

Eindrapportage Werkwijze ZSM en Rechtsbijstand



Document titel	Eindrapportage Werkwijze ZSM en Rechtsbijstand
Document versie	28 september 2015
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Document type	Eindrapport - Executive summary and conclusion
Project nummer	2534
Oplever datum	28 september 2015
Opdrachtgever	WODC
Aantal pagina's	6
Kernwoorden	ZSM, rechtsbijstand, rechtsbescherming verdachten, efficiëntie afdoeningsproces, kosten politie, kwantitatief onderzoek, kwalitatief onderzoek, onderzoeksresultaten.

Executive summary and conclusion

It is of the utmost importance that access to legal assistance within the ZSM-procedure is organized thoroughly. Every suspect has the right to consult an attorney preceding the first hearing by the police. Various parties have voiced their concern however regarding the fact that, in many cases, suspects in the ZSM-procedure relinquish their right to an attorney even though they are not informed regarding the potential consequences. In 2013, the working group 'ZSM & Rechtsbijstand' recommended to organize the ZSM-procedure in such a way that suspects automatically receive legal assistance prior to the police hearing (first consultation).¹ Suspects are then only allowed to turn legal assistance down by telling the attorney personally he or she does not want it. In addition, the suspect has a right to legal counsel in connection with the settlement decision in the case the prosecutor intends to impose an immediate settlement (second consultation). Furthermore, the first contact between the suspect and the attorney would take place through video-conferencing. This recommended ZSM-procedure was implemented in three regions (Rotterdam, Central-Netherlands, and Eastern-Netherlands) to pilot the procedure recommended by the working group.

The goal of the current study is to determine what the consequences of the recommended ZSM-procedure are for the legal protection of suspects, the efficiency of the ZSM-process, and the costs for the police, the Public Prosecutor's Office and subsidized legal assistance. This study was carried out by a multi-disciplinary team of the Erasmus University, led by the Centre of Excellence in Public Safety Management (CESAM), in November 2014 through August 2015.

Research questions

In order to do justice to the complexity of the (recommended changes in the) ZSM-procedure, the study concerned both the implementation of the recommended ZSM-procedure (process oriented approach) and the consequences of the recommended ZSM-procedure (result oriented approach).

The study answered the following two main research questions:

1. What are the actual consequences of the procedure recommended by the working group 'ZSM & Rechtsbijstand' on the legal protection of suspects, the efficiency of the ZSM-process and the costs for the police, the Public Prosecutor's Office and subsidized legal assistance, set against the current practice?
2. What are the organizational consequences of the recommended procedure, how practical is the implementation of the various elements of the recommended procedure, and what are the most important contributors to the costs of the procedure?

The research themes and sub-questions derived from these two main questions are tested in the pilot regions and the outcomes are compared to a reference region, where the ZSM-procedure remains unchanged. The following topics were investigated:

Efficiency	Legal protection of suspects	Costs
Preferred attorneys	Legal assistance	Subsidized legal assistance
Face-to-face consults	ZSM legal outcome	Attorney reimbursement
Objection	Detention of suspects	Stakeholder expenses
Use of legal assistance	Video conferencing	
Time to complete ZSM-procedure	Information-exchange	
Translators		

¹ Advies werkgroep ZSM en Rechtsbijstand, juli 2013, versie 1.0

Research approach

The pilot was limited to arrested adults suspected of category B-offenses, who were registered with a ZSM-attorney by the Legal Aid Board.² Minors were not included in the pilot. The pilot areas were selected based on the number of suspects they process and the distribution between urban and rural areas. Based on these criteria, the recommended ZSM-procedure was piloted in three areas: Unit East-Netherlands (starting 11-11-2014), Unit Central-Netherlands (starting 11-3-2014) and Unit Rotterdam (starting 11-11-2014). The Unit Zeeland/West-Brabant was added as a reference, in order to compare the pilot areas to an area where the modus operandi hasn't changed. A few research questions only relate to the pilot regions. The quantitative results from the pilot regions were compared to those in the reference region where possible. The qualitative research questions predominantly relate to the legal protection of suspects.

The implementation and consequences of the procedure recommended by the working group 'ZSM & Rechtsbijstand' were investigated using both qualitative and quantitative research methods. The researchers investigated the implementation of the procedure by interviewing relevant stakeholders and performing observations in the three pilot regions and the reference region and studying journals kept by the attorneys involved. This data was used to provide insight into the consequences of the recommended ZSM-procedure for the legal protection of suspects. The efficiency and costs of the recommended ZSM-procedure were studied both qualitatively and quantitatively. The consequences were studied quantitatively by analyzing registrations kept by the Public Prosecutor's Office, Police and the Legal Aid Board, the bills submitted by attorneys, and journals kept by the attorneys. Where possible quantitative findings were cross-validated and based on interviews and observations. Local context effects were analyzed. However, that does not mean qualitative findings were used as a substitute for quantitative findings or vice versa; both data sources were always combined.

