

## Summary

### **Conditional release of forensic psychiatric inpatients contrarian to or conform hospital staffs' advice Recidivism rates and consequences for probation services**

#### **Introduction**

The Dutch judicial order 'terbeschikkingstelling' (tbs) is a court ordered sentence for people who have committed serious crimes and who have been declared (partially) irresponsible of committing these crimes due to severe mental disorders. The tbs-order, or 'disposal on behalf of the state', mainly consists of mandatory treatment in a closed forensic psychiatric hospital (fph). Towards the end of their treatment, most patients are conditionally released back into society. Conditional release is a way to more gradually reintegrate into society. It is a judicial order involving release from the fph while living under certain mandatory conditions in the community. In the Netherlands, a judge decides on conditional release for forensic psychiatric inpatients. He is mainly advised by hospital staff, although other advisory parties may be involved as well. The decision about conditional release is important, since the judge has to determine whether or not a patient is ready for safe reintegration into society. However, not much is known about the judges' decision-making process, the effects the judges' decisions may have on the reintegration of former forensic psychiatric inpatients into the community, and the recidivism rates of these patients. The present study was set up to gain more knowledge about these issues as this may decrease post-release recidivism rates. We examined possible differences in forensic psychiatric inpatients (N=447) who have been conditionally released by a judge 1) in line with hospital staffs' advice (conform conditional release) and 2) against hospital staffs' advice (contrarian conditional release). These two groups of patients were compared on demographic and criminal background characteristics, as well as on recidivism rates. Furthermore, interviews were held with professionals in forensic psychiatric practice, mostly probation staff members, to gather recommendations on improving the conditional release process of those patients released against hospital staffs advice.

The tbs-order is initially imposed for two years after which it ends automatically by law unless the public prosecutor requests prolongation. When such a request for prolongation has been submitted, the patient has to appear in court in a so-called 'prolongation hearing'. It is up to the court (the judge) to decide if the order should be continued or terminated. At this hearing, the judge may also decide to end the tbs-order conditionally, in which case the forensic psychiatric patient is no longer required to stay in the hospital but may reintegrate in society under certain conditions (e.g. use of medication, regular visits to a psychiatrist, supervision by a probation officer). In a prolongation hearing, the judge is advised by several different parties about the necessity of prolongation of the in-patient treatment and judgments about the risk of recidivism in case of conditional release are provided. The most important advisory party is the hospital staff who have been treating the patient. Secondly, the public prosecutor and the probation services are involved as advisory parties. Finally, there may be additional reports from an independent psychiatrist and a second behavioral expert (often a psychologist), if by prolongation the tbs-order would last longer than six years. The judge may decide to end the tbs-order conditionally either in accordance with one or more advisory parties or against the advice of one or more of these parties.

The rationale behind the present study was two-fold. First, executive authorities in the forensic field in the Netherlands, especially the probation services, indicated to have more problems with supervising forensic psychiatric patients on contrarian conditional release as compared to those on conform conditional release. These problems include a more problematic and conflict filled supervision trajectory, and lack of time to properly arrange living circumstances and income. Second, there was a change in the Dutch law in 2013 making it mandatory for each forensic psychiatric patient to be conditionally released for at least one year before final discharge. Due to this change in law, an increase in the number of forensic psychiatric inpatients on contrarian conditional release was expected. Since not much is known about these patients and how the decision-making process may influence the outcome of the period under conditional release, the Research and Documentation Centre of the Dutch Ministry of Security and Justice was asked to perform the present study. The aim of the study was to gather information and possibly develop new directives for care that fit the needs of these patients.

### **Objective, research questions, and research methods**

The objective of the present study was *to gain more insight on several matters relating to forensic psychiatric patients on contrarian conditional release.*

A contrarian conditional release is defined as a conditional release of the tbs-order by a judge, while the advisory bod(y/ies) recommend(s) prolongation of the compulsory treatment.

The main research questions were:

- 1 How many forensic psychiatric inpatients have been sentenced to go on conditional release and how many of these conditional release decisions were contrarian to the advisory bod(y/ies)? Can conditional release decisions be categorized into different subtypes and if so, what kind? In line with previous research regarding the contrarian *unconditional* release, we will look into strong versus weak contrarian release decisions (based on agreements about risk judgments) and at possible differences with regards to written advice submitted before the prolongation meeting as compared to oral statements given during the hearing.
- 2 What is the relationship between a contrarian or a conform conditional release-decision by a judge on the one hand, and reoffending on the other hand? Reoffending during conditional release as well as after unconditional release will be examined.
- 3 How do the executive authorities (i.e., probation services and forensic care institutions) supervise forensic psychiatric patients on conditional release?

