

pro facto

Summary

Evaluation preventive frisking

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The researchers are responsible for the content of the report. Making a contribution (either as an employee of an organization or as a member of the guidance committee) does not automatically mean that the person concerned agrees to the entire content of the report. This also applies to the Ministry of Justice and Security and its Minister.

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# Summary

## Background

Preventive frisking was introduced with the implementation of Article 151b of the Municipalities Act in 2002. This made it possible for preventive frisking to be done in areas designated by the mayor as security risk areas and to search vehicles, packaging and luggage for weapons.<sup>1</sup> The aim of preventive frisking was to reduce weapons possession which is concentrated in specific areas and at specific times. A legal system was set up in which powers were assigned to the municipal council, the mayor, the public prosecutor and the police. On 1 July 2014, the mayor's powers were broadened to make it easier to apply preventive frisking in emergency cases. To this end, the Municipalities Act has been revised with the introduction of Article 174b and both the Weapons and Ammunition Act (WWM) and the Police Act have been amended.<sup>2</sup>

On 23 September 2020, a motion by the (then) Members of Parliament Van Dam and Yesilgöz-Zegerius was passed, requesting the government to "evaluate the instrument of preventive frisking and bring it up to date with the requirements of our time".<sup>3</sup> In the motion, the Members of Parliament held that preventive frisking can effectively contribute to preventing knives, weapons and heavy fireworks from being taken onto the streets. At the same time, they argued that the bar for using the instrument was very high, it could not be used flexibly and its application varied greatly at the local level. As a result, they claimed that the police and judiciary were confronted with large differences in enforcement across the country.

In response to the Parliamentary motion, the Scientific Research and Documentation Centre (WODC) commissioned an evaluation into the instrument of preventive frisking. This is a summary of that evaluation.

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<sup>1</sup>Official Journal 2002, 420 (Stb. 2002, 420).

<sup>2</sup>Official Journal 2014, 191 (Stb. 2014, 191).

<sup>3</sup> *Parliamentary Papers II 2020-2021*, 28 684, No. 631 (*Kamerstukken II 2020-2021*, 28 684, nr. 631)

## Research question and topics

### *Research questions*

The following research question was central to the study:

*To what extent and on the basis of what considerations is made use of the power to carry out preventive frisking (articles 151b and 174b of the Municipalities Act), what are the experiences of the professionals involved and of the persons on the receiving end of the instrument, to what extent are the envisaged objectives realised, and what possibilities are there for the scope of the instrument to be expanded and its application to be further optimised?*

These questions are divided into 24 sub-questions, which in turn are subdivided into four sub-studies. The sub-studies are:

- I. Reconstruction of policy
- II. Application of preventive frisking
- III. Considerations and experiences
- IV. Effectiveness and efficiency

## Research methodology

### *Study of literature and case law*

The research started with a study of (background) information on the instrument of preventive frisking (in emergency cases). The parliamentary papers on Article 151b and 174b of the Municipalities Act, previous studies on the instrument, and articles in newspapers and (professional) journals were therefore reviewed. This was accompanied by a study of case law on the application of preventive frisking.

### *General exploratory interviews*

In order to get a general idea of the experiences with and the effectiveness of the instrument, general exploratory interviews were conducted. Interviews were held with representatives of the Ministry of Justice and Security (JenV), the Association of Netherlands Municipalities (VNG), four people involved from the (National) Police, the Royal Marechaussee, the Prosecutor's Office of the Public Prosecution Service, the National Ombudsman, the Commission on Weapons and Ammunition Act, Control Alt Delete, Amnesty International, Privacy First and two academics.

### *Digital survey and desk research*

In order to gain insight into the application of preventive frisking by municipalities, a digital questionnaire was sent out to all Dutch municipalities. Public order and security employees from 232 municipalities completed the survey, giving a response rate of 66%.<sup>4</sup> For the municipalities that did not complete the survey, additional information on the application of preventive frisking was collected by means of desk research.

