

Summary

Law on long-term supervision

Reconstruction of the policy theory, first evidence and further research themes

Background

There is a new law in the Netherlands, in which long-term supervision, treatment and monitoring of ex-delinquents and former forensic psychiatric patients is arranged, the Law on long-term supervision (LLTS; *Wet Langdurig Toezicht*). The goal of the LLTS is to provide more adequate supervision on possible recidivists among sex offenders, on a specific group of violent offenders and on forensic psychiatric patients who have been imposed a tbs-order (*maatregel terbeschikkingstelling*). By more adequate supervision on these offenders it is the intention of the government to contribute to the most important goals of the new set-up of forensic care in the Netherlands, which is fixed on recovery for the patient and reduction of recidivism in society. This measure entails disposal to be treated on behalf of the state (Article 37a.1 Dutch Criminal Code [DCC]) and is a court-ordered sentence for people who have committed violent crimes and who have been declared partially or completely unaccountable (*ontoerekeningsvatbaar*) for these crimes due to severe mental disorders.¹ Persons with such an order are called patients but are not admitted within the health system. Instead, they enter the prison system in which high secure forensic psychiatric hospitals are set up.

The LLTS has to be evaluated after five years, as is common for new laws in the Netherlands. Further, (annual) monitoring and updates of the applications of the LLTS have been promised to the Dutch parliament. The goal of these studies is to monitor the usefulness of the LLTS and to make adaptations if necessary. The Research and Documentation Centre of the Ministry of Justice and Security (WODC) wrote a research program in which an outline of the studies is provided. Besides annual monitoring of the applications of the law, studies focusing on specific themes and recidivism measurements are planned. Furthermore, in the research program, the extent to which the expectations of the legislator of the LLTS are met is examined. The expectations, goals and supposed working mechanisms are summarized in a so-called 'policy theory'. In the present study, the policy theory was reconstructed. Each part of the LLTS was thoroughly examined and the expectations of the legislator were analyzed. We also compared the expectations of the legislator with evidence from the literature and formed a first judgment on the effects that may be expected from the LLTS. Finally, important developments on supervision and criticism that was given on the LLTS by forensic psychiatric professionals were examined and summarized. Some additional research themes have been formulated as a result.

¹ Violent crimes are considered those crimes that carry a minimum sentence of 4 years. The TBS order either involves mandatory treatment in a closed forensic psychiatric hospital (Art. 37b.2 DCC) or is served in the community while abiding by certain conditions (Art. 38.1 DCC). Tbs-orders are executed in a specific part of the prison system (and not in the health system as in many other countries).

Goals and research questions

The goal of the present study is to reconstruct and analyze the theory behind the policy change. The main research questions are:

- 1 What are the plans behind and what are the expectations of the LLTS by the legislator?
- 2 Which subgroups of delinquents do the separate parts of the LLTS target?
- 3 Which supposed working mechanism are behind the LLTS?
- 4 On what terms can we expect results from the LLTS?

For the operationalization of supervision in the present report we follow previous reports by the WODC on supervision: 'Supervision encompasses control of (aspects of) the behavior of the persons involved, with or without a combination of guidance, treatment and/or care, with the goal to prevent criminal recidivism'. The present report only focuses on supervision at the backdoor, at the end of a prison sentence and/or tbs-order when an offender (gradually) returns to society. It therefore does not take into consideration front door initiatives, supervision that replaces a prison sentence or alternative punishment.

The LLTS in a nutshell

The LLTS encompasses prolonged supervision in three different manners and is applicable for (former) forensic psychiatric patients with a tbs-order and former prisoners. The tbs-order can be imposed conditionally or with mandatory admission in a secure forensic psychiatric hospital. The LLTS is only applicable to the latter tbs-orders. These tbs-orders are limited to four years unless the index crime involved a danger to persons, then its duration is unlimited. Tbs patients with an unlimited tbs-order with mandatory admission in a forensic psychiatric hospital can be conditionally released (CR). CR for tbs-patients prior to the LLTS was limited to a maximum of nine years. In the first part of the LLTS, the unlimited prolongation of this CR is arranged. The first term of CR is for 1 or 2 years, after which it can be extended by a judge for 1 or 2 years each time.

