



## **Breathalyser tests in cases of violence**

Process evaluation of the Violent Offenders Alcohol and Drug Testing Act in start-up areas

### **Summary**

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# Introduction

Tackling violent crimes is one of the priorities of the current government. The combating of violent offences has therefore been included in the 2015-2018 Security Agenda. One of the approaches is to tackle the 'substance use' risk factor. The reduction of substances linked to violence aims to increase security both in public life and in families.

On 1 January 2017 the Violent Offenders Alcohol and Drug Testing Act (VOADTA, in Dutch: Wet middelenonderzoek bij geweldplegers) came into effect. This provides a legal basis for the deployment of substance tests for violent offenders and the use of the results of these in prosecution. Alcohol and drug use can be a reason for the imposition of special conditions, such as an alcohol ban, location ban and behavioural interventions focused on reducing alcohol and drug use. In addition, alcohol and drug use may count as an aggravating factor.

The law gives investigating officers the statutory authority to order somebody suspected of having committed a violent offence to collaborate in an investigation into the possible use of alcohol or drugs. This so-called drug test is to ascertain whether or not a suspect has committed a violent offence while under the influence of alcohol or drugs.

Although the act formally comes into effect on 1 January 2017, the VOADTA will be rolled out in phases. As of 1 January 2017 the VOADTA will be tested in three areas. The reason for not applying this new method everywhere at the same time was the consideration that the method might result in various queries with regard to implementation. In order not to burden the entire police organisation with these queries, the new method has been launched in just some teams, and alcohol alone is tested for in the start-up areas.

In order to promote the national roll-out, the Ministry of Security and Justice requested a process evaluation of the initial experiences in these start-up areas. DSP-groep was commissioned to carry out the evaluation by the Research and Documentation Centre (In Dutch: Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC) of the Ministry of Security and Justice.

## Selection of start-up areas

On 1 January 2017 the authority to test the use of alcohol has been implemented in three start-up teams of the police. Those teams were in Alkmaar, Eindhoven-Zuid and Veluwe West. The choice of these three start-up areas enables the implementation to be tested in a metropolitan, a medium-sized and a rural municipality. The national roll-out will take place as of 1 July 2017 and the police will, as of then, also test for the use of drugs.

## Objective and methods of the study

The objective of this evaluation is to gain insight into the extent to which the various parties carry out the VOADTA in the start-up areas according to the national established work procedure and the reasons for any deviation from this. The parties involved include: the police, the probation and after-care service, the Public Prosecutions Department and the Netherlands Forensic Institute (NFI). The aim of the evaluation is to provide insight into the points that require improvement. This objective has been translated into various main questions that have been answered in the study:

- 1 What was the process of education (both internally and externally) and instruction concerning the VOADTA?
- 2 What is the procedure?
- 3 At what points does practice deviate from procedure?
- 4 What are the initial results?
- 5 What are the preconditions for a successful national roll-out?

Various research methods were used to answer the research questions. Initially, an analysis was carried out into secondary documentation. This documentation consisted of the relevant legislation and regulations as well as the process descriptions formulated by the police and the Ministry of Security and Justice for the chain partners for the VOADTA. In addition, thirty semi-structured interviews were held with the police, the Public Prosecutions Department, the probation and after-care service and the NFI, on both a local and a national level. The research team accompanied the teams working in the nightlife area in the start-up areas during weekend evenings, during which they observed how the working procedures were given substance to. Eight criminal cases that were dealt with by the police according to the VOADTA were discussed afterwards, and overviews were requested from the police concerning the number of registered VOADTA cases and the number of potential VOADTA cases. In addition, an analysis was carried out of the individual registrations in the police registration system (BVH). Finally, overviews were requested from the probation and after-care service concerning the number and type of recommendations, and the behavioural interventions recommended.

