

Temporary release for home and resettlement leave

A study of decision making in granting leaves to Dutch prisoners

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Summary

1. Terms of reference by the Ministry of Justice of the Netherlands

To prepare a new person-oriented arrangement of temporary release for leave of sentenced adult prisoners, the research unit of the Dutch Ministry of Justice (WODC) requested Nelissen Onderzoek & Advies to inform the Ministry about the operation and application of the present arrangement during the past five years.

The Ministry of Justice has requested that two forms of unescorted temporary release for sentenced adult prisoners be examined. They are:

- unescorted temporary release for home leave and resettlement from a closed custody institution for prisoners who have served at least one third of their custody time and who have less than twelve months remaining to serve (General Leave for Prisoners or GLP);
- unescorted temporary release for home leave and resettlement during the weekend as a part of the prison regime in an open or semi-open correctional institution (Regime-Bound Leave, or RBL);

The administrative procedure preceding a decision whether or not to grant a GLP is based on an application by the prisoner and a process of consultation of several parties in the criminal justice system. The procedure for an RBL is considerably less extensive. The regime of a semi-open or open institution includes a weekly or monthly release for a RBL. The assessment of the prisoner's suitability for a RBL is part of the process of selection and placement in a (half) open setting.

More specifically the purpose of the study is to inform the Ministry of Justice of:

- The number of applications, and the number of decisions to grant or to withhold a leave during the past five years for both forms of temporary release;
- The procedures that regulate temporary release and how these were applied during the past five years;
- Releases with problematic outcome (the event of breach) and cases with a problematic application.

2. Methodological issues, data and procedure

In this study the operation of the temporary release from prison is viewed from the perspective of decision makers and their decision whether to grant a leave or not. Their decision however is also made within a social and organizational context. Therefore, the decision making process is considered on the level of:

- the person of the decision makers and their decision frames;
- their interactions with other parties;
- the organizational structure.

The outcome of the decision making process is placed within the realm of the most fundamental characteristic of criminal justice decision making: the need to find a balance between competing demands. The right balance aims at an optimal realization of *all* relevant goals of the criminal justice field in question. In the practice of temporary release for a leave the relevant, competing criminal justice goals are, firstly, the resettlement needs of prisoners and, secondly, the protection of public safety. Balanced and rational decision-making implies a search for the right and fair measure. Moreover it aims at finding an ideal point. At this point, the primary goal of meeting the prisoner's individual needs for reintegration into family and resettlement is appreciated as much as possible without harming the consideration of protection of the public safety.

Individual decision makers' interpretations of the rules, procedures and their exercise of discretion within the legislative and organizational constraints may have consequences for the way they handle (complex) cases with conflicting demands. More specifically, the procedural practices they (collectively) develop and the individual decision makers' weighing of (conflicting) interests may show a varying concern for the risk of decision outcomes in terms of false negatives or false positives. Part of the focus of the study is to open a black-box and to unravel the mechanisms guiding certain decision making practices and decision outcomes.

The decision field was explored with qualitative and quantitative methods of research. The collection of data among decision makers included in-depth interviews, a telephonic survey and the assessment of problematic cases by two panels of practitioners. The data about the size of the practice of decisions regarding temporary release for leave were collected at the level of the central administration of the Dutch Prison Service and at the local level of the administration of correctional institutions.

3. The present arrangement

For a GLP the present arrangement demands an application by the prisoner for temporary release. This application is handled by the Bureau of Selection and Detention-planning of the prison. The main task of this bureau is the preparation of the decision whether to grant a leave or not. This decision is taken by the Prison Governor or, in the case of prisoners sentenced for more than two years, by the Selection Officer of the central Bureau of Selection Officers who decides on behalf of the Minister. The BSD fulfills a central role in handling the procedure by checking compliance with the eligibility- criteria and by an assessment of the risks, or so called counter-indications. An important feature of this assessment process is the consultation of involved internal (the prison personnel) and external parties (penal administration, the Prosecutor, local Police, Probation Service). The results of the enquiries of the BSD are considered by a regular decision-making and advisory panel of the prison. This panel gives an advice to the Prison Governor or Selection Officer as to the prisoner's suitability for temporary release. The prisoner is informed of the outcome by the BSD clerk and receives an authorization for a leave which can include special conditions.

