



Law on long-term supervision

Process evaluation

Summary

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Summary

The Long-Term Supervision Act

In 2018, a new law – the Law on Long-Term Supervision (LLTS) (*Wet langdurig toezicht; Wlt*) – came into force in the Netherlands that allows long-term supervision, treatment and monitoring of sex offenders and serious violent offenders. In doing so, the legislator wants to reduce recidivism and increase social safety. The law regulates three possibilities for long-term supervision of this target group under certain circumstances:

- 1 The conditional termination (CT) (*voorwaardelijke beëindiging; VB*) of the TBS order** (disposal to be treated in a forensic hospital on behalf of the state) **is unlimited** for TBS patients with an unlimited tbs order with coercive care. The maximum duration of the VB of nine years has expired with this new law.
- 2 The minimum duration of the probationary period of the special conditions for convicts has been aligned** with that of the general conditions to at least one year, and the probation period of the conditional release (CR) (*voorwaardelijke invrijheidstelling; v.i.*) can be extended. **The probation period can be extended** by a maximum of two years for all offenders on conditional release. For sex offenders and serious violent offenders, the probation period can be extended several times, up to life.
- 3 A new independent supervisory measure – the Measure on Behavioural Influence (MBI)** (*Gedragsbeïnvloedende en Vrijheidsbeperkende Maatregel; MBI*) – has been introduced, whereby conditions are imposed on the person concerned upon implementation. It can be imposed on people who have been sentenced to prison and tbs patients. The duration of the measure is two, three, four or five years. The MBI can be repeatedly extended as long as, according to the court, there is a risk of reoffending.

How big is the LLTS's target group?

The long-term supervision made possible by the LLTS is intended for a specific target group of sex offenders and serious violent offenders. The target group is limited in size. Based on the ex-ante implementation analysis (Drost et al., 2016), it is expected that between 70 and 90 people will face long-term supervision every year in the context of the repeated extension of the conditional release or the MBI.¹ Concerning the conditional termination of the unlimited tbs order with coercive care, it is expected that merely a few times the conditional termination will be necessary for more than nine years.

¹ The target group to which the alignment of the general and special conditions of conditional release and the one-off extension of the probation period applies is larger. This study is limited to the expectations concerning the repeated extension for sex offenders and serious violent offenders.

Process evaluation

The LLTS is monitored annually. The Scientific Research and Documentation Centre (WODC) has drawn up a research program for this purpose. Part of this research program is a process evaluation that provides insight into the implementation of this law, the effectuation of sections of the law, and the chain partners' first experiences.

DSP-groep carried out the process evaluation between May 2020 and June 2021. This consisted of analysis of policy documents, information material and internal documents of the chain partners. In addition, qualitative interviews were conducted with 49 respondents: 12 representatives of the chain partners who participated in the national project group at the time and 39 respondents involved in the implementation processes of the LLTS. Case law research has also been carried out to gain insight into the perspective of detainees, lawyers, reporters, the Public Prosecutor's Office and the Sitting Magistrates (*Zittende Magistraat; ZM*) on the extension of the probationary period of the conditional release and the imposition of the MBI.²

The process evaluation shows that implementing new legislation takes time, especially if it concerns specific legislation that applies to a limited target group. We first describe the activities undertaken to prepare for the implementation of the law. We then discuss the effectuation of the three sections in the law and the first experiences in practice for each section.

Implementation

Preparation by a chain-wide national project group

After the House of Commons passed the law in November 2015, the law's implementation was prepared between 1 January 2016 and 1 January 2018 by a chain-wide national project group led by a project leader of the Directorate for Punishment and Protection of the Ministry of Justice and Safety. This project group represented the chain partners involved in the implementation of the LLTS: Public Prosecutor's Office (including the Central Provision for Conditional Release (*Centrale Voorziening voorwaardelijke invrijheidstelling; CVv.i.*)), the three probation organisations (*3RO*), The Judicial Institutions Service (*Dienst Justitiële Inrichtingen; DJI*), the Central Judicial Collection Agency (*Centraal Justitieel Incassobureau; CJIB*)/Administration and Information Centre for the Execution Chain (*Administratie- en Informatiecentrum voor de Executieketen; AICE*), the Police, Judicial Information Service (*Justid*) and the Sitting Magistrate. The Council for the Judiciary (*Raad voor de rechtspraak; Rvdv*) – representing the Sitting Magistrate – participated to a limited extent in the national project group. The project group mainly prepared the necessary adjustments to the work process and the ICT systems and prepared and disseminated information about the LLTS. According to the respondents in the survey, the time and resources required

² Two have also been interviewed at policy level.

for the adjustments to the ICT systems were anticipated too late, due to which the adjustments were not realized when the law came into effect.