### *Study of registrations*

In order to gain insight into the actual application of preventive frisking and its results (number of frisks and persons searched, number and types of weapons seized, incidental finds), registrations of frisks were requested from the police of municipalities where preventive frisking

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<sup>4</sup> Based on 352 municipalities in 2021.

was applied. During the data collection, it appeared that in many municipalities the number of frisks and the exact results are registered only to a limited extent. This is especially true for municipalities that have only used the instrument occasionally or once. In municipalities where preventive frisking is systematically used, it appeared that registrations are kept more accurately. The results of preventive frisking in municipalities that have used it structurally in recent years, and that have provided statistics, were also studied.<sup>5</sup>

#### *Case studies*

In order to gain a deeper understanding of the reasons for using the instrument and experiences with it, case studies were conducted in the following nine municipalities: Amsterdam, Breda, Enschede, Eijsden-Margraten, Leeuwarden, Rotterdam, Schiedam, Zaanstad and Zwolle. In each case study, the three central actors involved in the application of preventive frisking (municipality, prosecutor's office and local police force) were interviewed and relevant municipal documents were studied. In addition to nine full-scale case studies, interviews were conducted with public order and security employees in four municipalities (The Hague, Roosendaal, Smallingerland and Utrecht) to gain an understanding of the reasons for or against the use of preventive frisking.<sup>6</sup>

#### *Accompanying the police and observing frisking operations*

In the municipalities of both Zaanstad and Rotterdam, we joined the police during a preventive frisking operation. During both operations, police officers were asked about their experiences with preventive frisking. In addition, during both operations, street surveys were conducted with persons who were frisked in order to gain insight into their experiences with the frisk and their opinions about the use of preventive frisking. A total of 31 randomly selected persons were questioned after being frisked, using a standardised questionnaire.

#### *Expert meetings*

At the end of the study, the preliminary findings with regard to the instrument of preventive frisking were presented to interest groups in two expert meetings. Both expert meetings were used to reflect on the preliminary research findings on the experiences, considerations, effectiveness, efficiency and future-proofing of the instrument.

## Reconstruction of policy

The introduction of Article 151b of the Municipalities Act in 2002 extended the targeted frisking powers that were already in place under the Police Act and the Weapons and Ammunition Act. The power to conduct preventive frisking and search for weapons on persons not being suspects in a pre-designated security risk area was intended to reduce the possession of weapons and violence involving weapons, thus helping to maintain public order in security risk areas. According to the legislator, the use of preventive frisking was supposed to contribute to the prevention of weapons possession, the seizure of prohibited weapons and the prevention and discouragement of the possession of weapons. An indirect objective that was not explicitly mentioned in the Explanatory Memorandum is therefore to increase the perception of safety in security risk areas.

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<sup>5</sup> This mainly concerns municipalities in the Rotterdam region and three municipalities elsewhere (Amsterdam, Leeuwarden and Zaanstad).

<sup>6</sup> In addition, for the municipality of The Hague, there was an interview with the police.

The introduction in 2014 of the possibility to carry out preventive frisking in emergency cases, with the introduction of Article 174b of the Municipalities Act, was intended, according to the legislator, to contribute to a more effective approach to nuisance, criminality and aggression, often involving weapons. The ability to designate a security risk area in urgent and unforeseeable situations and to issue a verbal order for a specific frisking operation in emergency cases, is intended to enable a faster and more targeted deployment of preventive frisking and to increase the effectiveness of the instrument. The power to carry out preventive frisking in emergency cases was also intended to meet the need of municipalities reluctant to designate recognised security risk areas, by allowing them to carry out preventive frisking under Article 174b of the Municipalities Act for a short period of time in sudden and exceptional cases.

## Application of preventive frisking

The survey of public order and security employees, supplemented by desktop research, shows that 95% of the municipalities (335) in the Netherlands have established the authority of the mayor to designate security risk areas. Of the 335 municipalities that have established the power in the General Municipal By-Law (APV), 80% did not designate any security risk areas in the period 2018 - 2021. The main reason given for this is that these municipalities do not have any weapons-related problems that would justify the designation of a security risk area. There are various situations that justify the designation of a security risk area. Here, a major distinction can be made between incidentally designated security risk areas, security risk areas designated temporarily for a number of weeks or months, and long-term and structurally designated security risk areas, which are repeatedly extended for a further period.

The results of the study show that most municipalities that use preventive frisking do so for a short period of time and incidentally when there is a (risk of) disturbance of the public order due to the (possible) presence of weapons. The use of preventive frisking is thus specifically aimed at restoring public order as quickly as possible and preventing further escalation. Such cases include (unannounced) demonstrations, threats to public order such as the curfew riots in 2021, threats of violence from football supporters and disturbances during New Year's Eve celebrations.

A small number of municipalities, especially in the Rotterdam region, but also the municipalities of Zaanstad and Leeuwarden, have designated long-term security risk areas. These municipalities have areas and neighbourhoods that have become a more permanent security risk. The reason for this is that the number of weapons-related incidents in these areas is and remains permanently high, which is why preventive frisking is considered an ongoing necessity. Preventive frisking is intended to eliminate weapons from the street, but it also seeks to have a preventive effect, enabling the police and municipalities to demonstrate that they are taking visible action against the possession of weapons and violence.