The procedure for a RBL is much less extensive. Prisoners who are selected for transfer from a closed custody institution to a (semi)-open institution and who already enjoyed a GLP, are licenced to a RBL. For sentenced prisoners who exclusively serve their prison term in a (semi)-open institution (so called check-in prisoners) the authorization to a RBL is preceded by a period of observation. Main purpose of this observation is the assessment of possible risks. In case of a refusal of a GLP or RBL the arrangement allows the prisoner to start a procedure of complaint.

4. Temporary release for leave: the size of its practice

The central administration is lacking a registration of the yearly number of submitted applications for a GLP. Only the number of granted leaves is registered. During the period 1999-2005 the number of granted GLP's varies from 2000 to 2400 leaves a year.

During the period 1999-2002 the yearly number of RBL's varies from 3000 to 6000 leaves. For the GLP's the lacking number of applications submitted in the central registration system, poses a problem in calculating the granting or refusal rate. To get an impression of this granting rate, it was decided to examine the administration on the level of a number of correctional institutions. Numbers of submitted applications for a GLP on the institutional level were related to the numbers of grants/refusals. During the period 2000-2005 on average out of 10 submitted applications 6 applications were granted and 4 applications were refused. For the period 1999 -2002 the central registration of cases where a breach in the sense of a withdrawal occurred, show that on average, of each 100 granted GLP's, in 8 cases the prisoner fails to return to prison. There is a lack of more specific information about cases of withdrawal from a RBL.

In general, the registration system of aspects of temporary release for leave needs overhaul. Besides some information gaps, the registration system suffers from a lack of vision on the selection and registration of temporary release aspects deemed relevant for purposes of monitoring and policy development. In addition, certain quantitative findings give reason to further examination of their background. Especially the large differences in granted/refused applications between correctional institutions of the same category are intriguing and demand for additional research.

5. The practice of applying the present arrangement

The practice of applying the present arrangement by the decision makers in the correctional institutions was examined by quantitative and qualitative methods. Analyses of the collected data reveal the following characteristics of the practice of temporary release for leave;

The results on the level of the *person* of the decision makers reveals the role of decision frames. In general decision makers' decision frames are characterized by a strong belief in the importance and benefits of temporary release for leave for the prisoner. Decision makers have a strong internalization of the legislator's intentions. In addition, their decision frames show the influence of individual decision maker characteristics.

The study offers many examples of decision making situations illustrating the important role of decision makers' different interpretations or *systems of meaning* in the decisions regarding temporary release. In part, the practice of applying the present arrangement may be characterized as an *interpretive practice*.

The results on the level of the *interactions* between the actors involved with a decision whether to grant a leave or not, reveals the important role of informal decision making power exercised by fact-finders. Although the Prison Governor or the Selection Officer have been allocated the formal authority to decide, fact-finders such as the Prosecutor, the Police, the BSD and the prison's advisory panel are perceived by actors as more powerful parties in the decision making process.

The informal power of these parties stresses the importance of adequate controlling mechanisms exercised by the Prison Governor or Selection Officers. The study offers an example of inadequate control of failing fact-finders that resulted in a granted leave with unacceptable security risks. Especially in cases where a leave is granted by the Governor a combination of his poor control and failing fact-finders may result in decisions with a higher

risk of false negatives. The risks are higher because an (external) party that performs an extra check of the decisions made by the Governor is lacking in these cases.