Informing executive professionals within the organizations of the chain partners

The project group participants were responsible for informing the executive professionals in their organization about the law and its implementation. The Public Prosecutor's Office and the 3RO in particular – the organizations for which the changes in the conditional release and the MBI have the most consequences for the work processes – have invested much time in informing the executive professionals. The courts and tribunals have been informed about the LLTS via a legislative notice and information on the intranet. Other chain partners, such as the police, DJI and the Dutch Institute of Forensic Psychiatry and Psychology (*Nederlands Instituut voor Forensische Psychiatrie en Psychologie; NIFP*) have disseminated information about the LLTS through a letter, news item or intranet. No specific information has gone to the legal profession and mayors. The trade associations of lawyers have, however, put information on the website. At the time of the process evaluation, information about the LLTS is a standard part of the course package of the Study Centre for the Judiciary (*Studiecentrum Rechtspleging; SSR*), the training for pro-Justitia reporters and the training for advisors/supervisors within the 3RO.

The LLTS is not considered legally complicated by most respondents, but the implementation – especially of the MBI – is. The chain working process of the MBI is very different from the existing processes. This may also cause professionals in the LLTS chain to associate the LLTS mainly with the MBI.

We explain below how attention has been paid to and the first experiences with the LLTS. We will discuss the necessary ICT adjustments, effectuation in practice and the experienced added value in practice.

The unlimited conditional termination of the tbs order

Limited attention to the unlimited conditional termination

Compared to the other two elements of the LLTS, relatively little attention has been paid to the information on the unlimited conditional termination of the TBS order. However, information about this element of the law is included in the information sheet about the LLTS. Limited attention has been paid to this element for two reasons: firstly, for the implementation of the unlimited conditional termination, no adjustments are required to the work process or ICT systems for the time being. Secondly, a conditional termination of more than nine years will not be an issue until 2026, and the influx will probably be nil.

The extension of the probationary period of the conditional release

Information on changes in the conditional release

Because of its central role in the process of conditional release, the CVv.i. took the lead in providing information about the changes concerning conditional release. It has organized meetings in all districts for

public prosecutors, probation officers and other chain partners. In addition, the CVv.i. also allows asking questions about case studies. Nevertheless, the extension of the probationary period of the conditional release is not yet on the minds of all professionals involved.

ICT systems not yet adapted upon entry into force

When this part of the LLTS came into effect, the ICT systems had not yet been adapted to the working method. A manual workaround was set up for the first eight months. At the time of this research, there are no longer any problems with the ICT systems.

Effectuation in practice

The tasks and responsibilities of the professionals involved in the chain are considered to be feasible. The central role of a small team at the CVv.i. in collaboration with the chain partners promotes the implementation of the conditional release process. However, it is still unclear for some chain partners who informs the victims and relatives about whether or not the conditional release will be extended.

Since the LLTS came into effect, approximately 65 conditionally released offenders have had their probationary period (partially) extended annually. Since the LLTS came into effect, the probation period has been (partially) extended every year for approximately 65 parolees. However, there is still limited experience with the application of a second or subsequent extension. This was discussed thirteen times in 2020. This limited number makes sense as the law only came into effect three years ago.

The Public Prosecutor's Office has been declared inadmissible in several courts in cases in which the extension of the probation period was claimed and in which the conviction took place before 2018 and/or the convicted person was released on conditional release before 1 January 2018. The Supreme Court ruled in June 2021 that in cases where the conviction took place before 1 January 2018, it is possible to extend the probation period of conditional release. However, the special conditions attached to the extended probation period are, in an exceptional case, contrary to the principle of legality, as stipulated in Article 7 of the ECHR. This is the case if the extension and special conditions alter the nature and maximum actual duration of the custodial sentence imposed by the court to the detriment of the offender.

The experienced added value of conditional release in practice

In practice, the two aspects of conditional release, which are not limited to sex offenders and serious violent offenders, have added value. These aspects are the one-time renewal of the conditional release for all detainees and the equalization of the probation period for special and general conditions. In practice, the added value seems to lie mainly in the possibility that these changes offer to start treatment, to complete a behavioural intervention or to be able to provide practical help for a longer period of time with a view to reintegration. Although the respondents also see added value in carrying out long-term

supervision for a specific target group using the repeated extension, they also comment on the extent to which it is possible to limit the risk of recidivism with long-term supervision.

