

## Summary

### **Defendants who refuse to participate in pre-arraignment forensic psychiatric evaluation**

#### **Findings on a special ward in the Pieter Baan Centre, the forensic observation clinic in the Netherlands**

### **Introduction**

In the Netherlands, suspects of serious crimes may need to be examined for mental illness when suspicions arise about their state of mind during their crime. As the public prosecutor builds his case against the suspect, he may order such an examination to take place. When this happens, the public prosecutor or the (examining) judge will give the Dutch Institute for Forensic Psychiatry and Psychology (NIFP) the assignment to evaluate the suspects' mental health. This evaluation results in a forensic psychiatric evaluation report in which usually five hierarchically sorted questions are answered: Is there a mental disorder or not and if so, which one(s)? Was there a mental disorder at the time of the alleged crime? Does the disorder influence the crime that was committed? What is the risk of recidivism? Is a behavioral intervention necessary or is punishment in prison advised?

The forensic psychiatric evaluation may take place while the defendants are incarcerated in jail awaiting trial or in the forensic psychiatric clinic in the Netherlands, the Pieter Baan Centre (PBC). The latter occurs when observation of the behavior is deemed necessary to gain more insight into the defendants' state of mind and consists of admittance to the PBC during six weeks. During their stay in the PBC, a multidisciplinary team of behavioral experts try to assess the mental health of the defendant. The team consists of a psychologist, a psychiatrist, a researcher who examines the course of life of the defendant and a legal adviser. Further, the defendant is placed in a group with usually seven other defendants and is observed in daily (prison) life. Some defendants however, refuse to participate in the evaluation. This may be problematic because insight into the defendants' state of mind during their crime may be limited. This in turn may be problematic because not all convicts are then placed in the right system: with treatment if a disorder is diagnosed, usually in the forensic mental health system, and without treatment if no disorder is diagnosed, in the prison system. For the duration of one year in the PBC a special ward has been set up to specifically attend to defendants who refuse to participate in the evaluation, called Unit 3. The regular examination process is altered in such a way that the PBC expects to observe more behavior from the defendant and thereby will be able to write a fuller forensic psychiatric evaluation report. Furthermore, it is expected that upon placement on the unit, some defendants may start to participate. The present report consists of two separate parts: (1) the evaluation of the plans behind the special ward, and (2) the results of the first six months of the pilot.

### **Methods**

Part 1. The goal of the evaluation of the plans is to determine the effects of the special ward that are expected by people essential to the ward and from the plans that have been written up. The research questions are:

- 1 What are the goals, plans, motives and thoughts behind Unit 3?

- 2 What are the supposed working mechanisms behind Unit 3?
- 3 What is the theoretical framework behind Unit 3?
- 4 On what (policy) literature is the ward based and how is this literature incorporated in the plans on Unit 3?
- 5 Can Unit 3 be considered successful or promising based on the evaluation of the plans?

The evaluation of the plans is performed by means of interviews of key figures, studying plans on paper, attending meetings about the ward and analyzing available literature.

Part 2. The results of the first six months of the pilot consists of a description of all defendants who have stayed at the ward during this time. The goal of this part of the study is to get a first impression of the effectiveness of Ward 3. The research questions are:

- 6 How many defendants who refuse to participate in forensic psychiatric observation have stayed in the ward during the first six months? How can this group be characterized? In what way can their refusal be described?
- 7 How many reports can be considered complete? How many and which questions in the forensic psychiatric report are answered?

The chapter on the first six months of the unit results from an analysis of the forensic psychiatric evaluation reports and a questionnaire that was set up for the present study by the main author.

## Results and conclusions

### Part 1: Evaluation of the plans

The main goal of Unit 3 is to gather as much information about a defendant who refuses to participate in forensic psychiatric evaluation as possible, in order to adequately write a complete forensic psychiatric evaluation report. The results of the present evaluation of the plans show that there are seven themes with a total of nine supposed working mechanisms. These are ideas about how Unit 3 might work, deduced from the interviews and literature behind the unit.

#### 1 *A social climate of a therapeutic community*

Expected working mechanism 1: By treating the defendants differently, in a social climate resembling a therapeutic setting, while incorporating motivational interviewing skills and by tempting and 'seducing' a defendant to engage in contact, it is expected that it is harder to (only) show previously prepared and/or desirable behavior. In this manner, it may be possible to observe a defendant more and/or better, which may lead to a more complete forensic psychiatric evaluation report.