Results

Efficiency

The efficiency of the recommendation procedure was studied by comparing the number of suspects to use legal assistance to the use of preferred attorneys, face-to-face consults, objections to punishments and measures, the time it takes for a suspect to go through the procedure and the use of translators. The recommended ZSM-procedure has led to an increase in the use of legal assistance. All cases reported to the Legal Aid Board after 20:00 are not relayed to an attorney the same day, but the next morning. New cases between 20:00 and 22:00 are picked up the next morning. This increases the workload in the morning by causing a backlog of registered suspects for the provided attorneys to process in the mornings, and puts a lot of strain on the legal protection of the suspect and the time it takes to process a suspect within the allotted 6 hours. Furthermore, arranging consultations with preferred attorneys as opposed to the ones provided also introduces delays, particularly during the weekend when their offices are generally closed. Where preferred attorneys have to be sought out outside of office hours, the ZSM-process can be delayed. In Central-Netherlands, the use of preferred attorneys decreased because suspects were obligated to first talk to the attorney provided. Many suspects seemed to be satisfied with the consultation provided by the standard provided attorney, therefore no longer requiring their own preferred one. This method therefore seems to improve the efficiency of the ZSM-process as more suspects use the provided attorney rather than their own preferred one.

² Pilot ZSM & Rechtsbijstand Plan van Aanpak t.b.v. Onderzoeksbureaus. Utrecht, September 19th 2014, DP21/015d.

The efficiency of the ZSM-procedure is also improved by the use of the video-conferencing facilities for the communication between the attorney and the suspect; it speeds up the ZSM-procedure as it eliminates travel times and expenses for the attorneys. A face-to-face consult is still utilized however if either the suspect or the attorney finds the video-connection to be insufficient. The attorneys who are physically present at a ZSM-location where suspects are also kept, such as the Kroonstraat in Central-Netherlands, take advantage of their proximity and more readily opt for a face-to-face consult with the suspect. That entails that it was easier for them to circumvent potential issues with the video-connection. In East-Netherlands, where there were more problems with the video-connection due to the mobile nature of the tablets they used, they also had more frequent face-to-face consultations. The use of translators proved problematic due to the lack of an option to include third parties in the video-conference between suspects and attorneys. Attorneys therefore often opted for a face-to-face consult when a translator was required.

Objections to the Public Prosecutor's decisions were also investigated as an indicator of the efficiency of the ZSM-procedure. Although the attorneys attribute great value to objecting to the Public Prosecutor's measures and punishments, and generally advise their clients to object, it is not clear to what extent the consultations have affected the number of formal objections as the actual occurrence of objections was too infrequent to be conclusive. It is apparent from the interviews however that suspects are more likely to be aware of the possibility to object because more suspects use legal assistance.

The considerably greater number of suspects using legal assistance also meant an increased number of suspects to process, particularly in the morning. This led to delays in the mornings as the number of provided attorneys was limited and during weekends because preferred attorneys are more difficult to reach. The video-conferencing however did speed up the process as it eliminated the need to travel as long as a face-to-face consultation wasn't required. The possibility to have face-to-face consults is of paramount importance however to circumvent potential issues with the video connection, translators and other – regular – circumstances.

Legal protection of suspects

The legal protection of suspects was studied by analyzing the number of suspects using legal assistance, their assessment of this assistance, the quality of the video conferences, quality of the information-exchange, and the potential effects on the procedure on the detainment of suspects and legal outcomes.

The recommended ZSM-procedure offers better legal protection of suspects than the regular ZSM-procedure. This is evidenced by the larger number of suspects who use legal assistance and rate this assistance positively. Furthermore, suspects who originally did not want to use legal assistance but did so anyway because it was provided for them automatically were generally positive about the experience and acknowledge the added value of the information they received. It was very rare for a suspect to explicitly decline legal assistance once speaking to an attorney. For the roughly 5% of suspects who did explicitly decline legal assistance, having to wait for the attorney anyway to decline the consultation personally meant an unnecessary additional waiting time. Though the video-conferencing method for consultations required some initial habituation and problem solving of technical difficulties, experiences near the end of the pilot were generally positive. The complications that did arise, for example due to the wifi-connection, were circumvented by utilizing the possibility to speak with the suspect face-to-face.

