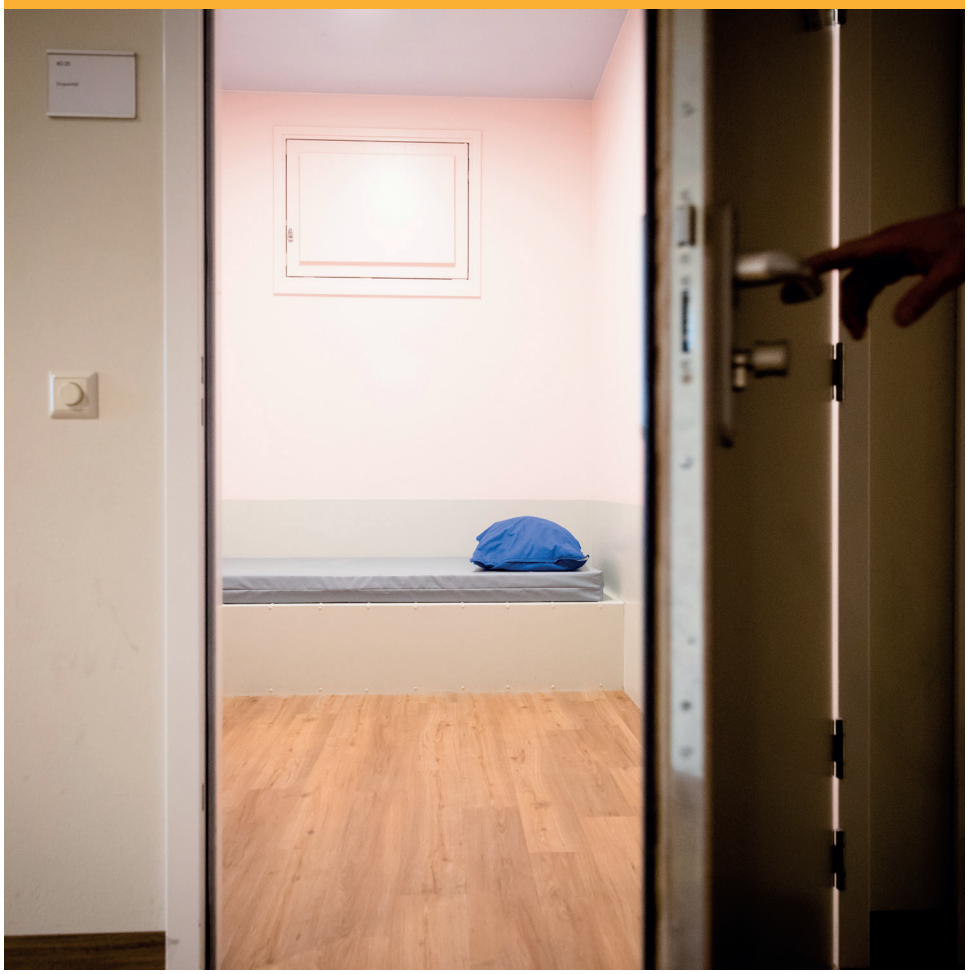
DUTCH
SAFETY BOARD

Summary

Forensic care and security

lessons from the case Michael P



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The Hague, March 2019

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The Dutch Safety Board

When accidents or disasters happen, the Dutch Safety Board investigates how it was possible for these to occur, with the aim of learning lessons for the future and, ultimately, improving safety in the Netherlands. The Safety Board is independent and is free to decide which incidents to investigate. In particular, it focuses on situations in which people's personal safety is dependent on third parties, such as the government or companies. In certain cases the Board is under an obligation to carry out an investigation. Its investigations do not address issues of blame or liability.

Dutch Safety Board

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N.B. The full report is published in the Dutch language. If there is a difference in interpretation between the Dutch report and English summary, the Dutch text wil prevail.

CONTENT

Forensic care in the Netherlands

An important value within our rule of law is that perpetrators of crimes get the opportunity to be useful members of society after serving their sentence. The unavoidable consequence, however, is that among these returning criminals there are persons that still constitute a threat to their fellow citizens. This is why the Netherlands has developed an extensive system of forensic care whose most important goal is to protect society from repeat offenders.

