



Victim's rights and interests during long term supervision

The balancing of victim's rights and
interests against those
of the perpetrator

Summary

Cahier 2026-5

S.A.A. van 't Klooster
M.H. Nagtegaal

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Summary

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Background

The overarching aim of this study is to examine the rights, protection needs, and interests of victims and bereaved relatives during the final phase of sentence enforcement, and how these are weighed against the rights and interests of the offender. More specifically, the study focuses on conditional release (CR), the conditional release of forensic psychiatric patients (FPCR), and the measure of behavioural influence and limitation of freedom (MBI). Under these modalities, the offender lives in the community while being subjected to conditions and probation supervision, as part of a back-door supervision program. Central to this research are the changes introduced by the Long-Term Supervision, Behavioural Control and Restriction of Freedom of Movement Act (LTSA; *Wet langdurig toezicht, gedragsbeïnvloeding en vrijheidsbeperking*; hereinafter: LTSA modalities). These changes make it possible to supervise offenders for an extended period of time, potentially for life, if the offender continues to pose a risk (see further below). The LTSA entered into force in two phases, on 1 January 2017 and 1 January 2018.

The present study stems from two parliamentary motions concerning victims and bereaved relatives that were submitted and adopted during the LTSA's legislative process. In 2017, Members of Parliament Van Oosten, Van Toorenburg, and Groothuizen call on the government to thoroughly examine, as part of the LTSA evaluation, how to balance the offender's right to a family life and the rights and wishes of victims. In 2014, Members Van der Steur and Recourt requested the government to ensure that, in organising supervision, victims are consulted by the Public Prosecution Office about their wishes for the design of that supervision, if they so desire. The first motion is addressed in the current evaluation; there has been no insight into the second motion due to the ongoing transfer of tasks from the public prosecutor's office (more specifically Detention Progress Information Point; *Informatiepunt Dententieverloop*) to the minister Central Judicial Collection Agency [CJCA]; *Centraal Justitieel Incassobureau*). These motions were incorporated into the research programme for the LTSA evaluation; the present study forms part of that programme. The Dutch Research and Data Centre (WODC) conducted the study and formulated three research objectives:

- 1 Map and analyse the protection needs of victims and bereaved relatives in the enforcement of long-term supervision as it applies to the LTSA population;
- 2 Map and analyse the rights and interests of victims, bereaved relatives, and offenders in the enforcement of long-term supervision as it applies to the LTSA population;
- 3 Determine how the balancing of rights, interests, and protection needs of victims, bereaved relatives, and offenders is currently shaped in legal practice during the enforcement of long-term supervision for the LTSA population.

These objectives were addressed through six research questions:

- 1 What protection needs do victims and bereaved relatives have during the implementation of long-term supervision under the LTSA?
 - a What types of protection needs are there?
 - b Which aspects of the offender's life/behaviour do these protection needs concern?
 - c Are these protection needs legally and practically feasible?
- 2 Which factors are associated with the protection needs, such as the index offence and other criminal justice dispositions (e.g., Article 38v Dutch Criminal Code [DCC])?
- 3 Which parties, for example, the probation service, the Public Prosecution Office, and the defence, comment on protection needs and when are they involved in the inventory/advice on protection needs?
- 4 What rights and interests do victims, bereaved relatives, and offenders have during the implementation of long-term supervision as it applies to the LTSA population?
 - a Which rights and interests follow from the changes brought about by the LTSA?
 - b Which rights and interests derive from other applicable legal bases, such as human rights?
- 5 How is the balancing of rights, interests, and needs of victims, bereaved relatives, and offenders currently carried out in legal practice during the implementation of long-term supervision for the LTSA population, and which arguments of the involved parties are considered in these decisions?
- 6 Do rights and interests of victims, bereaved relatives, and offenders conflict?
 - a If so, are there sufficient safeguards?
 - b If not, what can be improved?