The second part of the LLTS involves prisoners in the prison system who are conditionally released. Conditional release for prisoners in the Netherlands is possible with prison sentences of 1 year or more. During CR, all prisoners have to abide by the general condition of not committing any new crimes and in addition, special conditions may be imposed. Prior to the LLTS, the general condition was set for at least one year, whereas special conditions varied in duration. With the LLTS, the minimum term of one year of special conditions has been arranged. Thus, CR for prisoners with or without special conditions now always lasts for at least one year. Further, possibilities of prolongation of CR have been set up with the LLTS. The third part of the LLTS is the possibility to impose an independent supervision order, which can be imposed in combination with a prison sentence and/or a tbs-order, the Measure on behavioral influence and limitation of freedom (*Gedragsbeïnvloedende en vrijheidsbeperkende maatregel*; MBI).

Methods

A thorough literature review was conducted to answer the research questions. The parliamentary documentation on the process which led to the LLTS was studied and

a literature search was conducted, in Legal Intelligence, Kluwer Navigator and Google Scholar. No interviews were conducted as the process leading up to the LLTS was already started in 2010 and not many persons originally involved in this process were working in parliament anymore. Also, the documentation was thorough and it was possible to reconstruct the policy theory from these documents in full.

Results

Policy theory

As mentioned before, the main goal of the LLTS is to prevent criminal recidivism. With the LLTS the legislator set out to resolve the problem that a lot of criminal behavior results from recidivists and that sex and violent offences result in societal uproar and feelings of unsafety. This recidivism needs to be reduced by longer and individually tailored supervision of sex and violent offenders with or without a tbs-order. The prolonged and individually tailored supervision trajectory, with elements of control, guidance, treatment and support, is expected to result in a behavioral change which in turn will result in a reduction of recidivism and an increase in the safety in society. As secondary goals in the policy theory, a reduction of new patients, a shorter treatment duration and a faster end of the tbs-order are expected by the legislator. A more thorough analysis of the policy theory behind the three parts of the LLTS is provided below.

Indeterminate prolongation of CR for tbs-patients

Background

In the final stages of the tbs-order the judge may impose CR. This occurs when the general safety of persons or goods is no longer at risk and mandatory admission in a forensic psychiatric hospital is no longer necessary. During CR a tbs-patient has to abide by certain conditions. Examples of such conditions are following out-patient treatment, restraining orders or mandatory check-ins with probation officers. In most cases the patients resides outside the hospital in protected living facilities or private housing. The initial CR for tbs-patients as well as the prolongation of CR is for 1 or 2 years and the total duration of CR under the LLTS is indeterminate and no longer limited to 9 years.

Target group

The LLTS is applicable to all tbs-patients with an unlimited tbs-order with mandatory hospitalization, who have started their CR from the 1st of January 2017. In the past five years an average of 139 tbs-patients per year have started CR (range 74-203). The lowest number of 74 CRs was in 2019. In recent years, the total number of tbs-patients with a CR in September of each year has also declined, from 353 in 2015 to 239 in 2019. Although the total number of different types of tbs-orders that have been imposed has fluctuated over the past 20 years, in 2019 there were 221 tbs-orders, nearly the same total amount as in 2001 (219 tbs-orders).

Expected number of patients involved

The *potential* number of tbs-patients with an unlimited CR was analyzed and consists of a maximum of 2,479 tbs-patients with an unlimited tbs-order with mandatory hospitalization, 114 tbs-patients who have to be readmitted following CR and 125 tbs-patients with a conditional tbs-order that has been turned into an unconditional tbs-measure. The *actual* number of CRs in the first three years of the LLTS is 334. However, the average duration of the CR is a little over two years, almost

seven years below the previous maximum of nine years in CR. With these numbers it is not expected that the possibility of longer prolongation within the LLTS will apply to many tbs-patients. From a prior impact study it was estimated this effect of the LLTA would be non-existent.

Term of the expected effects

As mentioned before, the LLTS applies to all CRs for tbs-patients that have started from the 1st of January 2017. The previous duration of the CR was limited nine years, therefore on and after the 1st of January 2026 it will become possible for tbs-patients to be on CR longer than previously possible. In the mean time we will monitor several aspects of the CR, among which the average duration and the range of CR. We will also examine the possibility that the different perspective with which CRs under the LLTS start has any impact on the practice of CR. As the number of tbs-patients who will need a longer period of CR than nine years is expected to be very small, we do not expect an increase in time under supervision of this part of the LLTS.