Forensic care has two components: suitable treatment of the detainee and the corresponding security that is needed. This combination is most visible under a tbs-regime, a specific form of forensic care in the Netherlands. Within the tbs-regime, the detainee cannot be released as long as experts consider that the risk of repeat offences is still too high. Other forms of forensic care (together called OFZ) do not include the possibility to keep extending the detention period, so the end of detention usually means the end of care. In this OFZ it is therefore important to reduce a detainee's risk of reoffending as much as possible before he returns to society.

After a period of detention the sex offender Michael P received forensic care for over four years, first at the Penitentiary psychiatric centre (Penitentiair Psychiatrisch Centrum, PPC), a closed establishment that is part of the prison (Penitentiaire Inrichting, PI) in Vught, and later at the Forensic psychiatric unit (Forensisch Psychiatrische Afdeling, FPA) in Den Dolder, where he underwent a resocialization programme. On the basis of this case the Safety Board has formed a picture of how the other forensic care system works.

The Board found that the investigated facilities had a culture heavily oriented towards care. When the concerned person is admitted into forensic care, his title changes from *prisoner* to *patient*, and he is treated accordingly. There is full attention for his mental well-being, and the practitioners and counsellors do everything they can to improve it. In this respect, forensic care displays a strong similarity to regular mental healthcare services (ggz). The Board is impressed by the degree of engagement of the facilities' staff, who want nothing more than to surround their patients with good care. They give their very best to this work, but have to deal with a complex practice and the permanent dilemma between the trust that is needed for a good treatment relationship and the professional suspicion needed to recognize risk signals. What these efforts yield is not always visible to the outside world. Societal appreciation for the work is accordingly modest, whereas incidents related to forensic care do attract full attention.

Risk assessment and taxation

When placing a detainee in a care facility, the law requires '*an unhindered enforcement of custody*' as precondition. The prevailing care culture of forensic facilities like those in the FPA, however, does not fit well with security tasks. Staff at these facilities are there for their patients, to guide them back to society with good care, not to separate them from it. Or, as a caregiver expressed to the researchers: 'the word "punish" is not in our vocabulary'.

Because of the strong emphasis on providing care to the patient, the other component of forensic care – limiting the risks patients pose – is not really on the radar. The Board has determined that during the long stay of Michael P in forensic care facilities, at no moment whatsoever was insight obtained into the risk of him committing another sex offence. This applies to the FPA in Den Dolder, which had already started a leave programme before meeting the person, as well as for the PPC in Vught, where an early estimate of the risk of reoffending could have offered the possibility to modify a long-term care programme. That estimate was never made. Sex crimes risk taxation instruments were not used, neither in Vught nor in Den Dolder. Although opinions vary within the sector about the link between instrumental taxations and professional estimates, these instruments were available and should have been used. A sex crimes risk taxation was included in the treatment plan of the FPA in Den Dolder but was not implemented in practice. As a consequence, the sex offences of Michael P remained completely out of the picture.

Responsibilities

The resocialization of Michael P was put in place by the FPA in Den Dolder, but officials from the Ministry of Justice and Security made the decisions remotely. That was in the first place the director of the PI in Vught, who appears to be the party responsible for execution of sentences and granting of freedoms. In reality that responsibility has little meaning, because the PI director in turn depends on a selection official of the Individual cases division (Divisie Individuele Zaken, DIZ) who decides on behalf of the Minister for Legal Protection. Neither the selection official nor the PI director could involve the risk factors in their considerations because they had not received any information about it from the FPA. The FPA only released scanty behavioural reports to the PI, without indications of potential risks. In turn, the PI and DIZ were satisfied with this information. The responsible officials of the PI and DIZ decided to grant freedoms to Michael P without any knowledge of potential safety risks ensuing from this decision. The Public Prosecutor's Office (OM) and the Probation Service were – wrongly – not involved in the decision-making process about freedoms.

The Ministry of Justice and Security has designed a complex decision-making system for other forensic care. However, the official agencies in that system are at too great a distance from the mental health facilities to be able to monitor the judicial component of the forensic care. The decision-makers are not behavioural experts and do not get to meet the persons over whose freedoms they must decide. Without having adequate information available it is impossible for them to distinguish high-risk cases from the large flow of cases they have to review every day. This has turned the decision-making about freedom programmes into a routine administrative procedure instead of a thoroughly weighed process that does justice to the purpose of forensic care: protecting society against repeat offenders. The case of Michael P, who took his first steps into freedom without there being any notion of the degree to which that was responsible, is illustrative of the lack of perspective on high-risk cases within the system of other forensic care.

