



Improving the BIJ regulation

Summary

- SUMMARY -

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Summary

Improving the BIJ regulation

Background and objective of the study

In the past few decades, various information flows have been organised regarding the return of (former) prisoners to society. One of these is the *Administrative Information Flows concerning Former Prisoners (BIJ)*.

Since 2009, the BIJ regulation has provided for the mayor's administrative body to be informed about the return of a person who has been irrevocably sentenced to a custodial sentence or measure for an indecency offence or serious violent crime, or to a TBS order¹ with compulsory treatment, or an extendable PIJ measure.² The BIJ regulation aims to enable mayors to counteract public order disturbances, which might occur when particular former prisoners return – and to be able to take measures in case this is deemed necessary and possible. This information flow is kept separate from, for example, the information supply within the framework of after-care, due to the privacy-sensitive aspects of the offence information.

In 2019, the Dutch Safety Board (*Onderzoeksraad voor Veiligheid*) observed the necessity to improve the BIJ regulation in a report on forensic care and security. In response to this research report, the minister announced several measures, including an adaptation of the BIJ regulation. Meanwhile, all municipalities are connected to the regulation. After consultations with various chain partners, the ministry of Justice and Security (*ministerie van JenV*) drafted an improvement plan. In order to take a substantiated decision on the various adaptations to be put through, the pros and cons need to be mapped out. For this purpose, the present study was conducted. The study focuses on the following seven possible adaptations:

1. reporting under the BIJ-regulation in case of sentences that are not yet irrevocable;
2. the possibility to 'flag up' certain convicts (i.e., the mayor's administrative body can indicate whether they want to receive report(s) on a specific convict by 'flagging up' this convict in the registration system;
3. stepping up the number of reports;
4. withdrawal of the National Police Force from the process;
5. making sure that Dutch persons sentenced abroad are also reported on;
6. reporting in cases of terrorism, stalking (*belaging*), and arson;
7. reporting to mayors of more than one municipality if there is reason to do so.

Study design

The following activities were conducted in this study:

1. **Description of the adaptations.** By means of interviews and a document study the contents and background of the proposed adaptations were mapped out.
2. **Exploratory interviews with chain partners.** The aim of the interviews was to gain insight into the way the BIJ regulation is currently being conducted and to survey possible consequences of the adaptations.
3. **Assessment framework.** In order to systematically map out the pros and cons and the risks of the proposed adaptations, an assessment framework was set up. By means of this assessment framework the further information gathering was structured and the research questions were answered.
4. **Working sessions with municipalities.** Subsequently, two online working sessions were organised with persons authorised by the mayor to BIJ access of eleven municipalities and Care and Safety Houses (*Zorg- en Veiligheidshuizen, ZVH*) on the current performance and themes of the assessment framework.
5. **Expert meeting.** Finally, an expert meeting took place with experts in the field of administrative law and criminal law, policy, and information management with a focus on privacy and proportionality considerations.

¹ TBS (*terbeschikkingstelling*) refers to detention under Her Majesty's pleasure.

² PIJ (*Plaatsing in een Inrichting voor Jeugdigen*) refers to placement in an institution for juvenile offenders.

The input from the working sessions and the expert meeting was used to fill in the assessment framework for each adaptation.

An assessment of the adaptations

The main question is whether the adaptations lead to an improvement of the information position of the mayor with an eye to assessing the risks of disturbances of public order, and consequently, the possibility to take measures to reduce or remove these risks.

Reporting in case of sentences that are not yet irrevocable

Under the current BIJ-regulation, reports are only sent to the return municipality if the former prisoner in question has been irrevocably sentenced. The adaptation enables the sending of BIJ reports concerning the return of former prisoners who have been sentenced in the first instance, but not yet irrevocably.

- The adaptation is in line with the aim of the BIJ regulation: former prisoners who have not been irrevocably sentenced (yet) may also pose a risk to public order when they return to society.
- The adaptation is technically feasible.
- The adaptation involves a large increase in the number of BIJ reports.
- The presumption of innocence must be taken into account. There are leads with regard to this in related legislation. There seems to be no a priori conflict with the European Convention on Human Rights (*EVRM*).
- Information on convicts that have not (yet) been sentenced irrevocably can be shared during ZVH meetings. This is a partial alternative to the proposed adaptation.

