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Published in:
XXIXth International Congress on law and Mental Health

Publication date:
2005

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
Oei, T. I. (2005). The criminal non-punitive order as seen from an economic standpoint. In *XXIXth International Congress on law and Mental Health* (pp. 156-156). Unknown Publisher.

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51.4. The Criminal Non-Punitive Order as Seen From an Economic Standpoint

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In the second half of the 19th century, there was an increasing societal need for an alternative to punishment as retribution and general prevention, all the more because the courts were only able to sentence mentally disturbed people based on the principle that they were either insane or not. In the event of insanity, the court could only sentence a defendant to mandatory commitment to a psychiatric hospital, but it was not clear whether such a person would actually be less likely to commit repeat offences after the end of the treatment.

As soon as the physician in charge was of the opinion that the insanity was over, the legal ground for further treatment under the old Lunacy Act (*Krankzinnigenwet*) disappeared, and, pursuant to (old) Section 28, the administration of the institution had to release the patient. However, such a person often proved not to be free of psychic disorders, and was therefore still a danger to society.

This paper deals with the role of the criminal non-punitive order in giving legal subjects the treatment that helps to improve their behaviour, as well as the issue of whether the supply of non-punitive orders may possibly be exceeding the demand as their effectiveness proves inadequate.