The Measure on Behavioural Influence (MBI)

Information

The chain organizations paid the most attention to the MBI in the implementation phase, especially the Public Prosecutor's Office and the 3RO. This measure also requires the most adjustments because the work process is different from the regular chain work process. The information about the MBI cannot be assessed as well as the information about the other parts of the LLTS. This has to do with the complexity of the implementation practice and because it is insufficiently clear to which offenders the MBI applies.

ICT systems not ready upon entry into force

When applying for the enforcement of the MBI, monitoring time by the CJIB/AICE is essential. If the application is filed too late, the possibility of enforcement of the MBI will automatically lapse. The aim is to fully automate the process of time monitoring. This requires a significant financial investment because the MBI process is different from the process for other sanctions and measures, as the measure's implementation takes place years after its imposition. A semi-automated method is used at the time of the process evaluation, which is prone to errors.

Effectuation in practice

Roughly speaking, we can distinguish three phases in the MBI process: the phase before the MBI is imposed, the phase between the imposition and the decision to enforce and the implementation phase, which includes the options for extension. So far, experience has only been built up with the first phase, and that experience is limited. Between 1 January 2018 and 29 October 2020, the MBI was irrevocably imposed in 56 cases. The most important bottleneck in this first phase is that to advise whether to impose a MBI, advisors from the probation service and pro-Justitia reporters have to estimate the risk of recidivism over, sometimes, quite a few years. Respondents experience this as difficult or impossible.

Experienced added value in practice

In addition to a lack of familiarity with the measure, it is also important that not all chain partners see the added value of the MBI compared to the already existing sanction package and the possibility of monitoring long-term – whether or not lifelong – in the context of the conditional release and conditional termination. In accordance with the legislator's point of departure, respondents expect the MBI to be particularly suitable for sex offenders and serious violent offenders. The cases in which the MBI has been imposed since 1 January 2018 concern individuals with a high risk of recidivism and (persistent) multiple problems, some of which have psychological problems. Some respondents see the MBI as a lighter framework than a TBS order. However, some respondents disagree. The prospect of lifelong supervision has a significant impact on convicts. It can also give offenders the impression that the court assumes that

they will not work on behavioural change during their TBS order or prison sentence and therefore “will not improve their lives”.

Conclusions and recommendations

All involved chain partners have realized the implementation of the LLTS, in different ways appropriate to their organization and geared to their role and involvement in the various parts of the LLTS. However, the implementation is not yet optimal. The main obstacles have to do with the insufficient awareness and the limited added value of some instruments.

Due to the limited experience in practice to date, it is still too early to conclude whether the LLTS is being carried out intended and meets a need. According to the respondents, expectations of the LLTS should be tempered because supervision has its limitations when it comes to reducing the risk of recidivism. Time will tell whether greater awareness of the long-term supervision possibilities offered by the LLTS will lead to more long-term supervision or whether the application will fall short of expectations, partly due to a lack of perceived added value. It is therefore advisable to repeat the process evaluation at a later date. The appropriate time varies per section of the LLTS and depends on the moment of sufficient experience with each section. In addition, we believe, when assessing whether the LLTS is being used in accordance with the expectations in the ex-ante implementation analyses, it is necessary to take into account the possible impact of the WSenB on the influx in the extension of the probationary period of the conditional release and the MBI and the aforementioned ruling of the Supreme Court. With the Punishment and Protection Act (*Wet straffen en beschermen; Wsenb*), the conditional release is a maximum of two years. The extension of the conditional release as made possible by the LLTS, shall remain in full force and effect. The changes in the initial conditional release are expected to have consequences for the influx into the conditional release and the extension thereof. As a result of the WSenB, the interviewees expect that the number of calculating detainees will increase. The respondents expect that calculating detainees will choose not to use CR. In that case, it is also not possible to repeatedly extend the CR. The only way to make long-term supervision possible for this group of detainees is by imposing an MBI.

The supreme court's ruling may extend the probationary period of the conditional release in fewer cases than assumed in the ex-ante analysis.

Based on the experience so far, we formulate several recommendations for effectuation in practice. Because of the limited target group, it is necessary to inform the people involved again and ensure that information is easy to find. The LLTS must also pay attention to the interrelationship between the conditional release and the MBI. When imposing a sentence or measure on the suspect, the court must consider what options exist for supervision after the sentence or measure has expired to assess whether it is necessary to impose a MBI. In addition, we recommend considering who can best advise on the extension of conditional release and the implementation of the MBI.

Finally, we recommend researching how detainees experience long-term supervision with the possibility of repeated extension, its effect on their motivation to comply with set conditions, and whether long-term supervision may also have a negative impact.

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