

# De maatregel Inrichting voor Stelselmatige Daders

## *Procesevaluatie*

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## *11. Summary: Enactment of the Institution for Repeat Offenders Committal Order (ISD Order)*

The Act introducing the Institution for Repeat Offenders Committal Order (ISD Order) took effect on 1 October 2004. Committal to an institution for repeat offenders is intended as a way of dealing effectively with the persistent offenders responsible for a substantial volume of crime and public nuisance.

### *11.1. Study question and research method*

The study question for this process evaluation is whether the implementation of the Institution for Repeat Offenders Committal Order (ISD Order) is consistent with what was intended when it was formulated. The objective of this study is to provide insight into how far the implementation process has advanced, and whether any improvements are desirable or necessary, for the benefit of the people it affects, policymakers, the ministry and parliament. Another objective is to estimate how many registered offences society has not had to endure because persistent offenders have been incapacitated. The incapacitation is achieved by convicting and imprisoning the offenders.

Various research techniques were applied in the study. A document study into the envisaged form of the ISD involved analysing papers and policy documents from both parliamentary chambers. The implementation process was investigated by means of structured and semi-structured interviews with public prosecutors (5), probation officers (13), personal case officers and other prison staff (26), judges (5), lawyers (4) and municipal officials (6). ISD subjects were also interviewed (17). Prison files were investigated (100), with a view to gathering background details of ISD subjects and the ISD process. A case law study was then employed to illuminate any legal obstacles, and reasons for refraining from or extending an ISD Order. Finally a list was drawn up of criminogenic factors of all ISD subjects, based on the RISC offender assessment database. (RISC comprises a set of questions for assessing recidivism risk, and is used by the probation service.) HKS, a national police records system, was used in tentatively estimating the incapacitation effect.

## *11.2. Objective and target group of the ISD Order*

The origins of the ISD Order are in safety policy. The primary objective is to reduce the public nuisance caused by repeat (i.e. extremely persistent) offenders. Imposing the order for up to two years should curb nuisance, since it is impossible for someone to cause nuisance in the public domain while they are in detention. Another objective of the order is to reduce recidivism. Recidivism can be prevented by influencing behaviour, with due regard to any personal issues involved. Only properly motivated ISD subjects are eligible for behaviour-influencing programmes of this kind. ISD subjects who, despite being motivated, are incapable of following programmes, require care that is programmed specifically for them. Anyone unfavourably inclined towards everything gravitates to a basic regime. The initial expectation was that a large group of ISD subjects would end up in a basic regime through a lack of motivation.

However, it would appear in practice that approximately only one fifth of the ISD population is in a basic regime. The ISD population is predominantly male, but the order is imposed on women too. ISD subjects offend frequently, with the average rate of registered offences attributable to them lying between 1.8 and 16.8 a year, based on the five years prior to the ISD Order. The average rate for the entire group is 5.5 offences a year. All ISD subjects have a history of addiction (drugs, alcohol, or both), which is not to say that addiction is a foreground issue for everyone involved. More than half of ISD detainees have some combination of psychiatric problems and a personality disorder, and possibly learning difficulties as well. There is therefore an element of comorbidity for the majority of people who receive an ISD Order. The calculating persistent offender without a history of addiction does not occur in the ISD population. These results are consistent with those of the 2007 inspection study by the Sanctions Inspectorate (Inspectie voor de Sanctietoepassing, Inrichtingen voor Stelselmatige Daders, 2008).

## *11.3. Implementation of the Act*

We discuss the implementation process in four phases: the circumstances leading to an ISD Order; preparation for the hearing; execution of the order; and postcommittal care.

### **Phase 1: The circumstances leading to an ISD Order**

The persistent offenders case meeting has an important role in preparing for an ISD Order. A case consultative structure has been established in all districts (by police region), and is usually controlled by the Public Prosecution Service. Chain cooperation has gained momentum. The lists of extremely persistent offenders who are eligible for an ISD Order in all five of the districts investigated are in order, or nearly so. The same cannot always be said of the files on the persistent offenders, which may not have been updated, with care information often missing in the computer system. The probation service is supposed to produce a preliminary plan in this phase, with an assessment of the background of the persistent offender and

recommendations for intervention. This plan does not always materialize, which has some relation to available capacity.