The first two research questions were examined in a quantitative manner. A list of all tbs-patients who had been conditionally released between October 1997 (the date the possibility to impose a conditional release order was introduced in Dutch law) and July 2013 (the date the amendment of the law was introduced that sees to a mandatory year of conditional release) was requested from the Dutch Custodial Institutions Agency. In total, 949 unique tbs-patients had been ordered to go on conditional release in this period. As this number was too large to examine in full, these patients were randomly divided into either the research group (N=478) or the control group (N=471). For the research group, all conditional release decisions were retrieved from the patient files. Out of the 478 patients in the research group, 31 conditional release decisions (6.5%) could not be found or were incomplete in the patients records, therefore, the final research group consisted of 447 patients. A standardized code sheet was specifically designed for systematically charting the decision-making process leading to the conditional release. All parties that had given

advice on the conditional release decision were noted, along with their advice in favor of or against conditional release. Also, the risk assessment judgments about the risk of recidivism of each advisory party were noted. All information was collected directly from the judges' decisions, no other records were studied. The present study will focus on the advice of the forensic psychiatric hospital staff, given their key role in the prolongation hearing in which the court decides on conditional release. Recidivism data was obtained through the Recidivism Monitor of the Research and Documentation Center of the Ministry of Security and Justice. The third research question was investigated qualitatively. We attended several tbs case study consultation meetings by the probation services (tbs-casuïstiek overleggen [TCO]). A TCO is a multidisciplinary consult in which all tbs-patients under the responsibility of the probation services are discussed. In addition, semi-structured interviews were held with several other important forensic care institutions.

## **Results**

Beforehand, we examined possible differences between the research group and the control group in order to determine the generalizability of the results. The only significant difference between the research group and the control group was gender (slightly more females were found in the research group as compared to the control group). However, given the overrepresentation of males in the tbs-population, the results in the present study can still be seen as representative to the population of tbs-patients with a conditional release. The generalizability of the results to the female tbs-patients, however, should be done with caution.

### *Conditional release decisions*

First, we looked at how many contrarian release decisions had been made and if these decisions could be divided into subtypes. Not all advisory parties were involved in each prolongation hearing. Therefore, we determined the amount of correspondence between the judges' decision and the advice by an advisory party per party and only when they had actually given advice in a certain hearing. In about 25% of the cases (for each advisory party separately), the judge decided to conditionally release a forensic psychiatric patient against the advice of that advisory party. This was true for the advices given by the public prosecutor, the fph, and the six-year experts. With regards to the recommendations of the probation services, the rate of contrarian conditional release decisions was somewhat lower: about 15% of the cases. We then looked into differences with regards to the written advice submitted before the prolongation meeting as compared to oral statements given during the hearing. Unfortunately, this information was only available for the advice given by the public prosecutor. The percentage of contrarian release decisions was much higher for written recommendations by the public prosecutor (71%) as compared to the oral advice given during the prolongation hearing (16%). Finally, we looked into information about risk assessment judgments while on conditional release. This information also appeared to be too difficult to retrieve from the judges' decisions and large numbers of missing data were found. Hence, we were not able to categorize the conditional release decisions into strong versus weak contrarian conditional release decisions.

Second, since the recommendations by the forensic psychiatric hospital staff is considered the central advice in a prolongation hearing, all judges' decisions involving an fph-advice were looked at more thoroughly (N=334). In these analyses, those tbs-patients with a contrarian conditional release decision were compared to those with a conform conditional release decision on demographic and criminal characteristics, including recidivism rates. The index offense of tbs-patients

