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International Summaries

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From the Netherlands

The Assigning of Priorities in the Administration of Temporary Custody

Although priority classifications are useful to justice system officials, the problem of crowding in temporary custody facilities has not been eliminated.

By Dr. A.C. Berghuis and
J.J.A. Essers

Introduction

Due to a serious crowding problem in temporary custody facilities (i.e., jails and holding facilities), the Netherlands instituted a regulation in January 1984 requiring that all adult males admitted to temporary custody facilities be assigned a priority rating based upon their need for pretrial confinement. The categories are intended to reflect the seriousness of the crime for which they were arrested and their need for confinement because of drug use or other factors. The priority classifications are as follows:

- Priority A—most serious need for confinement.
- Priority B—less serious need.
- Priority C—least serious need.

Assignment of places in the facilities is based on these priorities, with Priority C

individuals being released or being candidates for release from facilities if the influx of Priority A males justifies the need.

This study examined the situation a year later to evaluate the effectiveness of the January 1984 regulation. Because there is a 3-month delay in getting records on temporary custody inmates, the researchers used data on the 4,086 individuals taken into custody in the first half of 1984 only. The methodology consisted of four strategies:

- Periodical counts of the number of suspects in custody per district—total number and priority assignment.
- Identification of cases upon which custody is decided despite a lower priority classification, and some data on the administration of custody.
- A study of official case files.
- A survey of public prosecutors and other justice system officials concerning the efficacy of the new regulation.

Statistics on temporary custody

Among 13 districts, 4,086 suspects were admitted to custody during the first 6

months of 1984. Although the percentage of suspects classified according to the three priorities varied from area to area, Priority A is clearly the most used category (45 to 50 percent of suspects) while Priority C is the least used (20 to 25 percent of suspects). The districts of Rotterdam and Middelburg were the greatest users of Priority A, assigning suspects to this category 86 and 84 percent of the time, respectively. Priority C was used so little that even in those districts where that classification was selected most often (Almelo, Den Bosch, and Amsterdam), an average of only 1 in 14 to 20 cases was assigned this category.

Because so many suspects are assigned to Priority A, crowding remains a problem and many suspects must be freed before their trial date. Some are set free immediately and some are held at the temporary custody facility until they have to be released to make space for a suspect with a higher priority rating. Tables 1 and 2 present statistics on the numbers and priority classifications of suspects freed before their trial dates.

The data show that in the first half of 1984, of the 4,086 assigned to temporary custody, 561 were set free before their trial date. Of these, 238 were released

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International Summaries

immediately because of lack of space, and 323 were released after spending an average of 18 days in custody. For Priority B and C suspects, release prior to trial was fairly frequent (30 to 40 percent of all cases) and these individuals spent an average of 14 days in custody. Pretrial release was infrequent for Priority A suspects (6 percent), with about 2 percent being released before any time was spent in custody.

In a few cases, higher priority suspects were set free to make space for suspects with a lower priority—these decisions usually involved special circumstances and did not indicate that the system was malfunctioning. Often, problems such as (1) prisoner transportation; (2) prisoner dangerousness; or (3) differing interpretations of priority definitions were the cause. Suspects were most often freed before trial in the district of Breda (29 percent of all suspects), Amsterdam (28 percent), Middelburg (25 percent), and Dordrecht (23 percent). Priority B and C suspects were generally freed (40 to 50 percent for Priority B and an even higher percentage for Priority C).

Priority A criteria

A study of official files was used to gather data on priority-assignment decisions. The criteria used can be categorized as follows:

1. The suspect was arrested for an offense carrying a possible sentence of 12 years or more.
2. The suspect was arrested for drug dealing, smuggling, or manufacture.
3. The suspect was arrested for other serious crimes, such as robbery, forgery, etc.

The case statistics show that 29 percent of Priority A cases fell into the first category, 26 percent into the second, and 46 percent into the third. The three categories reflect the perceived dangerousness to society of letting the suspect go free as well as the perceived risk of his flight or continued offending.

The third category, "other serious crimes," was the least used. Offenses in the second and third categories can be upgraded if special circumstances exist:

- The suspect is considered dangerous regardless of the seriousness of the offense for which he was arrested.
- The suspect is a recidivist.
- Weapons were used in committing the crime.
- The crime involved losses of great value.
- Assault or abduction of a victim occurred.

- Organized crime was involved.
- Special procedural circumstances exist.

Assignment of priorities: a file study

The researchers examined case files of males in temporary custody to determine the accuracy of the priority assignment system. They also examined consistency among districts in using the classifications, as well as enforcement and interpretation of the priority ratings throughout the country.

The authors used a sample of 320 cases in their analysis, which they regarded as representative of the system.