Information exchange

The care-oriented culture in forensic care entails a reticence to release patient information. Legal limitations such as doctor-patient confidentiality and privacy legislation play a role in this process, but the Board has also observed that the agencies loosely filter information. When relocating Michael P from the PPC in Vught to the FPA in Den Dolder, a one-sided favourable picture was sketched about his behaviour during his years at the PPC. Information about various incidents that this 'model patient' (according to the PI) caused in Vught was only released to the FPA after it had accepted admitting Michael P.

In this case it even appears that the concerned person was enabled to restrict the information transfer. The PPC Vught worked for a year on a criminal offence analysis of Michael P, but after he was moved to Den Dolder only part of it was transferred to the FPA. According to the PI, the reason was that Michael P did not give authorization for a full transfer. The FPA was consequently deprived of crucial information about the risk profile of the concerned person. The Board recognizes that a detainee can also claim rights to privacy, but deems it unacceptable that a weighty safety consideration, as is the case here, is made subordinate to such claim. In this case, advance authorization for full information transfer should had been set as a condition for transitioning to the lighter detention regime of the FPA.

Reticence to provide information is also noticeable from the outgoing side of the forensic agency. For the last eight years, the so-called BIJ-regulation has enabled Dutch municipalities to obtain information from the Minister of Justice and Security about leaves or returns of perpetrators of serious violent and sex crimes. After receiving a BIJ-notification, municipalities have to make quick efforts to collect information about the status and risk profile of the approaching detainee/ex-detainee. Besides the police, the Public Prosecutor's Office and the Probation Service, also a forensic institution can provide relevant information about a returning offender, but it seems to the Board that it is in fact the forensic institution that is often apprehensive about sharing information with public authorities. Care for the patient, his privacy and the treatment relationship prevail over the interest of public order and safety here. The Board deems this unacceptable and urges parties, preferably under the umbrella of the Safety House, to have closer communications and timely share all the information that is needed to ensure that the resocialization process runs its course safely. Apprehension and hesitation must make place for openness.

Final words

A criminal who goes to prison as a dangerous person can also come out of prison as a dangerous person. The parties involved in forensic care, the care facilities, the Probation Service and the local government offer no guarantee of removing that danger. It is, however, their societal task to jointly do whatever is possible to minimize the chances of dangerous individuals victimizing others again. That does not require dramatic measures such as expanding the tbs, it requires instead a fundamentally different way of working that brings the essence of forensic care into practice – a combination of care and security. Working with an awareness of risk under clear responsibilities must bring safety into the processes of resocialization and conditional release. To this end, it is necessary to identify high-risk cases of repeat offences using validated, broad-based risk taxation instruments and subsequently adapt care programmes, freedom programmes, security and supervision accordingly. By changing detention regimes and in a phased or non-phased return to society, sharing information about the person is crucial, especially when it comes to identified risks. After all, shared knowledge of the risks is necessary for all the involved parties in order to jointly be able to work on a safe return of criminals to our society.

SUMMARY

Background of the investigation
Starting on 29 September 2017, the disappearance and death of Anne Faber dominated the news in the Dutch media for weeks on end. The societal unrest built up in Den Dolder, in the Zeist municipality, after the Public Prosecutor's Office announced on 12 October that Anne had been raped and killed by one of the residents of a local forensic psychiatric clinic. The mayor of Zeist requested an investigation by the Safety Board, asking how the presence of a forensic institution affects the safety of its surroundings.

The Safety Board took up the mayor's request and focused the investigation on how forensic care prepares perpetrators of serious violent and sex crimes for their return to society and how local authorities are involved in this return.

The Dutch forensic care system
Forensic care is mental health care that is part of a judicial sentence or measure. Its most important goal is to prevent repeat offences. Because forensic care has two components – care and safety – that can each vary in intensity, the forensic care system has several modalities. The most well-known is tbs, a form of psychiatric detention with involuntary treatment, and distinguishes itself from the other types because a psychiatric detention measure can be extended as long as experts consider the concerned person as too dangerous to be released. The other modalities, which do not have this option, fall under the collective term 'other forensic care' (OFZ).