The answers to these questions are briefly set out below. Further elaboration can be found in the relevant chapters.

Research methods

Multiple research methods were used. To identify which (human) rights of victims, bereaved relatives, and offenders play a role in the enforcement phase of an LTSA modality, an analysis of legislation and case law was carried out, supplemented and clarified by several academic articles and reference works. Relevant judgments of the European Court of Human Rights (ECtHR) were found using hudoc.echr.coe.int, searching on keywords such as "contact ban" and "location ban." Several scholarly articles and reference works were used to supplement and clarify. To assess the interests and (protection) needs of victims and bereaved relatives, interviews were conducted with 13 participants: 6 bereaved relatives, 4 victims' counsellors, and 3 staff members of Victim Support Netherlands (VSN; *Slachtofferhulp Nederland*). The case managers and victim lawyers all have extensive experience representing multiple victims and bereaved relatives. The chair of the FNG spoke from her own experience as well as from the experiences of other bereaved relatives. All bereaved interviewees have had to deal with an offender who was released under conditions. Although for some the offence occurred some time ago, their situation under a LTSA modality has played out recently or is still ongoing in 2026, allowing them to speak to their current experiences.

To determine how the balancing between the interests of victims, bereaved relatives, and offenders is made in legal practice, two staff members of the Central Facility for Conditional Release (CFCR; *Centrale Voorziening voorwaardelijke invrijheidstelling*), were interviewed, and FPCR decisions and MBI-imposition decisions of district courts and courts of appeal were analysed.

Results

LTSA amendments and consideration of victims' interests

Special conditions can be attached to all three LTSA modalities to place the convicted person under supervision. Since the LTSA's introduction, that supervision can potentially last a lifetime. In the enforcement of the three LTSA modalities there is a margin, and in all cases a statutory obligation, to weigh the interests of victims and bereaved relatives against those of the offender. For CR and FPCR this statutory obligation does not derive from the LTSA itself; it already existed or has been implemented through recent legislation. Because the MBI is a new measure introduced by the LTSA, the victim-related provisions for that modality do derive from the LTSA.

With the LTSA, the probation period under CR was set at one year and extension options were introduced. In deciding on granting CR and on attaching conditions, the interests of victims and bereaved relatives are explicitly included in statute as circumstances that need to be considered (Article 6:2:10 of the Code of Criminal Procedure, DCCP). This balancing requirement was introduced by the Act on Punishment and Protection (APP; *Wet straffen en beschermen*), although victims' interests were already implicitly considered in CR decisions before the APP was implemented. Whether the offender may start CR and under what conditions can thus be influenced by the interests of victims and bereaved relatives. An offender may be denied CR if doing so would prevent serious harm to the interests of victims and bereaved relatives. Any extension of the probationary period attached to CR can similarly be motivated, in part, by the interests of victims and bereaved relatives; for example, where there is a fear of seriously burdensome behaviour towards them.

With the LTSA's introduction, FPCR can be extended repeatedly and the former maximum period of nine years has been abolished. When a TBS patient (a forensic psychiatric patient, *terbeschikkingstelling*) is placed on FPCR, the interests of victims and bereaved relatives are considered through completion of the 'Victim Box': the outcome of a victim assessment including the analysis of consequences and any (safety) risks for victims and bereaved relatives. This Victim Box is completed by the TBS clinic. It examines the likelihood of a confrontation with the victim, the relationship with the victim at the time of the index offence and at the time of FPCR (if applicable), and other sensitivities. In this way, the interests of victims and bereaved relatives are considered in the FPCR decision, though those interests pertain more to the design of FPCR and the conditions attached than to the decision of whether or not FPCR may be granted. With the introduction of the Act on Expanding Victims' Rights (AEVR; *Wet uitbreiding slachtofferrechten*), victims and bereaved relatives have been granted a limited right to address the court at the hearing where FPCR is considered, to explain their protection needs (Article 6:6:13(4) DCCP). This limited right is confined to conditions that directly affect the interests of the victim.