with a contrarian conditional release significantly more often was a sex offense or a property offense, their criminal history was more comprehensive, they more often had been sent on trial leave before their conditional release, the prolongation hearing was more often adjourned in order to gather information from the probation services on the possibilities of conditional release, and the conditional release decision followed significantly more often after an appeal by one of the parties involved (i.e. the patient and/or the public prosecutor). No significant differences were found between patients with contrarian or conform conditional release decisions regarding age, gender, country of birth, IQ, personality disorder, psychotic disorder, and length of treatment prior to the conditional release. There were also no significant differences between both groups in violations registered by the probation services while the forensic psychiatric patients were on conditional release, however, this last result should be considered preliminary due to data concerns. Further, we looked at which advisory parties were involved in each conditional release decision. In cases where the judges' decision is contrarian to the advice of the fph, the fph is generally the only advising body. There were no cases where the judges' decision was contrarian to all recommendations. In conditional release cases where the court decision is compliant with the advice of the fph, all other parties generally agree with the advice of the fph. However, only in twelve cases all other parties agreed with the advice of the fph for a conditional release. Hence, it can be concluded that the judges' decision for conditional release contrary to the recommendations of the involved parties is heterogeneous in nature, in which the various parties hold different opinions on the possibilities of conditional release. Third, both reoffending during conditional release as well as after unconditional release (official discharge) were examined. Recidivism during conditional release is rare, only nine patients recidivated. Results regarding recidivism after discharge showed that both the general and severe violent two-year recidivism rates, as well as the seriously violent five-year recidivism rates, were significantly higher for tbs-patients on contrarian conditional release than for patients on conform conditional release. No differences between both groups were found for very seriously violent re-offenses. Hence, these results show that tbs-patients on contrarian conditional release are convicted more often to less severe reoffending compared to patients who have been conditionally released conform the fph advice. Finally, we examined the strength of this association by including other known predictors of recidivism in a Cox-regression analysis. The results of this analysis showed that the way the judges' decision has been reached (contrarian versus conform) is no longer a significant predictor of recidivism when these other variables are included. These more general predictors of recidivism, such as age at the time of unconditional release and criminal history, are the significant predictors in those analyses. This means that although significant differences may be found between recidivism rates for patients on conform conditional release as compared to those on contrarian conditional release, this difference is explained by other characteristics of these forensic psychiatric patients.

#### *Execution of contrarian conditional release*

The qualitative part of the current study shows that problems concerning the execution of the contrarian conditional release are particularly found in those cases in which the probation services recommended against the conditional release. This in contrast to those forensic psychiatric patients on conditional release in contrast to the advice of other advisory parties. However, it is assumed that a contrarian conditional release can still be implemented effectively. Respondents suggested several solutions within the range of current Dutch law: 1) different probation officers should be involved in writing the advisory report for the prolongation

hearing and the actual supervision trajectory; this might decrease the problems regarding the execution of contrarian conditional release decisions, 2) the collaboration between the probation services and the fphs in case of a contrarian conditional release should be intensified (e.g. more detailed introduction of the patient or a more extensive knowledge transfer), 3) a more gradual transition of responsibilities from the fph to the probation services, and 4) in case of a potential contrarian conditional release, the fph should already involve the probation services to better prepare the implementation of the conditional release. Furthermore, several suggestions have been made that fall outside the scope of current Dutch laws and/or regulations: 5) more opportunities to transfer the tbs-patient back and forth between the fph and the probation services to better fit the treatment process to the needs of the patient, 6) the possibility to impose the obligatory conditional release for less than a year, and 7) the opportunity to convert the conditional release into a probationary release in case of serious violation of the consequences. Currently, this is not possible, causing a delay in the treatment process.

### **Conclusions**

Based on the current study, the following conclusions can be drawn:

- 1 In approximately 25% of the cases, the judge decides on conditional release contrary to the advice of the various individual parties, regardless which party is advising (i.e. public prosecutor, fph, six-year experts). The judge decides against the probation services' advice less often: 15%.
- 2 The judges' decision on contrarian conditional release is a heterogeneous type of decision: there are only a few cases where all advising parties mutually agree about conditionally releasing a forensic psychiatric inpatient.
- 3 Tbs-patients who have been conditionally released contrarian to the fph advice reoffend more often than patients who have been conditionally released conform the fph advice. However, when other predictors for recidivism are also included in the analyses, the type of decision (contrarian versus conform conditional release) is no longer a predictor for recidivism. Other, more general predictors of recidivism, such as age at unconditional release and criminal history, are then found to predict the difference in recidivism rates.
- 4 Probation officers note that problems concerning the supervision of former forensic psychiatric inpatients on contrarian conditional release are particularly found in cases where the probation services advised against conditional release. An intensification of the already existing framework between the fph and the probation services, as well as a more flexible approach of the conditional release process may ensure that contrarian conditionally released forensic psychiatric inpatients can be effectively transferred into the community as well those patients on conform conditional release.