In 2017 the person that killed Anne Faber was in Den Dolder under treatment at a Forensic psychiatric unit (FPA), one such type of other forensic care. The Safety Board examined this case to get a picture of how other forensic care works in practice.

The Michael P case
Michael P is a sex offender convicted to a long prison sentence, and admitted in July 2013 to other forensic care. He stayed for 3½ years at the Penitentiary psychiatric centre (Penitentiair Psychiatrisch Centrum, PPC) of the prison (Penitentiaire Inrichting, PI) in Vught. In January 2017, Michael P was relocated from the PI in Vught to the FPA in Den Dolder. Michael P underwent a resocialization programme there, in preparation for his planned release in June 2018. The stay of Michael P in Den Dolder came to an abrupt end when the police arrested him on 9 October 2017 on suspicion of involvement in the disappearance of Anne Faber.

When Michael P was admitted to the PPC in Vught, the facility did not place him under treatment for sex crimes. Even later, neither diagnoses nor risk taxations redirected the treatment towards reduction of repeat offences. In the last year of Michael P's stay in Vught the PPC did work on a criminal offence analysis that provided greater insight into his risk profile, but because its completion overlapped with the relocation to Den Dolder his treatment was not modified.

When Michael P was relocated to the FPA in Den Dolder, the PPC transferred limited and rather inadequate information, both to the FPA and to the Netherlands institute for forensic psychiatry and psychology (Nederlands instituut voor forensische psychiatrie en psychologie, NIFP), which set up an indication for purposes of the planned relocation. The indication did not refer to sex crime matters or to information from the criminal offence analysis prepared in Vught. This analysis, the only document that sheds light on the risk profile of Michael P, was only conveyed partially to the FPA, partly because Michael P did not give authorization for a full transfer.

Because of the sparse transfer of file information to the FPA in Den Dolder, Michael P's risk profile sank further below the radar than it already was in Vught. The FPA immediately started a resocialization programme that planned a gradual series of steps for leaves ('freedoms'), but did not precede this with research to get a picture of Michael P's risk of reoffending.

Because the legal provision based on which Michael P was relocated is in fact not intended for resocialization programmes, it did not anticipate involving probation officials to supervise it. The Public Prosecutor's Office, which should have made recommendations about Michael P's freedoms, was not involved in the decision-making process. This is how Michael P, already shortly after arriving in Den Dolder, was circulating freely outside the clinic, without external supervision and without a preceding estimate having been made about the extent to which he could constitute a danger for the surroundings.

The effect of other forensic care

The Ministry of Justice has set up a system to decide on the placement of detainees in forensic care and on the allocation of freedoms. The NIFP makes an indication for a detainee that needs care. Based on the established care and safety needs, an official from the Individual cases division (Divisie Individuele Zaken, DIZ) selects a suitable forensic facility. If the detainee is relocated from a PI to a forensic care facility, as was the case with Michael P, the director of the PI retains remote responsibility for the execution of the sentence. The facility presents recommendations for the granting of freedoms. In turn, the PI director makes a recommendation to the DIZ selection official, who ultimately decides about freedoms on behalf of the Minister.

Relocating detainees to forensic facilities creates a distance between them and the agencies that decide about them. There is a lack of direct contacts. File information, which is indispensable to retain a perspective on detainees' risk profile, are hardly or selectively exchanged – if at all – between the PI and the care facility. When requesting freedoms, the responsible PI director and the DIZ selection official are not provided with current risk information that they could involve in their considerations either. Conversely, they do not set any demands to the forensic facilities to produce professional estimates and instrumental taxations of risks. Instruments to measure specific risks of repeat offences are available, but due to a lack of coordination there is no consensus about one single suitable set of tools or about how these tools should be implemented in practice. In this situation it can happen that high-risk cases are not recognized as such, and that freedoms are granted without there being a perspective of the danger that it creates for public safety.

Involvement of local authorities in resocialization and return of criminals

The Zeist municipality was not informed about the fact that Michael P could be circulating freely through the community, outside the clinic. This was caused by an administrative mistake of the Judicial facilities service (Dienst Justitiële Inrichtingen, DJI).

The case makes it clear that communications between the facility and the local government had been awkward and that the municipality was hardly informed about the risk profile of patients being treated there.