Supposed working mechanisms

From the analysis of the policy theory supposed working mechanisms, expectations of the policy makers, can be formulated:

- 1 By dropping the maximum duration of CR it can be prolonged as long as danger is expected -> by prolonging CR as long as danger is expected, supervision can last as long as deemed necessary -> by supervision as long as deemed necessary recidivism can be prevented.
- 2 By dropping the maximum duration of CR it can be prolonged as long as danger is expected -> due to the possibility of supervision as long as danger is expected the public prosecutor and the forensic psychiatric hospital staff will be willing to let patients go on CR earlier -> by the earlier willingness to let patients go on CR, the duration of treatment inside the hospital will decrease.
- 3 By dropping the maximum duration of CR it can be prolonged as long as danger is expected -> due to the possibility of supervision as long as danger is expected, the public prosecutor and the forensic psychiatric hospital staff will be willing to let patients go on CR earlier -> by the earlier willingness to let patients go on CR, the outflow of patients will increase.
- 4 By dropping the maximum duration of CR supervision can last as long as danger is expected -> due to the possibility of supervision as long as danger is expected, recidivism can be prevented -> by preventing recidivism the number of new tbs-orders can be decreased.

Changes in CR of prisoners

Background

Prisoners who enter the final stage of their unconditional prison sentence can also be conditionally released. CR for prisoners is only available for prisoners with a prison sentence of one year or more and is usually granted at two-thirds of the prison sentence, leaving the final one-third of the prison sentence to be served under supervision in society. Only in exceptional cases delay or cancellation of CR is necessary. All prisoners on CR have to refrain from committing new crimes for at least one year, this is called the general condition. Special conditions may also apply, for instance a restraining order, which prior to the LLTS only lasted for the remaining one third of the original prison sentence. With the LLTS, the mandatory duration of the special conditions is also set at one year. Further, possibilities of

prolongation of conditional release have been set up. The changes in CR for prisoners started on the 1st of January 2018.

Target group

The changes in CR under the LLTS apply to all prisoners who go on CR. As CR is only for prisoners with a prison sentence of 1 year or more, only a small part of the Dutch prison population is potentially affected by the LLTS. In 2019 a minority of 2,085 of all 23,975 prison sentences that were imposed in that year lasted one year or longer (8.7%). In the past five years an average of 955 prisoners per year started CR. The changes in CR for prisoners apply to different subgroups. The first change is applicable to all prisoner on CR: when special conditions apply, these last minimally one year. The legislator expected that this change would specifically result in positive effects for prisoners with an unconditional prison sentence between 1 and 2 years. With regards to the second change, one prolongation of a maximum of two years is also possible for all prisoners on CR. Further prolongations of CR are only allowed for specific subgroups. The legislator expected this for three subgroups of prisoners:

- a Prisoners with a sex offence or violent offence sentenced to a prison sentence of at least one year with a crime that carries a prison sentence of at least four years;
- b Terrorists;
- c Sex offenders who plan to travel abroad.

Expected numbers

In the past five years the average number of new CRs was 1,103 offenders per year, in 2019 1,097 new CRs for prisoners started. Interestingly, although the number of new CRs decreased somewhat from 2018 to 2019, the total number of prisoners on CR at the reference date of the 31st of December each year has strongly increased: from 2,545 in 2018 to 2,802 in 2019. In the past five years on average 68% of all new CRs has included one or more special conditions. In 2019, 585 of all CRs started with special conditions, this is the group for whom the first change of the LLTS is applicable. The expected number of CRs for whom prolongation is applicable is less clear. The estimations vary between 60-214 prisoners.

Term of the expected effects

Both changes in CR for prisoners directly sort their effect from the 1st of January 2018. The extra time under supervision is estimated at 2.5 years.

Supposed working mechanisms

From the policy theory the following supposed working mechanisms were formulated:

- 1 By setting the minimum duration of the special conditions at one year, there is now more time to work on behavioral change specifically with prisoners with a short prison sentence (i.e., between 1 and 2 years) -> by creating more time for supervision for prisoners with a short prison sentence, recidivism for these prisoners may be prevented.
- 2 By creating more possibilities to extend the time under CR, conditions such as treatment and behavioral interventions may be prolonged as long as deemed necessary -> by a longer period of possible treatment and behavioral intervention behavioral change may occur -> by behavioral change, recidivism may be prevented.