## Comment as part of the research results

The research relates to the period of time between 1 January 2017 and 14 April 2017. The period is even shorter for the registered dates: up to 31 March 2017. Because of the limited research period and the timing of the research so shortly after the implementation of the act, the experiences of the police and other chain partners were relatively limited. As a result, in some cases during the fieldwork little routine was developed regarding the new working procedures. The risk of carrying out an evaluation under these circumstances is that start-up problems are observed rather than structural issues. Attempts were made to understand this distinction during the evaluation of the information collected. The evaluation discusses the testing of alcohol use only.

## Conclusions per research question

For each research question this section provides conclusions that can be drawn based on the research.

### What was the process of education and instruction concerning the VOADTA?

The education and instruction about the VOADTA provided to the police mainly took the form of briefings. The 'train the trainer' principle was also used, i.e. various employees in each basic unit were trained to instruct other police employees. However, this was done at a later stage, as a result of which not all the intended police employees had yet received training at the time that the VOADTA came into effect on 1 January 2017.

It is a striking fact that there are differences between the basic teams regarding the manner in and the extent (frequency) to which the relevant employees were informed and updated with regard to the VOADTA. These differences are permitted, but it may be expected that differences will also arise between the police teams as regards the extent to which the VOADTA will be applied in practice. This could ultimately result in regional differences in the application of the VOADTA throughout the country.

In the start-up areas the education and instruction given to police employees focused mainly on the employees of teams working in the nightlife areas. This is justifiable given the fact that in The Netherlands 70-80% of nightlife related violence is alcohol-related and about 60% of alcohol-related violence takes place in nightlife areas. In addition, this was a conscious choice in one of the start-up areas: it was used only for nightlife area violence<sup>1</sup>. The result of this focus is that the VOADTA has been applied to only a limited extent to other areas such as that of domestic violence. Unless additional attention is devoted to the wide application of the VOADTA, it cannot be expected to be automatically applied to any other areas.

The public were informed via a public campaign which was developed and provided by the Ministry of Security and Justice in collaboration with chain partners. This meant that, in the start-up areas, communication took the form of posters in bus shelters and in toilets in clubs and bars as well as maxi banners on buses. Information about the VOADTA was also made available through the [gewelddonderinvloed.nl](http://gewelddonderinvloed.nl) website. The message communicated read: 'geweld onder invloed wordt zwaarder bestraft' (harsher penalties for alcohol-related or drug-related violence). In addition, posters for the waiting rooms at probation and after-care services were designed with a message that emphasises a suitable punishment for violence while under the influence.

Various educational activities were undertaken by the police in the start-up areas, such as information in local media and Facebook messages. The extent to which the public or potential target group is actually reached cannot be established on the basis of this study.