The LTSA introduced the MBI, a measure which needs to be imposed during sentencing and requires an additional judicial verdict to enforce. The statutory text contains no explicit attention for victims and bereaved relatives at the time of MBI imposition (although a general danger criterion applies: for the protection of the safety of others, or the general safety of persons or goods), but such attention is required at enforcement and extension of the measure (Articles 6:6:23b and 6:6:23c DCCP, respectively). This does not mean that the interests of victims and bereaved relatives cannot be weighed when deciding to impose a MBI.

Human rights and legislation

Various human rights may influence the balancing of the interests of victims, bereaved relatives, and offenders under long-term supervision. Over time, victims and bereaved relatives have acquired more rights during and after the criminal process (see Articles 51a–51h DCCP). In addition, victims and bereaved relatives may expect the State to act proactively where their human rights are at risk due to the offender's conduct. The State has such a positive obligation where there is a real and imminent risk to the life of an identified individual and the authorities knew or ought to have known of such a risk. The State must then take reasonable steps to avert that risk as it relates to the right to life (Article 2 European Convention on Human Rights and Fundamental Freedoms [ECHR]), the prohibition of torture and inhuman or degrading treatment (Article 3 ECHR), and the right to private life (including physical and psychological integrity; Article 8 ECHR).

Various offender rights may constrain the content of special conditions: the right to private life (Article 8 ECHR), the right to liberty (Article 5 ECHR), and the right to freedom of movement (Article 2 of Protocol No. 4 to the ECHR) are particularly relevant to special conditions under long-term supervision. All special conditions that may be attached to the LTSA modalities have been assessed against these human rights, even where they are very unlikely to create friction with the rights of others, in particular the rights of victims and bereaved relatives. Special conditions that can create friction between the rights of victims/bereaved and offenders include: a contact prohibition, a location prohibition, an area ban, a prohibition on volunteer work, an obligation to move residence, a settlement ban, and potentially any other condition regarding the offender's behaviour. For example, imposing a contact prohibition between two family members may be both prompted by a positive obligation to protect the victim and also an interference (though not a violation) with the offender's right to family life.

Respecting the human rights of convicted persons is a rule-of-law principle that the Dutch State must uphold. When imposing special conditions that may interfere with the offender's right to private life and/or freedom of movement, the authorities must assess whether the interference is necessary in a democratic society, incorporating the requirements of proportionality and subsidiarity. In such cases there is an interference with a human right, but not necessarily a violation. Special conditions that may entail a deprivation of liberty, such as compulsory placement in a clinic, must meet stricter standards. Article 5 ECHR can apply to LTSA modalities in two ways: detention after a criminal conviction (Article 5(1)(a) ECHR) and/or detention of persons of unsound mind (Article 5(1)(e) ECHR). Three minimum requirements flow from Article 5(1)(e) ECHR for the detention of persons with a mental disorder: (1) the mental disorder must be reliably established by a competent authority on the basis of medical expertise, (2) the nature or degree of the mental disorder must warrant compulsory

confinement, and (3) the lawfulness of continued confinement depends on the persistence of the disorder. There is no ready-made answer to whether a particular special condition might violate human rights law; it will always depend on the facts and circumstances of the case at hand.

Protection needs and interests of victims and bereaved relatives

The results show that victims and bereaved relatives typically have protection needs in the enforcement phase of a sentence and/or measure, perhaps especially so in this phase. They may also have other needs and interests that are more indirectly related to protection.