'Flagging up' convicts

By 'flagging up' a specific former prisoner, mayors can indicate whether they want to receive reports on certain convicts. This adaptation can be interpreted as 'limiting' (receiving reports on specific former prisoners within the category of BIJ offences) or as 'expansive' (receiving reports on a former prisoner who has been sentenced for an offence that is outside the category of BIJ offences).

- Flagging up people offers considerable objections with regard to practical execution.
- There is a larger demand for the expansive variant than for the limiting variant, because cases that are outside the BIJ category may also pose a risk to disturbances of public order.
- A risk of the limiting variant of flagging up is that the mayor misses out on relevant return information.
- An argument against the expansive variant is that municipalities need to have a lot of knowledge before they can indicate they want to flag up a specific person, and that municipalities are not often in possession of this prior knowledge. Especially if they are in possession of this prior knowledge, the added value of a BIJ report is limited.

Stepping up the number of reports

This adaptation concerns stepping up the number of BIJ reports in cases of leave and regime planning.

- It is technically possible to report every leave movement from regular detention. Currently, this is impossible for individual TBS leaves; adaptation of the BIJ regulation for TBS and PIJ requires an extensive adjustment and linking of automated registrations.
- Information on all leave movements seems unnecessary. Additional BIJ reports mainly have added value if the type of leave or the return address is changed.
- An alternative to stepping up BIJ reports concerning leave of former prisoners is to further improve the communication among municipality, penitentiaries (*PI's*) and forensic psychiatric institutions.

Withdrawal of the National Police Force (*Landelijke Eenheid, LE*)

The National Police Force have indicated they want to withdraw from the BIJ process. Currently, the National Police Force supplement the BIJ reports with information on the offence from their own registration system.

- The Prisoners Criminal Investigation Information Point (*GRIP*), the Custodial Institutions Agency (*DJI*), and the Judicial Information Service (*Justid*) think that hardly any information is lost due to the withdrawal of the National Police Force from the BIJ process.
- The withdrawal of the National Police Force has no technical consequences for the information process (apart from simplification).
- According to persons authorised by the mayor to BIJ access who receive many BIJ reports, the National Police Force information reports have added value because they provide an initial view of the offence.

Reporting on Dutch persons sentenced abroad

The International Office of the Dutch Probation Service (*Bureau Buitenland*) provides reports on Dutch persons that have been sentenced abroad if the persons in question give their consent.

- The BIJ regulation offers little opportunity to send more reports concerning the return of Dutch persons that have been sentenced abroad for an offence that would fall under the BIJ regulation in the Netherlands, mainly because sharing information in this context is only possible if the prisoner assents to this.
- A small minority of persons detained abroad have been sentenced for an offence that would fall under the BIJ regulation in the Netherlands. These former prisoners are expected to only rarely pose risks to enforcement of public order.
- An alternative is to aim for a situation in which more Dutch persons detained abroad serve their time in the Netherlands by means of an appeal to the Dutch Enforcement Transfer of Criminal Judgments Act (*WOTS*) and the Law on Mutual Recognition and Enforcement of Custodial and Suspended Sanctions (*WETS*).

Reporting in cases of terrorism, stalking and arson

- The adaptation is in line with the aim of the BIJ regulation: arson, stalking and terrorism can lead to disturbances of public order, particularly in smaller municipalities.
- It is technically simple to increase the number of sections of the law under which BIJ reports are made in the Information Portal Injus. The process to decide which sections of the law are relevant is more complex.
- The adaptation leads to an increase in BIJ reports.
- Proportionality should be considered regarding the question whether the proposed offences are all serious enough to justify far-reaching measures.
- To make cases of (severe) arson or stalking part of the ZVH case consultations can offer a partial alternative to expanding the BIJ regulation.

Reporting to more than one municipality

Currently, BIJ reports on the return of a former prisoner are only sent to the municipality where the former prisoner is registered.

- The adaptation is in line with the aim of the BIJ regulation: the return of a former prisoner can pose a risk to the enforcement of public order in more than one municipality. It does occur that the municipality that is informed of the return of a former prisoner is not the one to which the prisoner actually returns.
- It is necessary to put through the adaptations in the information systems of DJI and Justid. Moreover, it should be decided based on which criteria more municipalities can receive a BIJ report.
- Persons authorised by the mayor to BIJ access can pass information to an authorised person of another municipality if there is reason to do so. However, not everyone uses this possibility and there may be risks regarding the privacy of former prisoners.

