



Dienst Justitiële Inrichtingen
Ministerie van Justitie en Veiligheid



Information for concerned parties

Psychological and psychiatric reporting in
criminal cases

Netherlands Institute of Forensic Psychiatry and Psychology

This leaflet provides information for persons examined by a psychiatrist and/or a psychologist in the context of a criminal case. In case the examinee is aged below 18, this leaflet is - also - intended to be read by their parents or legal representatives. Legal representatives are persons able to make decisions on behalf of persons unable to do so, such as a guardian.

Reading aid:

- Any reference to "he" should be read to also refer to "she".
- An "examiner" is the psychiatrist or psychologist conducting the examination.
- A "criminal offence" is the action performed by the suspect that is not allowed under the law.
- The abbreviation "NIFP" refers to the Netherlands Institute of Forensic Psychiatry and Psychology.
- "Independent" refers to the fact that someone is performing their work without being influenced by others.

When is a psychiatric and/or psychological examination requested?

When a person is suspected of having committed criminal offences, the public prosecutor or judge sometimes wants for that person to be subjected to a psychiatric or psychological examination. In such a case, the public prosecutor or judge may order the examination to be carried out. A report is made of the examination, which is then submitted to the public prosecutor or judge.

Examples

- *You may have suffered from a mental illness when committing the criminal offence. The public prosecutor or judge in that case wishes to know whether there is reason to reduce your liability for those offences. The public prosecutor or judge also wishes to know what the odds of a repeat offence are.*
- *The judge may also impose a measure under criminal law in your case. In that case, the public prosecutor or judge will order that two examinations are conducted: one by a psychiatrist and one by a psychologist.*

After reading the advice included in the report, the judge may choose to lower your sentence or not to impose a sentence at all. If it is possible that you will offend once again because of your mental problems, you may need to undergo treatment. In some cases, the judge can decide to impose mandatory treatment.

You refuse to cooperate with the examination

Treatment may still be provided, even if you do not wish to cooperate with the examination. Enough (other) information may exist to determine that you are suffering from a mental illness. According to the law, in this case, it is sufficient that the psychiatrist and psychologist inform the judge of why you refused to cooperate.

You can, in consultation with your lawyer, also request the public prosecutor or judge for an examination yourself.

What do the examiners do?

The examiner as an advisor

The examiner does not give treatment, but serves as an adviser for the public prosecutor or judge. The examiner writes a report and thereby gives advice to the public prosecutor or judge. When you have been examined by a psychiatrist and a psychologist, these examinations will be bundled into one report and submitted to the public prosecutor or judge. The examiner will use questions agreed on with the public prosecutor or judge. The examiner will inform you of this.

Independent advice

The public prosecutor or judge does not influence the substance of the examination or the advice given by the examiner. But you or your lawyer, too, do not influence the substance of the examiner's advice. This means that the examiner may give an advice the public prosecutor or judge disagrees with, but also that they may give an advice you disagree with.

How does the examination work?

Start of the examination

The examiner will visit the detention centre or youth custodial institution. Should you not, or no longer, be detained, you will be invited to visit the NIFP office or another place for the interview.

During this first interview, the examiner will discuss the questions that will be asked during the examination. The examiner will also discuss which data they received to prepare for the examination. In addition, an explanation will be given of how the examination will be conducted. The examiner will inform you of your rights and obligations (these are listed in this leaflet, under section 4) and tell you who else they wish to talk to in the context of the examination. Such parties may, for example, be your GP or employer. In the case of youths, parents and teachers may also be approached.

Contents of the examination

During the examination, the examiner will ask questions about:

- you, yourself;
- your family;
- your education or job;
- your friends;
- and about what you do in your leisure time.

If you will (also) be subjected to a psychological examination, the examiner will ask you to complete questionnaires. These will contain questions associated with psychological tests, such as a test about understanding difficult subjects or a test concerning your personal characteristics.



What will happen next?

The examiner will extensively discuss the criminal offences you are suspected of having committed with you. This is not to find out whether or not you are guilty of them. That task is the judge's. The examiner mainly wishes to hear your opinion about the criminal offence you are suspected of, such as:

- What happened?
- How did the suspect feel?
- What were they thinking about?

The examiner wishes to verify whether the criminal offence you are suspected of having committed and your possible psychological problems are linked. It may be that you will say that you have not done anything or that you believe things went differently from what the public prosecutor is saying. In that case, the examiner will ask you about what you believe happened and how you felt at that time.

Conclusions and advice

After finishing these interviews, the examiner will determine whether they found that you suffer from a mental illness or not. They will consider whether this may be linked to what happened. The examiner will also give an advice on whether treatment and/or supervision by the probation service is required.

