

VAN ROES NAAR RUZIE

Effectevaluatie Wet middelenonderzoek
bij geweldplegers (WMG)

SUMMARY

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Summary

The 'Wet middelenonderzoek bij geweldplegers' (Substance Research Act for Violent Offenders, WMG) has been implemented since 2017. Investigating officers are authorized to test suspects of violent crimes for the use of alcohol and drugs, provided they have an indication that the violence was committed under the influence. A plan and process evaluation of the WMG was carried out in 2022. The plan evaluation shows that the law serves five different main goals with underlying sub-goals. Three main goals have a social character, namely prevention of substance use in violence, preventing/reducing recidivism and increasing both public and domestic safety. The two other main goals focus on the criminal justice process, namely improving the approach to violence under the influence of alcohol/drugs and taking substance use into account as an aggravating factor in the criminal process and/or for the use of (additional) special conditions. The process evaluation shows that only a fraction of registered arrests for violent incidents lead to a WMG procedure. This is partly logical, since not every violent incident was committed under the influence of substances and not every violent offender under the influence is arrested within a period in which it is still useful to take a WMG test. Yet the percentage of WMG processes was substantially lower than the prevalence of substance-related violence cases that emerged from studies. The difference between them was an indication of considerable scope for using the WMG procedure. Based on the plan and process evaluation, extra effort therefore appeared to be necessary to put the WMG into practice more often.

Nevertheless, the judgment in the process evaluation was that the number of incidents that were dealt with completely in accordance with the WMG process provides a sufficient basis for an effect evaluation. What remained unclear during the plan and process evaluation is whether the Public Prosecution Service will follow up in the criminal proceedings with a demand based on the guideline in the WMG (a penalty increase of 75 percent and/or special conditions) and whether this will indeed be the case in a possible lawsuit decided.

The originator has described the following goal for the effect evaluation: *'The research is a follow-up to the plan and process evaluation and must provide insight into the effectiveness of the WMG with regard to achieving goals that relate to the criminal justice process and provide insight in possible possibilities to increase the effectiveness of the criminal justice process'*. These goals are formulated as follows:

1. To what extent has the introduction of the WMG led to the intended improvement in tackling violence under the influence of alcohol and drugs?
 - a. Through which modalities are substance-related violent cases handled in the criminal justice chain and what role does the WMG play in this?
 - b. To what extent has the WMG led to (better) registration of substance use by the police?
 - c. To what extent has the WMG led to an objective determination of substance use?

2. To what extent has the introduction of the WMG led to substance use being used as an aggravating factor?
 - a. To what extent has the WMG led to public prosecutors and judges having an objectifiable choice based on limit values?
 - b. What is the influence of the WMG on sanctions and/or special conditions that are demanded and imposed in violent cases involving the use of substances?
3. To what extent has the introduction of the WMG had the contrary effect of suspects and their defense using substance use as an argument to argue for a reduced sentence and to what extent are such attempts successful? And to what extent are there differences between cases in which a WMG process has been completed and those that have not?

In addition to the above evaluative questions, we wish to reflect on the results based on the questions below:

4. How do members of the National Police, the Public Prosecution Service and the Judiciary view the findings of this evaluation and how would they like to translate these findings into the criminal process?
5. What recommendations can be made to increase the effect of the WMG on the criminal justice process?

Research activities and points of interest

For this effect evaluation, it was important to look at information per case in order to be able to relate any effects to what was dealt with by the police, Public Prosecution Service and the judge through the WMG. The core of the effect evaluation therefore lies in file research, with a chosen research period from 2014 to 2021. A comparison of the period before the introduction of the WMG with the period after the introduction of the WMG is necessary to determine the effects attributable to the law. The original intention was to analyze twenty files per research year, which would yield 160 files over the eight research years. The files appeared to be spread across the ten Public Prosecution offices, but the process surrounding the inspection of the files at the Public Prosecution Service showed that not every public prosecutor's office was able or willing to support the investigation. The Rotterdam office and Central Netherlands office appeared willing to cooperate. 68 files could be viewed at the Rotterdam, 32 at the Central Netherlands. Ultimately, 87 of the 100 files turned out to be analyzable. The thirteen non-analyzable files could largely not be submitted or, in a few cases, had not yet been closed. All 87 files contained police information to a greater or lesser extent, 21 files contained information from the Public Prosecution Service and 55 files contained information from the judiciary.

In addition, initial findings from the analysis and other matters relevant to the investigation were discussed in conversations and email exchanges with representatives of the National Police, Public Prosecution Service and the judiciary. Fewer respondents were interviewed than initially thought, although that number would already be low.

As a result, the findings from the interviews are not representative of the perspective of these authorities.

Answering the research questions

The limited size and content of the research files and the small number of interviews means that the research questions have been answered in a more qualitative manner. An abbreviated summary of the research findings follows for each research question.

- 1a. Through which modalities are substance-related violent cases handled in the criminal justice chain and what role does the WMG play in this?

When arresting a violence suspect, the police must have an indication that the violence was committed under the influence. Only in the case of an indication may a psychomotor test, breathalyzer test (in the case of alcohol) or saliva test (in the case of drugs) be used. These are the 'preliminary investigations' referred to in the WMG Decree. A positive result of a preliminary investigation then leads to a suspicion of substance use. In that case, a suspect may be obliged to cooperate in a further investigation on the orders of the (assistant) public prosecutor. After a positive breathalyzer test, this involves a breath analysis and after a positive saliva test, a blood test. If a combination of both substances is suspected, a blood test can also be performed.