#### 2 *Extra forensic psychiatric expertise*

Expected working mechanism 2: by contracting staff with forensic psychiatric expertise from a forensic psychiatric center, with – amongst others – knowledge of personality disorders, experience with working in a therapeutic community and a fresh outlook on the observation process, a knowledge exchange with the staff from the PBC can take place. By the exchange of expertise, the knowledge on the observation process may increase. By additional knowledge further development of the observation methods may occur, which may lead to a more complete psychiatric evaluation report.

Expected working mechanism 3: by creating the new function of observation coordinator, someone who develops observation plans, promotes the expertise of staff members who run the ward, who adds file based knowledge and functions as a key figure between the psychologist, psychiatrist and staff members who run the ward, additional options to increase the observation process are created. By

developing the observation process further, the suspect may be observed better, which may lead to a more complete forensic psychiatric evaluation report.

3 *A day-to-day program with a flexible and attractive offer of activities*

Expected working mechanism 4: By creating an attractive and spacious common room equipped with several facilities (such as a game computer and recreational possibilities), the chance increases that defendants chose the common room above staying in their own cell (where they may not be observed). When the defendants chose staying in the common room more often than staying in their own cell, the defendant may be observed more often, which may lead to a more complete forensic psychiatric evaluation report.

Expected working mechanism 5: by expanding the day-to-day program and also by increasing the flexibility with which this program may be executed (for instance by increasing the amount of time spent outside going out for air), the defendant is stimulated to increase his amount of time spent outside his cell. In this manner, the defendant may be observed more often, which may lead to a more complete forensic psychiatric evaluation report.

4 *Limited amount of possibilities to retreat*

Supposed working mechanism 6: by observing defendants who refuse the forensic psychiatric evaluation in a homogeneous group, it is expected that they are not able to retreat behind defendants who need intensive care or are showing problematic behavior. In this manner, the defendant may be observed more often, which may lead to a more complete forensic psychiatric evaluation report.

5 *Extra focus on and attention for one subgroup of defendants*

Supposed working mechanism 7: by keeping the defendants who refuse to participate separately from the other defendants, there is more time to observe each defendant. By increasing the amount of time to observe, the number of observation is increased. This may lead to a more complete forensic psychiatric evaluation report.

6 *Prolongation of the observation period*

Supposed working mechanism 8: by prolonging the observation period, from the standard six to seven weeks and when necessary to a maximum of fourteen weeks, it is expected that it is harder to hide psychopathological disorders and to retreat from the forensic psychiatric evaluation. This may lead to a more complete forensic psychiatric evaluation report.

7 *Multidisciplinary expansion of the forensic psychiatric evaluation process*

Supposed working mechanism 9: by expanding the standard forensic psychiatric evaluation process in different manners and with the help of a multidisciplinary team, for example by creating extra consultation moments among staff in the multidisciplinary team, extra evaluation moments between the defendant and the psychologist and psychiatrist, a possible expansion of the forensic network evaluation and by creating more moments to discuss the preliminary results with the defendant, it is possible to gather more information about the defendant. More information may lead to a more complete forensic psychiatric evaluation report.

The next step in an evaluation of the plans is to compare the supposed working mechanisms with the (international) literature. An important shortcoming in the present evaluation of the plans however, is that (international) literature is not or hardly available, as the PBC is a unique institution worldwide. This unicity refers to the goals, the outcome and the length of stay of the observation period, the people who are admitted and the judicial trajectory the defendants find themselves in. Especially the goal of the PBC as an observation clinic for diagnostic purposes, makes it hard to compare it with the international literature. A next step is to compare the working mechanisms with the literature on comparable

populations and to study if this literature provides any guidelines into the possible efficacy of the supposed working mechanisms. This was only possible for the first theme: a social climate of a therapeutic community. This literature shows that the set up of Unit 3 is comparable with the set up of a positive social climate in judicial settings with a different goal, such as incarceration in prison. Due to the fact that in other judicial settings the goal is detainment rather than forensic psychiatric evaluation, this literature may not be used to confirm a positive or optimal social climate in the observation clinic, however it does show that the social climate is set up according to the literature in populations similar to the population in the PBC.

Finally, from the evaluation of the plans it is determined that Unit 3 is not set up according to an analysis of the literature, is not research-based and does not incorporate current forensic psychiatric theories, while the Unit may have profited from such analyses.

