

pro facto

WODC Summary

The right direction or missed opportunities?

Groningen, 1 October 2021

www.pro-facto.nl

Ossenmarkt 5
9712 NZ Groningen

profacto@pro-facto.nl
050 313 98 53



rijksuniversiteit
groningen

Colofon

© 2021 WODC
Copyrights reserved

This research was commissioned by the Dutch Scientific Research and Documentation Centre (WODC) and conducted by Pro Facto, an agency for administrative and legal research, consultancy and education.

The research team: mr. Nicolette Woestenburg (project manager), dr. ir. Bieuwe Geertsema,
 mr. Stef Roest, mr. Niko Struiksma, prof. mr. Sanne Struijk

The supervisory committee: prof. mr.dr. Pauline Schuyt, dr. Anne-Marie Slotboom, drs. Caroline Liberton (Ministry of Justice and Security), drs. Theo van Mullekom (WODC)

Commissioned by: WODC



1 Summary

1.1 Background

The Koers en Kansen (Direction and Opportunities) programme kicked off in 2015 with an exploratory look at the future of sanction enforcement for the purpose of developing a vision for this enforcement set in a wider context, in which the objectives of punishment and resocialisation are central. The overarching goal of the Koers en Kansen programme is to apply effective sanctions, now and in the future.

Over 40 project ideas were gathered in 2018 and the first projects were launched in 2019. The Ministry of Justice and Security has asked the WODC to conduct a process evaluation to provide insight into the experiences, perceived impact and effective elements of projects aimed at the sentencing and processing of minor offences. Within the Koers en Kansen programme, five projects fit this definition and therefore the following projects are included in this process evaluation:

- I Wijkrechtbank Eindhoven (Eindhoven Community Court)
- II Vonnisvoorstel en versnelde rechterlijke interventie (Proposal to the Court and faster Court action)
- III Verbinding Proeftuin Ruwaard (Integrating the Pilot Project in Ruwaard in the judicial chain)
- IV Omgevingsadvies Jeugd (Recommendations regarding Young Offenders based on their Circumstances)
- V Toezichtrechter OM (Public Prosecutor's Office, Supervisory Judge)

The Toezichtrechter project had not yet started when this research was being conducted and, for that reason, could not be included. The report describes the findings of the projects Wijkrechtbank, Vonnisvoorstel, Verbinding Proeftuin Ruwaard and Omgevingsadvies Jeugd. When analysing the projects and addressing the research questions, the policy theory of Toezichtrechter has, however, been considered.

1.2 Research question and sub-studies

The main research question reads as follows:

What are the experiences of chain partners on a local, regional and national level with respect to the projects within the framework of Koers en Kansen (Direction and Opportunities) that focus on the handling and sentencing of criminal cases? What do the chain partners involved consider to be the effective elements and mechanisms of the projects and with what impact?

This main question is divided into 17 sub-questions, which in turn are subdivided into four sub-studies. The sub-studies are:

1. Reconstruction of policy theory
2. The implementation of the projects and the role of the chain partners
3. Effective elements and mechanisms
4. Analysis and learning effect

1.3 Reconstruction of policy theory

The policy theory of each project was examined. When describing the policy theory, the intervention, the context, the assumed mechanisms and the assumed outcome were described successively on the basis of desk research. In addition, an interview with the project leader took place for each project in order to clarify the assumptions. Ideally, each project has a policy theory with specific objectives and a carefully thought-out policy theory. When the objectives are very broad, it is more difficult to measure the success of a project and which elements contribute to this success.

The analysis shows that each project does have a policy theory, albeit neither explicit nor supported by scientific literature. Furthermore, the working methods of the projects are not predetermined; the projects are based on the principle of learning by doing and working methods are further refined and adjusted during the project. The common goal of the five projects is to prevent recidivism and to find a suitable sentencing process for the suspect.

The projects focus on the pre-trial phase, except for the Toezichtrechter project which focuses on the post-trial phase. The most important innovative element that emerges from all the projects is that recidivism is tackled from different angles by focusing on the multi-problems of the suspect and that not only sanctions, but also the provision of (psychosocial) help is considered. In the Verbindend Proeftuin Ruwaard project this is done in the broadest form by also involving partners from the social and healthcare domain. The manner of cooperation is also seen by the participating parties as an innovative element. Cooperation is relied on more extensively than is normally the case in the criminal domain. With the exception of the Vonnisvoorstel and Toezichtrechter projects, cooperation in the projects is between more than the judicial partners alone. It also involves partners from the social domain and the healthcare sector.

The objectives and scope of the projects are sometimes adjusted during the project. One example of this is the switch from neighbourhood-based work to a city-wide approach. The decision to broaden the projects seems to be entirely determined by the need for more inflow. The question is whether this choice benefits the work that is at the heart of the project, since it is not backed up by any substantive arguments other than increasing inflow. But a project is more likely to be successful if you can adjust your choices in the interim. The challenge, therefore, is to strike a balance between substantiation and sufficient freedom to implement the project in practice. The ideal way of working that has the support of the chain partners and experts seems to be a set-up in which professionals have sufficient professional freedom to experiment and innovate, while at the same time a number of frameworks are specified that stem from (scientific) research.

