

Summary

Applications of the Law on long-term supervision in 2017-2020

A first exploration

Background

Law on long-term supervision

The Law on long-term supervision (LLTS; *Wet Langdurig Toezicht*) was fully implemented in 2018. This law arranges long-term supervision, treatment and monitoring of ex-delinquents and former forensic psychiatric (fp) patients. 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 fp patients who have been imposed a tbs-order (*maatregel terbeschikkingstelling*). The tbs-order is a judicial measure that entails mandatory hospitalization and treatment in a fp hospital (Article 37a.1 Dutch Criminal Code [DCC]). This court-ordered sentence is 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.²⁵ Persons with such an order are called 'patients' but are not admitted within the health system. Instead, they are admitted to high secure fp hospitals within the judicial system. By supervising these offenders more adequately, the government wants to contribute to the most important goals of a new system of forensic care in the Netherlands, that is focusing on recovery for the patient and reduction of recidivism in society.

Evaluation of the LLTS is due five years after the full implementation, in 2023, as is common for new laws in the Netherlands. Further, (annual) monitoring and updates of the applications of the LLTS were promised to Dutch parliament. In the present study, the applications of the law in 2017-2020 were examined.

Goals and research questions

The goal of the current study is to ascertain the applications of the LLTS in 2017-2020 and to compare these with the goals of the legislator. The research questions are on the number of applications, characteristics of the applications and arguments by court on the imposition of the measures.

The LLTS in a nutshell

The LLTS encompasses prolonged supervision in three different manners and is applicable for (former) fp patients with a tbs-order and former prisoners. The tbs-

²⁵ Violent crimes are considered those crimes that carry a minimum sentence of four 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).

order is imposed conditionally or with mandatory admission to a high secure fp hospital. The LLTS is only applicable to the latter tbs-orders. These tbs-orders are limited to four years unless the index crime involved danger to persons, then its duration is unlimited. Tbs patients with an unlimited tbs-order with mandatory admission in a fp hospital can be conditionally released (forensic psychiatric conditional release [FPCR]). The first term of FPCR is for one or two years, after which it can be extended by a judge upon a prolongation request by the district attorney, also for one or two years. The LLTS arranges that FPCR can be prolonged without a limit on the maximum duration. Prior to the LLTS, FPCR was limited to a maximum of nine years. The changes in FPCR will be seen in fp practice from the 1. January 2026 onwards because at that time, a fp patient under the new legislation can be on FPCR for longer than nine years (the period prior to the LLTS). One possible effect taking place prior to 2026 is that fp patients starting FPCR from 2017 onwards, have a different perspective: an unlimited instead of a limited duration of FPCR. It is possible that this change in perspective influences FPCR practices, for instance, the number of FPCRs that start or the duration of FPCR. For this reason, several characteristics of FPCR were monitored.

The second part of the LLTS involves conditionally released prisoners from the prison system. Conditional release for prisoners in the Netherlands is possible with prison sentences of more than one year. During CR, all offenders 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 and could also be shorter than one year. With the LLTS, as of 1. January 2018, a minimum term of one year of special conditions is arranged. Thus, CR for offenders with or without special conditions now always lasts for at least one year. Further, the LLTS has arranged possibilities of prolongation of CR for former prisoners. The third and final part of the LLTS is a new independent supervision order, which is imposed either in combination with a prison sentence and/or a tbs-order, the Measure on behavioral influence and limitation of freedom (MBI; *Gedragsbeïnvloedende en vrijheidsbeperkende maatregel*).

Methods

In the current report, the applications of FPCR in 2017-2019 were examined. For the conditional release of offenders and the MBI, we examined applications from 2018-2020, as these changes were implemented 1. January 2018. For some research questions the answers are not available for 2020, these will be answered in a next report. We requested datasets from three different Dutch institutions: the Custodial Institutions Agency (DJI), Council for the Judiciary (Rvdr), and the Central Judicial Collection Agency (CJIB). Prior to the acquisition of the data, a Privacy Impact Analysis (PIA) was performed and formal letters seeking approval from the heads of the aforementioned agencies were sent. To determine if the applications of the LLTS were in accordance with the expectations of the legislator, the results were compared to the relevant literature, for instance with the impact analysis by the research agency Significant and the policy analysis of the Research and Documentation Centre of the Dutch Ministry of Justice and Security (WODC).

