

THE ISD-MEASURE FOR HIGH FREQUENCY OFFENDERS: SOCIAL COST-BENEFIT ANALYSIS OF A POSSIBLE PROLONGATION

AUTHORS: FRANK VAN ZUTPHEN, MARJOLEIN GODERIE & JAN JANSSEN

SUMMARY

Introduction

October 1st 2004 the ISD-measure for high frequency offenders came into effect. The ISD-measure aims to improve public safety by incapacitation of high frequency offenders for a longer period (maximum of 2 years) and by reducing post-release recidivism by re-socialisation. High frequency offenders (HFOs) are sentenced in special sections in prisons (ISD stands for *Inrichting Stelselmatige Daders*, or Institution for habitual offenders) and those offenders who are motivated receive treatment and a rehabilitation program with the aim to reduce recidivism. A recent study of Tollenaar & Van der Laan (2012) showed that the ISD-measure is more effective to reduce crime and recidivism compared to ‘treatment as usual’, being short prison sentences. Within two years after the ISD-measure 72 percent of the HFOs have committed crimes again compared to 84 percent of HFOs with treatment as usual. So, post-release recidivism decreases substantially, although the recidivism figures still remain high.

Given this high recidivism and suggestions from stakeholders that a period of two years would be too short for a proper rehabilitation program several political parties in The Dutch House of Representatives suggested that the success of the ISD-measure could be further improved by a prolongation of the ISD-measure. In this report we analysed this suggestion. First, we analysed for which HFOs a prolonged treatment would be useful. Second, we analysed the social costs and benefits of a prolonged ISD-measure. We analysed five different alternatives and compared these alternatives with the regular ISD-measure of two years.

- ✓ prolongation of ISD-measure with six months;
- ✓ prolongation of the ISD-measure with one year;
- ✓ six months of probation after the regular ISD-measure;
- ✓ one year of probation after the regular ISD-measure;
- ✓ starting earlier with the rehabilitation program.

An important element to consider with a possible prolongation of the ISD-measure (relevant for all alternatives) is that the judge sentences a HFO to the ISD-measure. The judge has to make a judgment weighing the interests of the HFO on the one hand and the interests of society on the other hand. The judge decides. In this study we did not conduct a survey among judges to find out whether they would use of a possible prolongation of the ISD-measure for sentencing HFOs. So, the results in this study show the social costs and benefits in the *hypothetical case* of a possible prolonged ISD-measure.

HFOs suffer in various domains of functioning (addiction, mental health problems, intellectual disability) and in most cases it is a combination of these problems. HFOs also have problems with housing (homelessness), work and income (no work, no basic qualifications, debts) and health. Indications exist that the problems of HFOs have increased in the recent years.

First question in our study is for which HFOs a prolonged treatment would be useful. Treatment in this study is broadly defined. Treatment can be therapy as well as training, coaching, providing support, debt counselling and providing structure / daily routine to HFOs. Simply said: treatment can be all professional actions during the ISD-measure aiming to solve or better manage the HFO's problems that lead to rehabilitation of the HFO. When we speak of professionals in this report, we mean all doctors, practitioners, personal care officers, and other professionals working on the treatment of the HFO.

Research methodology

To answer the research questions, we started with a series of explanatory interviews with 13 stakeholders (judges, public prosecutors, lawyers, scientists and civil servants from the Ministry of Security and Justice). After these interviews, we made a selection of 43 HFOs at the end of their ISD-measure. For this group we first investigated their dossier. Second, we interviewed professionals directly involved with the treatment of the HFOs, like professionals working at the ISD-sections of prisons, GGZ-institutions, probation organisations and municipalities (after-care). In these interviews we talked about the case of the relevant HFO and asked whether a prolongation of the treatment would be useful and if so, what treatment would be most appropriate and what effects could be expected of this prolongation. In total we interviewed 93 professionals. For most of the 43 HFOs we interviewed two professionals and for some HFOs we interviewed three professionals. The result is 93 expert judgments of professionals about 43 HFOs. To check and validate the aggregate results of our study we organised an expert meeting with professionals. Finally, we also interviewed 13 HFOs (out of the group of 43 HFOs).

