

CASESTUDIE VERLOOP TRAJECT UITGEPLAATSTE EN NIET-UITGEPLAATSTE GEDETINEERDEN

**NA EEN ZEDEN- OF ERNSTIG
GEWELDSDELICT NAAR
AANLEIDING VAN DE
MAATREGELEN MICHAEL P.**

KLANT
DATUM
AUTEURS
KENMERK
VERSIE

Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC)
30 november 2023
Laurien van Eil, Wouter Jongebreur en Maaike Zoutenbier
WJ/sb-bv/003245
Summary

Summary

The Custodial Institutions (Framework) Act (Penitentiare beginselenwet, hereinafter the “PBW”) governs custodial sentences and custodial measures for both suspects and sentenced persons. When the Sanctions and Protection Act came into effect, outplacements in forensic care were provided for in Articles 15.4 and 43.4 of the PBW. Article 15.4 of the PBW allows prisoners requiring mental healthcare (acute or otherwise) who cannot be treated in the penal institution to be transferred to forensic care. This concerns temporary essential treatment, during which no freedoms can be granted. Article 43.4 of the PBW enables outplacement where it is important for successful rehabilitation and a reduced likelihood of repeat offending that the prisoner receives forensic care and where that forensic care cannot be offered in the penal institution. Outplacement based on this article is only permitted during the final stage of the detention (no more than twelve months before the end of the detention). Freedoms may be granted here.

After the conviction of Michael P. (hereinafter “P.”), the Inspectorate of Justice and Security and the Health and Youth Care Inspectorate investigated what happened during the detention of P. and the care he received. Based on these results, the Minister for Legal Protection took several measures in 2019, inter alia aimed specifically at outplacements under Article 15.4 (formerly 15.5) and Article 43.4 (formerly 43.3) of the PBW for violent or sex offenders convicted of serious offences. The measures can be subdivided into five topics:

- a. Tackling offenders who refuse to cooperate with an observation process;
- b. Obtaining a better picture of risks;
- c. Modifying the procedures for obtaining freedoms;
- d. Improving the sharing of information;
- e. Improving the provision of information to municipalities.

Previous research led to the provisional conclusion that the measures are having the intended effect because the risks are given more weight when considering grants of freedoms and because the safeguards when freedoms are granted have been tightened up.¹ However, the measures may have a downside. The parties involved (penal institutions, the three probation services and the forensic psychiatric units) suspect some prisoners are given an outplacement later, or possibly not at all, when they would have been eligible earlier before the measures were introduced. This has an adverse effect as treatment starts later, which can have implications for the reduction in the risk of reoffending and the offender’s eventual return to society.

This study aims to obtain a picture of how detention proceeds, the treatment route and preparation for the return to society of prisoners with an outplacement and those without. The focus is on the unwanted effect of a prisoner not getting an outplacement despite fulfilling all the conditions for one. Accordingly, the main question addressed by this study is: How have the measures changed the decision to arrange an outplacement and what consequences does this have for prisoners?

We used various research methods to answer the main question. An explanation of the choice of research methods and the action plan is given in the justification of the research approach in Appendix A. The results and conclusions of the present study are presented below.

¹ De Berk, V., M. Goedvolk, W. Jongebreur, G. van der Maas (20 April 2021): ‘Onafhankelijke toets op de implementatie van de verbetermaatregelen. Onderzoek naar de implementatie en effecten van de verbetermaatregelen naar aanleiding van de casus Michael P.’, (Independent assessment of the implementation of the improvement measures. Study of the implementation and effect of the improvement measures following the case of Michael P.). Utrecht: Significant Public.

The number of outplacements before the introduction of the measures was markedly higher than the number of outplacements after the introduction of the measures

Figures from the Custodial Institutions Agency show that the total number of outplacements has fallen from around 100 in 2018 to over 30 in 2020. The COVID pandemic may have played a role in this drop. The figures relate to outplacements under both Article 15.4 (formerly 15.5) of the PBW and Article 43.4 (formerly 43.3) of the PBW. It should be noted the figures include prisoners who did not commit a serious violence and/or sex offence. The incident with P. and the results of the investigation reports have made most of the professionals involved cautious about outplacements. The professionals themselves state that their impression is of a sharp decline in the number of outplacements, to just one or two a year (in which they are involved personally). Consequently, even though the improvement measures were not introduced with the aim of reducing the number of outplacements, in practice they are associated with a decline in the number of outplacements.

The in-depth interviews and broad group sessions showed that outplacements under Article 43.4 of the PBW are much less common than in the past. Article 15.4 (formerly 15.5) of the PBW is barely applied at all any more. Most of the files that were investigated for this study were files relating to the study group that received an outplacement. However, this gives a distorted picture of the actual situation as no files are created (by the Individual Cases Division) for the group for whom the procedure is not started, or is aborted at an early stage. This was the impression obtained in the interviews and group meeting with various professionals.

