the flexibility for a categorization based on multiple factors. In practice, differentiation takes place in the same way as before the introduction of the policy framework. There is more of a differentiation between clinics and between wards within a clinic in the sense that they differ in their 'treatment climate'. The most dangerous TBS patients in terms of control and the risk of escape are placed in the Pompe clinic in Vught. This clinic is located within the walls of a large penitentiary complex with prisons and detention centres. The clinics all have different wards with varying degrees of care and security. The differentiation between TBS patients is also based on the nature of their problems, such as the receptiveness to supervision, independence, risky behaviour, drug abuse, pathology (including psychotic disorders and personality disorders), vulnerability, the need for structure and contacts with fellow patients. In this way the clinics seek to create a carefully balanced mix in the groups within the limits of the small long-stay population.

13 The interpretation of the concept of security level has changed over time. To start with, it was interpreted as the clinic's internal security level, which is always very high in the case of TBS clinics. Consequently, up until mid-2010 the security level was exclusively taken to mean the degree of security that was required for the TBS patient *within the clinic*. In the run-up to the new Leave Rules, in which the security level has consequences for leave, the interpretation of security level widened to include the necessary level of security *during leave* (external security level).

## **Requests for long-stay status and placement**

14 The number of requests for long-stay status has fallen over the years from a total of 98 in 2007-2008 to a total of 25 in 2011-2012. The people involved say this is due to a combination of factors. The clinic, TBS patient and lawyer try where possible to find a solution outside the long-stay facility. The additional limitations imposed on the leave options for patients with a long-stay status have reinforced this tendency. Furthermore, the inflow and capacity utilisation in the TBS sector have fallen so that clinics have less of an incentive to request the long-stay status. In addition, now that patients are being moved to the long-stay facilities, the potential candidate pool for long-stay status has been removed from the general TBS population.

15 The main reason for requesting long-stay status is because the treatment is no longer getting results. Clinics submitting a request are required to recommend a care level and security level in terms of 'low'/'medium'/'high'. They do this in the form of a description but not usually using the aforementioned categories because there is no operationalisation.

16 The NIFP generally gives a descriptive recommendation concerning the care level and security level. The LAP takes the same approach for the care level but it does give a recommendation in terms of 'high', 'medium' or 'low' for the security level, in particular since the introduction of the new Leave Rules. The NIFP and LAP generally agree about their recommendations for an assignment of the long-stay status. If the request for long-stay status is rejected, the main reason is that the LAP still sees possibilities for treatment.

# S I G N I F I C A N T

17 In the period from 2008 through to 2012, 77 TBS patients were assigned the long-stay status. However, the number of assignments of long-stay status has fallen over the past few years, from 31 in 2009 to 3 in 2012. The Minister usually follows the recommendation of the LAP. However, the Minister has assigned a long-stay status to persons declared to be undesirable aliens, in contravention of the LAP's advice. The Minister does not take the recommended care level into account in the placement of TBS patients. Since the end of 2012, the Minister has assigned the security level.

18 It is possible to lodge an appeal against the placement decision with the Council for the Administration of Criminal Justice and Youth Protection. Around two in every five placement decisions are appealed against. The main reason for an appeal is that the treatment options have not yet been exhausted. Around 35% of the appeals against the placement are upheld by the Council for the Administration of Criminal Justice and Youth Protection; the most frequent reason given is that the complaint has not been sufficiently refuted. Although the number of appeals lodged since the implementation of the policy framework is small (11), it seems that the proportion of appeals that are upheld has fallen since the policy framework was introduced.

## Reviews

19 The Placement department in the Forensic Care division of the Custodial Institutions Agency keeps records of when the next review is scheduled for each TBS patient with a long-stay status. The first reviews started in mid-2010. By January 2013, reviews had started for all 120 TBS patients who had had the long-stay status for more than three years; most reviews had been completed (88%) or were at an advanced stage (11%). The reviews have led to a substantial outflow of patients from the long-stay status. A total of 158 reviews had been completed in early 2013 and the Minister had decided to end the long-stay status in 43 of these cases (27%). An appeal was lodged with the Council for the Administration of Criminal Justice and Youth Protection against the continuation of the long-stay status in 20 of the remaining 115 decisions (17%). However, none of these appeals were upheld.

20 In contravention of the stipulations in the policy framework, there is no systematic assessment of the security level in terms of 'low', 'medium' or 'high' at the start of the reviews. Following the introduction of the Leave Rules, the Minister nearly always sets a security level when maintaining the long-stay status. There is no systematic implementation of the determination of the care level.

21 The LAP's recommendations concerning the long-stay status generally agree with those of the NIFP reporters (90%) and the clinics (74%). However, the LAP is more likely than the clinics to recommend ending the long-stay status. In about half of the known cases, the LAP's recommendation for the security level agrees with the recommendation of the clinic and the NIFP reporters. The LAP is more likely to recommend a 'low' security level than the clinic or the NIFP reporters.