- 3 By creating more possibilities to extend the time under CR, conditions such as treatment, a restraining order, a prohibition to speak publicly or to the media and an obligation to check in with probation officers can be arranged for terrorists -> due to these conditions, behavioral change may occur in terrorists, the spread of the terroristic message may be restricted and a new trip abroad to perform terroristic acts may be prohibited and a new terrorist attack may be prevented.

Measure on behavioral influence and limitation of freedom (MBI)

Background

The MBI is a new and independent supervision measure that was introduced into Dutch law with the LLTS. This third and final part of the LLTS has also started on the 1st of January 2018. The measure is to protect the safety of others and the general safety of people or goods. The measure obligates the person involved to abide by certain conditions. The imposition of the MBI does not necessarily result in the execution of the MBI. The initial imposition may follow at the judge's discretion or after a claim to impose the MBI by the public prosecutor was granted by a judge. It can only be imposed in combination with a (partially) unconditional prison sentence and/or a tbs-order. First the execution of these parts of the sentence, the prison sentence and/or tbs-order, follows. The execution of the MBI is dependent on a claim to execute by the public prosecutor no later than 30 days prior to the end of the other elements of the sentence. This claim only follows when the person involved still poses a threat to society. If the judge grants this claim, he then orders the execution of the MBI, sets the duration of the supervision and determines the conditions that need to be abided by. Most conditions available for the MBI were already listed in Dutch law for other possible judicial measures, but four new conditions were listed: conditions that limit possibilities to do voluntary work, a condition that limits the right to leave the Netherlands, the prohibition to live in a certain area and an obligation to move houses. The first term of the MBI is set at two, three, four or five years and these are also the terms with which the MBI can be prolonged.

Target group

By law, there are three target groups for the MBI:

- a Persons who are also sentenced to a tbs-order (Art. 38z.1a DCC);
- b Persons who are also sent to a (partially) unconditional prison sentence due to a crime that imposes a danger to the body of one or more persons and carries a minimum sentence of at least four years (Art. 38z.1b DCC);
- c Persons convicted of five types of sex offences and two other types of crimes. These are: involvement in child pornography (possession, spread, et cetera Art. 240b DCC), illicit sexual conduct with a minor (Art. 248c DCC), making someone under the age of 16 a witness to illicit sexual behavior (art. 248d DCC), online grooming with a person under the age of 16 (Art. 248e DCC), deliberate promotion or facilitation of illicit sexual acts between a child and a third party (Art. 250 DCC), human trafficking (Art. 273f DCC), or extortion (Art. 38z.1c DCC).

Further, from the present analysis it was concluded that the MBI is mainly expected in:

- 1 Defendants who refuse pre-trial forensic psychiatric assessment and are imposed a prison sentence;
- 2 In combination with a conditional tbs-order;
- 3 In combination with a limited tbs-order with mandatory hospitalization;
- 4 With terrorists;

- 5 With sex offenders who intend to leave the country to perform sex offences abroad.

Expected numbers

The potential target group consists of a maximum of 229 people a year. These are 78 defendants who refuse pre-trial forensic psychiatric evaluation, 81 persons with a conditional tbs-order, 5 persons with a limited tbs-order with mandatory hospitalization, 65 suspects of a terroristic crime (guilty or not guilty is unknown) and an unknown number of sex offenders who possibly plan to travel abroad. However, no more than 20 MBIs are actually expected to be imposed annually. In addition, not all MBIs are expected to be executed.

Term of the expected effects

Due to the fact that prior to the execution of a MBI the other parts of the sentence are carried out first, it is expected to take some time before the first MBI will be executed: four years when combined with an unconditional prison sentence, 5.2 years when combined with a conditional tbs-order, 4 years when combined with a maximized tbs-order and 13 years in combination with an unlimited tbs-order with mandatory hospitalization. The average extra time under supervision with a MBI is estimated at four years.

