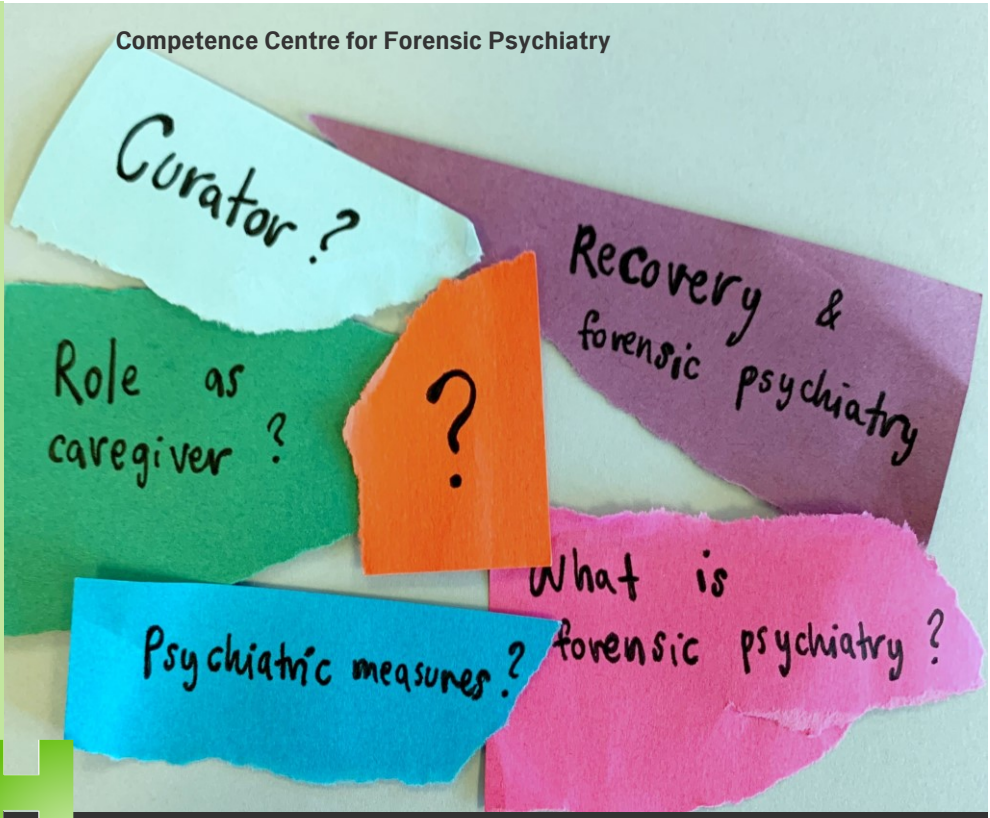
Competence Centre for Forensic Psychiatry



REGION

Sentenced to psychiatric treatment

Information about psychiatric measures and treatment – a brief introduction

Forensic patients and psychiatric measures

A forensic patient is a person who has committed a crime, but due to a mental disorder or deficient mental development has been sentenced to a psychiatric measure.

According to the Danish Penal Code, section 16, persons who at the time of the criminal act were irresponsible due to mental illness or similar conditions are not punishable.

In order to prevent additional offences, such persons may be sentenced to a psychiatric measure under the Danish Penal Code, section 68. According to the Danish Penal Code, section 69, persons who are otherwise mentally disordered may also be sentenced to a psychiatric measure even if they are considered punishable.

The purpose of a psychiatric measure is to prevent recidivism. The psychiatric care system thus has a twofold obligation; affording psychiatric care and treatment to forensic patients and controlling them for the sake of the surrounding communities. The special measure entails that the individual patient is obligated to follow the psychiatric treatment.

Further reading

- Brandt-Christensen, M. (2012). Retspsykiatri. In: Hageman, I. and Bauer, J. (eds.), *Psykiatri for ikke-psykiatere*, 217-236. Hans Reitzels Forlag.
- Brandt-Christensen, M. (2016). Retspsykiatri. In: Nyboe, L., Johannesen, S., and Jørgensen, P. (eds.), *Psykiatri*, 137-144. Munksgaard.

Forensic patients in Denmark

In Denmark, an annual 600-750 people are sentenced to a psychiatric measure. This number has increased dramatically in the course of the past 40 years; from 300 in 1980 to appr. 4,250 in 2018. In 2020, the number is estimated to appr. 3,000-4,000 people.