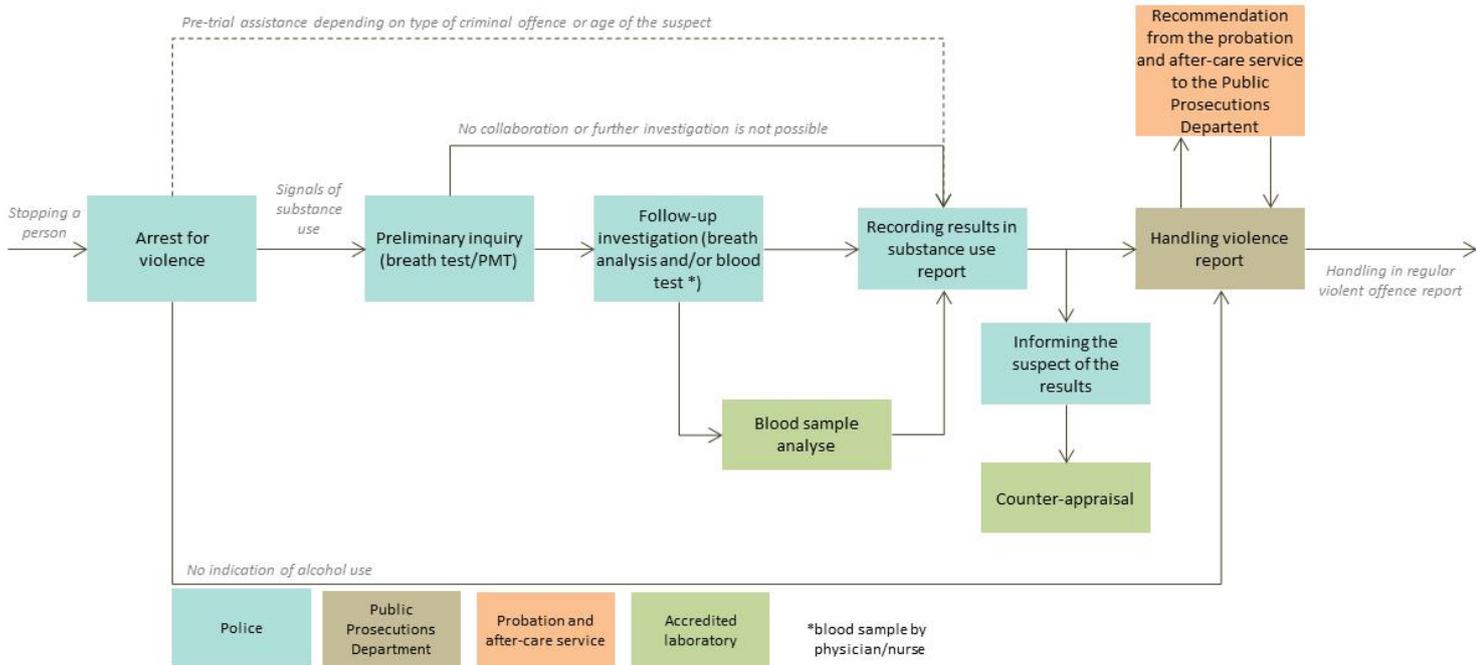
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<sup>1</sup> This focus on nightlife related violence applied during the period of the fieldwork for the research from 1 January 2017- mid-April 2017. In addition, the start-up area was also used for the wider application of the VOADTA.

## What is the procedure?

The VOADTA procedure comprises various steps. It is a chain process in which the police, the Public Prosecutions Department, the probation and after-care service and the NFI all know their role. The various steps for testing for alcohol are represented in the figure below.

### Alcohol and violent offenders chain process



If, based on observation or other circumstances, investigating officers believe that a suspect has committed a VOADTA-worthy violent offence under the influence of alcohol, they can order the suspect to collaborate in an investigation into the use of alcohol as part of a preliminary test. This preliminary test takes the form of a breath test or psychomotor test (PMT) carried out by the investigating officer. If the breath test or PMT confirms the signs of alcohol consumption, and the person is thus suspected of being under the influence of alcohol, further investigation will be carried out. This is usually done using a breath analysis. Within the framework of the VOADTA a blood sample is taken and sent to the NFI only in the case of an uncompleted breath analysis or a suspicion of combined use with drugs.

If a breath analysis is carried out, the investigating officer immediately informs the suspect of the results. If the investigation confirms the suspicion that the blood alcohol content is higher than the limit, the investigating officer points out to the suspect that he or she is entitled to a second test in the form of a blood test. In this case a blood sample is taken at the suspect's expense and sent to an accredited laboratory.

The police will record the result of the breath test and the breath analysis in the report on the 'PV substance use in violent offences' form.

The Public Prosecutions Department handles the offence as a regular violent offence, but takes the VOADTA into account when establishing the sentencing. Information proving that a suspect has committed the violent offence under the influence of alcohol will be considered objectively and systematically in the sentence requested by the Public Prosecutions Department. There will be a maximum of a 75% increase in penalty and/or special conditions for the punishment.

The probation and after-care service deals with the offence according to the regular work process with regard to pre-trial assistance, recommendations and supervision. They consider the information about alcohol or drug use and can provide recommendations about the conditions that can be imposed within the framework of the VOADTA. These may involve specific behavioural interventions, such as the Alcohol & Geweld (Alcohol & Violence) behavioural training course (for which the probation and after-care service has a role in the supervision of compliance with the conditions).