The BIJ-regulation, which provides information to the public administration about returning detainees, was implemented in the Netherlands in 2011. If a municipality becomes affiliated with this regulation, a 'BIJ-notification' informs the mayor of the return of a detainee/ex-detainee or of the arrival of a detainee that could be at the municipality during his first leave. The mayor can then estimate whether the arrival of the detainee/ex-detainee could cause unrest or disturb the public order and, if necessary, take measures to prevent such unrest or disturbance of the public order.

The Board has investigated the functioning of the BIJ-regulation with a survey among all 319 municipalities affiliated with the regulation. The BIJ-regulation appears to meet a general need. Every year about one thousand BIJ-notifications go to municipalities, followed by an intervention in 60 to 90 cases. Issues do present themselves though: municipalities often get the BIJ-notifications too late, so there isn't enough time to gather information and put measures in place. Municipalities also need additional information in the BIJ-notification, especially when it involves high-risk cases, and experience obstacles due to strict rules for exchange of personal data between the involved parties.

To take precautionary measures when high-risk criminals return, the municipality can make a recommendation to the Public Prosecutor's Office to set special conditions to convicts that have been conditionally released, such as restraining orders, electronic surveillance and involuntary clinical or outpatient care. It appears that not all municipalities are aware of these possibilities.

Safety Houses play an increasingly important role in the exchange of information about returning criminals. Safety Houses are a regional collaboration between municipalities, probation officials, the Public Prosecutor's Office, the police, ggz (mental health care facilities) and forensic facilities. Through a multidisciplinary and individually-oriented approach a Safety House can uniquely focus on complex problems where care and safety intersect.

RECOMMENDATIONS

The Safety Board has observed deficiencies in the way perpetrators of serious violent and sex crimes are prepared for a safe and responsible return from other forensic care back to society. To eliminate these deficiencies, improvements are needed in risk assessment, division of responsibilities and information exchange.

The sanctions and protection legislation that is now being prepared can contribute to this, but does not have enough reach to eliminate the deficiencies observed by the Board.

The Board expects all the involved parties (the Judicial facilities service (Dienst Justitiële Inrichtingen), forensic care facilities, the Public Prosecutor's Office, Probation Service, municipalities and the police) to jointly use the findings and conclusions from this report to accomplish the required turnaround in thinking and acting. It is up to the Minister for Legal Protection to take the lead in accomplishing an overarching and joint approach, and to ensure the necessary prerequisites.

The Safety Board recommends the following to the Minister for Legal Protection:

Enhance the focus on risk of repeat offences

1. Enhance the focus on public safety in the treatment of high-risk patients in other forensic care by:
   a. developing a broad-based, target group-oriented and validated set of tools for risk taxation;
   b. using the already available validated instruments for risk taxation until such time;
   c. periodically charting the risk profile (nature and scope) for repeat offences using such risk taxation;
   d. coordinating the treatment and guidance with the risk profile; and
   e. using testing criteria when granting freedoms that – given the risks posed by the criminal – take public safety into account.

Align responsibilities with common goal

2. Reassess the tasks and responsibilities of all the involved parties for their contribution to the common goal: the safe and responsible return process from other forensic care of criminals with a high risk of reoffending. Adjust these tasks and responsibilities as needed.

3. Do not grant freedoms to criminals at a high risk of reoffending without providing adequate supervision. To this end, provide clarity about the interpretation and application of articles 15.5 and 43.3 of the Custodial Institutions Act (Penitentiaire beginselenwet).

Improve the conveyance of information

4. Improve the continuity of care and safety by transferring all the information relevant for meeting the responsibility of the receiving party before relocating detainees from a PI to other forensic care. Risk taxations, court reports, behavioural reports and medication prescriptions of the person concerned should be considered in any event. A precondition for the voluntary relocation of the detainee to a different regime and when transitioning from detention to conditional release (v.i.) should be his agreement to the transfer of all relevant information.

5. Strengthen the information position of municipalities by modifying the BIJ-regulation and improving its implementation:
   a. Make the BIJ-regulation compulsory for all municipalities.
   b. Improve the timing, reliability and completeness of the BIJ-notifications, also with respect to risk-related information.
   c. Improve coordination of the content of the BIJ-notifications to the needs of the municipalities.

6. Legally regulate the exchange of data between municipalities, judicial institutions, forensic institutions and other relevant parties to give municipalities better control of criminals' resocialization risks.

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