### **Phase 2 Preparation for the hearing and trial**

When preparing for the hearing, the list of ISD Order candidates maintained by the police (and discussed in the case meeting) is the criterion used by the Public Prosecution Service in deciding whether to seek an ISD Order. The prosecutor checks whether the suspected persistent offender meets the legal requirements for imposing the order. The probation service does not always succeed in forming an opinion before bringing the suspect before the public prosecutor. Nonetheless, a preliminary plan usually does exist, and is sufficient. Moreover, the probation service would not always appear to be in a position to verify suspicions that the persistent offender has a serious psychiatric disorder. There is no instruction for how to perform this check, and the relevant knowledge sometimes comes from the case meeting. This is a problem area, as the Sanctions Inspectorate observes (*Inrichtingen voor Stelselmatige Daders 2008*, p. 20). When Compulsory Treatment of Addicts (SOV) was still in force, which was until the end of 2004, the outcome of a behavioural study was required prior to imposition. There is no constraint of this kind for ISD Orders. The Netherlands Institute of Forensic Psychiatry and Psychology (NIFP) is hardly ever requested to provide an opinion. As a result, ISD Orders are being imposed inappropriately on repeat offenders with a serious psychiatric disorder.

The RISC should be applied for every ISD candidate. The interviews with public prosecutors and probation service staff would suggest that this step is almost always taken, unless the suspect refuses. However, the figures show no RISC analysis for half the ISD subjects. Concerns about RISC were raised in the interviews with probation service staff, psychologists and public prosecutors, with mention of both the relevance of the information yielded and the time consumed in using the instrument. A comment from the probation service was that it works well as a checklist, but additional more precise diagnostics is necessary for this target group (see also Van der Knaap et al., 2007).

The process of social inquiry reporting to courts certainly did not run smoothly in the initial period of ISD introduction. Faced with a suspect who refused to cooperate both with the RISC and the social inquiry report, the probation service could well terminate the social inquiry report assignment. Currently, the probation service usually produces a social inquiry report for reluctant suspects too. They then refer to earlier reports and to knowledge accumulated about the suspect in previous years. Some districts have standards for the form in which the opinion is presented, which is usually beneficial to the quality. Otherwise, there is no formal requirement for a RISC analysis or plan of action before imposing an ISD Order.

We observe in practice that the judiciary views ISD Orders as a last resort: an order is given only in the absence of alternatives, and with the requirement attached that ISD subjects are to be put on a programme. The judiciary considers rehabilitation within an ISD framework to be extremely important. It seems in practice that a substantial majority of ISD subjects have a personal plan, and approximately one fifth of them are in a basic regime. The orders are almost invariably imposed for two years, with no deduction of the pretrial detention period. ISD subjects who appeal the ruling may ultimately be detained for three

years. There is reason to terminate the order if the recidivism risk has receded, but there may be other termination grounds, outside the control of the ISD subject, such as negligence on the part of a government agency.

### **Phase 3: Execution of the intramural phase and extramural phase**

Execution of the order has an intramural phase, inside the institution, and an extramural phase, outside. However, the extramural phase does not apply to everyone.

#### *Intramural phase*

Once a judgment has become final, the ISD subject is given time to stabilize. This does not always occur in an ISD unit, and transfer to the correct location does not always proceed as it should.

An accommodation plan is never available in good time (i.e. within four weeks). The quality is also variable, partly because of a lack of relevant information, such as reports from psychiatrists and psychologists, reports from other prisons, and information from prior treatment and care. All respondents consider four weeks too short to draw up a tailored accommodation plan for an individual, and they would opt for a period of between six and eight weeks. The respondents would also prefer a reintegration plan to an accommodation plan. The Sanctions Inspectorate arrives at the same general conclusions, and proposes a reintegration plan through a growth model (Inrichtingen voor Stelselmatige Daders 2008, p. 22 ff.).