Need for prolongation of treatment

Our research has shown that the alternative 'starting earlier with the rehabilitation program' is no real alternative for an effective increase of the treatment period with six months within the current two year period. In individual cases it is possible to start earlier with the treatment program, but the time gained is in those cases at most several months. Although it looks like it takes some time before the actual treatment starts, in the first phase of the ISD-measure diagnosing, stabilising, and motivating the HFO are necessary before the treatment can start. This phase normally takes several to six months.

Almost all professionals interviewed have stated that a prolongation of the ISD-measure can be interesting and useful - depending on the case and conditions - in solving and managing the problems of HFOs.

In 22 percent of the interviews professionals stated in their expert judgment that a prolongation of the ISD-measure would not be useful for the HFO. Most important reason was that the HFO is not or cannot be motivated for a treatment program. One could say this group is untreatable. In the other interviews (78 percent) the expert judgment of professionals was that an prolongation of the treatment program could be useful.

We also asked which legal framework was necessary for this treatment. In 12 percent no legal framework was necessary, in 7 percent a civil law framework would be appropriate and in 81 percent a criminal law framework was needed.

Treatment program as part of the ISD-measure

The rehabilitation program or treatment program as part of the ISD-measure is always tailor-made, although in general several phases can be determined. The first phase of the ISD-measure is intramural (in the ISD-section in prison) and during this phase diagnosing, stabilising and motivating the HFO are part of the program. Normally, this phase takes several to six months. If the HFO is motivated for treatment the HFO starts with behavioural interventions. The next step in rehabilitation and re-socialisation is the extramural phase of the ISD-measure. The extramural phase consists of a care program (at a GGZ-institution) and a re-socialisation program (at a institute for sheltered or assisted housing). In most, but not all, cases the re-socialisation program follows the care program. The extramural phase takes from 6 to 18 months. Rehabilitation of the HFO is trial-and-error process (two steps forward, one step back) in which the HFO gets more and more freedom as the rehabilitation program progresses. Especially large steps in the rehabilitation process (from the ISD-section in prison to GGZ-institution, from the GGZ-institution to institute for sheltered or assisted housing, and from the institution for sheltered or assisted housing to independent living) incur a great risk of relapse in for example use of drugs and criminal behaviour. If a HFO in the ISD-program violates conditions, the HFO can be put back at the ISD-section of the prison. Several months before the end of the ISD-measure after-care is started, for which municipalities are responsible. Immediately after the ISD-measure the criminal law framework ends.

Professionals provided several reasons why a prolongation of the ISD-measure could be useful in certain cases:

- ✓ The care program and / or re-socialisation program are not finished yet (for example resulting from relapse of the HFO). The two year period is in those case insufficient to complete the total rehabilitation program. This is a result of the increase in complexity of HFO's problems. In some cases a second care program (after relapse out of the first care program) is not started as the time for a second care program within the time frame of the ISD-measure is insufficient.
- ✓ Extra support and a big 'stick behind the door' (judicial pressure) are necessary, so the HFO can get used to his new environment in a controlled setting (this is especially relevant in the transition to sheltered or assisted housing). The stick behind the door serves a legal threat preventing relapse out of the rehabilitation process.
- ✓ In case of a relapse shortly before the end of the ISD-measure it is not possible to arrange after-care (housing, income, healthcare, daytime activities and a social safety net) in a proper manner. In case of a prolonged ISD-measure relapses shortly before the end of the ISD-measure can still occur, although the chances of a relapse decrease as the duration of the rehabilitation program increases.