The authority to carry out preventive frisking in cases of emergency under Article 174b of the Municipalities Act is used only to a very limited extent. In the period 2018 - 2021, 5% of the municipalities exercised this power. It has been exercised in nineteen municipalities, twelve of which have exercised it once. In the remaining seven municipalities it has been used between two and five times. Preventive frisking in cases of emergency is carried out if there is an acute threat, for example, during a demonstration or in the case of impending violence by football supporters, about which information only becomes available at a late stage.

## Considerations and experiences

### Considerations and experiences

A number of factors play a role in the decision to (systematically) apply preventive frisking: (1) the type and severity of the weapons problem, (2) the political-administrative context, (3) the 'profile' of the mayor and (4) knowledge about the instrument. The factors governing the political-administrative context and the 'profile' of the mayor are especially decisive when preventive frisking is intended to contribute to countering long-term and structural weapons-related violence. Where municipal councils are critical of preventive frisking, for example in Amsterdam, the chance that the instrument will be used is smaller. The same goes for the mayor's opinion of the instrument; does the mayor criticise or support the instrument?

In the case of short-term or incidental use of preventive frisking, there is generally little political controversy about its use. In municipalities where security risk areas are designated on a long-term basis or repeatedly, preventive frisking is an integral part of the security strategy. In these municipalities, preventive frisking is rather seen as a mainstream power that is available to the police in the fight against weapons possession and violence.

There are municipalities that do not use preventive frisking. There might be political reasons for this as well. For example, it is pointed out that weapons problems do not concentrate in one area, which would mean that too large an area would have to be designated as a security risk area. Another argument for not using the instrument is that it would be too ineffective, especially because target groups quickly know that frisking is taking place somewhere and that it is an unfocused, random means of control. The demand on police capacity and the possibility of using other powers to combat weapons-related violence are also cited as arguments.

In general, those involved, especially the police, are positive about the use of preventive frisking. This satisfaction is mainly related to the fact that the police are visibly present for the public through preventive frisking to tackle weapons-related violence. Also, in every operation, weapons are taken from the street by means of preventive frisking. However, no explicit goals are formulated prior to the use of preventive frisking, making it impossible to determine whether an operation is successful or effective, for instance in terms of the number of weapons found.

No substitution effect has been observed in the study, whereby municipalities make use of an emergency notification on the basis of Article 174b of the Municipalities Act instead of Article 151b of the Municipalities Act. Municipalities prefer to carry out preventive frisking on the basis of Article 151b of the Municipalities Act. Limited use is made of the power under Article 174b of the Municipalities Act. Two reasons are given for this in the interviews. Firstly, the area in question where there is a risk of a disturbance of public order is often already designated as a security risk area pursuant to Article 151b of the Municipalities Act. Secondly, there is usually no such thing as an unforeseeable situation. For example, it is usually known in advance when football matches or events will take place. This allows sufficient time to designate a security risk area under Article 151b of the Municipalities Act (if such an area has not yet been designated).

### Practical implementation

In practice, different frisking methods are used: dynamic or static vehicle checks, foot patrols, area surveillance, checks on catering establishments and area closure/enclosure. The choice

of the location(s), the timeframe, the method(s) and the scope of the preventive frisking operation is largely determined by the available capacity and the planning within the police force. However, the aim is to check mainly at the locations and at the times when the expected yield of weapons and/or chance of arrest is the highest, for instance in the weekend and during evenings when people go out.

The starting point for most frisking operations (at least in security risk areas that have been designated for a longer period of time) is that these take place randomly. The way in which this is implemented differs per municipality/base team. Several municipalities explicitly use a criterion of searching 'every umpteenth passer-by or vehicle' or the 'next passer-by'. This excludes the police officers' scope for choice as much as possible, which should guarantee the random nature of the checks. In other municipalities, the police have more autonomy and freedom of choice on the street: there, the starting point is to randomly search people, but no selection criterion is used. In some cases, people are also selected specifically, for instance on the basis of deviant behaviour. In this case, there is a combination of selection based on chance (randomness) and professional intuition/experience (professionalism). The picture that emerged from the interviews is that, in practice, it is impossible to guarantee that checks are always entirely random.

Because of the starting point that the frisking operations usually take place randomly, a relatively large number of people who have no involvement with the possession of weapons are frisked during searches, and therefore relatively few weapons are found. The random application of preventive frisking therefore has an adverse effect on the chance of arrest and the effectiveness of the instrument. A more targeted application of preventive frisking towards target groups that are more likely to carry weapons, can increase the chance of arrest and the effectiveness of the instrument. In practice, this creates an area of tension between the effectiveness and the randomness of the instrument, which is wrestled with.