Several procedural factors may play a role, according to the respondents. Support from VSN, victims' counsel, and the Public Prosecution Office is less self-evident in the enforcement phase than in the sentencing phase. Victims and bereaved relatives can obtain support, but often must seek it proactively, according to the bereaved relatives. They must also finance legal assistance from victims' counsel themselves; VSN support is always free. This may hinder communicating protection needs adequately, according to victim lawyers. Moreover, communication with victims and bereaved relatives from the Public Prosecution Office and the CJCA generally needs improvement according to all respondents. A fixed point of contact for victims and bereaved relatives with the Victim Information Point (VIP; *Slachtoffer Informatiepunt*), a unit under the CJCA, as well as with the TBS clinic, could help. Feedback about the protective measures imposed could already make a significant difference. It was also suggested that a system in which people first receive a notice that information is available, which they can then view at a time of their choosing, similar to the government's messages portal, could help. This allows for personalised messaging, which can also be useful where multiple bereaved relatives (a mother, a sister, a partner) have different views about protection needs and receiving information. Victims' counsel and VSN staff also called attention to restorative mediation and how it may contribute to recovery for victims and bereaved relatives and thereby indirectly affect their protection needs.

Every victim and bereaved relative is different and has different interests and protection needs, according to victim lawyers, VSN staff, and the CFCR. Multiple factors may influence protection needs, divided into victim factors and offence factors. Victim factors include the personality of the victim, the impact of the offence on the victim and their coping mechanisms, and underlying interests and emotions such as fear, anger, letting go, and regaining control of their own lives. Offence factors relate to the index offence, including whether the offence was directed at the victim specifically or at a random victim, what type of offence it was, and its nature and severity. The relationship with the offender plays a role across these factors. For instance, where the offender is known to the victim and knows everything about them, a victim may have fewer protection needs because they feel better able to assess the offender and assume he will not reoffend.

For location bans and contact bans, specific needs and interests emerged. According to respondents, location bans for victims and bereaved relatives primarily aim to prevent a confrontation with the offender. A location ban may be desirable for the home environment, as well as other important places, such as the victim's gravesite or the workplace. Bereaved relatives report that changes in circumstances, such as moving house, can cause unrest. Whether to disclose a new address depends on the victim's or bereaved relative's situation. Disclosure may be undesirable even while it may be

useful for protection. Requesting a contact ban generally raises fewer problems because less information is disclosed to the offender. According to victims' counsel and VSN staff, virtually all victims and bereaved relatives desire a contact ban.

Some needs and interests emerged that do not directly concern the imposition of special conditions, but these needs may affect them. All respondents indicated that victims and bereaved relatives primarily need timely, concrete, and accurate information. Having the right information at the right time can remove much uncertainty and unrest, enabling victims and bereaved relatives to regain control and articulate their protection needs. According to bereaved relatives, there is significant room for improvement in information provision. The information they receive lacks clarity in substance, the tone is perceived as cold, and it contains errors. They are also not presented with all available options, such as a meeting with the public prosecutor before a TBS extension hearing, and they have no right to all the information they would like, such as whether the offender's treatment is effective. Improving information provision could mean a great deal for victims and bereaved relatives. They also emphasise the importance of recovery and what is needed for that. Better support across all life domains, such as finances and work life, preferably concentrated in one place, could help the recovery of victims and bereaved relatives.

Balancing of interests in legal practice

Whether protection needs can be honoured, and whether the balancing of interests comes out in favour of victims and bereaved relatives, often depends on offender factors: the offender's resocialisation interests and the right to private and family life. The protection needs of victims and bereaved relatives and these offender interests can particularly come into friction where victims/bereaved relatives and the offender live in the same area or have (familial) ties. How to balance the rights, protection needs and interests will always depend on the circumstances of the case at hand.

Conditional release

In balancing between victims, bereaved relatives, and the offender in CR cases, the CFCR plays a key role. The CFCR aims for tailored decisions to accommodate both the interests of victims and bereaved relatives and those of offenders; there is no standard framework or decision model. If no protection needs of victims and bereaved relatives are known, conditions to that effect are not imposed, according to CFCR staff. A limitation of this approach is that some needs remain unknown, e.g., because victims/bereaved did not respond in time or were not consulted, resulting in the absence of protective conditions in those cases. Where conditions are imposed, they must be proportionate to the offence and the offender's dangerousness. That assessment may evolve as CR continues over time. Subsidiarity (using the least intrusive means to achieve the aim) also plays an important part in imposing conditions, respondents noted.