There is no simple or conclusive explanation to the increased number of forensic measures. Many factors may apply, and possible partial explanations count:

- That more people are convicted of violence or threats of violence against public employees
- That more people go through a psychiatric assessment
- Increased prevalence of severe mental illnesses such as schizophrenia
- Increased or changed use of intoxicating substances
- Changes in the mental health services, i.e. patients being discharged too soon and/or outpatient follow-up being inadequate

- Insufficient coordination of efforts on the part of municipalities, the Department of Prisons and Probation and health care services.

Further reading

- Sundheds- og ældreministeriet [The Danish Ministry of Health] (2015). *Kortlægning af retspsykiatrien: Mulige årsager til udviklingen i antallet af retspsykiatriske patienter samt viden om indsatser for denne gruppe.*
- Rigsrevisionen [The National Audit Office of Denmark] (2021). *Retspsykiatriske patienters forløb*.

The process prior to and immediately after sentencing

Remand custody

You may be remanded in custody if you are the suspect of a criminal act but have not yet been convicted. The remand custody may take place in a pre-trial detention centre, or a judge may decide that a remanded person be transferred to a secure psychiatric ward. This is called custody in surrogate. The police may decide that the person remanded in custody be subject to checks of letters and supervised visits for the purpose of the criminal investigation. This may also apply for a detainee remanded in custody in surrogate. This means that the

detainee's communication with persons outside the prison or the psychiatric ward is restricted.

Psychiatric assessment and statement

A psychiatric assessment is a psychiatric examination of a person charged with a criminal offence. Typically, the public prosecutor will request that a psychiatric assessment be undertaken.

The psychiatric assessment is summarised in a psychiatric statement included in the court's criminal proceedings. The statement is meant to assist the court in deciding on a penalty and whether the defendant is fit for common punishment or needs psychiatric treatment.

A psychiatric statement is drawn up for the criminal proceedings exclusively and is not part of the treatment.

All mental statements are compiled by psychiatric specialists. The statement includes a social worker's description of social circumstances. Often it will also include a psychological examination. The psychiatrist is responsible for the statement's psychiatric conclusion, while the court decides whether the person was irresponsible when the offence was committed.

As a rule, the psychiatric assessment is conducted on an outpatient basis, i.e. without admission to a psychiatric ward.

If the examining doctor recommends it, or if the defendant refuses to participate in an outpatient psychiatric assessment, it may be conducted during admission to a psychiatric ward.

If a forensic patient is charged due to recidivism during a forensic treatment, the court must base its ruling on an updated psychiatric assessment. In such cases, the public prosecutor may either request a new psychiatric assessment and ditto statement or ask the senior psychiatrist in charge of the treatment for a new statement on the patient's current mental health.

After sentencing

When the trial has ended and the patient has been sentenced, both the public prosecutor and the offender have 14 days to decide whether to appeal to the next court. During this time, the remand custody will most often be extended until the sentence becomes final. Only then may a so-called implementation request ('iværksættelsesanmodning') be sent to a psychiatric ward. After this, a senior psychiatrist must assume responsibility for the treatment in writing. Once done, the psychiatric measure has been implemented and the patient may be transferred from remand custody to psychiatric treatment. Due to this process, the time between sentencing and the beginning of the psychiatric treatment may be considerably longer than the 14-day deadline for appeal.

Treatment of forensic patients

Forensic patients are basically offered the same psychiatric care and treatment as other psychiatric patients. Hence, care and treatment are based on the individual patient's needs. The central elements are pharmacological treatment, psychological examinations and

treatment, therapeutic treatment in the form of milieu therapy and social skills training.

Forensic patients are to a large extent treated in the general psychiatry, while the more complex clinical pathways are handled by specialised forensic psychiatry.

The most common forensic measures are sentences to treatment (often dubbed 'B-domme' in Danish) and sentences to placement (the so-called 'A-domme'). In addition to this, the patient may be sentenced to outpatient treatment.

The regulations of the Mental Health Act apply for patients with a sentence to treatment or placement as well as for all other psychiatric patients. This does not entail easier access to compulsory treatment, restraint or belt fixation of forensic patients. The only difference is that the sentence to treatment enables the admission of the patient against their will without reference to the Mental Health Act.

Sentence to treatment

A sentence to treatment ('B-dom') subjects the patient to a certain psychiatric treatment. The senior psychiatrist in charge of the treatment must be affiliated with the regional psychiatry, meaning that it cannot be a private psychiatrist.

A sentence to treatment does not necessarily entail patient admission, but as a rule it does require that the treatment be introduced with admission to a psychiatric ward. The senior psychiatrist in charge of the treatment may decide to discharge the patient for continued outpatient treatment in an outpatient team.

The patient may be readmitted solely pursuant to the sentence to treatment, i.e. without a court order. This typically happens if the patient's mental health deteriorates or substance abuse ramps up, or due to other circumstances believed to increase the risk of recidivism.

