

Summary

The decrease in the number of impositions of detentions under a hospital order with compulsory psychiatric treatment Developments and backgrounds

Detention under a hospital order (the so-called tbs system) is a treatment measure that judges can impose on defendants who are not (fully) legally accountable due to a psychological disorder. This means that they are not blamed for their offence, either not at all or only in part, because they suffer from a mental disorder or illness. The objective of such a measure is, on the one hand, to protect society, and to offer treatment to the detainee on the other. The measure of detention under a hospital order has two variants: detention under a hospital order with compulsory psychiatric treatment and conditional detention under a hospital order. In the case of detention under a hospital order with compulsory psychiatric treatment, the detainee is placed in a (closed) Forensic Psychiatric Centre (FPC) and treated there. When the detainee has been sentenced to conditional detention under a hospital order, this individual is not subject to a compulsory placement in an FPC, but the judge stipulates conditions regarding his behaviour (for instance that he is to attend the psychotherapeutic clinic or is not allowed to use alcohol).

In 2008 and 2009, the number of impositions of detention under a hospital order with compulsory psychiatric treatment has decreased steeply. In this study, we have tried to gain more insight into the causes of the recent decrease in detentions under a hospital order, by analyzing the available quantitative information on this subject and the connections present within it. To this end, we have conducted a literature study and have gathered data from registration systems from the NIFP (Netherlands Institute of Forensic Psychiatry and Psychology) and WODC. In principle, the research period runs from 1995 up and until 2009, but in particular for the early years as well as for 2009, the information is not complete. We have taken this into account during our interpretation of the results.

In this summary, we will briefly present the results and conclusions with the aid of the research questions.

1 How sizeable was the decrease in impositions of detention under a hospital order in 2008 and 2009 in comparison to the years before?

During the 2002-2005 period, there was a peak in the number of detentions under a hospital order: during that time, detention under a hospital order was imposed more often than either the period before or the period after. For this reason, the decrease in the number of impositions of detention under a hospital order was substantial compared to the 2002-2005 period, but less sizeable in comparison to the years 1995-2000. Nonetheless, the number of imposed detentions under a hospital order during 2008 and 2009 was at its lowest since 1995.

2 In which stages of the procedure to arrive at a (possible) imposition of detention under a hospital order do decreases/increases occur?

In our study, we have discerned three stages: the offence, the forensic psychiatric assessment ordered by court and the verdict (sanction). We will briefly explain these: (1) the (possible) imposition of detention under a hospital order starts with someone committing an offence for which detention under a hospital order can be

imposed. During the criminal proceedings, it may be decided that an assessment of the defendant's mental capacities is necessary. (2) This forensic assessment results in a forensic report, in which the presence of any mental disorder is investigated, as well as its possible carry-over on the committed offence and the chance of recurrence. This report leads to an advice on the imputation and an intervention advice, part of which is the imposition of detention under a hospital order. When the judge wants to impose the measure of detention under a hospital order, according to statutory regulation, he must have at his disposal the advice of two different behavioural experts, one of whom has to be a psychiatrist. (3) Based on this report, among other things, the judge passes a verdict. Below, we will indicate for every stage which developments occur., we will also go into the possible causes for the recent decrease in the number of imposed detentions under a hospital order. We will present a résumé of this under research question 3, which deals with this issue.

Offence

In this study, as our frame of reference we have used those offences that have turned out to have been punished with an above average number of imposed detentions under a hospital order. The number of verdicts for these offences has decreased since 2004, - with a brief interruption in 2008 -, thus following the same pattern as the impositions of detention under a hospital order. In other words, the number of offences with an above average chance of an imposed detention under a hospital order has decreased, and in connection with it, the number of impositions of detention under a hospital order has decreased as well. This is, however, not the only explanation, because the number of impositions of detention under a hospital order as a percentage of the number of offences with an above average chance of such an imposition has also decreased, especially in 2008 and 2009 (see under '*Verdict*').

Forensic assessment

For defendants of offences with an above average chance of an imposition of detention under a hospital order, a forensic report was requested more and more often as from 2003 (this happened relatively less often in 2008, but 2009 has once more shown a steep increase). Although these research years are not completely comparable (because of the lapse between the moment of a forensic assessment and the subsequent verdict), the hypothesis that the decrease in the number of impositions of detention under a hospital order is caused by a decrease in the number of requests of a forensic assessment, is not supported by the results of our study. In 2008 and 2009, the percentage of multidisciplinary forensic reports that lead to an advice of imposing detention under a hospital order with compulsory psychiatric treatment decreased. This trend set in during 2003. This confirms our hypothesis that multidisciplinary forensic assessments have resulted less often in an advice to impose detention under a hospital order, which in turn has resulted in a decreasing number of such impositions. The underlying cause may be an increase in the number of defendants who refuse to cooperate in forensic assessments. Although a forensic assessment can be conducted for these defendants all the same, the lack of cooperation may obstruct an advice on the imputation or the imposition of detention under a hospital order. For this reason, in practice, these cases seldom lead to such an imposition. In this way, by refusing to cooperate, defendants do have an opportunity to lower their chances of getting sentenced to detention under a hospital order. The number of defendants who refuse to cooperate in forensic assessments is not unequivocally registered. Roughly, the number of defendants who have been registered as such (a minimum) has increased in recent years (although 2009 has seen a slight decrease). The same goes for the number of defendants for whom no

conclusions could be presented regarding their responsibility (the maximum) (also measured as a percentage of the concluded multidisciplinary forensic reports). Yet, when we look solely at the percentage of advices to impose detention under a hospital order involving cooperative defendants, it turns out that in 2008 and 2009, the number of such advices has decreased for this group as well. That forensic assessments less frequently lead to an advice to impose detention under a hospital order, cannot be ascribed to the increased number of 'refusing' defendants alone.