CFCR staff identified various factors that may influence the balancing exercise, largely consistent with the needs identified earlier. These are grouped into victim factors, offence factors, and offender factors. Victim factors, including the person of the victim and underlying emotions, can influence the balance — for example, fear may carry significant weight. Offence factors such as the type and seriousness of the offence also play a role; less intrusive conditions are imposed for less serious offences, as noted by respondents. Offender factors such as the offender's intent, their own safety, the resocialisation principle (the principle that an offender should reintegrate in his

previous personal sphere), and the right to private life can influence the balance. All these factors interact and are considered together by the CFCR to reach a well-balanced decision. A key principle is that decisions must be tailored to the case.

Conditional release of forensic psychiatric patients

In the FPCR decisions examined, a special condition directly affecting victims and bereaved relatives was imposed in 11 cases. The balance thus likely came out in favour of victims and bereaved relatives in those cases. Due to a lack of reasoning in the judgments, the researchers could not determine how the balancing was carried out. In the vast majority of cases, a condition that can indirectly be protective was imposed (for example, the conditions that the offender is required to ask for permission to move house, was imposed in 38 of 46 cases). As noted in the introduction, the fact that conditions are not mentioned in the judgment, does not necessarily mean that victims and bereaved relatives (through probation services or the prosecution) expressed no need for protective measures, or that judges ignored their interests. What can be concluded is that it is not stated in the judgment.

The researchers expect that, with the introduction of the limited right for victims and bereaved relatives to address the court at the hearing where FPCR is considered as of 1 January 2025, more attention will be paid to their protection needs in FPCR decisions after that date, because there is a clear moment during the hearing at which they may speak about their protection needs and judges can refer to it in their decisions.

Behaviour-influencing and liberty-restricting measure

By studying MBI-imposition decisions, the researchers examined how the balancing of interests and needs of victims, bereaved relatives, and offenders is currently made in legal practice in MBI cases, and which arguments by the parties are considered. In 7 of 50 cases, probation services commented on protective conditions for victims and bereaved relatives, in the form of contact and/or location bans. In 3 cases, the prosecution and the victims' interests they invoked are mentioned. The defence, understandably, rarely comments on victims and bereaved relatives, in 5 out of 50 cases.

In 5 of 50 cases, the reasoning for imposing the MBI is directly linked to protecting victims and bereaved relatives. Because this direct link does not occur very often, the researchers also mapped the sanctioning reasoning behind the sentences combined with the MBI. It can therefore not be determined whether these arguments pertain specifically to the MBI or to combined sanctions that are imposed, but it is hypothesized that they apply accordingly. It shows that judges generally weigh various interests of victims and bereaved relatives against the offender's behaviour and/or circumstances, and/or the case's features, when determining sanctions. These include: the impact of the offence on the victim, certain victim characteristics such as vulnerability, susceptibility, dependency, and age, the degree of interference with physical and/or mental integrity, interference with the right to life, the location of the crime scene, the impact on the legal order as a whole, and negative offender behaviour, including failure to take responsibility, self-centredness (sexual, financial, etc.), calculated behaviour, and committing a sadistic offence.

The analysis further shows that judges' balancing of victims' and offenders' needs and interests when imposing the MBI (and other sanctions) is often structured as follows: due to the defendant's behaviour, a right and/or interest of the victim was infringed. The consequences of that infringement are for the defendant's account (and after

conviction: the offender's). It remains to be seen whether these or other factors will also apply to the enforcement stage of the MBI, where special measures can be imposed to protect victims and bereaved relatives. It is expected that the more victims' needs and interests featured at the imposition stage, the more they will also be invoked at the enforcement stage as grounds for enforcing the MBI. For example, a location ban for the victim's hometown may be considered if the offence took place at the victim's home. Or, due to the victim's heightened vulnerability, there may be a greater need to impose multiple special conditions to protect the victim. Bereaved relatives may also have protection needs because of the harm they suffered and due to fear of the offender. These needs can in principle be accommodated, provided the offender's human rights and the resocialisation principle are respected in the balancing.