Results

Unlimited CR

In the first three years of the LLTS (2017-2019) the number of FPCR that started has strongly decreased. In 2016, 157 fp patients were sent on FPCR, whereas this number decreased to 140 in 2017, 120 in 2018 and only 74 in 2019. Furthermore, the number of FPCRs in 2019 is almost half of the number in 2017: it decreased from 140 to 74. In 2017-2019 the total number of FPCRs on a fixed date each year has also decreased, from 359 in 2016 to 239 in 2019. One hypothesis explaining this decrease is that fp practitioners became more cautious in allowing (conditional) release of fp patients, due to a severe and highly public case of a rape and murder by a fp patient at the end of 2017 (the case of Michael P.). As we did not examine this hypothesis, we cannot draw any final conclusions on this hypothesis. As the number of unlimited tbs-orders has been slowly increasing again since 2016, it is expected that the number of FPCRs will increase in the following years (FPCR is necessary in order to end the tbs-order). The legislator expected that fp practitioners would be more willing to allow FPCR for fp patients following the LLTS, however, the first three years of the LLTS do not prove this to be true.

We calculated changes in the average duration of FPCR, however, these numbers are not reliable yet, as not enough fp patients have started and finished FPCR under the new legislation. In previous and more recent years, the average duration, median and range of FPCR has increased, from an average of 552 days for fp patients whose tbs-order ended in 2015 to 724 days for patients ended their tbs-order in 2019. These are mainly fp patients who started their tbs-order eight to ten years prior, in 2005-2009; the LLTS was not applicable for most of these patients. For fp patients whose tbs-order ended in 2017-2019, 51% started and ended their FPCR under the LLTS, however, this number was not enough to reliably calculate the duration of FPCR. The number of prolongations of FPCR varies, 48% of all fp patients on FPCR only get one term of FPCR, of one or two years, whereas FPCR is prolonged with at least one term for 52% of all fp patients on FPCR. Finally, at the time of the study, 35 fp patients are already on FPCR for relatively long period between four and nine years.

Secondarily, the legislator expected that with the LLTS the influx of fp patients and the treatment duration would decrease and the outflux of fp patients would increase. However, the results show that the influx of fp patients has increased, that the treatment duration under the LLTS cannot reliably be determined yet and that the outflux has decreased.

The total number of tbs-orders with mandatory treatment is relatively stable in the first three years of the LLTS: 120, 141 and 129. In relation to previous years, there is a steady increase of tbs-orders from 98 in 2013 to 129 in 2019. The number of conditional tbs-orders has also increased in 2017-2019, from 49 in 2016 to 91 in 2019. Furthermore, although the number of impositions of different types of tbs-orders varies, the total number of tbs-orders is almost the same now as it was twenty years ago: 220 in 2019 and 219 in 2001.

The possible influence of the LLTS on treatment duration can be examined for fp patients that start their tbs-order from 2017 onwards. As the regular treatment duration is 7.6 years, this effect cannot be examined yet. In more recent years, the treatment duration for fp patients prior to the LLTS has decreased, from the height of 10.6 for fp patients starting their treatment in 1998 to 7.6 years for fp patients who started their treatment in 2010.

In 2017, the first year of the LLTS, the number of fp patients whose tbs-order ended increased from 170 in 2016 to 210. This is partly because more tbs-orders ended because the district attorney did not submit a prolongation request, this number increased from 20% in 2016 to 30% in 2017. When the district attorney does not submit a prolongation request, the tbs-order ends automatically on the date of the prior prolongation. In 2018, a sharp decrease is seen in the number of tbs-orders that ended due to the absence of a prolongation request: 11%. The number of ended tbs-orders further decreases to 157 in 2018 and stabilizes with 153 in 2019. The reasons for the decrease in 2018 and 2019 are unknown but as with the hypothesis for the decrease in conditional release in 2017-2019, the severe and highly public case of a rape and murder by a fp patient at the end of 2017 (the case of Michael P.) may have influenced the decrease in outflow.