The experiences with the information-exchange between attorneys and other stakeholders are more mixed. The attorneys often received the information pertaining to the suspect and his case too late,

or the information they received was incomplete. This is detrimental to the legal protection of the suspect. Furthermore, the information-exchange was rated particularly lacking during the busy morning hours, when the pressure to process suspects within the allotted 6 hours put additional strain on the ZSM-procedure. It is however not clear to what extent these difficulties are exclusive to the recommended ZSM-procedure or also apply to the regular ZSM-procedure. The experiences were more positive in Central-Netherlands than in Rotterdam and East-Netherlands, as the smaller group of attorneys allowed for more interpersonal communication and negotiation between attorneys and the stakeholders.

A second consultation will take place as a result of a proposed penal order or when the suspect is detained for further investigation. This is not the IVS consultation which is regulated by law.³ Hardly any suspects utilized the possibility for a second consultation with an attorney during the pilot. The number of (proposed) penal orders is substantially lower than the number of first consultations and consequently the number of second consultation is also significantly lower. There seems to be considerable overlap between the content of IVS consultations and the optional second consultation, where a second consultation is not necessary when the suspect already received an IVS consultation. Another reason could be that the 6 hour timeframe for the ZSM-procedure left insufficient time for a second consultation without additional detainment of the suspect. This could have contributed to the low number of suspects to take advantage of this option. To what extent the low number of suspects to take advantage of a second consultation is due to these two reasons is unclear however.

There were no suspects who originally wanted legal assistance and then changed their mind.

The main indicators for the legal protection of suspects – the detainment of suspects and the outcomes of the ZSM-procedure – show no great change due to the pilot. It is therefore unlikely that the recommended ZSM-procedure adversely affected the legal outcomes for the suspects. Formally, the protection of legal rights has improved in the pilot, because the legal assistance makes the suspect better informed of his legal position.

Costs

Lastly, this study evaluated the pilot's costs related to subsidized legal assistance, expenses for the police and the Public Prosecutor's Office and how much money attorneys earned versus the activities they performed and time they spent. This study was based on an overview of the declared legal assistance provided by the Legal Aid Board, overviews of incidental costs and police supervision and coordination for the pilot and compared to the Business case ZSM & Rechtsbijstand.⁴

In total, € 613.100 was spent on subsidized legal assistance related to the standard attorneys provided. The preferred attorneys received more than € 26.583, (this is an under-estimation as the preferred attorneys in Central-Netherlands did not submit their bills). Regarding incidental costs for the police, Public Prosecutor's Office and the Legal Aid Board, the budget was € 150.000 of which € 132.170 has been spent to date. The pilot therefore stayed within budget.

A distinction was made between the payments for attorneys based on their activities and, if there were not enough cases to process, their availability. Payments based on availability are half the hourly rate for activities. The quantitative analysis revealed that in 70% of cases in Rotterdam, and in 97% of cases in Central-Netherlands, the payments were based on the attorney's availability. The attorneys in Rotterdam and in Central-Netherlands were therefore very unsatisfied with the

³ Artikel 40 Sv.

⁴ Business case ZSM & Rechtsbijstand, februari 2014. Opgesteld door PwC in opdracht van de werkgroep 'ZSM & Rechtsbijstand'.

reimbursement they received. Even though the attorneys in East-Netherlands were also paid based on their availability in 97% of cases, these attorneys were generally satisfied. This is because they can work from home or from their own office thanks to the mobile video-connection on their tablet, which allows them to continue their regular duties when they are not needed for ZSM.

Conclusion

This study pertained to the implementation and consequences of the ZSM procedure recommended by the working group 'ZSM & Rechtsbijstand', compared to the regular ZSM procedure, to provide the necessary insights to determine how to organize the ZSM-procedure.

The recommended ZSM-procedure has a detrimental effect on the time it takes for a suspect to go through the procedure, particularly in the morning, and during the weekend, but there are no concrete signals that the recommended ZSM-procedure greatly influenced detention times, legal outcomes or objections to the Prosecutor's decisions. It was however confirmed that the recommended ZSM-procedure increased the number of suspects who use legal assistance considerably and that these suspects, even the ones who originally declined, were positive about the experience. The video-conference method of consultation also turned out to be considered an improvement regarding the efficiency of the procedure, though the possibility to have a face-to-face consult is important to circumvent potential issues with the video-connection.