Conclusions, identified bottlenecks, and recommendations

Conclusions

The overarching aim of the present study is to examine the rights, protection needs, and interests of victims and bereaved relatives during the final phase of sentence enforcement and how these are weighed against the rights and interests of the offender. Based on the results, the researchers reach the following conclusions:

- 1 The LTSA's changes to CR and FPCR concern possibilities to extend these modalities during the enforcement phase. The LTSA did not itself introduce victim-related provisions for CR and FPCR in these areas; those follow from other statutes (APP and AEVR). In introducing the MBI, the LTSA included victims' rights and interests in the imposition, enforcement, and extension stages. As a result, victim interests are connected with all Wlt modalities. Through special conditions that may be attached to CR, FPCR, and the MBI, the balancing between victims, bereaved relatives, and the offender can take shape in supervision practice.
- 2 During the enforcement phase, victims and bereaved relatives have the following rights: the limited right to address the court in FPCR proceedings (introduced by the APP, article 6:6:13(4) DCCP), the right to respectful treatment (Article 51aa DCCP), and the right to information (in accordance with Article 51ab DCCP). They may also benefit from protection under the right to life (Article 2 ECHR), the prohibition of torture and inhuman or degrading treatment (Article 3 ECHR), and the right to private life (Article 8 ECHR). In certain situations, the State has a positive obligation to protect victims and bereaved relatives on the basis of these rights.
- 3 Offender rights, such as the right to liberty and security (Article 5 ECHR), the right to freedom of movement (Article 2 of Protocol No. 4 to the ECHR), and the right to private and family life (Article 8 ECHR), together with proportionality and subsidiarity, limit the imposition, duration, and scope of special conditions under the LTSA modalities. Conversely, positive obligations under the ECHR may require the Dutch State to take preventive measures to protect victims and bereaved relatives, resulting in potential friction between these duties, for example with a contact ban or a location ban.
- 4 The primary procedural need of victims and bereaved relatives is to receive accurate, concrete, and timely information; yet this need is often insufficiently met. Accurate, concrete, and timely information enables victims and bereaved relatives to know where they stand, reducing protection needs.

- 5 Victims and bereaved relatives themselves must communicate their protection needs. These wishes then serve as a starting point for imposing protective measures in the context of CR. A limitation of this approach is that some needs remain unknown, e.g., if responses are not timely or no inquiry is made, so protective conditions are not imposed in those cases. Within the scope of this study, information was unavailable on the inquisition of protection needs for the FPCR and MBI. Informing (and consulting) of victims in cases in which an MBI is involved, is not a task of the Information point detention.
- 6 A number of victim and offence factors may influence victims' and bereaved relatives' protection needs in the enforcement phase. Victim factors include the personality of the victim, the impact of the offence, their coping mechanisms, and underlying interests and emotions such as fear, anger, letting go, and regaining control of their own lives. Offence factors concern the index offence, including whether it targeted the victim specifically or a random victim, the type of offence, and its nature and severity.
- 7 The interests underlying protection needs vary and differ per person. At least the following interests emerged: avoiding confrontation with the offender, regaining control over one's life, preventing fear and uncertainty, having peace of mind, safeguarding privacy, and being seen and heard.
- 8 The balancing of rights, interests, and protective measures for victims, bereaved relatives, and offenders cannot be captured in a single legal rule. Some principles were identified: proportionality, subsidiarity, and tailoring. Offender factors such as the right to resocialisation and to private and family life play a significant role. Victim factors such as the person of the victim, fear, anger, and letting go can also influence the balance. Offence factors such as the type, nature, and seriousness of the offence are weighed as well; generally, less severe offences lead to less intrusive protective measures.
- 9 In the enforcement phase, several matters regarding victims' and bereaved relatives' protection needs are insufficiently in order: the provision of information about their wishes and interests; the transmission and articulation of protection needs; feedback on the special conditions imposed; the limited enforceability of victims' rights and availability of complaint mechanisms; and the lack of legal aid funding for victims' counsel.