Table S.1 provides an overview of the assessment of the possible adaptations by means of the main themes of the assessment framework.

Table S.1 Judgement of adaptations by main theme of the assessment framework

	Relevance problem	Demand municipalities	Feasibility: legal frameworks	Feasibility: working process DJJ/Justid	Feasibility: International Office	Feasibility: working process municipalities	Proportionality	Alternatives	
Adaptation	Assessment*								Explanation
Sentences that are not (yet) irrevocable	Green	Green	Yellow	Green	Grey	Yellow	Yellow	Yellow	<ul style="list-style-type: none"> - Corresponds with aim of BIJ regulation - Requires adaptation of BIJ regulation - Technically feasible - Number of reports increase - Presumption of innocence - Alternative: ZVH consultation
Stepping up the number of reports – regular detention	Green	Green	Green	Green	Grey	Yellow	Green	Yellow	<ul style="list-style-type: none"> - Corresponds with aim of BIJ regulation - Demand for reports when type of leave and return address change - Technically feasible - Number of reports increase (possibly limited) - Alternative: improvement of communication with penitentiaries
Stepping up the number of reports – TBS/PIJ	Green	Yellow	Green	Red	Grey	Yellow	Green	Yellow	<ul style="list-style-type: none"> - Corresponds with aim of BIJ regulation - Demand: often good contacts with TBS clinic, trusting the decision of the clinic to grant leaves - Technically not feasible: information systems are not linked - Number of reports increase - Alternative: improving communication with clinics
Reporting to more than one municipality	Green	Green	Green	Yellow	Grey	Green	Green	Yellow	<ul style="list-style-type: none"> - Corresponds with aim of BIJ regulation - Requires adaptations to information systems: filling in and sending more addresses - Alternative: informal sharing of information among people authorised by the mayor to BIJ access
Increasing the number of offence categories	Green	Green	Yellow	Yellow	Grey	Yellow	Yellow	Yellow	<ul style="list-style-type: none"> - Corresponds with aim of BIJ regulation - Requires adaptation of the BIJ regulation - Technically feasible, but selection of sections of the law complex - Number of reports increase - Sharing of information on less serious offences possibly not proportional - Alternative: ZVH consultation, communication by means of terrorist department PI Vught
Flagging up (limiting)	Red	Yellow	Yellow	Red	Grey	Yellow	Green	Red	<ul style="list-style-type: none"> - Does not correspond with aim of BIJ regulation - Little demand from municipalities: risk of missing information - Requires adaptation of the BIJ regulation - Requires substantial adaptations to information systems - Choice of criteria for flagging up - Alternative: ZVH consultation, close contacts cooperation partners

Continuation of table S.1

	Relevance problem	Demand municipalities	Feasibility: legal frameworks	Feasibility: working process DJJ/Justid	Feasibility: International Office	Feasibility: working process municipalities	Proportionality	Alternatives	
Adaptation	Assessment*								Explanation
Flagging up (expansive)									<ul style="list-style-type: none"> - Corresponds with aim of BIJ regulation - Requires adaptation of the BIJ regulation - Requires substantial adaptations to information systems - Choice of criteria for flagging up - Risk concerning legal equality - Alternative: ZVH consultation, close contacts cooperation partners
Persons sentenced abroad									<ul style="list-style-type: none"> - Concerns small target group, often victims do not live in the Netherlands - Prisoners are outside the Dutch legal framework: sharing of information on a voluntary basis - Dutch sections of the law are not fully compatible with foreign sections of the law - Possibly damaging to contacts probation service - Alternative: WOTS/WETS
Withdrawal National Police Force									<ul style="list-style-type: none"> - Not focused on aim of BIJ regulation - Demand for offence description - Technically feasible - Workload: Persons authorised by the mayor to BIJ access need to gather more information

* In the table, green is used to indicate that the judgment is predominantly in favour of the adjustment of a criterion. Red is used for a predominantly negative judgement, orange for an intermediate category, and grey for 'not applicable'.

