

# **Behavior reports and consultation in the adult criminal justice system**

## Summary

Oberon Nauta (DSP-groep)

Gerard de Jonge (Universiteit van Maastricht)

# **Behavior reports and consultation in the adult criminal justice system**

Summary

Amsterdam, 11 December 2008

Oberon Nauta (DSP-groep)  
Gerard de Jonge (Universiteit van Maastricht)

In collaboration with:  
Manja Abraham  
Willemijn Roorda  
Bram van Dijk

## **Colofon**

Besteladres:  
DSP-groep  
Van Diemenstraat 374  
1013 CR Amsterdam

Dit onderzoek is uitgevoerd in opdracht van het WODC van het ministerie van Justitie.

© 2008 WODC, ministerie van Justitie. Auteursrecht voorbehouden.

## Summary

Commissioned by the *Wetenschappelijk Onderzoek- en Documentatiecentrum* (Scientific Research and Documentation Centre) of the Ministry of Justice, a study was carried out to examine the way in which consultation takes place in the adult criminal justice system with respect to suspects and sentencing. This study is a response to signals suggesting that work is sometimes unnecessarily (partially) duplicated and that there are bottlenecks with respect to timeliness, harmonization and the exchange of information.

The study poses four principal questions:

- 1 How is existing (and intended) consultation practice organized?
- 2 On which (scientific) instruments are the diagnoses and advice resulting from existing (and intended) consultation practice based?
- 3 Is the information contained within consultation reports considered sufficiently useful by customers and users to support decisions regarding the suspected or convicted persons for whom advice is requested? Is the information sufficient and sufficiently available/ passed on to enable decisions in the chain to be made?
- 4 To what extent is it necessary - based on the questions posed above – to change existing consultancy practice? Does this concern specific elements in particular? If so, which?

To answer these principal questions, a legal framework was first described for consultation processes relating to adult criminal justice. The following sources of information were subsequently used:

- Written information from advisory organizations, to be specific, the Netherlands Institute of Forensic Psychiatry and Psychology (NIFP), the Probation Service and Forensic Psychiatric Centres (FPC's).
- Literature about the psychometric properties of different diagnostic instruments.
- Interviews with employees of these advisory organizations.
- Interviews with those seeking advice/ users, intermediaries and those producing consulting reports in the judicial districts (arrondissements) of Rotterdam, Leeuwarden and Arnhem.

The most important findings were discussed in an expert meeting when the study was completed.

The study had two important limitations.

- Since the Probation Service's consultation process was undergoing radical changes as part of a realignment program while the study was conducted, it was decided to restrict the advice given by the Probation Service to a formal description of the situation intended by the realignment program.
- The *Raad voor de Rechtspraak* (the Council for the Judiciary) did not approve the request to interview judges and examining judges.

The most important results of the study are summarized below in relation to the four principal questions.

## Description of consultation practice

Consultation on the personalities of suspects or convicts with criminal law organizations for the purpose of passing a criminal law judgment is legally anchored in a number of different laws, measures, regulations, guidelines and policy frameworks. For a number of criminal law judgments, this legal framework states the advisory organizations. The legal framework is not very explicit about the *form* in which the consultation has to take place. An exception is the consultation conducted with regard to decisions taken in relation to *TBS* (persons placed at the disposal of the authorities) with compulsory nursing (extending compulsory nursing, approving leave, long-stay placement).

In spite of the legal framework not listing which advisory organizations should be consulted and the type of consultation product that should be generated for all criminal law judgments, there does appear to be a uniform approach to consultation nationally (in the arrondissements researched).

The Probation Service is the largest advisory organization. The manner by which it advises the judiciary is bound to strict formats, although this is currently being realigned. The aim is that by the end of 2009 consultation will be provided almost exclusively by means of two types of consultation reports that have to be drawn up according to a scrupulously defined format. Depending on the type of criminal law judgment for which consultation is given, the report will be based on the diagnostic instruments *RISc (Recidive In-schatting Schalen)*, *Estimation Scales for Reoffending* or *QuickScan*.

Pro Justitia consultation is also highly uniform in practice. The NIFP mediates at the start of all Pro Justitia personality assessments between the requesting party and the reporting party/behaviour specialist. It also ensures that the report formats and research design that it developed are used consistently. Nevertheless, the use of diagnostic instruments in the realization of Pro Justitia reports is less standardized and allows big differences to be seen between reporting parties.

Consultation provided to selection officers in the prison system is also standardized to a large extent, at least for as far as the advice given by penal institutions is concerned. Selection proposals are only issued in a fixed format.

Another exception to this uniform character is consultation in the *TBS* domain (being placed at the disposal of the authorities). Although the legal framework provides the most explicit instructions for the use of formats and diagnostic instruments for these consultation products, from the study it appears that the FPC's interpret these instructions differently. Reports from these advisory organizations often differ substantially in the degree of comprehensiveness and the way in which additional information (e.g. legal statements or the results of risk evaluations) are processed in the consultation product.

A third exception to the uniform nature of consultation during criminal justice is created by the *trajectconsult* (process consultation). This product has no legal status, in as much as it is not a requirement of any particular criminal law judgment, but it is frequently requested in preliminary inquiries. *Trajectconsult* is, however, not available in every arrondissement. Moreover, from this study it appears that each arrondissement applies this consultation product differently.

The reports cover the same subjects to some extent, although the motivation differs per report type. The subjects that are the most commonly reported on are:

- criminal history
- earlier sanctions, interventions
- biographical consideration
- health and addiction consideration
- forensic psychological/psychiatric consideration
- accountability
- chance of reoffending
- most desirable conviction (behavior) interventions and or treatments that have to be applied to reduce the chance of reoffending.