The option of starting outplacement based on the articles is now viewed more critically

The approach to placements has changed since the introduction of the measures. Staff at penal institutions say that the required care was the main point of departure in the past when deciding whether or not to start a placement based on the articles. The investigative reports by the inspectorates and the Dutch Safety Board showed that in the case of P., the balance tipped excessively towards the care, with too much emphasis on granting freedoms as part of that care. The measures stipulate that security, risk control and protection should always weigh heavily in the decisions. Since the introduction of the measures, case managers have become more aware of the risks and are more critical in their consideration of whether to start the procedure for placement under the articles. In particular, it is said to be difficult to give arguments that demonstrate the benefit and necessity of a placement based on the articles. All the possibilities within the penal institution have to be exhausted before an outplacement can be considered. However, these possibilities are lagging behind. One *positive* example of the development of a treatment option is the sex crimes unit in the Arnhem penal institution.

A prisoner is no longer recognised as needing an outplacement if they have a long period of parole (conditional release) or a long conditional period as part of their sentence. If that is the case, there is more likely to be a negative recommendation from the Public Prosecution Service and/or a rejection of the application than in the past. However, penal institution psychologists and case managers say that treatment in a clinic based on outplacement under the articles could actually be more appropriate than waiting to start the treatment during the parole period. Placement under the articles would serve as a more robust context than treatment during the parole period. Clinics also report that placement in a clinic based on the parole period or special conditions is often seen as too risky. An outplacement under the articles is more appropriate for offenders convicted of serious violence and/or sex offences because of the mandatory nature. However, forensic care providers have become more cautious in admitting prisoners with a high risk of reoffending, because of the emphasis on taking the risks into account.

The application procedure for placement under the articles takes longer and is felt by professionals to be tough and complex

An associated consequence of the improvement measures is that penal institution staff now feel the application procedure to be tough and complex. It takes time to have to carry out a detailed analysis of the offence, perform the risk

assessment and have the offender seen in person by a psychiatrist. The application procedure has become much longer, and this lengthy procedure with its uncertain outcome is seen as having an undesirable effect on the prisoner in question. As a result, professionals have become extremely cautious about applying for an outplacement under the articles because they feel that the uncertainty can in itself be harmful to the prisoners. Prisoners have to remain motivated for the treatment throughout the application procedure. This is asking a great deal of them. Moreover, the placement request may be rejected at a late stage in the application procedure, which can have a harmful effect on the prisoner or adversely affect the cooperation between the prisoner and the penal institution staff.

There is no direct relationship between the prisoner's behaviour in the penal institution and whether or not the outplacement request is rejected

The investigation of the files showed that both before and after the introduction of the measures, disciplinary punishments or measures were imposed on prisoners, but these punishments did not necessarily affect the prisoner's eligibility for an outplacement. It can be concluded based on the available information that there is no clear difference between the situation before the introduction of the measures and the situation afterwards. Many files show treatment was needed; since the introduction of the measures, that treatment has often been provided in a penitentiary psychiatric centre. There are few other possibilities, if any, for receiving treatment in a penal institution. This refers to the actual availability of treatment options, rather than what would theoretically be possible.

Since the introduction of the measures, outplacement under the articles is only considered if a lengthy period of treatment is thought essential for achieving stabilisation and rehabilitation

It became clear from the in-depth interviews and group sessions that outplacement is seen as a last resort. Professionals still consider requesting an outplacement based on the articles for prisoners where a lengthy period of treatment, stabilisation and rehabilitation is deemed essential. In such cases, the parole period is thought to be too short. Case managers and psychologists say that it is actually prisoners with a *high* risk of reoffending who require placement in a clinic. After all, treatment in the clinic is aimed at minimising the risk of reoffending. And outplacement under the articles ensures prisoners get the treatment they need (the treatment period may be longer than the few months of a parole period). It is even claimed that the risk of prisoners ending up back in society having received incomplete treatment is greater without outplacement under the articles. Penal institution staff also say it is easier to argue the case for an outplacement when a lengthy period of treatment, stabilisation and rehabilitation is necessary. At present, an outplacement application is often successful when made shortly before the period of detention ends, as part of smoothing the transfer before the start of the parole period.

Suggestions for improvement

The suggestions for improvement are divided into improvements in the application process and suggestions for improving the care options in the penal institution. The application procedure is complex and lengthy, with a great deal of uncertainty about the outcome. We see the following potential points for improvement in the application process:

- a. Introduce a more condensed offence analysis that is better tailored to its purpose as one of the factors to be taken into account for the placement decision.
- b. Increase the available capacity for the risk assessments and consultations with a psychiatrist (of the Netherlands Institute of Forensic Psychiatry and Psychology, NIFP).
- c. Implement joint multidisciplinary coordination with all the parties involved to improve the efficiency of the sequence of steps in the application procedure.

The third suggestion for improvement will also ensure lessons can be learned across multiple cases. Each party considers an individual case from the perspective of their own role, responsibilities and expertise. Professionals can learn from one another and from how others weigh up the risks and need for treatment. This will boost expertise and

confidence in the process. A shorter application procedure will make penal institution staff more likely to consider the option at an earlier stage of outplacement based on the articles.

The suggestion for improving the offering of care within the penal institution runs as follows: the adverse effects of starting treatment later can be combatted to some extent by procuring and providing more ambulatory care, to be delivered by external healthcare providers within the penal institution, and by improving and expanding the in-house provision of forensic care in penal institutions.