Most patients sentenced to treatment are treated as outpatients, usually under the supervision of the Department of Prisons and Probation. During most treatments, there will be times when admission to a psychiatric ward is necessary. This may be due to a deterioration of the patient's mental health or failure to show up for outpatient appointments. Increased risk of recidivism could also result in admission.

A sentence to treatment may or may not have a maximum time frame. The maximum time frame is typically five years. A sentence to treatment may be extended by up to two years at a time. This does not require a new trial, seeing that the court may decide by way of an order.

Sentence to placement

In the case of very serious crime and concurrent severe mental illness, a patient may be sentenced to placement ('A-dom'), requiring them to be committed to or placed in a psychiatric ward. During the admission, the senior psychiatrist in charge of the treatment may grant the patient limited leave alone or escorted by staff. Additional leave requires permission from the State Prosecutor following an application from the senior psychiatrist.

The duration of a sentence to placement is most often, but not always, indeterminate. Patients sentenced to placement cannot be discharged until the court converts the sentence to one of treatment.

Sentence to outpatient treatment

A sentence to outpatient treatment may or may not include potential admission to a psychiatric ward and will typically be overseen by the Department of Prisons and Probation.

This type of sentence is less invasive than sentences to placement or treatment. As far as sentences to outpatient treatment with potential admission are concerned, the same justifications for admission apply as for sentences to treatment, i.e. typically deterioration of mental state or other circumstances that are believed to increase the risk of recidivism.

Recidivism during treatment

If a forensic patient is found guilty of committing a new offence during forensic treatment, the public prosecutor may decide to drop the charges ('tiltalefrafald'). This means that the patient is found to be guilty of the new criminal charges, but that the case will not go to court. Hence, no changes will be made to the existing sentence.

More serious new crime may result in a new indictment being raised, which involves a new psychiatric assessment or statement from the senior psychiatrist in charge of the treatment as well as a new trial and thus potentially a new sentence.

Request for annulment

A forensic measure may be sought annulled before the sentence expires. A request for annulment may for instance be made by the patient or the curator ('bistandsværgen').

If the duration of a sentence is indeterminate, the patient or the curator may make biannual requests with the public prosecutor for a new assessment of the grounds for upholding the sentence. In practice, the preparation and processing of such cases is time-consuming.

Cross-sectoral co-operation

Co-operation between various bodies and sectors is usually necessary during forensic treatment, but this may prove challenging.

The purpose of psychiatric measures is to prevent recidivism. As a rule, criminal offences are the result of complex issues, hence must be countered by complex solutions and efforts. This imposes substantial demands on the multidisciplinary and cross-sectoral co-operation.

Overall, many actors are involved that both patients and caregivers must deal with. Recent research documents the need for ongoing alignment of expectations between:

- Patient and hospital psychiatry
- Patient/citizen and municipal psychosocial rehabilitation
- Caregivers and district psychiatry
- Judiciary and caregivers who assume the role of curator.

Further reading

- *Rigsadvokatmeddelelse nr. 5/2007*, updated august 2022. Behandlingen af straffesager vedrørende psykisk afvigende kriminelle og personer omfattet af straffelovens §70.
- Sundhedsstyrelsen [Danish Health Authority] (2010). *Vejledning om behandlingsansvarlige og ledende overlægers ansvar for patienter, der er idømt en behandlingsdom eller en dom til ambulant psykiatrisk behandling*.
- Danske Regioner [Danish Regions] (2019). *Anbefalinger til kriminalitetsforebyggende indsatser målrettet mennesker med psykisk sygdom.*
- Møllerhøj, J. & Stølan, L.O. (2021). *Vendepunkter. Patienters og pårørendes fortællinger og erfaringer med forløb før og efter dom. KFR Arbejdspapir nr. 6*. Kompetencecenter for Retspsykiatri og Psykiatrisk Center Sct. Hans [Competence Centre for Forensic Psychiatry and Mental Health Centre Sct. Hans].

Recovery and forensic psychiatry

The past 10 years have seen an increased focus on recovery in both the regional hospital psychiatry and municipal social psychiatry. However, the terminology is unclear and at times confusing. In some contexts, clinical recovery is in focus, i.e. complete recovery and cessation of the symptoms. In others, the focus is on personal recovery, i.e. the individual patient's trajectory towards living a meaningful and fulfilling life regardless of limitations associated with mental disorders. This sense of recovery has a broad focus on many

aspects of an individual's life and quality thereof. To *recover* or to be in recovery does not necessarily mean that you become completely asymptomatic or that treatment is terminated.