*The conclusions of the first part of this study, the evaluation of the plans, is:*

*The analysis of the plans behind the unit shows that Unit 3 was mainly set up to intensify the observation process and to adjust the social climate, from experience in practice and expertise with the PBC and partner organizations.*

*The comparison with the literature was limited, but shows that the social climate in Unit 3 incorporates many factors that are deemed important in similar populations. The other supposed working mechanisms can not be judged from the literature because of a lack of available applicable literature.*

*In setting up the unit, no analysis of the literature was performed, no research was conducted nor the possible applicability of leading forensic psychiatric theories was determined, such as the RNR and the Good Lives Model. The unit could potentially have profited from such an exercise.*

*Finally, due to the choice to mainly focus on intensifying and developing the observation techniques as part of the multidisciplinary forensic psychiatric evaluation, possible improvement of other elements of the forensic psychiatric evaluation process were not considered. It is possible that in other parts of the multidisciplinary forensic psychiatric evaluation process improvements could have been made as well, such as in the evaluations of the psychiatrist, psychologist or forensic psychiatric network examination.*

## **Part 2: First results Unit 3**

In the first six months of the pilot, 21 defendants were admitted to the ward and their forensic psychiatric evaluation reports were completed. These reports were all written on behalf of trial court (lowest court), there were no reports written for defendants who had to appear in court for appeal. The average age at the time of admittance in the PBC was 37.2 years old and most defendants are male. At least two thirds of the defendants (14) were treated before the current alleged facts occurred, with a judicial measure or in the regular mental health care system in the Netherlands. Four defendants have had a Dutch judicial order of *terbeschikkingstelling* (disposal to be treated on behalf of the state, TBS order, Article 37a.1 Dutch Criminal Code) or a placement in a juvenile forensic psychiatric center.

Seven defendants stayed in the unit for five weeks, the length of stay of the other defendants varies from one to nine weeks. For 10 defendants the length of stay was increased from six to seven weeks, 8 defendants stayed six weeks and for 3 defendants the observation period was prolonged to ten weeks. For the majority of defendants (14), prolongation of the observation period was not considered, because it was not expected to lead to a more complete forensic psychiatric evaluation report. For 6 defendants prolongation was considered and applied for and for 3 defendants

the prolongation was granted. For the 3 other defendants, the examining judge did not grant permission for prolongation of the observation period.

Most defendants have several reasons to refuse to participate in the forensic psychiatric evaluation. Commonly, they refuse to participate at the advice of their lawyer (19 defendants). Next to this reason, some defendants claim that they are innocent (3 participants) or that it might harm their case if they would participate in the examination (7 other defendants). The behavioral experts indicate that 18 out of 21 defendants do not refuse participation out of psychopathological reasons (such as a psychotic disorder). For 1 of the 3 remaining defendants this information is not available and for 2 defendants, refusal due to psychopathology cannot be ruled out.

The reasons behind the transfer to Unit 3 are often that defendants refuse to cooperate in the forensic psychiatric evaluation. For 4 defendants, no explicit reason behind the transfer to Unit 3 is given. Seven defendants have started to cooperate (somewhat) more after being transferred to Unit 3 (33%). In 4 out of 7 of these defendants, the amount of cooperation is considered quite large.

For 10 defendants of Unit 3 (48%) conclusions about disorder(s) were provided. For 7 defendants (33%) a partial advice was given on an intervention or behavioral measure. Comparable numbers about the population of defendants who refused in the PBC in the past (2012-2016, N=478) show that for 36% of these defendants conclusions on disorders were reached and for 21% an intervention or behavioral measure was advised. With these numbers, the number of complete forensic psychiatric evaluation reports is increased as compared to the past.

**Table S1 Amount of information in forensic psychiatric evaluation reports in the first six months of Unit 3**

Number of defendants who stayed at the unit	21
Mental disorder	10 (48%)
Mental disorder at the time of the alleged crime	8
Mental disorder played a role in the crime	5
Diminished accountability	5
Risk of recidivism due to mental disorder	5
More general risk of recidivism	4
Advice given for a behavioral measure or intervention	7 (of which 2 partial advices; 33%)

*Conclusion first six months pilot Unit 3:*

*The amount of information that was gathered from defendants who refuse participation in pre-arraignment forensic psychiatric evaluation on Unit 3 has increased as compared to the amount of information that could be gathered from defendants who have refused to participate in previous years. This finding can be cautiously interpreted as a success of the unit. For 48% of the defendants of Unit 3 conclusions could be drawn on disorders and for 33% advice on an intervention or behavioral measure was given. In the comparison group (N=478), defendants who have been subjected to pre-arraignment forensic psychiatric evaluation in the PBC in 2012-2016, these numbers were 36% and 21%, respectively.*

Due to the fact that only a small amount of defendants were admitted in the first six months and to the fact that the pilot will involve an additional six months, these results should be considered preliminary. The effect evaluation, which is expected at the end of the summer 2018, should shed more light on the final judgment on the efficacy of Unit 3. In that study, all defendants who have refused cooperation and

stayed at Unit 3 will be matched with defendants from the previous 5-year cohort and compared on the above and additional outcome measures. In this manner, more definitive conclusions on the efficacy of Unit 3 can be drawn.