Supposed working mechanisms

From the analysis of the policy theory the following supposed working mechanisms were formulated:

- 1 With the MBI the judge has an extra judicial measure for supervision in offenders of sex or violent crimes whose recidivism rates have not decreased enough to guarantee a safe return to society -> due to this additional judicial measure, individually tailored conditions may be imposed -> due to individually tailored conditions, recidivism may decrease.
- 2 With the MBI it is possible to provide supervision and aftercare for offenders with determinate sentences who actually still need supervision and aftercare (mainly defendants who refuse pretrial forensic psychiatric evaluation, persons with a conditional tbs-order, and persons with a maximized tbs-order with mandatory hospitalization) -> due to supervision and aftercare possibilities for these offenders, individualized behavioral change may occur -> due to individualized behavioral change, a decrease in recidivism for these groups may occur.
- 3 Because the MBI can be imposed on defendants who refuse pre-trial forensic psychiatric assessment and have been imposed a prison sentence, these offenders can still be obligated to follow treatment -> because mandatory treatment can now be imposed even without the tbs-order, it is no longer beneficial to refuse pretrial assessment -> because it is no longer beneficial to refuse pretrial assessment, the problem with these defendants can be decreased.
- 4 In the MBI special conditions may be imposed such as mandatory treatment, a restraining order, a prohibition to speak publicly or to the media and an obligation to check in with probation officers can be arranged for terrorists -> due to these conditions, behavioral change may occur in terrorists, the spread of a terroristic message may be restrained and a new trip abroad to perform terroristic acts may be prohibited and a new terrorist attack may be prevented.
- 5 By imposing a travel ban or the revocation of a sex offenders passport as part of the conditions in a MBI, it may be prevented that a sex offender moves abroad -> by preventing a sex offender to move abroad, it may be prevented that he commits new sex crimes abroad.

- 6 By the threat of imposing a MBI in combination with a conditional tbs-order or a maximized tbs-order, the person involved is stimulated to abide by the conditions imposed in these latter orders -> by extra stimulation, the person involved becomes extra motivated to abide by these conditions and is expected to put in more effort -> by putting in more effort, it is expected that the actual execution of the MBI is prevented.
- 7 By the possibility of supervision through MBI it is secured that supervision and aftercare are possible after a conditional tbs-order ends -> by this safeguard in certain cases it is possible to impose a milder sentence instead of an indeterminate tbs-order -> by being able to impose a milder sentence some impositions of the tbs-order are prevented.
- 8 By means of the MBI supervision is set out and freedom of movement is prohibited -> by supervision and limitation of freedom of movement recidivism is prevented -> by preventing recidivism new tbs-patients are limited.

Evidence policy theory

Cited recidivism rates

For the assumption from the policy theory that a lot of crimes are committed by recidivists there is evidence from a recent study showing that recidivists are responsible for about 70% of all crimes. However, during the legislative trajectory, the legislator misinterpreted recidivism rates from a study that was conducted for the LLTS in four ways: 1) the quoted numbers from that study combined recidivism rates for a large group of ex-tbs-patients who had gone through the tbs-system over a long period of time, while there were big differences between the separate cohorts in the studied years, 2) part of the former tbs-patients had been treated a very long time ago (in the eighties and nineties of last century), making comparison with the current population difficult if not impossible, 3) from the quoted cumulative recidivism numbers it was wrongly concluded that recidivism rates rise over time, on the contrary: recidivism rates from more recent cohorts were lower as compared to recidivism rates from older cohorts, and 4) in the recidivism rates, only tbs-patients were included whereas the LLTS is broader and also applies to ex-offenders who have been sentenced to prison and not a tbs-order. This shows that the results of the study that were quoted do not adequately represent the necessity of long-term supervision.

Recent recidivism rates

The finding in the above cited study that recidivism rates for more recent cohorts were lower than recidivism rates for older cohorts, is confirmed in new recidivism rates that were calculated in the present study. Over time, newer cohorts show lower recidivism rates than older cohorts. This result was found for all four subgroups that were studied in the present study: former tbs-patients with a sex offence or violent offence and former prisoners with a sex offence or violent offence. The drop in recidivism rates was stronger for some subgroups as compared to others: in former tbs-patients with a sex offence the drop was 17.2%-points, in former tbs-patients with a violent offence 1.3%-point, in former prisoners with a violent crime 16.3%-point and in former prisoners with a sex offence 3.3%. This shows that recidivism rates have decreased in recent years, even without long-term supervision.