Tables 3 and 4 show the kinds of crime that were assigned to Priority A, the percentage of all Priority A individuals for each crime type, and reasons for assigning the priority. The figures show that theft and robbery suspects are most likely to receive the highest classification, followed by suspects accused of crimes against persons, and finally those accused of drug offenses and arson. In most cases, it is assault or violence accompanying the crime rather than the crime itself that governs the decision on priority assignment.

The files show that suspects generally are tried for the same crime for which they are taken into custody. That is, prosecutors do not try to get higher priority assignments by accusing the suspect of a more serious crime than that for which he was arrested. Of the cases that were dismissed, almost half were for technical reasons and the rest were discretionary decisions.

When the different categories of crimes included in Priority A were examined, results varied. For the category of crimes carrying a sentence of 12 years or more, Priority A assignments were generally given consistently in all districts. See Table 5.

Suspects accused of drug offenses can be given Priority A classification if there is risk of "flight or collusion." However, when two groups of districts were compared, results showed that Priority A is only rarely assigned regardless of district. However, if a sentence of 6 or more years would be the eventual sentence, use of Priority A increases, mostly in the cases of retail drug dealers.

Table 1: Disposition of suspects due to crowding

	Number	Total
Not released		
• in custody until trial	2,056	51
• freed before trial for other reasons	1,433	35
Released		
• immediately	238	6
• after time in custody	323	8
Total	4,050	100

Table 2: Disposition of suspects due to crowding per priority classification

	Priority A		Priority B		Priority C	
	Number	%	Number	%	Number	%
Not released						
• in custody until trial	1,480	62	536	35	39	41
• freed before trial for other reasons	794	33	610	40	23	24
Released						
• immediately	40	2	178	12	19	20
• after time in custody	103	4	207	14	13	14
Total	2,417	100	1,531	100	94	100

Table 3: Priority A—Offenses and number of assignments

	Num-ber	Per-centage
FORCE AGAINST PEOPLE	36	12
Open violence	3	
Threats using force	3	
Homicide	3	
Attempted homicide	15	
Murder	4	
Attempted murder	5	
Serious assault	3	
VIOLENCE AGAINST FIRMS	15	5
Arson	15	
MORALITY OFFENSES	10	3
Rape	4	
Attempted rape	2	
Indecency (minors)	4	
PROPERTY OFFENSES USING VIOLENCE	36	12
Theft using violence	31	
Blackmail	5	
PROPERTY OFFENSES WITHOUT VIOLENCE	139	44
Forgery	11	
Simple theft	2	
Qualified theft	110	
Swindling	3	
Fraudulent bankruptcy	6	
Fencing	7	
HANDGUN OFFENSES	1	0
OPIUM LAW OFFENSES	76	24
TOTAL	313	100

When miscellaneous crimes were examined and defined by seriousness of the act (violence against persons, arson, indecency, property offenses using violence, and property offenses), results showed that criteria for assigning Priority A are often not satisfied, probably due to difficulty in interpreting priority criteria.

Overall, the file study showed that in those districts in which a well-defined system is developed for interpreting priority criteria, there was more consistency in assigning Priority A than Priorities B and C. For example, the decisions to incarcerate were most consistently applied to crimes carrying a sentence of more than 12 years. The same decisions were most inconsistent in those cases in which the criteria of danger of "flight or collusion" had to be applied to make the priority assignment.

Failure to satisfy the criteria for incarceration was particularly apparent in those crimes in the category of property offenses without violence. Here, 1 in 2 to 3 suspects failed to satisfy Priority A criteria—more than five counts have to be present and/or the value involved in the crime has to be more than 100,000 Dutch guilders. One in three to four cases did not meet the criteria of 10 or more previous arrests or prior conviction ending in probation. These criteria were overruled most often in cases of theft or robbery, particularly if the suspect was a known recidivist.

The study found that there is a wide diversity of cases that receive Priority A ratings. There is also a group of crimes that are being assigned a high incarceration priority that could receive a lower rating. For instance, Priority A assignments were given in 1 in 6 cases where the eventual incarceration was less than 3 months and 1 in 3 cases in which the eventual incarceration was less than 6 months.

Temporary custody at the police station

The authors also looked at the influence of availability of cell space at the police station on the assignment of priority. Since there were so few Priority C assignments, when data were lacking, the study presumed that any suspects known not to be Priority A were Priority B.

Results showed a wide variation between districts in assignments, probably caused by the amount of available cell space at the police station. Data on the number of suspects held at police stations upheld the speculation. In areas with relatively more available cell space, a larger number of lower priority suspects were held in custody along with Priority A suspects than in the smaller stations.