Conclusion

Fitting the aim of the regulation

Depending on the exact interpretation, three of the adaptations closely fit in with both the aim and the system on the one hand, and the set-up of the BIJ regulation on the other hand: reporting in case of sentences that are not yet irrevocable, reporting to the mayors of more than one municipality if there is reason to do so, and stepping up the number of reports. With regard to two other adaptations, it is more problematic to fit in with the aim and set-up of the BIJ regulation. With regard to increasing the number of offence categories by adding terrorism, arson, and stalking, it is clear that the return of such former prisoners to municipalities may lead to disturbances of public order, which is comparable to the return of former prisoners that have been sentenced for indecency offences or serious violent crimes. However, in the automated routine process it is much harder to make a selection of returning former prisoners based on sections of the law. With regard to reporting on the return of former prisoners from foreign prisons, there is hardly any experience with disturbances of public order in return cases (therefore, it is unclear whether the adaptation fits in with the aim of the regulation). Moreover, to arrive at a selection of offences is more problematic, and it is impossible to fit in with the automated routine reporting process. Flagging up specific former prisoners may fit in with the aim of the BIJ regulation, however, it does not fit in with the automated routine process of reporting to the mayors. The adaptation

concerning a withdrawal of the National Police Force from the process does not influence the (improvement of the) risk analysis of possible disturbances of public order when former prisoners return to municipalities. The adaptation is mainly significant for the efficiency of the process.

Consequences: pros and cons

Three of the adaptations can only be put through if the BIJ regulation is altered. This applies to reporting in cases of sentences that are not (yet) irrevocable, adding new offence categories, and flagging up specific former prisoners. Reporting on individual leave movements of TBS prisoners and PIJ prisoners is impossible, because Injus is not connected to the information systems of forensic psychiatric institutions. Reports on the return of Dutch persons sentenced abroad occur completely outside Injus. The main possibly negative consequence of execution by the municipalities is an increase in the number of BIJ reports, and concurrently, an increasing workload of persons authorised by the mayor to BIJ access and the local and regional chain partners. An increase in the number of reports is mainly relevant for larger municipalities that already receive many BIJ reports. With regard to the possibility of municipalities to be able to flag up specific former prisoners, a distinction is made at the level of individual former prisoners which may lead to **legal inequality**. Various adaptations lead to more frequent invasions of **privacy** of former prisoners, if only because more data is shared on more former prisoners. With regard to reports concerning sentences that are not (yet) irrevocable a compensation scheme should be provided, in case acquittal is granted later.

Alternatives

Alternatives to adaptations mainly concern sharing of information by means of other consultations: consultations with forensic institutions and ZVH consultations. On 1 July 2021, the Sanctions and Protection Act (*Wet senb*) became operative, which introduced a type of information sharing with mayors on the return of former prisoners with a high risk of reoffending. This may reduce part of the need for information on specific former prisoners. In addition, the Data Processing by Cooperations Bill (*WGS*) offers possibilities to specifically pay attention to security problems concerning certain people in a ZVH context. Former prisoners that do not fall under the current BIJ regulation may be included in case the municipality and cooperation partners (e.g., probation service and ZVHs) share the view that they require attention.

Conclusion

In order to assess the desirability of the adaptations to the BIJ regulation it is advisable to take a number of basic assumptions and developments into account: guarantee the routine and automated (and therefore robust and reliable) nature of the first step in the reporting process; use other possibilities to spot and process data on actual risks of serious indecency offences or violent crimes; be aware that considerations related to proportionality and privacy protection are often made at the national rather than the local level; and realise that the central role of the mayor may be less prominent than formally intended. With regard to the latter: as more categories of former prisoners would fall under the BIJ regulation – also supplemented by reports on returning prisoners with a high risk of reoffending – the number of reports increases. This larger number of reports alone will mean that the mayors have less opportunity to interfere, and this increases the chance that reports are mainly handled administratively and are largely dealt with without consulting the mayor. The mayor remains responsible for processing the reports; however, actual operational involvement will become ever less probable. The question remains whether this is desirable (or avoidable) and to what extent; it does indicate that the attention should expressly be and remain focused on the careful processing of criminal personal data by the civil service and the chain partners. This should prevent former prisoners from being associated with their offence(s) longer than necessary, which hinders their resocialisation and reintegration.



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