On the level of the formal and real *organizational structure* the study suggests the following:

- On the level of the *formal* organizational structure, decision makers experience the arrangement for the GLP in general as clear and workable. For the RBL, on the contrary, the arrangement is experienced as rather inflexible and lacking opportunities to use the leave for resettlement purposes. The RBL is only permitted at the weekends, which restricts its purpose to mere home leave and integration into family-reintegration.
- On the level of the *real* organizational structure the discretionary use of the present arrangement has resulted in institutions adopting various implementation practices with regard to the following elements of the procedure:
 - supplying information to prisoners and preparing them for temporary release;
 - consultation of external parties for information about risks and family circumstances of the prisoner;
 - the assessment of (external) information and (negative) advices;
 - the choice of the officer in charge of the institution's advisory panel;
 - the handling of complex problematic cases (cases of doubt and conflicting interests);
 - planning and evaluation of the temporary release; the use of special conditions regarding the time, place, duration and escort.

The results suggest the presence of an organizational culture or climate with regard to the handling of pre-release matters. The distinctive feature of this decision making climate refers to a varying level of efforts with regard to the procedural aspects mentioned above. The climate may be characterized in terms of decision makers doing more or less with their discretionary freedom. Doing less implies a climate that tends to a doing no more than strictly obliged by the law, a stronger adherence to routine and a preference for easy, standardized solutions. Doing more implies a more intensive use of the possibilities of discretion and explicit attempts to shape the leave to the unique circumstances of the case.

Several findings suggest an impact of different implementation practices on the risk of false negatives or false positives in decision outcomes.

The decision field's methods of risk assessment involve a clinical prediction based on professional training, intuition and experience with offenders. A majority of the practitioners considers the prisoner's behaviour as a rather poor predictor of problems during a leave. Various other problems with risk-assessment are reported. In the opinion of most practitioners the present practice of risk assessment is amenable to improvement. Reduction of cases of breach, for instance by improving risk-assessment, is seen as a realistic and feasible option. In attempting to reduce the risk of a problematic outcome of release, some institutions developed an explicit policy using special measures and instruments with regard to the preparation, planning an evaluation of a leave with the prisoner.

6. A closer look at problematic applications

Two panels of practitioners were requested to give their advice whether to grant a leave or not in cases with more complicated problems. The cases were brought up by practitioners in the decision field. After a group discussion of each participant's assessment of the case, the panels were asked to formulate a best solution. The problems in the cases refer to applications with an ambivalent character produced either by doubts about the possible outcome of the leave or by (increased) conflict between the prisoner's interest and the interest of protection of the public.

The review of almost all cases shows initial assessments by both panels with diametrically opposed advices implying a granting or a refusal of the application. Other solutions refer to suspension of the decision for further enquiries or to a granting of the leave with special conditions. Distinctive decision frames resulted in different decision outcomes. More specifically, the information about the facts and circumstances of the cases reviewed, evoked different framing operations by the panel members with different assessments of what the information conveys. A striking result is that, solutions concerning a direct granting or refusing a leave in complex cases, are put aside by the panels in the end as simplistic, easy, unbalanced and inadequate. Complex cases are seen as cases demanding a breaking through of routine and business as usual. Practically, best solutions in complex cases imply a performance by decision makers of additional activities aimed at more balanced and informed decision making outcomes.

With regard to the findings of this study it is concluded that certain features of the present practice of granting temporary release are of special importance for the introduction of a person-oriented arrangement. Especially relevant is the finding of a practice where the fundamental problem is not so much the granting and use of too much discretion and the protection against and control of bias in decision making. The fundamental problem of the present practice refers to a certain reluctance of decision makers to make optimal use of their discretionary freedom in order to guarantee decisions that are as balanced and appropriate as possible in the light of the relevant interests. Organizational factors, constraints or pressures may hinder the optimal use of discretion. As the implementation of a person-oriented leave arrangement requires an optimal use of discretion and 'a doing more' in the sense of tailor-made solutions, the creation of decision making structures that encourages decision makers to break through routine and business as usual, is crucial.