Attention is given at the start of the intramural phase to motivating ISD subjects to change their behaviour. While the order is in place, many ISD subjects appear to be susceptible to motivating talks, albeit that this is a time-consuming process. Three groups of ISD subjects ultimately crystallize out: those who are willing but unable; those who are motivated, but not at all costs; and those who are unfavourably inclined towards everything. The final category is the smallest.

There is a large group of willing ISD subjects who are unsuitable for an ISD Order because of a possibly serious psychiatric or personality disorder, or a learning difficulty. This group should be offered care, but this objective is not being achieved. However, measures have been taken in the course of time to cater for this group, such as by engaging psychologists and behavioural specialists, but prison is still an inappropriate setting in which to supervise this group for two years. All concerned, from the court, the prison staff to the ISD subject, find it hard to accept that people who need care, and are actually unsuitable for ISD, still have the order imposed. They all argue for a broader and more diverse network of clinics and care institutions that are able to provide treatment. Incidentally, the lack of care services can be grounds in an interim court review for terminating an order.

The situation for ISD subjects with serious psychiatric problems may improve if the Ministry of Justice insources care from the mental health care system. However, this measure would provide no remedy for ISD subjects with learning difficulties. Furthermore, there are long waiting times for providers of addiction treatment and care, so that ISD subjects with serious addiction problems who are unsuitable for behavioural interventions, but do need

care, spend almost the entire ISD period in prison. An exception to the above is the group of female ISD subjects, who can often be found a place after some considerable effort.

A large group of ISD subjects appear to have learning difficulties, which may become apparent because of the lengthy detention. They are not being dealt with appropriately. The cognitive skills training for people with learning difficulties provided at four of the five locations investigated is unsatisfactory. Furthermore, their addiction pattern prevents them being placed in a facility for intellectually disabled people, even though they are in need of care. Neither do they fit into the prison community, where they are vulnerable and defenceless.

ISD subjects who are well motivated and open to influence should be offered intramural interventions aimed at reintegration. A plan of action should then be available within two months. A longer period tends to pass in practice (and six months is no exception). There is no national or other format for the plan of action and the required information. Several behavioural interventions are also offered, but there is insufficient variety, and what is available is not always tailored to and appropriate for this specific target group of obstinate recidivists. The typical interventions offered are training courses, such as cognitive skills, social skills, or budget training. It is questionable whether the existing training courses address the core problem of extremely persistent offenders, or whether instead a form of treatment is needed. The study also reveals that while the execution of the personal plan is on the agenda in case meetings, there is often no one with ultimate responsibility for coordination. Failure to provide the programmes mentioned in the plan of action, or having no plan of action, may prompt a court to terminate the order in an interim review.

The group of unmotivated ISD subjects is subject to a basic regime, and follows the mainstream programme. The unmotivated ISD subjects consider that being locked up for such a lengthy period for something so petty is unjust. The period is usually even longer than two years, because pretrial detention is not deducted. Case law shows that orders may be terminated in interim review for unwilling ISD subjects too, if justified by a circumstance outside the control of the ISD subject.

#### *Execution of extramural phase*

The institution and the municipal administration agree the execution details of the extramural phase. Many different organizations are involved in the extramural phase. The communication and coordination of responsibilities between care institution, probation service and prison in the extramural phase demand a clear coordinating role of the probation service, which as yet is not always present. The introduction of the new cooperation model between the prison and probation services, which is part of the Recidivism Reduction policy programme, is expected to help improve the coordinating function (Inspectie Sanctietoepassing 2008, p.41).

The probation service is supposed to visit ISD subjects once a week, but this does not actually happen. A distinction is made between intensive, average and low supervision. Supervision is tailored to the personal circumstances and the phase that a given person is in. The study suggests that supervision should be more intensive, certainly in the initial phase.

There is a need for tailored supervision by the probation service in order to take immediate action in the event of a relapse, and to prevent ISD subjects falling back too far. Trial and error is a legitimate part of the process, but this aspect needs firm handling. Progress reports are important in tracking development. Progress reports are not always produced each month, and the probation service does not always appear to be aware of relapses in good time, which could have to do with the lack of clarity in the coordinating role.