1.4 The implementation of the projects and the role of the chain partners

The Toezichtrechter project, as previously mentioned, is not included in this part of the analysis because it has not been started.

1.4.1 Working method

In all projects, the working method consists of several phases in which information is gathered about the suspect's underlying problems so that a specific plan or recommendation can be drawn up for each suspect. The group of chain partners involved is wide-ranging; as many partners as possible have been involved in the projects, so that all the information about the suspect can be assembled. In addition to the OM (Public Prosecutor's Office) and the probation service (and in the case of the Wijkrechtbank and Vonnisvoorstel projects, the district court), housing corporations, welfare organisations, mental health care and addiction care are involved. In three of the four projects, a directing or coordinating party has been appointed. Only in the case of the Vonnisvoorstel project was this (deliberately) not done; cooperation takes place through a working group led by the Public Prosecutor's Office. At a case level, different professionals can be in charge, depending on the plan that has been drawn up with regard to the disciplinary and/or assistance programme.

In all projects, a plan or recommendation is drawn up jointly with various chain partners (and sometimes with the suspect him or herself) prior to the hearing that takes into account, for example, the assistance required. In general, the freedom that chain partners have in projects is great. It is noted that the dividing line between advising and supervising is becoming blurred; in the projects where multidisciplinary consultation takes place, partners normally involved in supervising also contribute to the recommendations.

1.4.2 Information

Within the Koers en Kansen programme, one of the ideas is that more comprehensive, life-cycle oriented information should be compiled for the purpose of making well-informed decisions about suspects. In the Omgevingsadvies jeugd project the collection of information is sufficiently well developed. The Child Protection Board coordinates the collection of information by requesting information from the various chain partners, municipalities and the social domain. In the Verbindend Proeftuin Ruwaard project, the information is collected in consultation with the suspect and by having a staff member from the Proeftuin project involved alongside the probation officer (who draws up the recommendation). A wider network can be

involved in this: a pragmatic approach is used whereby possibly relevant institutions (for example, housing association and GP) are consulted and possibly involved in the search for solutions. The options that are available and the role that the suspect can take on him or herself are identified. In the Wijkrechtbank project, the information is collected by the municipality as process controller and in the Vonnisvoorstel project by the coming together of the chain partners, sometimes supplemented by other parties such as welfare organisations and housing corporations.

1.4.3 Scaling up and down flexibly

Another idea central to the Koers en Kansen programme is the flexible scaling up and down of security, care or supervision. Wijkrechtbank and Vonnisvoorstel also focus on this. Flexibility in scaling up and down is provided for in the Vonnisvoorstel project by allowing the Public Prosecutor's Office and the probation service to meet again if the conditions are violated in order to determine new conditions and to present the case to the same judge. In the Wijkrechtbank project, this is provided for by the so-called 'finger-on-the pulse' hearing, in which the special conditions can be modified. This flexible scaling up and down has not yet happened; the project has so far focused mainly on the front end of the criminal process.

1.4.4 The suspect and their circumstances

In all projects, the suspect is central. The most appropriate solution for the suspect is considered, with the ultimate aim of preventing recidivism. In this respect, the projects fit in perfectly with the long-standing individual-oriented approach in the sanctions system, aimed at influencing behaviour and preventing recidivism. The problems of the suspect and his or her needs are identified in particular by combining information from the various chain partners and other parties. In several projects, the suspect him or herself also participates in the discussion.

The projects' target group generally tends to be broad. It includes anyone (sometimes within a certain postal code area) who is or has been given a custodial or freedom-restricting sanction. The projects are generally aimed at offenders with multiple problems who commit relatively minor crimes. However, in the Wijkrechtbank and Vonnisvoorstel projects, inclusion criteria have been set so that only suspects who have confessed to the offence can participate in the project. This does have the drawback that only motivated suspects are included, which may bias the project. It is possible that suspects who are motivated would also comply with the special conditions in the absence of this project. And it is possible that suspects who are not motivated might actually become motivated by the working methods in these projects. The latter group is not given a chance in the projects now.

In addition to the suspect, his or her circumstances are also mentioned in the project plan in several projects. This mainly relates to the effects of the project. For example, the projects Wijkrechtbank and Verbindend Proeftuin Ruwaard are (initially) specifically aimed at a neighbourhood or postal code area, as a result of which the contribution of the project is also seen as reducing the nuisance in the neighbourhood and making this neighbourhood safer. Incidentally, in all projects, due to the limited inflow, the postal code area of the project was eventually expanded. As a result, the effect of a safer neighbourhood will probably be more limited, but an impact assessment will have to show that.