Conditional release of offenders in the prison system

The Central Office of CR (COCR) is an agency within the district attorney's office that arranges the execution of all CRs in the Netherlands. In the first three years of the LLTS each year more cases were brought forward to the COCR as compared to the previous years (1,126 cases on average as compared to 1,088 cases). This is partially explained by an increase of offenders leaving prison after serving a prison sentence of one year or more, from 7.4% in 2015 to 9.6% in 2019. After an assessment made by the COCR it is determined which offenders are eligible for CR and which are not. In the first three years of the LLTS, there is a small increase in the number of positively assessed CR cases, those allowed to go on CR, from 85.6% in 2018 to 89.9% in 2020. This is comparable to the proportion of positively assessed CR cases in 2015-2017, which varies from 86.1% to 89.6%. The legislator did not indicate whether or not they expected an in- or decrease in the number of CR cases. Further, the total number of CR cases at a fixed date each year has also strongly increased, from 1,917 in 2015 to 2,643 in 2020. The numbers above show that this is at least partially explained by an increase in offenders leaving prison after serving a sentence of longer than one year as well as the small increase in the number of positively assessed CR cases. The legislator did not indicate whether or not they expected an in- or decrease in the total number of CR cases at a fixed date each year.

The number and proportion of offenders who are not granted CR has increased in the first three LLTS years, from 40.5% (n=17) in 2018 to 57.1% (n=40) in 2020. Further, the number and proportion of CRs that were put off for some period of time has increased as well, from 26.9% (25 offenders) in 2018 to 41.3% (45 offenders) in 2020. These numbers are not available yet for previous years.

As mentioned above, the general condition of not committing any further crimes is applicable to all CRs. In addition, in about 65% of CR cases that started in 2018-2020 one or more special conditions were also attached. This is a decrease as compared to previous years, in which on average 70.2% of all CR cases (in 2013-2017) started with special conditions. This is in contrast to the expectations; the legislator expected an increase in the number of CRs with special conditions attached, as they hypothesized that the prolongation of CR made possible with the LLTS would result in more CRs with special conditions attached. The average number of special conditions per person in 2018 is 3.93 (standard deviation [SD]=1.88), almost the same as the average number of special conditions in 2019, which was 3.98 conditions (SD=1.76). However, in 2020 an increase was found to an average of 5.08 conditions attached (SD=1.78). In previous years, there is also

an increase in the number of special conditions imposed: from an average of 2.6 conditions in 2013 to an average of 3.7 conditions in 2017. The increase in the number of special conditions attached to CR is in line with the expectations of the legislator.

In 2018-2020, in almost all cases as a special condition, mandatory check-ins with probation services is imposed (92-94%) and other, not further specified conditions are also imposed often (92-94%). Further, the number of restraining orders, orders that prohibit the entrance of a certain geographical area, orders to stay in a certain geographical area, behavioral interventions, admittance to a hospital, prohibitions to use alcohol or drugs or duties to cooperate with drug or alcohol tests hardly vary in the first three years of the LLTS, in 2018-2020. Further, in 2020 the results showed an increase of 5%-points in the number of special conditions on protective housing facilities as compared to 2018 and 2019. The total number of special conditions involving aftercare was calculated by summing up all conditions on protective housing facilities, treatment by professionals or hospitals, behavioral interventions and admittance to a hospital). This total of aftercare conditions increased in 2020 as compared to 2018 and 2019 (from 649 to 761). The special conditions on aftercare as a proportion of the total number of special conditions also increased, from 60% in 2018 to 64% in 2020. The comparison of these numbers with previous years will be done in a different report. From the analysis on the policy theory it is known that the legislator expected an increase in special conditions on aftercare, due to the before mentioned expectation that more time was needed to work on behavioral change. With the additional time, it would be easier to attach special conditions. The numbers found confirm this expectation.

The duration of special conditions could not be calculated reliably, as many CRs had not finished yet.

With the LLTS it became possible to prolong CRs. Special rules apply, all CRs can be prolonged one time by a maximum of two years and only certain specifically dangerous cases can be prolonged indefinitely, each time by a maximum of two years. The COCR assesses each case according to the rules and regulations and determines if a CR can be prolonged once or more often. The COCR determined that in 2019, 59% of all CRs could potentially be prolonged once and 41% could be prolonged more often. These numbers are comparable to 2020 and are also in accordance with an analysis of the proportion of crimes with a violent and/or sexual component in 2019 of 41%. The district attorney has to determine if it is indeed necessary to make use of this legal possibility of the prolongation of CR and they have requested prolongations of CR in 75 (in 2019) and 79 (in 2020) cases. The prolongation requests are judged in court and the number of cases in which prolongation was granted was 46 (61%) in 2019 and 53 (67%) in 2020. A prolongation request can also be partially granted, this was done in 20 cases (27%) in 2019 and in 14 cases (18%) in 2020. In total this adds to 66 cases in 2019 and 67 cases in 2020 in which prolongation was completely or partially granted. From the impact analysis by Significant, it was estimated that the prolongation of CR (once or repeatedly) together with the imposition of the MBI would be imposed to about 80 people (range 70-90). It was also expected that a maximum of 20 people each year would be imposed a MBI, which would predict 50-70 prolongations of CR. The actual number of prolongations of CR thereby lies within the expected range.