Verdict (sanctions)

It is possible that judges more often prefer to impose alternatives for the measure of detention under a hospital order. In this study, we have examined which developments occur in relation to two possible alternatives for such a measure, namely long(er) prison sentences and placement in a psychiatric hospital.

The percentage of imposed long(er) prison sentences for offences with an above average chance of an imposed detention under a hospital order fluctuates, but remains fairly stable. Although an increase occurred in 2008, this fitted in with the fluctuations of previous years and did not persist in 2009.

Interestingly, in contrast to this, the measure of placement in a psychiatric hospital was imposed comparatively more often in 2008 and 2009. Thus, the developments regarding the measure of detention under a hospital order and regarding the measure of placement in a psychiatric hospital show a contrary trend. It is possible that judges more often choose to impose the measure of placement in a psychiatric hospital instead of a measure of detention under a hospital order.

We were unable to study all the alternatives for the measure of detention under a hospital order. A provisional release on parole under the condition of treatment could be another possible modality for replacing an imposition of detention under a hospital order. The same goes for a conditional detention under a hospital order. The developments regarding conditional detention under a hospital order do not give cause for assuming that this sentence is imposed as an alternative.

It is possible, for that matter, that the Public Prosecution Service plays a role in this, by more often demanding alternatives for the measure of detention under a hospital order. The sentences demanded by the Public Prosecution Service could not be included in our research.

3 To what extent is it feasible to trace the (possible) causes of the decrease? Which (possible) causes are these?

Based on the collected material, we are unable to provide a conclusive answer to the query into the causes of the recent decrease in impositions of detention under a hospital order. The decrease in the number of imposed detentions under a hospital order in 2008 and 2009 seems to have been the result of the combined effects of:

- The decreasing number of offences with an above average chance of a measure of detention under a hospital order.
- The increasing number of defendants who refuse to cooperate in a (multidisciplinary) forensic assessment.
- The decreasing frequency with which a measure of detention under a hospital order is advised in forensic reports.
- The possibly more frequently made choice of a measure of placement in a psychiatric hospital instead of a measure of detention under a hospital order.

Underlying the developments and (possible) causes outlined above may be other developments and causes. In the literature, as for instance in Muis and Van der Geest (2009), the decrease is related to a decrease in 'popularity' and/or reticence with respect to the measure of detention under a hospital order among judges and

lawyers. Lawyers are thought to advise defendants more often to refuse their cooperation in forensic assessments, an advice presumably connected to the increase in the average duration of treatment, tightened leave policies, and the client's chances of ending his days in a longstay ward. We have not examined such underlying causes in this study.

In addition to this, there are developments and causes that possibly exert an influence on the imposition of detention under a hospital order, the causal role of which cannot or can hardly be studied. Examples of this are developments regarding the prevalence of mental disorders, and the effectiveness of the treatment for mental disorders or the treatment aimed at prevention, by involuntary hospitalization (either as part of the Psychiatric Hospitals (Compulsory Admissions) Act or as the result of civil action).

4 What are the possibilities for follow-up research aimed at gaining more insight into the causes of the decrease in impositions of detention under a hospital order?

This study has shed more light on the (possible) causes of the decrease, but not on its underlying mechanisms. After all, each cause found raises the question 'why'. Why does the number of offences with an above average chance of detention under a hospital order decrease? Why do defendants refuse to cooperate in forensic assessments? What happens to these defendants? Why do forensic reports result less often in an advice to impose detention under a hospital order? Do public prosecutors and judges choose alternative sanctions? Why (or in which cases) do they choose this course of action?

For practical reasons, we will make some suggestions for research into the most pressing questions, which can be carried out short-term. One of these pressing questions seems to be in what way the Public Prosecution Service and the judiciary make their demands and/or decisions in cases in which detention under a hospital order can be considered. How do they view the measure of detention under a hospital order? Is it possible to trace developments in their views? Which sanctions do they use as an alternative for the measure of detention under a hospital order, and for what reason? To what extent does the measure of placement in a psychiatric hospital present an alternative? Does it pay for defendants to be uncooperative? Does it lower the chances of getting sentenced to detention under a hospital order and if so, to what extent?

Other useful research can be done on the pressing question why forensic assessments lead less often to the advice to impose detention under a hospital order. Furthermore, this study may be repeated, for instance to complete the data for 2009 and to record further developments. In conclusion, we recommend improved registration of defendants who refuse to cooperate in forensic assessments.