The offence is then dealt with in the regular process and by the chain partners involved. This means that the Public Prosecutions Department or the court deals with the offence. The information about acts of violence under the influence can be used in deciding on how the case is dealt with.

### At what points does practice deviate from procedure?

During the period January – March 2017 the police applied the VOADTA method for about 50 cases in accordance with the broad outlines of the national procedure. This means that, generally, an assessment was made as to whether or not to apply the VOADTA authority, breath tests and breath analyses were carried out, suspects were informed about the results and an accompanying report was drawn up. However, the study also shows that the procedure was deviated from regarding some components, and that there are differences between and within start-up areas.

Not all potential VOADTA cases are dealt with through the VOADTA procedure, which means that there are cases involving violence that are also thought to involve alcohol use for which no breath test/analysis was carried out. This does not necessarily have to constitute a deviation from the process, because the application of the VOADTA is a discretionary authority and not compulsory. The reasons for this deviation are sometimes logistical in the sense that a police officer estimated that they had insufficient time to carefully conclude the case according to the VOADTA or because a suspect was extremely unmanageable. In some cases, however, the reason was that the police officer was insufficiently familiar with the option of applying the VOADTA in that specific case.

The evaluation further demonstrates that cases of violence occurred for which a breath test was used without there being any sign of alcohol use. However, there is no statutory authority for this.

In cases in which the VOADTA procedure was started, not all prescribed process steps were always followed consistently.

The law prescribes that, even if the suspect's test does not exceed the legally standardised limit values (a blood alcohol level of 0.8 or more constitutes an aggravating circumstance), the test results are registered all the same. This was not done in all cases. The law also prescribes that, if the suspect does test positively above the test values, he/she is informed of his/her right to a second test. This was not done in every case.

Initially, registration issues occurred during the research period as a result of the fact that BVH, was not yet adapted to the specific VOADTA situation. Most of these issues have meanwhile been solved.

The consistent application of the VOADTA procedures appears to be related to the extent to which (some) routine has been developed. During the study the routine (and motivation to work) with the VOADTA gradually increased in two of the three start-up areas, as is demonstrated by the number of registered cases and the explanation of respondents. Veluwe West was the only area in which cases were rarely dealt with according to the VOADTA. Nevertheless, the knowledge of the VOADTA has certainly not yet reached all relevant police employees in Alkmaar and Eindhoven.

During the period researched (January – mid-April 2017) the Public Prosecutions Department, the probation and after-care service and the NFI gained little or no (NFI) experience in dealing with VOADTA cases. Based on this research, little can be said as far as these organisations are concerned about the extent to which the VOADTA process was applied as intended, let alone how they were dealt with in practice.

## What are the initial results?

During the period 1 January – 31 March 2017 the police applied the VOADTA in 49 cases and completed a report concerning substance use in violent offences. For each start-up area, this number is<sup>2</sup>:

- Alkmaar 15
- Eindhoven-Zuid 31
- Veluwe West 3

These numbers are not what we would expect if the number of relevant violence incidents is considered. If the rule of thumb is employed that alcohol use is involved in 30% of the cases involving violence and that in 75% of these cases the people involved are caught in the act, the expected number of VOADTA cases is about four times higher than was dealt with according to the VOADTA in the start-up areas. It appears that this discrepancy can be explained by a lack of familiarity and that, in practice, the VOADTA is applied only within the framework of nightlife related violence.

A comparison of police files from 2016 and 2017 shows that there have not (yet) been more reports of alcohol use in violent offences since the introduction of the act in the start-up areas. In 2016 increased attention was devoted to alcohol use in violent offences in 13% of the cases, and in 2017 in 19% of the

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<sup>2</sup> This is the number of individually registered cases. A group offence involving three people and for which three tests were taken counts as three.

cases; this difference is not significant. It was demonstrated, however, that the information provided after the introduction of the VOADTA about alcohol use is more systematic and better founded compared to before the introduction of the act.