We also asked the professionals which criminal law framework would be most appropriate (prolongation ISD-measure or probation). We did not present in detail designed alternatives to the professionals with the option to choose the most appropriate alternative as the ISD-program is tailor-made. We just asked the question, which criminal law framework would be most appropriate as part of the optimal treatment program.

If a criminal law framework is required, in 44 percent of the cases probation is preferred and in 36 percent of the cases a prolongation of the ISD-measure is the preferable option. In 20 percent of the cases both alternatives are equally adequate. Most important reason for choosing one of the alternatives is that a prolongation of the ISD-measure is perceived as being much heavier. Prolongation of the ISD-measure is therefore a bigger stick behind the door than probation.

It should be noticed that probation is always an element of the program during the extramural phase of the ISD-program. If the prolongation of the ISD-measure alternative is chosen this automatically implies probation during the extramural phase of the prolonged ISD-measure.

Finally, we asked the professional for the best environment for treatment in case of a prolongation of the ISD-measure. In 16 percent of the cases a GGZ-institution was deemed to be the optimal environment, in 60 percent of the cases an institute for sheltered or assisted housing was the best setting and in 23 percent another environment (for example ambulatory care) would be more appropriate. The ISD-section in prison wasn't mentioned at all by professionals as the most optimal environment. This implies that the prolongation of the ISD-measure means a prolongation of the extramural phase of the ISD-measure.

Costs and benefits prolongation

To gain more insights into the costs and benefits of a possible prolongation we estimated the situation of the 43 HFOs in our sample on different domains (safety, housing, work and income, and health) at the start of the regular 2 year ISD-measure, at the end of the regular 2 year ISD-measure and at the end of the prolonged (2½ or 3 year) ISD-measure. The situation at the start and the end of the regular ISD-measure were determined using information from the HFO dossiers, the situation at the end of the prolonged ISD-measure was determined using expectations from the professionals. Using the differences in these situations we calculated the social costs and benefits. In the next table we present the results of the analysis of the social costs and benefits for the average HFO.

Table S.1 Social costs and benefits for the average HFO (present values, 5 year period, figures in € 1,000)

INCLUDING RECIDIVISM EFFECTS	BENEFITS -/- COSTS
ISD-measure 2½ year	33 – 59
ISD-measure 3 year	59 – 107
ISD-measure 2 year + ½ year probation	33 – 59
ISD-measure 2 year + 1 year probation	59 – 107
ISD-measure 2 year (staring earlier)	No real alternative

The table shows the benefits outweigh the costs for all four alternatives of a prolongation of the ISD-measure for the *average* HFO. These findings are robust, the costs have been calculated generously and the benefits have been calculated conservatively. Of course – as is always the case in this type of research – uncertainty exists about the exact figures on the costs and benefits, although using other assumptions and other expectations from professionals also lead to the conclusion that the benefits for the average HFO outweigh the costs.

The type of criminal law framework (prolongation ISD-measure or probation) is not distinctive for the level of costs and benefits for the average HFO.

The main uncertainty with a serious impact on the level of costs and benefits for the average HFO is the extent to which a prolongation of the ISD-measure leads to a reduction of post-release recidivism. The table below shows the results of the costs and benefits for the average HFO including and excluding recidivism effects in case the alternative ‘prolongation ISD-measure with one year’ is chosen.

Table S.2 Social costs and benefits for the average HFO (present values, 5 year period, figures in € 1,000)

PROLONGATION ISD- MEASURE 1 YEAR	COSTS	BENEFITS	BENEFITS -/- COSTS
Including recidivism effects	100	159 – 207	59 – 107
Excluding recidivism effects	100	102 – 132	2 – 32

The table shows the positive balance of costs and benefits for the average HFO drops if recidivism effects are excluded from the calculations, although the balance still remains positive. The bandwidth of the balance of costs and benefits including recidivism effects is between € 59,000 and € 107,000 for the average HFO. If the prolongation of the ISD-measure has no effects on recidivism at all (only incapacitation effects and effects on the domains of housing, work and income, and health remain), the bandwidth of the balance of costs and benefits drops to € 2,000 and € 32,000 for the average HFO. The extent to which recidivism effects occur as a result of the prolongation of the ISD-measure are therefore an important element to consider when answering the question whether it is interesting to prolong the ISD-measure.