The WMG test steps are not always considered simple by police officers, but this appears to be mainly due to the nature of cases of violence. This requires a lot of effort, for example in getting a picture of the incident in the case of a diffuse division of roles between perpetrators and victims, and is therefore separate from the WMG procedure. Most police officers interviewed indicate that the WMG generally provides more attention and awareness regarding the determination of substance use. This is especially reflected in the social interrogations, in which the necessary attention is paid to possible addiction problems.

At a later stage, the WMG must provide the public prosecutor and the judge input for the sanction to be claimed/to be imposed. As a precondition, it is not only possible to demand a higher sentence, but also to impose special conditions. In order to do this, it is important that attention is already paid to this in the police process.

1. To what extent has the introduction of the WMG led to the intended improvement in tackling violence under the influence of alcohol and drugs?
 - b. To what extent has the WMG led to (better) registration of substance use by the police?
 - c. To what extent has the WMG led to an objective determination of substance use?

Based on the file analysis, it seems that the introduction of the WMG has had a positive effect on more accurate and better registration of substance use by the police. After the introduction of the law, substance use appears to have been detected and registered more often than before its introduction. This means that an objective determination of

substance use appears to be more common, although this can also be traced back to the fact that the WMG simply gives the authority to administer substance tests. Based on the interviews in the context of the effect evaluation, both goals appear to be achieved according to the police.

2. To what extent has the introduction of the WMG led to substance use being used as an aggravating factor?
 - a. To what extent has the WMG led to public prosecutors and judges having an objectifiable choice based on limit values?
 - b. What is the influence of the WMG on sanctions and/or special conditions that are demanded and imposed in violent cases involving the use of substances?

After the introduction of the WMG, testing appears to have been carried out more often. This implicitly means that the WMG offers an objectifiable choice based on limit values. The information obtained from the conversations with the judges indicates that judges see the test results as absolute data. However, this does not mean that exceeding limit values is included as an essential element in the case. There are two reasons for this. Firstly, the interviews with judges show that the findings from the psychomotor tests of police officers can also suffice. Secondly, it appears that, according to the judges, exceeding limit values does not play a prominent role in determining the sentence, partly because the focus of a case is on the violent crime and substance use is only of secondary importance. However, exceeding the limit values does provide a starting point for entering into discussions with suspects and possibly for imposing special conditions.

3. To what extent has the introduction of the WMG had the contrary effect of suspects and their defense using substance use as an argument to argue for a reduced sentence and to what extent are such attempts successful? And to what extent are there differences between cases in which a WMG process has been completed and those that have not?

It is not possible to determine from the file analysis whether and to what extent the WMG had an influence on this contradictory effect. According to judges, substance use is sometimes raised as a defense argument, but no difference is noticeable between the period before and after the introduction of the WMG.

Reflection and the sequel

The last two research questions have been reformulated to reflect on the effect evaluation. This was originally going to concern the perspective of the three core actors about the findings from the evaluation and a translation thereof into the criminal process (research question 4) and concrete recommendations to increase the effect of the WMG on the criminal justice process (research question 5). Instead, the effect evaluation is reflected on an aggregated level.

First of all, the research findings must be viewed with the necessary caution. These are more indications of the effects of the WMG than actually realized effects. This is mainly due to the lower than expected number of criminal files analyzed; instead of 160

criminal files, 87 files were analyzed. Moreover, the information density per file was not always sufficient. Furthermore, the number of respondents interviewed is low, although the initially planned numbers of interviews for the police and the judiciary have been achieved.

Secondly, the WMG seems mainly to be a 'paper' law, because the police, the Public Prosecution Service and the judiciary appear to make little use of the available supporting elements of the law. The discretionary power of the police officer is included in the WMG, but can also mean that the potential for substance-related violence cases is less likely to be assessed via WMG tests. In addition, it has happened that the Public Prosecution Service dismisses cases, for example due to sometimes difficult evidence in violent cases. A WMG test is separate from this. In that sense, the law has no added value for the Public Prosecution Service. It also appears that during the trial the judge mainly looks at the suspect's (addiction) background instead of the test values. The judges interviewed have a fairly uniform opinion regarding the WMG: for them, this legislation is at most a tool for delving deeper into the criminal process, especially when it comes to gaining insight into the (addiction) background of a suspect. That said, the WMG plays little or no role in any form of aggravated sentence. This could be an unconscious consequence due to the fact that it is unclear to what extent the public prosecutor takes the WMG results into account in the charge. This is difficult to determine, because this study does not provide insight into how an officer comes to a specific charge.

Based on the interviews with the judges, there appears to be a division in substance-related violence cases: is it a one-off or a structurally problematic abuse of substances? The WMG can provide support in answering this question, for example when the test results have been a reason for the Public Prosecution Service to request a probation report. It is striking that this does not seem to occur more often after the introduction of the WMG, while judges consider a probation report to be an important element in determining the underlying problems of suspects. It is therefore important that underlying problems are brought to light during the criminal process, because they form the basis for a better insight into this. This gives judges more tools for implementing the sanction and/or imposing special conditions.

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