Although many consultation products report about the same subjects, there appears to be no question of duplicate consultation. In most cases, overlapping consultation products are not generated within the same sentencing process, and in cases where duplicate consultation is given, the period between the consultations is often so long that an update is warranted. Systematic overlap only applies to static subjects (biographical consideration and criminal history) when reports are produced for different phases of the sentencing process. As far as dynamic reports are concerned, within this study overlap was only identified in situations where consultation is provided for the purpose of legal inquiries by the Probation Service and an independent behavior specialist.

For all consultation products, information from the criminal file and the personal file (contains all personality assessments of the suspect that have been produced in the last ten years, both in the juvenile and the adult domain) is used to varying degrees. The extent to which the information is used depends to a limited degree on the type of consultation product. This means that for all consultation reports use can be made of the information derived from the personal file, if this is available. Availability varies in practice.

Information from the juvenile circuit is used when establishing a consultation product for as far as the component features in the personal file and is available. Information from the health care sector (juvenile and adult) is only included in the assessment in exceptional cases and after permission is given by the suspect or convict.

The consultation reports produced are partially available for use by third parties in the chain. The *Justitiële Documentatiedienst* (Judicial Records Service) in Almelo is in the process of digitalizing all hard copies of personal files containing personal assessments and to make these available via its JDonline webportal. Most of the partners in the criminal justice circuit are authorized to use this system. The reporting parties that produce consultation products also have partial legally authorization to consult this information, but not one of them has access to the system in practice.

All probation workers, on the other hand, have digital access to reports produced by the Probation Service via their own CVS system. Paper copies of reports that have been mediated by the NIFP are available to reporting parties who are conducting work for the same NIFP location. Reports that have arisen through mediation from other branches are not immediately available and are only requested if the reporting party considers them to be useful.

## Supporting scientific instruments

Diagnostic instruments are used with most consultation products. An exception to this are the Pro Justitia psychiatric reports, where the diagnosis is in fact only based upon a clinical judgment, and the consultation reports delivered to the Selection Officer by the PI's.

The use of diagnostic instruments varies according to the type of consultation product and sometimes also the reporting party. The Probation Service works consistently with RISc and QS, while in the *TBS* domain estimates of reoffending are, without exception, processed using the HKT 30 or HCR 20, the PCL-R and, in the case of an immoral offence, the SVR -20.

There is less uniformity within psychological Pro Justitia research. Although the NIFP has provided an overview of the diagnostic instruments that it considers the most suitable for such research, it appears that reporting parties still frequently use other instruments.

## Accessibility and availability of information

An assessment framework was used in this study to establish bottlenecks. The basic principles for this framework were equal rights, legal security and effectiveness. Consultation in criminal justice is continuously assessed against these principals.

In spite of the uniform nature of the way in which the consultation process in criminal justice is organized in the studied arrondissements, it appears from this study that the current consultation process has a number of bottlenecks. In the first place attention must be drawn to the fact that the indication premise of a Pro Justitia study is still not uniform in spite of national agreements between, among others, the judiciary and the NIFP. In one arrondissement BooG is consistently used to establish the need of Pro Justitia research, while in another arrondissement the decision to conduct Pro Justitia research is in fact always taken on the basis of a *trajectconsult*. What this probably means in practice is that comparable cases do not always come to the same decision about whether to conduct Pro Justitia research or not. This is a shortcoming in terms of equal rights and effectiveness.

In the second instance, attention must be drawn to the fact that reporting parties do not always use, or are not able to use, information from the criminal file and personal file. The reporting parties, particularly in legal preliminary and final inquiries, are dependent to a large extent on the information made available by the requesting party. The information position of the requesting parties is sometimes incomplete because, for example, it is not standard practice to consult JDonline.

Opportunities for acquiring information from the health care and juvenile circuits (in as far as this does not concern criminal law) are even more limited. Neither the party requesting the research nor the reporting party have access to an overview of a person's treatment history and the extent to which research has previously been conducted. Only when offered by the suspect or convict, and following explicit permission from that person, can this information be requested. From this study it appears that this time-consuming path is not always taken by those who draw up consultation reports.

Differences in the extent to which information from the criminal file, the personal file and information from the health care circuit is used is not desirable with respect to equal rights, effectiveness and legal security.

In the third instance the subject timeliness requires attention. Pro Justitia researches that are established during legal preliminary inquiries in particular are often made available to the criminal proceedings so late that the details of the case cannot be presented at the first hearing. Such a situation has an adverse effect on effectiveness. The criminal proceedings are extended and further hearings have to be held, which means additional costs and a longer than necessary period of uncertainty for the suspect or convict about the conclusion of his/her case. Since the problem of timeliness differs per arrondissement, for example, one arrondissement may conclude a case much quicker than another arrondissement, unequal rights arise.

Fourthly, it appears from the study that behavior specialists do not always concur in their judgments and differ in their conclusions on, for example, conditions of ill-health or accountability. Contrasting reports hinder criminal proceedings because the legal authorities have to pass sentence on a behavioral issue for which they are not trained.

A fifth point for attention resulting from this study concerns the achievability test in Pro Justitia reports. From the study it appears that with certain regularity, treatment institutions are advised but the person producing the Pro Justitia report does not check the actual available capacity of the proposed institution. This can have negative consequences for effectiveness and legal security.

### **Desired amendments**

In this study the research question posed above has been left generally unanswered. The reason for this is that criminal justice consultation during criminal proceedings is currently undergoing radical change (realignment program consultation products probation, introduction of Specialists in Criminal Matters Act, guaranteeing use of BooG). Nevertheless, this study has revealed various bottlenecks in the consultation process. This information should be utilized by those who are currently responsible for establishing policy and who are involved in the process of change to ensure that the identified shortcomings are no longer able to manifest themselves in the future.