A targeted selection of persons occurs more often when there are tangible (threatening) disturbances of public order, such as at football matches and (unannounced) demonstrations. In such situations, the police often have information that, for instance, certain groups may disturb the public order. Interviewees from the case study municipalities said that a targeted selection of persons is not made on the basis of predetermined risk profiles and/or selection criteria, but on the basis of professional intuition of the police officer. In the interviews, it was indicated that it is difficult in practice to formulate permissible selection criteria. Reference is also made to a possible increased risk of ethnic profiling and possible stigmatisation of certain target groups.

## Effectiveness and efficiency

### Effectiveness and efficiency

Municipalities that use preventive frisking usually have three objectives: 1) reducing the possession of weapons and finding prohibited weapons (and seizing weapons), 2) preventing the possession and use of weapons in a security risk area, and 3) increasing the perception of safety among residents and visitors in a security risk area. Evaluating the effectiveness of preventive frisking is complicated in practice. In particular, the contribution of the instrument to preventing and reducing the possession and use of weapons is not or barely measurable. Only the number of weapons-related incidents that actually do occur and the number of weapons that are confiscated can be determined. Whether and to what extent people leave weapons

at home and do not carry them because of the preventive frisking operation and the number of weapons that the police 'misses' during a frisking operation cannot be measured. Furthermore, it cannot be determined whether the number of incidents involving weapons would have been higher if preventive frisking had not been used in the case in question.

The degree to which preventive frisking contributes to the perception of security is measurable, but is not systematically monitored by municipalities. However, the picture that emerges from this research is that there seems to be a relatively large public support for the use of preventive frisking. This follows from the interviews, the street surveys with frisked persons and previous studies. However, there are indications that certain groups (e.g. young people and people with a non-Western background) are less positive about the use of preventive frisking.

Apart from the three general objectives that are aimed for with the use of preventive frisking, the case study municipalities that use preventive frisking on a structural basis do not have any more specific objectives that have been established prior to the area designation. Two criteria are decisive for the decision to extend a security risk area: the yield of weapons from the frisking operations and the number of incidents involving weapons. Usually, the conclusion is that weapons are still being found during frisking operations and that weapons-related violence has not (significantly) decreased. For the municipalities involved (that have been using the instrument for a long time), this is often enough reason to designate an area as a security risk area once again. However, since no more detailed objectives are set prior to the use of preventive frisking, there is no clear evaluation framework to judge whether the use of preventive frisking is enough or not sufficiently effective. The question whether preventive frisking contributes sufficiently to the three objectives, and whether (more) use of other measures would be more effective, is discussed less (or not) explicitly the longer the instrument is applied in municipalities.

The incidental, short-term use of preventive frisking in specific (threatening) situations where public order is disrupted, is generally regarded as useful and effective. The use of the instrument is then mainly aimed at the immediate restoration of public order. The opinions on the effectiveness of the structural and long-term use of preventive frisking are more varied. The added value is mainly seen in the ability of the instrument to identify and prevent: if residents and visitors of a security risk area know that there may be a weapons check, this should discourage people from carrying weapons. Reference is also made to the profits from weapons and any incidental finds as an additional positive effect. A precondition for the effective use of preventive frisking with the aim of combating a structural weapons problem is that the instrument must be a part of a broader package of measures. According to the interviewees, preventive frisking as a stand-alone measure is not enough. There are two main aspects that limit the effectiveness of (the long-term use of) preventive frisking. Firstly, it is a random control tool and therefore not a targeted instrument, which means that a relatively large number of people are searched who are not carrying weapons, while a relatively large amount of police effort (depending on the method) is required. In addition, it quickly becomes known (through the use of social media and app groups) that checks for weapons are being carried out at a certain location, which reduces the chance of finding weapons.

The study identifies a number of opportunities for improvement in order to increase the effectiveness of preventive frisking: 1) a more dynamic and unpredictable use of preventive frisking, 2) better communication about the application of preventive frisking, and 3) more knowledge sharing and exchange of best practices.