Finally, recidivism rates of other crimes within the four subgroups were studied, to determine which types of offences are most commonly committed. This shows that recidivism rates of other types of crimes is more prevalent: within both subgroups,

ex-tbs-patients as well as ex-prisoners, five or six other types of crimes are more prevalent. These are property offences with violence, destruction of property, mild aggressive acts, disturbances of the public peace and drug crimes. Within the four subgroups of perpetrators, recidivism of a property crime with violence is highest. Despite these findings, although less prevalent, it is possible that sex offences and violent offences have a lot and likely more impact on society.

Individualized treatment

For the effectiveness of the way the established problem needs to be resolved, an individualized supervision trajectory, evidence can be found in literature. Studies show that a combination of care and control is most effective in supervision to prevent criminal recidivism. Also, recent studies show that desistance of criminal behavior does not occur in the same manner for all criminals, however a personal and individualized trajectory is more common. This also shows that 'custom-made' supervision is most effective. In the evaluation of the LLTS it is necessary to examine if this approach was properly implemented. Another aspect that will be examined is if the working mechanisms for supervision in general also apply to long-term supervision because most working mechanisms come from general studies into supervision.

New patients, treatment duration and end of treatment

For the secondary goal of positive effects on a decrease in new tbs-patients and treatment duration and an increase on the number of tbs-patients whose tbs-order is successfully finished, there is no evidence yet. The legislator expected that the possibility of a longer duration of CR for tbs-patients would result in a greater and earlier willingness by treatment staff and the public prosecutor to send them on CR, however, professionals involved indicate that this is not important to their decision-making. Instead, the danger that tbs-patients still pose and their risk of recidivism guides this decision. Also, in forensic psychiatric practice, no or hardly any patients are seen that require such a long period of CR. On the other hand it is also expected that the MBI resorts in a decrease in new tbs-patients and treatment duration and an increase on the number of tbs-patients who successfully leave the tbs-order, however, it is not expected that many people will be imposed this measure (a maximum of 20 per year).

Discussion

Supervision on offenders has shown a strong increase in the past 20 years, on the number of people under supervision as well as on the intensity of supervision. This effect can be seen around the world. Interestingly, this increase in supervision can be seen even though criminality has dropped at the same time. Accordingly, less punishments are imposed and one would expect that also less supervision is necessary: less supervision as an alternative to a prison sentence, less CRs, less conditional sentences et cetera. Also, more and more modern means of supervision are used to execute sentences, besides the longer known electronic monitoring. An example of this is the alcohol lock that has recently been implemented in the Netherlands. Although in society electronic monitoring is sometimes seen as an easy way out of a punishment, supervised offenders experience this type of monitoring as intrusive. The intrusion is on their sense of control, pressure on their social life, stigmatization and the number and intrusive nature that conditions may impose. It is possible the LLTS is also seen as intrusive, as there are many conditions that may be imposed and at the start of the supervision it is unknown how long the conditions will last. Therefore it is no surprise that a lot of criticism was given during the legislative process as well as after it was accepted by parliament.

General criticism

One of the main criticisms on the LLTS is that all three parts have limitations in scope. First, it is expected that the indeterminate CR for tbs-patients will hardly have any effects, as the mean duration at present is only two years and the experience from everyday forensic psychiatric practice that this is sufficient for most tbs-patients. Second, in CR for prisoners, the prolonged period under supervision may be eluded by canny prisoners who behave in such a way that they are not granted CR. When no CR is granted, the possibility of extending CR is also not available. This has been put forward as one of the most important flaws within the LLTS because these offenders are most likely the ones that need supervision the most. Among tbs-patients such canny behavior is not possible because one year of CR is mandatory for most tbs-patients. This rule was implemented in Dutch law after it was seen that some patients did not gradually reenter society. This is the same situation that presents itself now for canny prisoners. The only way to prevent this and to guarantee a conditional and gradual reintegration in society for prisoners is to also implement such a mandatory period in CR for former prisoners. Third, the MBI is not expected to be imposed very often, not by the legislator nor by professionals in the field, thereby limiting its potential influence. With these important limitations in the scope of the LLTS, in all three parts, it is important to limit expectations of the recidivism effects under the LLTS.