Limitations of the research

Despite due care in preparing this report, the following points warrant attention. As with any qualitative research, the interpretation of interview data reflects the findings and sometimes opinions of a limited group of people, based on their experiences which. These do not necessarily represent the situation nationwide nor all stakeholders. In addition, interviews were conducted only with bereaved relatives and not with direct victims of offences. Direct victims did come into view by speaking with victims' counsel and VSN case managers, who each assist multiple victims. Nevertheless, direct victims were not interviewed themselves.

In addition, the researchers were also limited in the number of available and relevant FPCR decisions that are publicly accessible, despite multiple search efforts and the knowledge that more FPCR decisions were handed down in the period studied. It was therefore not possible to draw a random sample from all FPCR decisions, which calls for caution in interpreting the FPCR analysis. Moreover, FPCR decisions provide limited reasoning on how victims' rights and interests are accommodated, making them an imperfect source for answering this question exhaustively. Special conditions cannot

be attached to the MBI during imposition of this measure; this is done during the enforcement stage. The researchers therefore could not analyse the balancing at the moment of MBI enforcement. The researchers were therefore unable to analyse the balancing of interests at the time the MBI is enforced. It did become clear, however, that even at the imposition stage — despite the absence of explicit statutory grounds for doing so — victims' interests and human rights are already taken into account. Future research could focus on enforcement decisions concerning the MBI to examine whether and how the balance of interests between victims, bereaved relatives, and offenders is made at that stage, and also whether and how the enforcement ground "necessary to prevent seriously burdensome behaviour towards victims" is used.

The absence in this report of an extensive analysis of the process of identifying protection needs and informing victims and bereaved relatives was agreed upon at the start of the study. This relates to the previously described transfer of tasks from the Public Prosecution Service (PPS) to the minister (the CJCA), which had not yet been completed at the time of the present study. It is therefore possible that some of the points raised by respondents and the conclusions and recommendations made by the researchers to improve the position of victims and bereaved relatives at the enforcement stage are already being incorporated into this transfer of tasks.

In answering research question 5, it was found that it is difficult to assess how the balancing of interests is conducted when imposing protective conditions in FPCR cases, but the researchers expect that the balance of interests will feature more prominently in cases in which the right to speak (*spreekrecht*) has been exercised. Because cases in which the right to speak was exercised fall outside the scope of this study, such cases were not included in the analysis of FPCR cases. The researchers did encounter some cases in which the court of first instance or the court of appeal refers to the right to speak and sets out its substance as an argument in making the balancing of interests. Case ECLI:NL:GHARL:2025 presents this as follows:

'The prohibitions and orders referred to here almost invariably entail an infringement of the right to respect for private life, which also applies to a person subject to a TBS order (*terbeschikkinggestelde*) (Article 8(1) of the European Convention on Human Rights). The legal framework legitimizes such an infringement. However, such an infringement should go no further than necessary for the purpose of the condition, namely primarily the prevention of criminal offenses, but (as the court of appeal assumes by analogy with HR 31 May 2022, ECLI:NL:HR:2022 , NJ 2022/250 with note by Ten Voorde) also no further than what a person subject to a TBS order is required to accept from the perspective of social propriety, for example towards victims or bereaved relatives of the proven offense(s).