In mid-April 2017 it was estimated that the Public Prosecutions Department had 15 cases under consideration, one of which was settled (with a 75% increase in penalty). The other cases were scheduled for court session. There is no insight into the number of recommendations provided by the probation and after-care service for VOADTA; the probation and after-care service itself indicates that they suspect this to have been nil or very few during the period investigated. The NFI has not yet carried out any blood analyses for VOADTA cases.

### What are the preconditions for a successful national roll-out?

Based on the initial experiences with the VOADTA, various lessons can be learned for the national implementation:

- ③ The VOADTA is one of the many topics the police are confronted with every year. In order to ensure that the VOADTA will not disappear under the radar, it is useful to appoint a problem-owner for the VOADTA in each basic team in each police organisation, who focuses attention on the VOADTA and coordinates feedback on the follow-up to the VOADTA cases in the criminal law chain with the Public Prosecutions Department.
- ③ The VOADTA is still very new and there still are – certainly where drugs are concerned – queries about its implementation. Because these questions can be properly answered in practice only, it is important to regularly look back at the application of the VOADTA in the initial period and to ask whether the agreements, work procedures and available resources are still properly suited to the practical implementation. This may result in the adjustment of local operational procedures.
- ③ For the benefit of the support and in order to answer implementation questions effectively, it is important for the police and the Public Prosecutions Department in particular to collaborate closely concerning the VOADTA dossier on a local level in the initial phase. The police will thus be informed about the follow-up to the criminal proceedings and will remain motivated. In addition, this coordination provides the opportunity for the police to improve the work process and products (reports) based on the comments made by the Public Prosecutions Department, as a result of which the VOADTA can be employed as effectively as possible. In view of the targeted result of the law – the deployment of a suitable intervention – it is recommended that consideration be given to including the probation and after-care service in this process.
- ③ Monitoring is useful in order to be able to meticulously follow the implementation and application of the VOADTA in tracing and prosecution. This requires relevant cases to be easily retrieved in both the police process system and the Public Prosecutions Department. Obviously the Public Prosecutions Department and the police need to enter into discussions on a central level in order to evaluate what is required to recognise VOADTA cases, if they are transferred from the police to the Public Prosecutions Department without a cordial transfer.

- ③ Although the VOADTA work procedures can differ for each basic team (and are bound to differ in view of the area-related work), each team must make choices for a fixed number of components and make preparations. It would be a good idea for the central project management of the VOADTA to provide the problem-owners in the basic teams with an implementation checklist with intended topics. In addition to this checklist, it is obvious that the national DAG implementation<sup>3</sup> group should make a standard work procedure available that is periodically updated on the basis of the advancing insight and experiences gained. This generic work description should state exactly what should be part of the approach and list the points on which the elaboration should/must be given locally. This generic standard work procedure should then be distributed among the local VOADTA problem-owners in the police.
- ③ Currently, a suspect's refusal to collaborate in the preliminary inquiry or the further investigation can be advantageous for the suspect. Although refusing is an offence, the theoretical sentence for this refusal is considerably lower than the theoretical increase in penalty that may follow if the substance use is established during further investigation. If the VOADTA is to be effectively applied, this loophole needs to be closed.

## Conclusion

Experience is the best teacher, and much has been done in the three start-up areas that will be instructive for the rest of The Netherlands. The experiences in Alkmaar, Eindhoven-Zuid and Veluwe West highlight significant preconditions for success, but by no means guarantee that entirely new challenges will not present themselves elsewhere in The Netherlands. In addition, information was in fact obtained only about the first phase of the VOADTA process. After all, the manner in which the Public Prosecutions Department, the probation and after-care service and the NFI will ultimately give further shape to the new law is just as important for the success of the VOADTA as the actions by the police.

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<sup>3</sup> The DAG implementation group consists of (national) representatives of the police, the National Office of the Public Prosecutions Office of the Public Prosecutions Department, SVG, NFI and Ministry of Security and Justice.