Measure on behavioral influence and limitation of freedom

In the first three years of the LLTS the MBI was imposed 58 times: 2 in 2018, 17 in 2019 and 39 times in 2020. In some cases there are decisions in trial court as well as appeals in appeal court. The judges in appeal courts confirmed some MBIs whereas others were reversed. In the end, 53 MBIs were irrevocably imposed, 1 in 2018, 15 in 2019 and 37 in 2020. These numbers show that in the first two years of the LLTS not nearly as much MBIs were imposed as expected (20 each year). However, in 2020 the amount of MBIs imposed has nearly doubled the expectations. The imposition of MBIs throughout the Netherlands differs. By the courts in Amsterdam, the Hague, Limburg, Oost-Brabant and Zeeland-West Brabant no MBIs were imposed in 2018 and 2019. The courts in Noord-Holland, Overijssel, Noord-Nederland and Midden-Nederland imposed respectively one, two and three MBIs in 2018 and 2019. The courts in Rotterdam and Gelderland imposed most MBIs, for each. More details on the MBIs in 2020 will follow in the next report.

The trial courts and appeal courts motivate their decisions to impose a MBI by stating that both the maximized tbs-order as well as the tbs-order with conditions have a fixed end term, which may not be adequate to treat someone fully; the risk of recidivism is high and it is necessary to reduce this risk; as a safety measure, should the punishment and treatment trajectory prior to the MBI not be enough and due to complex disorders. These are also the statements mentioned by the legislator as possible reasons to impose a MBI.

The MBIs in 2018 and 2019 are more often combined with a tbs-order than with a prison sentence (11 out of 16 times). Four MBIs were combined with an indeterminate tbs-order, two with a tbs-order with conditions and five with a determinate tbs-order. In five other cases the MBI is not combined with a tbs-order but with (among others) an unconditional prison sentence.

The number of MBI-requests in 2018 and 2019 made by the district attorney cannot be reliably determined as they do not have a registration system of all such requests. In total, 24 cases were found in which the district attorney has requested a MBI. In 13 of these cases the courts ordered the MBI, in 11 cases they did not. In appeal court five requests for a MBI were put forward and these were imposed four times. This sums up to 29 cases in which a request of a MBI was made to the courts and 17 MBIs were imposed. Of the 16 irrevocable MBIs in 2018 and 2019, 14 have been requested by the district attorney and two were imposed by virtue of the judges' initiative.

In 8 out of 16 irrevocable MBIs the probation services have recommended the imposition of the MBI, in the other 8 no such advice was quoted in the judges' decision. This does not necessarily mean that there were no recommendations by the probation services. An analysis of MBI advices directly from the probation services will follow in a further report. In the court rulings often a risk assessment made by probation services was found, such as low, average and high. The probation services state that in their opinion, the MBI is necessary as an alternative pathway to treatment should the judges chose to impose a different sentence. This is the case in one ruling by the court of Rotterdam in which the probation services explicitly state that the MBI is necessary if the court decides to impose a tbs-order with conditions instead of a tbs-order with mandatory treatment. In a case by the trial court Overijssel the probation services state that the MBI could be a valid alternative should the tbs-order with mandatory treatment not be adequate. Also,

probation services state that it is unknown at present if the MBI is necessary in the future but they recommend the imposition anyway in order to be on the safe side.

Among the persons convicted to an MBI, there are five offenders who have committed one or more sex offences, ten perpetrators of one or more violent offenders and one person who committed arson while endangering people. Four out of five sex offenders were convicted of sex offences with victims aged 18 years or younger, they could possibly be expected to travel overseas to commit further crimes. The MBI was imposed only once on a defendant who refused to cooperate with the pre-trial psychiatric assessment services and was not imposed to any terrorists. The imposition of the MBI on sex and violent offenders is according to the expectations by the legislator. However, the imposition of the MBI on defendants who refuse participation in pre-trial assessment and terrorists is so small, that the effects are – for now – almost non-existing.