If one looks at the costs and benefits of the current 2 year ISD-measure (in comparison with ‘treatment as usual’, being short prison sentences), the results are in line with the results of our analyses. The bandwidth of the positive balance of costs and benefits of the current 2 year ISD-measure is between € 220,000 and € 371,000 for the average HFO. As a result of a reduction of recidivism the ISD-measure is a cost-effective measure. If a prolongation of the ISD-measure also leads to a further reduction of the recidivism the prolongation is also a cost-effective measure.

Most of the benefits of the prolonged ISD-measure (approximately 90 percent) are in the domain of safety and the result of a reduction in crimes committed by HFOs (incapacitation and post-release recidivism). In addition benefits have been calculated in the domains of housing, work and income, and health, although the benefits in these domains are at most five percent of the total benefits.

For determining the effects in the safety domain we used information of a study into the effectiveness of the ISD-measure of Tollenaar et al. (2014), while the effects in the other domains were calculated using expectations from professionals directly involved with the treatment of HFOs. As the benefits in the other domains are only a small percentage of the total benefits other expectations of professionals have a limited effect on the level of the costs and benefits and no effect on the final conclusion that the benefits outweigh the costs of a prolongation of the ISD-measure for the average HFO.

Concluding remarks

In calculating the costs and benefits we examined the *hypothetical situation* that the ISD-measure would be prolonged for all 43 HFOs in our research group and we estimated the situation after prolongation of the ISD-measure using among other things expectations of the professionals. Using this information we calculated the costs and benefits for the *average* HFO. Of course, the average HFO does not exist. Furthermore, each ISD-measure is tailor-made.

In 22 percent of all cases professionals stated that a prolongation of the ISD-measure would not be useful for the HFO. This group reduces the average success rate of the prolongation of the ISD-measure. This implies that in case the ISD-measure is only prolonged for those HFOs, for whom professionals think it will be useful, the positive balance of costs and benefits will become even more positive. Furthermore, professionals stated that for some HFOs just a small push in the right direction (at relatively low costs) could be sufficient to reach a stable situation with minor chances of relapse into the old habits of the HFO. Furthermore, the yearly benefits for each HFO reaching a stable situation without problems in the domains of housing, work and income, and health are very substantial.

So, the average figure tells only a part of the story. On the one hand a prolongation of the ISD-measure is not relevant for all HFOs meaning a prolongation of the ISD-measure for these HFOs only leads to incapacitation effects. On the other hand, the social benefits (excluding all crime reduction effects in the safety domain) per HFO can be as high as € 42,000 per year. This implies that a tailor-made approach is also relevant for the prolongation of the ISD-measure.

An important element to consider is the further design of the possible prolongation of the ISD-measure and especially the legal framework. Both options (prolongation ISD-measure and probation) require an amendment of the law. The legal framework is out of scope of this study. However, most professionals and other stakeholders interviewed stated as an explicit requirement for a possible prolongation that a judge should review each individual HFO case before a possible prolongation of the ISD-measure would be effectuated.

Van Zutphen Economisch Advies (Van Zutphen Economic Advice) is specialised in economic evaluations of projects and policy. In these evaluations we study questions like effectiveness (Which effects can be expected? Will we reach our goals?) and efficiency (Do the benefits outweigh the costs? Do cheaper - equally good - solutions exist?). By means of our studies we help our clients (governments and companies) on the one hand save costs and on the other hand obtain maximum results (maximum impact and effects) out of their projects and their policy. More info: <http://www.vanzutphenadvies.nl>.