# S I G N I F I C A N T

22 Of the individuals who had a long-stay status in mid-January 2013 (N=141), a security level category has been specified for 55%: 38% are in the 'low' category, 8.5% in the 'medium' category and 8.5% in the 'high' category. With the Leave Rules in mind, the clinics were asked to recommend a security level in mid-2012. The clinics gave priority to assigning security levels for individuals for whom there were leave options.

23 The completion time of six months envisaged by the Custodial Institutions Agency for the review from the request to the clinic for a recommendation to the LAP's decision is achieved in 28% of the cases. The median completion time is 8.6 months. The clinics and the NIFP reporters in particular need more time for their recommendation. Furthermore, an extra step has been added to the process whereby the clinic responds to the report by the NIFP reporters.

## **Leave**

24 Following the introduction of the new Leave Rules on 27 May 2012, TBS patients with a long-stay status may only go on escorted leave if a 'low' security level has been assigned to them. Since then, if the Leave unit receives a request for leave, it checks whether the security level is known. Leave requests without a 'low' security level are no longer processed. Leave authorisations that had already been issued have remained valid. Only leave with double escorts was allowed in the run-up to the change in the Leave Rules. The change had no practical consequences for the advisory task of the TBS Leave Assessment Advisory Board.

25 Before the Leave Rules were implemented, 38% of TBS patients with a long-stay status as at mid-January 2013 (N=141) had authorisation for (escorted) leave. As most of these TBS patients have had their security level established as 'low', there is no obstacle to a new authorisation for leave. There are two known individuals (4%) who previously had leave authorisation but who have now lost the possibility of leave as their security level has been established as 'medium' or 'high'.

26 According to the clinics, some TBS patients were temporarily unable to take (escorted) leave in the transition to the new Leave Rules. This was partly because there were insufficient staff to enable the required double escorts in the case of valid authorisations where the security level had not yet been set. In addition, it was not possible to request a new leave authorisation until the security level had been assigned. The treatment coordinators feel that this had, and still has, a big impact on the psychological state of the TBS patients affected and their quality of life.

## **Termination of long-stay status and outflow**

27 There were 25 known requests for termination of the long-stay status in the period from 2008 to mid-2011. The long-stay status was lifted in around half of these cases following the LAP's advice. Many requests to end the status came from the Van der Hoeven clinic and were aimed at the placement of their patients in the De Voorde ward with a view to discontinuing this clinic's long-stay facility. The main reason for a refusal of a request to end the long-stay status is that the LAP did not agree to the proposed placement in De Voorde.

# S I G N I F I C A N T

28 The long-stay status of in total 74 individuals was lifted in the period from 2010 through to 2012. The breakdown of status terminations by reason is as follows:

1. Termination of long-stay-status after review (43 cases)
2. Termination of long-stay-status after request for status to be lifted (13 cases)
3. TBS patient died (9 cases)
4. Other reasons, such as a decision by the Council for the Administration of Criminal Justice and Youth Protection, conditional termination of nursing care and the end of the TBS (9 cases)

29 The NIFP and the LAP are insufficiently clear about the specific transfer options available when the long-stay status is ended. They therefore usually describe the type of institution that is required rather than recommending a specific institution. If an FPC is recommended, the Custodial Institutions Agency's Placement department will look for a suitable treatment centre. This process generally takes a good two months. In the case of a transfer to a mental healthcare institution, the clinic is responsible for the placement. According to the clinics, it is difficult to find a mental healthcare place as mental healthcare institutions regularly refuse to take TBS patients.

30 As regards 'long-term care' as a facility TBS patients could transfer to, there is currently insufficient knowledge about what is on offer and which wards or clinics are involved. A 'long-term care' facility might be appropriate if less security is required.

## **Conclusion**

31 The legal position of TBS patients with a long-stay status has been improved by the implementation of the policy framework. The review provides a check of whether the long-stay status should be continued. Most TBS patients who have had a long-stay status for more than three years have had their status reviewed. A quarter of the reviews carried out resulted in the long-stay status being lifted. The role of the LAP has been formally documented. Two justices have been added to the LAP committee, taking the positions of chair and deputy chair.

32 The differentiation according to care level and security level has led to confusion and is not in line with actual practice, in which differentiation among a small population takes place on the basis of multiple factors. A formal distinction between 'high', 'medium' and 'low' in care level and security level serves no purpose for this internal differentiation.

The amended Leave Rules are being implemented as intended. TBS patients with long-stay status are only allowed on (escorted) leave if their security level is 'low'. This has not led to a systematic change in the leave opportunities for most of the TBS patients. However, as not all TBS patients with long-stay status had had their security level assigned when the change came into effect on 27 May 2013, this did result in temporary restrictions to leave opportunities for the individuals concerned.