From the MBIs we also noted the advice given by the Netherlands Institute for Forensic Psychiatry and Psychology (NIFP) and the arguments put forward by the defense attorney. In 1 out of 16 irrevocable MBIs the NIFP recommended a MBI, in 13 cases no MBI is recommended, in 1 case the defendant claims not to have any memories of the crime he committed, therefore the NIFP could not determine any disorders and in 1 case the defendant refused pre-trial assessment. In 9 cases the NIFP assesses the risk of recidivism to be high, in 1 case this is defined as 'substantial and lasting' and in 1 case average to high. In 4 cases there was no risk of recidivism cited.

The defense attorneys did not often advice on the imposition of a MBI, only three times. In one case the defense argued that the MBI was not necessary, in one case they left it up to the judges and in one case the defense attorney claimed the rules of the law did not permit the imposition of the MBI. In two cases in which the MBI was not imposed, the defense attorneys proposed the MBI as a less severe alternative to the tbs-order, but the judges did not follow this argument.

In one case, as opposed to the intentions of the legislator, the imposition as well as the execution of the MBI was requested and imposed by the court. Other MBIs that have been imposed have not been put into practice yet, as the offenders first have to serve their prison sentence and/or tbs-order.

Conclusions

- 1 The number of FPCRs that started and the number of FPCRs at a fixed date each year have decreased in the first three years of the LLTS. This is in contrast to the expectations of the legislator who expected the LLTs to lead to an increased willingness to start FPCR in forensic psychiatric professionals and in turn an increase in the number of FPCRs.
- 2 The influence on the duration of FPCRs under the new legislation cannot be determined reliably yet as many FPCRs that started under the new legislation have not ended yet.
- 3 The legislator expected a decrease in the influx of new fp patients and of the treatment duration and an increase in the outflux of tbs-patients. These expectations were not met, the influx increased, the treatment duration cannot be reliably determined yet and the outflux decreased.
- 4 The average influx of CR cases in the prison system that was assessed by the COCR is larger in the first three years of the LLTS as compared to the three

years prior. This can be explained by a rise in the number of potential CR cases, that has increased in the past years; there are more offenders leaving the prison after serving a prison sentence of one year or more. The number of positively assessed CR cases, these are the CR cases that are deemed fit to start, is almost the same in 2018 and 2019 as compared to the years before. In 2020 there is a small increase. The number of CR cases at a fixed date each year has increased profoundly in recent years. This is partially due to the above mentioned increase in offenders leaving the prison system after serving a prison sentence of 1 year or more and also partly due to a larger proportion of CR cases that are positively assessed to start. The legislator did not put forward any expectations on the number of CR cases after the implementation of the LLTS.

- 5 The number of CR cases with special conditions attached has decreased in the first three years of the LLTS, in contract to the expectations of the legislator. On the other hand, the average number of special conditions per person as well as the number of special conditions involving some kind of aftercare have increased, in line with the expectations of the legislator.
- 6 The influence on the duration of CRs under the new legislation cannot be determined reliably yet as many CRs that started under the new legislation have not ended yet.
- 7 The number of impositions of the MBI in the first two years of the LLTS has not met the expectations, however, this number has more than doubled in 2020.
- 8 Four MBIs were combined with an indeterminate tbs-order, two with a tbs-order with conditions and five with a determinate tbs-order. In five other cases the MBI is not combined with a tbs-order but with (among others) an unconditional prison sentence. The legislator expected the MBI to be mostly combined with the tbs-order with conditions not the tbs-order with mandatory treatment.
- 9 The trial courts and appeal courts motivate their decisions to impose a MBI by stating that both the maximized tbs-order as well as the tbs-order with conditions have a fixed end term, which may not be adequate to treat someone fully; the risk of recidivism is high and it is necessary to reduce this risk; as a safety measure, should the punishment and treatment trajectory prior to the MBI not be enough and due to complex disorders. These are also the statements mentioned by the legislator as possible reasons to impose a MBI.
- 10 In 2018 and 2019 the MBIs are mainly combined with the target groups set out by the legislator, that is, sex offenders and violent offenders. Four sex offenders committed crimes against victims aged 18 years or younger and warrant protection from leaving the country to commit further sex crimes abroad. The MBI was imposed only once on a defendant who refused to cooperate with the pre-trial psychiatric assessment services and was not imposed to any terrorists. The imposition of the MBI on defendants who refuse participation in pre-trail assessment and terrorists is so small, that the effects are – for now – almost non-existing.