The quality of the report

When the psychiatrist and psychologist both conduct an examination, they will consult with each other during and after the examination. They will do so to compare their examinations. Should there be differences, it is important for them to learn what caused this. It may be that the advice given by the psychologist and that by the psychiatrist is different. For example, one of them might argue that the suspect is to be admitted to a clinic, while the other believes that treatment can also be provided

at home. In that case, the judge will decide what will happen. Once the examination is finished, a psychologist, psychiatrist, or legal expert of the NIFP will read the report. The examiner may receive comments and recommendations about the report, for example if things have not been written down clearly. The examiner is given the opportunity to correct this. They will themselves remain responsible for their report.

Completion of the examination

Before sending the report to the public prosecutor or judge, the examiner will inform you of their conclusions and the advice given during a final interview. You can respond to the conclusions and the advice. This response will be included in the report.

During this final interview, you can read the report (right of access) and inform the examiner whether it contains errors of fact (right of correction). Examples of errors of fact are typos in the name of a friend or the inclusion of a statement you have not made.

Upon discussing the report, the examiner will submit the final report (including your own reaction) to the NIFP. The NIFP will then submit the report to the public prosecutor or judge. The judge will decide on how to use the advice given in the report. The report will be discussed with you during the court hearing. The judge may ask the examiner to explain the report during the hearing.

Your rights and obligations

Cooperation

You are not obliged to cooperate with the examination. The public prosecutor or judge will ask you and your lawyer about how you feel about an examination by an examiner in advance.

It may be that you first indicated that you wished to cooperate with the examination, but have later changed your mind. In that case, it is wise to inform the examiner of why this happened. The examiner will inform the public prosecutor or judge thereof. Even if you do not cooperate with the examination, some matters can still be investigated.

No permission required for an investigation

The examiner does not require your permission to consult data on the criminal case. They do not require your permission to request information from references.

References include:

- school
- employer
- friends
- family

Such references may, of course, decide not to say anything. This is their own decision. If they do cooperate, this information is included in the report.

The examiner does not require permission to write down things they hear or see from you. During their work, the examiner will comply with the legal rules, such as those of the General Data Protection Regulation (GDPR).

Permission required for an investigation

Sometimes, the examiner wishes to talk to your GP or another practitioner. In that case, the examiner will ask for your permission. Practitioners may not provide information to the examiner if you have not given written permission. This is because of their duty of confidentiality. In this case, the examiner will often ask you to sign a statement. By signing you grant the practitioner permission to provide the information.

Confidentiality

The examiner must treat the information they collect confidentially. They may report to the public prosecutor and judge on anything of relevance to the examination. They may also consult with the other examiner, the NIFP, and the probation service.

However, the examiner may not give information about their examination to persons not involved in the examination. The examiner also has a duty of confidentiality in this regard.

Inspection and correction

Once the examination is completed, the examiner will discuss their conclusions and the advice they will give to the public prosecutor or judge with you. You have the right to read the report in advance of that meeting. This means that you will be handed the provisional report or that you can read it in the presence of the examiner.

The references, too, possess this right of inspection and correction. They only have this right with respect to the information in the report they provided.

Copy of the report

Once the public prosecutor or judge has received the final version of the report, your lawyer, too, will receive a copy. You can ask your lawyer for a copy of your own.

Submission cannot be stopped

The examiner is obliged to submit their report to the public prosecutor or judge. This holds true even if you disagree with the report. You can inform the examiner of your disagreeing. You can also inform your lawyer thereof during the hearing.

What is the NIFP

The NIFP is an independent institute and is not itself a public prosecutor or judge or examiner. The NIFP is requested by the public prosecutor or judge to engage a (freelance) examiner to conduct an examination. Should this be necessary, the NIFP will give advice to the public prosecutor or judge about what the examination will consist of.

The public prosecutor or judge may also ask the NIFP to talk to you directly. In that case, you will have a short meeting with a psychiatrist or psychologist, who will give advice to the public prosecutor or judge about whether or not to have conducted a (more detailed) examination. Advice is sometimes also given about the healthcare required and the placement in detention.

The NIFP is part of the Ministry of Justice and Security, but has no ties to the public prosecutor and the judge. The examinations are conducted by independent examiners.

Scientific research

The report of and all information collected by the examiners may, in the future, be (anonymously) used for scientific research.

Should you object to this, please inform the examiner thereof. The examiner will in that case note this in the collected information and report this to the NIFP.

Complaints

If you are unsatisfied with the examiner or the examination, please first discuss this with the examiner. Should you fail to find a solution together with the examiner, you may ask the NIFP to give advice to the examiner and to you as an independent party. Your lawyer, too, may give advice about the available options to lodge a complaint with the examiner's professional association or with the regional disciplinary tribunal.

Questions

Should you have questions, please contact the examiner who conducted the examination, or the NIFP.

If you are a suspect in a criminal case, you may also contact your lawyer. The NIFP's telephone numbers and privacy statement are available on www.nifp.nl

No rights may be derived from the information presented in this leaflet.

Colophon

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