Both caregivers and professionals may play a central role in recovery processes as persistent carriers of hope. Hope, positive identity, a meaningful life and assuming responsibility and control over one's situation are central elements in recovery processes.

Forensic patients may experience recovery processes as lengthy and complicated by the fact that they have to deal with both the consequences of illness and the consequences of having committed a crime. The term *offender recovery* denotes actively engaging with the crime that led to a sentence to treatment or placement and with how to avoid recidivism.

Forensic patients' recovery processes often entail long-term and complex efforts to form a new identity, making it possible to think of themselves as something other and more than illness and criminality.

Danish and international research into recovery and forensic psychiatry has shown that personal recovery is also possible for forensic patients, but that the processes may be complex, long-term and fraught with many ups and downs.

Further reading

- Møllerhøj, J. (2021). Offender Recovery. Forensic Patient Perspectives on Long-Term Personal Recovery Processes. *International Journal of Environmental Research and Public Health, 18 (12),* 6260.
- Møllerhøj, J. (2019). *Recovery, rehabilitering og retspsykiatri – begrebsafklaring og dilemmaer. KFR Arbejdspapir nr. 3.* Kompetencecenter for Retspsykiatri og Psykiatrisk Center Sct. Hans [Competence Centre for Forensic Psychiatry and Mental Health Centre Sct. Hans].
- Møllerhøj, J. & Stølan, L. O. (2018). 'First and foremost a human being...': user perspectives on mental health services from 50 mentally disordered offenders*. Nordic Journal of Psychiatry, 72 (8)*, 593-598.

The many roles of caregivers

Caregivers of forensic patients may play a pivotal part in the patients' recovery processes and opportunities to recover. This is the case during as well as after forensic treatment.

The role as caregiver may be manifold. Some offer practical assistance, while others help maintain an organisational overview or lend emotional or relational support. Caregivers may function as crucial collaborators for the patient, psychiatric staff and municipal caseworkers.

If a patient is 18 years of age or older, caregivers are automatically entitled to neither detailed information about nor involvement in the patient's treatment. Patients 18 or older must consent to the involvement of caregivers in the treatment in the form of participation in network meetings or other meetings with staff.

Psychiatric units offer different events catering to caregivers. Some units engage mentors for caregivers who – based on their own experiences and those of others – act as support.

If the patient does not wish to involve caregivers

Even if the patient has not consented to involvement, health care professionals are always entitled to inform caregivers about e.g. illness, treatment and everyday life during outpatient treatment or admission. The staff will also be able to attend to the caregivers' experiences with the patient and the situation.

The tasks of the curator

Everyone who has been sentenced to a psychiatric measure allowing for admission to a psychiatric hospital must be appointed a curator. The court will appoint the curator, who, if possible, should be a family member or one of the offender's close friends. If this proves impossible, a curator is appointed from the police list of appointed curators. As far as possible, the curator should act in consultation with the patient.

The tasks of the curator are:

- Keeping up-to-date with the patient's state and making sure that admissions and the relevant measure are not extended longer than necessary

- Counselling and guiding the patient as regards applying for change or annulment of the measure and redress in connection with use of force under the Mental Health Act.

The curator is entitled to information about e.g.:

- When hearings concerning the patient are held, including hearings with a view to appointing a new curator
- Printouts of verdicts and orders regarding the patient upon request, unless investigative considerations exceptionally speak against it
- Information about the patient's personal circumstances and mental state upon request if the patient consents
- Information in the patient's records, including the treatment plan, again contingent on patient consent.

Further reading

- Møllerhøj, J. (2022). "What if you listened to and involved the caregivers?" – Experiences and needs amongst caregivers involved with mentally disordered offenders and mental health services. The *European Journal of Psychiatry, 36(3),* 191-199.
- Basse, E.M. & Kristensen, K. (2019). *Håndbog for psykiatribrugere og pårørende. Kend dine rettigheder.* SIND – Landsforeningen for psykisk sundhed [SIND – The Danish Association for Mental Health].
- Bekendtgørelse om bistandsværger nr. 947 af 24/09/2009.

About this pamphlet

This pamphlet mainly addresses patients and caregivers – those who encounter forensic measures for the first time as well as those who already have experience with forensic psychiatry. The purpose of the pamphlet is to inform about some of the key concepts within forensic psychiatry, but it does not purport to be exhaustive.

More information on forensic psychiatry, references to literature, download links for publications and this folder in an electronic format are available on the KFR website: www.psykiatri-regionh.dk/kfr.

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This pamphlet has been made available in all five regions in agreement with the heads of departments of the dedicated forensic services.

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