A no-contact order with the sister and the mother of the victim of the index offense, as well as the sister's husband, unquestionably falls within this framework. The same applies insofar as the requested area requirement supports this no-contact order. The court of appeal will therefore impose an exclusion order for [city 2] (the residence of the victim's sister and her husband), [city 3] (the residence of the victim's mother), and [city 4] (the cemetery where the victim and her father are buried). The exclusion order for these three places is specified as covering the entire area within the municipal boundaries of the municipalities in which these places are located.

The conditions attached to the conditional termination of compulsory treatment apply as long as the measure continues in conditional form, or for such shorter time as the Public Prosecution Service deems necessary. The law does not provide the possibility — as requested by the bereaved relative — to attach a time limit to those conditions.

Moreover, a request was made for exclusion orders for a not insignificant number of places, almost invariably in an urban environment, which bereaved relatives visit at most weekly, but in quite a few cases monthly or once per quarter for shopping, visits to a care provider, friends or family, and recreation. According to the request, clarity would be served by declaring (as further indicated on a map) a contiguous large part of the western Netherlands prohibited territory for the person subject to the TBS order.

These exclusion orders, made in the context of the right to speak and endorsed by the Advocate General, exceed the outlined framework for imposing conditions, as the necessity for such a broad prohibition is lacking — also in relation to the estimated frequency of the bereaved relatives' presence in the area — and the court of appeal does not see that, given the no-contact order, the person subject to the TBS order is required from the perspective of social propriety towards the victims to comply with it.'

The court of appeal weighs the interests of the bereaved relatives against those of the person subject to the FPCR; the balance regarding the no-contact order comes out in favour of the bereaved relatives, and the balance regarding the scope of the exclusion order comes out in favour of the person subject to the FPCR. A clear illustration of how a balancing of interests can be made at the enforcement stage, accommodating both parties.

Recommendations

Based on the research conducted, the researchers make the following recommendations:

- 1 Improve information provision to victims and bereaved relatives about the enforcement phase of the sanction. This includes general information about the course of CR, FPCR, and the MBI, as well as notifications of impending release and which authority they should contact to convey their protection needs. Clearly indicate what kinds of protection needs can be communicated and that doing so does not guarantee that special conditions addressing them will be imposed. An online portal allowing victims and bereaved relatives to submit their wishes at their own pace and at a time that suits them could be an option.
- 2 Ensure that all victims and bereaved relatives are well-informed about their rights in the enforcement phase of the LTSA modalities and proactively inquire into the protection needs, so that protection needs are better known during supervision.
- 3 Make the balancing between rights, protection needs, and the interests of victims, bereaved relatives, and the offender explicit and comprehensible to victims and bereaved relatives by providing reasons for imposing, not imposing, or modifying the special conditions they requested. This can be achieved through more extensive judicial reasoning in rulings concerning these special conditions: FPCR imposition and extension decisions, and MBI enforcement and extension decisions. Also consider whether the CFCR can make CR imposition and extension decisions public (at least for victims and bereaved relatives) and provide (more extended) reasons

for them. In addition, clearly indicate what victims and bereaved relatives can do upon observing a breach of conditions. This can contribute to procedural justice: perceiving the process as fair, among other things through procedural features such as the opportunity to be heard and to respond, as well as respectful interpersonal treatment and clear and timely communication.

- 4 Provide legal aid funding for victims' counsel during the enforcement phase so that victims and bereaved relatives can be adequately assisted.



Het Wetenschappelijk Onderzoek- en Datacentrum (WODC), Kennisinstituut voor de rechtsstaat, is een onafhankelijk kennisinstituut dat valt onder het ministerie van Justitie en Veiligheid. Het WODC draagt bij aan behoud en verbetering van de rechtsstaat via het (laten) uitvoeren van kwalitatief hoog wetenschappelijk onderzoek. En door het aanbieden van gevraagde en ongevraagde kennis, verbeterpunten en (waar mogelijk) denkrichtingen.

Voor meer informatie, bezoek www.wodc.nl