## **Adjusting or expanding the scope of the instrument**

### *Division of powers*

Interviewees were generally positive about the division of powers ('three-stage rocket') set out in Article 151b of the Municipalities Act, requiring that the council, the mayor and the public prosecutor make separate decisions before proceeding with preventive frisking. It is emphasised that preventive frisking is a powerful and far-reaching instrument, which should not be applied lightly. In view of this, the professionals involved deem it desirable that safeguards exist before preventive frisking can be applied. From the point of view of sufficient checks and balances, it is considered wise - in view of the weight of the instrument - that there are separate moments of deliberation, involving both administrative involvement (through the role of the council and mayor) and criminal law involvement (police and public prosecutor). The impression is that the graduated system of Article 151b Municipalities Act does not appear to be detrimental to the decisiveness of the instrument. The case studies show that in 'acute situations' where there is a (threat of) public disturbance, there are sufficient possibilities to proceed to preventive frisking in a timely and swift manner. In this context, reference is also made to the possibility of carrying out preventive frisking as a matter of urgency.

The results of the study show that there is no apparent need for a change in the system or division of powers with regard to preventive frisking. For instance, there is no need to make the power of preventive frisking a purely criminal power (without the intervention of the council and/or mayor) or a purely administrative instrument (without the intervention of the public prosecutor).

### *Expanding the scope to fireworks*

The survey shows that a majority (63%) of the public order and security employees surveyed believe that extending the scope of this instrument is desirable, but only in respect of (heavy) illegal fireworks. The question in the survey about the desirability of expanding the scope to include heavy fireworks was asked in general terms, so that it is not possible to determine from the response whether respondents only refer to expanding the scope of preventive frisking to fireworks that are used as weapons or to a broader expansion to include fireworks in a general sense.

From the interviews, it appears that most interviewees believe that preventive frisking should be possible in the event that there is hard (police) information and specific indications that fireworks will be used as a weapon. Within the current legal framework, there is already the possibility to qualify fireworks as a weapon if there are clear indications that they will be used as such (on the grounds of categories II and IV under 7° of the Weapons and Ammunition Act (WWM)). Most of the interviewees believe that this existing possibility to preventively search for fireworks (as a weapon) is sufficient. However, there still seems to be a lack of clarity among the professionals involved as to how much room and possibilities there are within the current legal framework to carry out preventive frisking to find out if a person is carrying heavy fireworks.

A limited number of the interviewees believe that preventive frisking should also be possible in specific situations where a disturbance of the public order is expected, partly due to the possible use of heavy fireworks, but where there is insufficient specific and hard information to substantiate that fireworks will be used as a weapon. It has been indicated that within the existing legal possibilities, there is a relatively high threshold before a preventive frisk can be carried out, due to the heavy 'burden of proof'. In this context, it would help to lower the

threshold for qualifying fireworks as a weapon. The investigation shows that there is no need for the possibility to use preventive frisking as a structural instrument to prevent possession and use of fireworks. This is seen as a disproportionate use of the instrument and reference is made to existing powers under the Economic Offences Act to take action against the possession, trade and use of fireworks.

#### *Expanding the scope to drugs*

The responses to the survey and the interviews do not reveal a clear need for expanding the scope to include measures aimed at other phenomena and objects, such as drugs. Various reasons are given for this. First of all, unlike weapons and heavy fireworks (which are used as weapons), drug use and possession are less directly related to the disruption of public order. In principle, drugs cannot be used to commit a life-threatening crime, there is no immediate threat of danger and a person who uses drugs only harms himself. Secondly, there are serious doubts about the extent to which preventive frisking is an effective means of combating drug problems and getting drugs off the streets, because it is only permitted to search people's clothes. Third, areas where drug searches could be carried out often overlap with already designated security risk areas. Fourthly, reference is made to the sufficient existing powers of investigation under the Opium Act and a wide range of other preventive and repressive measures in the administrative, fiscal and criminal areas.

#### *Individual and group-oriented approach*

The current legal framework allows no room for an individual-oriented approach with regard to preventive frisking, in which people who have repeatedly been involved in the use of weapons are designated as high-risk individuals and can be frisked at any time and any place within a period of time. Nevertheless, some of the interviewees see possibilities in an individual-oriented approach to preventive frisking, as this would allow for a more targeted and dynamic application of the instrument, especially in the case of so-called 'habitual offenders'. According to the interviewees, however, such an approach would best suit a criminal law approach; the instrument of preventive frisking, as laid down in the Municipalities Act, is not designed for this purpose. Most of the interviewees see few possibilities for a group-oriented approach to preventive frisking, in which a certain group of persons is designated as a risk group that can then be frisked anywhere (i.e. regardless of location) and in which the area-oriented approach of articles 151b and 174b of the Municipalities Act is abandoned. The most important reason for this is that it is considered difficult to define a certain risk group in more detail in practice with a good foundation, for instance on the basis of objective criteria.

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