In criminal law, there is a broader tendency to involve the victim in the sentencing process, the course of the execution of the imposed sentence and in the phase in which the offender returns to society. The victim also has a role within the Koers en Kansen programme, but remarkably, victims are hardly involved in the projects studied.

1.4.5 Obstacles

During the discussions with chain partners participating in the projects, a number of obstacles came to light. In general, the number of participants put forward for the projects is disappointing. In addition, the participants who are put forward do not always appear to meet the selection criteria, which means they are unable or unwilling to participate. And in practice, the way of working requires more time for the participating (chain) partners than in the regular process. This is not so much of a problem within the project itself, but it can become one when successful elements of the project are introduced into the regular process.

1.5 Effective elements and mechanisms

There are a number of elements that we see reflected in several projects.

- The mutual cooperation of partners is good in three projects and is an important element that facilitates partners to work together. Close cooperation is a precondition for the common exchange of information between the chain partners, which is necessary to get a better view of the suspect and his or her situation/problems.
- Participating organisations in the projects are on the whole enthusiastic. They support the concept of the project and are willing to invest (time) in the project. The intrinsic motivation of the partners in the three projects is high. This is proving to be a major factor in the success of the project, as people are inclined to put a lot of (extra) time and energy into the projects.
- A suspect's (multi-problem) situation is looked at from a broader perspective by contributing the various views of different expertises, allowing for tailor-made conditions or sanctions. This applies for all the projects.
- In all projects, the most appropriate solution for the suspect's situation is considered together with the suspect, but the extent and manner in which this is done varies. In two projects, ownership is hypothesised in the policy theory in combination with the engagement of the suspect. It would probably be going too far to actually use the concept of 'ownership'; after all, there will still be a criminal conviction even if the suspect cooperates. But in all the projects, there is an improvement in that at some point in the project they talk to the suspect and not about the suspect.
- An effective element that is central to two projects is speed of sentencing. Both the Vonnisvoorstel and Verbindend Proeftuin Ruwaard projects have set up a process that allows the sentencing procedure to be completed within a few weeks.
- The Koers en Kansen programme offers chain partners the opportunity to carry out innovative projects aimed at more effective sanctioning and enforcement in order to create a learning environment. Cooperation between the judicial chain, the local domain, the care sector and others is central to this. The programme's stimulus to experiment with innovative elements and to offer parties the freedom to organise this as they see fit, has created an environment in which the above elements have been effective.

1.6 Analysis and learning effect

1.6.1 Sanction objectives

One of the research questions concerns what can be learned from the experiences of these projects as far as the achievement of sanction objectives is concerned, such as punishment, reducing recidivism, recovery, satisfaction and deterrence. At first glance, it seems that special prevention in particular is at the forefront of the projects studied. Special prevention is aimed,

among other things, at preventing recidivism by taking measures that influence the individual offender (in a positive way) or control his or her behaviour. However, this does not mean that other sanction objectives do not play a role. For example, there is the criminal-law objective of punishment insofar as the sanction is an affirmation of standards and the retribution that accompanies the sanction for the legal standard that has been violated. Another common aim of general prevention and deterrence also lies in this confirmation of standards. Furthermore, it is evident that all projects involve customisation in determining and imposing the most appropriate and effective sanction on the offender. The sanction imposed is usually (partly) a conditional sentence, whereby in addition to the general conditions, special conditions are imposed on the offender. The sanction objective of rehabilitation is also clearly visible in the projects, both for the specific victim and for society as a whole. Finally, resocialisation also is clearly visible in the projects, although it is seen more as a means of special prevention. The projects see this as a successful return of the offender to society and a reduction of the risk of re-offending. However, it should be noted that the sanction objectives of retribution, rehabilitation and resocialisation are less (or not) explicitly mentioned in the projects. In order to increase support for the projects, it would be beneficial to mention not only special prevention, but also other sanction objectives more frequently in relation to the project.

1.6.2 **Securing**

The essence of all the projects studied can be found in looking at the multi-problems of suspects from a broader perspective, by involving the different viewpoints of various experts, which makes it possible to provide tailor-made solutions in the (choice of) special conditions or type of sanction to be imposed. The research shows that those involved see this as an important added value and that there is support for including (parts of) the projects in the regular process. The question is how this can be secured in the regular process and what is required to do so. In addition to the effective elements, such as cooperation and the intrinsic motivation of chain partners, it is also important for securing a new way of working that the right preconditions are in place. The preconditions that were cited during the interviews and focus groups were mainly the restructuring and reorganisation of processes within the organisation. Moving the processes forward cannot only come from individuals but must ultimately be done by the entire organisation.

In the interviews, it was noted that significant adjustments (or shifts) in the financing (system) of judicial chain partners are necessary to secure structural changes in the approach. Another important condition cited by interviewees is support from management, both before, during and after the pilot. In other words, more than just a successful project is needed to secure the effective elements in the regular processes. Evidence that the objectives are being achieved, such as reducing recidivism, as well as satisfactory preconditions such as capacity, financing and management support, are crucial.

pro facto