Other general limitations that have been put forward are that several conditions that may now be imposed are possibly in conflict with rules by the European Court of Human Rights, the Dutch constitution and/or European Union rights. Also, the proportionality of (prolonged) supervision relative to the crimes that have been committed may be lost, there may be an increase in defendants who refuse pretrial forensic psychiatric evaluation, there may be an even higher demand on police capacity to carry out the supervision who were already under staffed, cooperation and information exchange between chain partners in forensic practice is not optimally arranged, there is confusion with measures that are comparable, such as the Limitation of freedom measure (art. 38v Sr) and the lack of perspective for offenders may demotivate offenders to cooperate.

Criticism on specific parts of the LLTS

With regards to the indeterminate duration of CR for tbs-patients, criticism has been given on the premature nature of the alteration. Shortly prior to the introduction of the LLTS, the maximum duration of CR for tbs-patients had also been altered. In this alteration, the maximum of 3 years CR was increased to a maximum of 9 years CR. At that time, the legislator extensively examined the possibility of even longer prolongation, but did not deem this necessary and provided a number of arguments why 9 years would be sufficient. A further criticism is that it is not clear when supervision through prolonged CR for tbs-patients is necessary and when other legal possibilities for providing longer supervision may also be adequate.

The minimum duration of special conditions in CR for former prisoners of one year raises the question of why this term is necessary when a treatment module or training may also last shorter, for instance a few weeks or months. Some parties also indicated that the possibilities to prolong CR in prisoners is in contradiction with other new legislation that is under preparation, namely a new law on CR for offenders that limits the maximum duration of CR in all cases to 2 years. Also, the criteria for prolongation were vaguely defined, including a broad range of behavior, according to some. It was also indicated that the prolongation of CR can be seen as an extension of the sentence which is not allowed according to Dutch law.

With the MBI, most criticism was uttered. First, there are limitations to the usefulness of the MBI in combination with different tbs-orders: the MBI in combination with a tbs-order with mandatory and unlimited hospitalization is redundant, because indeterminate supervision is already available through the indeterminate CR. The MBI combined with a conditional tbs-order does not fit: the first measure is voluntary and the second is obligatory. And finally, the MBI with the determinate tbs-order is not balanced, as the first measure is limited in duration and the second is indeterminate. Other objections were: the MBI is premature in combination with a prison sentence due to recent other changes in legislation for prisoners, the fact that it is difficult to predict the need for the MBI in the future, the minimum duration of two years that is required for the MBI is considered too long, the limited judicial response that is possible after breach of conditions of six months imprisonment and the intrusive nature of some of the conditions. All criticism will be examined in the LLTS research program.

Conclusions

As explained above, with the LLTS the legislator set out to resolve the problem that a lot of criminal behavior results from recidivists and that sex and violent offences result in societal uproar and feelings of unsafety. This recidivism needs to be reduced by longer and individually tailored supervision of sex and violent offenders with or without a tbs-order. The prolonged and individually tailored supervision trajectory, with elements of control, guidance, treatment and support, is expected to result in a behavioral change which in turn will result in a reduction of recidivism and an increase in the safety in society. As secondary goals in the policy theory, a reduction of new patients, a shorter treatment duration and a faster end of the tbs-order are expected by the legislator.

The first examination of the evidence behind the expectations of the legislator show:

- 1 There is evidence that the established problem exists: generally speaking most criminal behavior is conducted by recidivists.
- 2 There is no evidence that recidivism rates for sex and violent offenders on the long term increases, on the contrary, this decreases.
- 3 There is no evidence that the recidivism rates of sex and violent offenders is highest: recidivism rates of other types of crimes is more prevalent.
- 4 There is evidence that the suggested solution by the legislator works, that is, supervision by means of individually tailored treatment is most effective. The evidence for long-term supervision has not been effectively studied yet, therefore, there is no answer yet on the possible effectiveness.
- 5 There is no reason to assume an effect of the LLTS on a reduction of new patients, a shorter treatment duration and a faster end of the tbs-order are expected by the legislator.
- 6 There has been a lot of criticism on the LLTS. Most importantly, it is observed that two out of three parts of the LLTS will barely be used in daily practice thereby limiting the potential effects on recidivism.