Achieving a satisfactory transition from life inside the prison walls to the world outside demands an earlier start to the extramural phase than is now usually the case. Another option would be to introduce an intermediate phase, such as a gradual process of undertaking various activities outside the prison walls. This also emerges from the Sanction Inspectorate's study. There are no legal obstacles to introducing the semi-open phase (letter of 4 June 2008, reference 5545436/08/DSP), and one of the locations that previously implemented the Compulsory Treatment of Addicts has retained the semi-open phase, with success.

#### **Phase 4: Postcommittal care**

In general, the target group involved is a difficult one. Many revert to their old ways, and a definite factor is that the subjects are no longer under a sentence in the postcommittal care phase. In order to stop this trend, one of the locations has assembled a forensic nonresidential team, which enters into a supervision contract with the prisoner shortly before the order expires. The objective is to keep a close eye on the situation.

Slowly but surely, the municipalities are acquiring expertise in designing postcommittal care. This aftercare responsibility actually applies to all ex-prisoners. More facilities for work and occupation than for accommodation are available to ex-ISD subjects. This is certainly the case for people with learning difficulties and addiction or psychiatric problems; their problems are too serious for mainstream organizations. Furthermore, the capacity of specialized services is too limited, so that this group has almost nowhere to turn.

### ***11.4. Conclusion***

The implementation process is progressing in fits and starts. The case meetings for persistent offenders in the districts (by police region) have an important role in the preparatory phases; if this role proceeds well, it saves the Public Prosecution Service substantial effort. However, these case meetings are also vital for coordinating the chain effectively in the extramural phase and postcommittal care.

The envisaged target group is being reached, albeit that the group of people with both an addiction problem and a combination of serious psychiatric problems and learning difficulties is larger than expected. Compatibility with the care institutions is a major problem area in this respect. The group with learning difficulties has a particularly hard time within the prison community. According to the State Secretary for Justice, there should be a routine personal plan consultation with the NIFP before the Public Prosecution Service acts, in order that the presence of a psychiatric disorder or other factors that render detention unsuitable

can be detected at an earlier stage. Several pilots for forensic care needs assessment have now been started to ascertain whether and how to perform in-depth diagnostics with ISD subjects (letter 4 June 2008, reference 5545436/08/DSP).

The interventions available in the intramural phase are too limited and insufficiently tailored to the target group; the training courses and interventions would appear not to address the core problem. The state secretary has undertaken to review the possibilities for an extended day programme, and is initiating a study into effective integrated programmes (letter 4 June 2008 reference 5545436/08/DSP).

There are insufficient extramural services available for ISD subjects in need of care. This situation most affects people with psychiatric problems and an addiction, and people with learning difficulties. The state secretary hopes that the insourcing of forensic care will have some influence in this regard. It is also expected that improved registration will lead in future to more demand-oriented purchasing (letter 4 June 2008 reference 5545436/08/DSP). No solution has yet been devised for people with learning difficulties.

The municipalities are consistently improving the way they handle their postcommittal care responsibilities. The largest problem area is concerned with the lack of housing facilities. The kind of accommodation that people now end up in brings them into regular contact with addicts, while making it almost impossible to find a normal job.

Over the years, great strides have been made in the execution of the ISD Order. Each location has found one or more solutions for acute problems. These good practices can serve as an example. For instance, one organization has a pleasant and efficient structure allowing dossiers to be built and updated in the course of the order in an accessible way, while another is managing to overcome the practical problems in finding short-term extramural places for ISD subjects, and yet another has a natural transition to rehabilitation through a semi-open unit in the prison itself. The study clearly reveals that the objective of the ISD Order is not just to keep people off the streets for a long time, but emphatically also to reintegrate them. This aim demands constant attention and specific measures, from the intramural phase (tailored treatment programmes and training courses), through the extramural phase (expansion of the network of care and other services) and into the postcommittal care phase: more, and more varied, housing facilities.



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