Survey of administrators regarding the new regulation

Questionnaires were issued to prosecutors, penitentiary advisors, the offices of counsel for the prosecution, and corrections administrators soliciting information on their perceptions of how the new regulation was being implemented and its effectiveness in reducing crowding. The survey instrument varied for each group.

Responses showed that public prosecutors generally feel that some type of priority classification is needed, and the majority feel that the present classification system is useful. However, they disagreed on whether or not the classification should be used as a norm or as an absolute guide. Some felt that lower priority should be assigned in some cases even if all criteria for Priority A are satisfied. Most of the prosecutors admitted to assigning Priority A status when there was fear of flight even if the gravity of the possible sentence did

Table 4: Reasons for assigning Priority A

Offense	Number	Percentage
I. Offense carrying a sentence of 12 or more years	885	37
II. Drug laws offense		
a. flight/collusion	307	13
b. no flight/collusion, offense carries penalty of more than 6 years	383	16
III. Other offenses		
a. serious act plus recent conviction	237	10
b. serious act plus danger of flight/collusion	324	13
c. recent conviction plus danger of flight/collusion	73	3
d. serious act plus recent conviction plus danger of flight/collusion	43	2
e. criteria unknown/unclear	45	2
IV. Upgraded from a lower priority to Priority A	123	5
Total	2,420	100

International Summaries

not require it. Prosecutors generally reported the criteria of "risk of collusion" to be confusing. A frequent complaint was a lack of sufficient difference between Priority A and Priority B criteria. They also complained that the priority criteria are so rigid they do not leave sufficient latitude for consideration of important extraneous factors, such as the experience of the prosecutor. Another problem prosecutors observed is that the criteria automatically throw some cases into too low a priority. Cases in point are those in which the suspect had recently been set free due to overcrowding and those in which the suspect needs psychological examination.

The survey of prosecutors also revealed that they often do not know the various procedural possibilities in the assignment process. These include: (1) compilation and passing on of information; (2) assignment of available space by the penitentiary advisors; (3) placement at police stations; and (4) placing and freeing

suspects with Priority A ratings. Prosecutors also commented on issues such as: (1) placing of minors and women; (2) transporting suspects from one district or facility to another; (3) keeping up with the extra workload created by the regulation; and (4) experiencing frustration at having to free suspects.

Offices of the counsel for the prosecution answered procedural questions. The administrators maintain the registry and help assign custody priorities. They cited problems with too few cells, and nearly all complained of problems in placing suspects in police stations, particularly in western districts.

Penitentiary advisors were concerned about the effect of the regulation in terms of exchanging places in custody—removing less serious for more serious offenders. Transportation problems involved in moving suspects from crowded to less crowded facilities were also cited.

Summary

This study shows the experience of the Netherlands justice system 1 year after implementing a new regulation for assigning priorities to suspects as a means for deciding who will be retained in custody and who can be freed. The regulation appears to be applied fairly uniformly across jurisdictions and is found useful to prosecutors and other justice system officials. Study data show that Priority A, the priority indicating greatest need for custody, is the priority assigned to the majority of suspects. Consequently, crowding still exists despite the use of priorities to free suspects.

The researchers identify such concerns as (1) some rigidity in the priority criteria; (2) difficulties in transporting suspects; and (3) placement of minors and women—an issue not addressed under the new regulation.

Table 5: Number of cases, percentage of Priority A cases, and percentage of cases for which assignment of Priority A is appropriate

District	Number	Percentage	DRUG LAW			OTHER OFFENSES			
			Offense carries more than 12 years	Risk of danger/collusion	Offense carries more than 6 years	also serious	also prior conviction	also risk of flight/collusion	Upgraded to Priority A
Den Bosch	324	49	20	6	5	11	6	7	3
Breda	289	58	20	4	3	24	9	21	4
Maastricht	197	56	13	1	23	16	10	10	1
Roermond	86	59	20	6	9	21	7	15	4
Arnhem	151	62	24	4	9	21	14	15	2
Zutphen	113	67	15	9	14	19	14	15	4
Zwolle	108	54	23	6	6	17	7	13	2
Almelo	186	53	16	1	11	19	12	19	2
Den Haag	271	76	38	14	1	17	8	17	3
Rotterdam	379	86	30	9	9	26	21	15	6
Dordrecht	92	48	21	4	9	7	2	4	8
Middelburg	49	84	16	33	12	16	0	16	6
Amsterdam	966	52	21	8	14	6	2	5	3
Alkmaar	67	58	27	2	8	15	10	5	8
Haarlem	193	69	19	35	0	10	5	10	2
Utrecht	308	51	19	1	10	16	13	9	1
Leeuwarden	99	51	12	9	13	16	6	10	0
Groningen	122	71	26	1	11	24	18	11	3
Assen	56	43	18	2	11	11	5	5	2