

Welcome

This module has been developed especially for Ad Hoc Experts.

It takes about 30 minutes to complete this module, but you can work at your own pace.

Introduction

You have been asked to act as an expert in a Dutch criminal law case, but you have not acted as such very often - or even never - before. What is expected from you, what can you expect, how can you approach this and what else should you know?

In brief, as an expert in a criminal case you will go through the following stages:

- You are asked to act as an expert
- You are appointed as an expert and you will receive an examination assignment
- You report to the commissioning party in writing
- You submit an additional report or appear at a hearing in order to give a testimony if there are any additional questions
- You send an invoice for your work

In this E-learning module Criminal Law for Ad Hoc Experts, you will be taken through this whole process, step by step. After completing this module, you will be familiar with the appointment procedure, the requirements to be met by a forensic report and the procedure when you have to appear at a hearing to explain your report in more detail.

If you have any questions about your specific situation after completing this module, the commissioning party will be able to help you.

2. Appointment

You have been asked to act as an expert in a Dutch criminal law case. Are you the right expert, can you turn down the assignment, what is expected from you and what rules should you follow? These questions are answered in this part of the E-learning module.

Are you the right expert to complete the examination assignment?

In principle, this question is answered by the judge who appoints you as an expert. Based on your CV and possibly the **Appointment Questionnaire** completed by you, your expertise and suitability for completing the examination assignment can be evaluated. If, however, you feel in advance that you are not suitable or you are unable to complete the examination assignment within the set period, please notify the commissioning party in good time, so that they can look for another expert if necessary.

Appointment

If you are of the opinion that you have sufficient specific knowledge and experience to carry out the examination assignment and the judge is also convinced of your expertise and suitability, you will be officially appointed as an expert.

If you are appointed by the suspect (defence) you will not (or not yet) be formally appointed as an expert, but you will receive your examination assignment directly from the suspect (defence).

What is expected from you?

Once you have been officially appointed as an expert, you will get an examination assignment from the commissioning party and a period within which the assignment must be completed. Following this, you - as the expert - are expected to use your knowledge and experience to give information, carry out an examination and/or give your opinion within the limits of the assignment given to you.

You may be asked, as the expert, to carry out an initial examination and report about your findings, but you may also be asked to act as a so-called contra-expert and to review and report on an examination that has already been completed.

You report your findings to the commissioning party in writing. In the next part of this E-learning module, you will find more information about the content of such a report.

Please contact the commissioning party if you have any questions or if you need additional information while you are working on your examination.

Are there any rules you must observe?

The Netherlands Register of Court Experts (NRGD) has adopted a **Code of Conduct** that must be obeyed by all registered experts acting in criminal law cases. This obligation does not hold for non-registered experts, nevertheless they should also obey the Code of Conduct. The questions below will point you in the right direction.

Your cousin tells you on his birthday that he is involved in a legal dispute. Not long after this, you are asked to act as an expert in his case. Should you accept this appointment as an expert? Yes/No

Right answer: no. If you have a connection (e.g. family, business) with one of the parties in a legal dispute, you may not accept the appointment as an expert.

(art. II.2: act with integrity, independence and impartiality; inform your commissioning party as soon as possible if (the appearance of) a conflict of interest can be assumed)

Should you use information from other, non-appointed experts in your report? Yes/No

Right answer: yes. You have to fulfil your task as an expert as good as possible. Therefore, it might be necessary to ask other non-registered experts for advice. Nevertheless, your report remains your responsibility at all times. You have to state clearly in your report which information is originating from who and what your own expert opinion is.

(art. II.1: provide careful investigation and reporting in order – above all – to enable the relevant judicial authority to reach a considered judgement in the criminal case)

The question formulated by the commissioning party is beyond the limits of your expertise, but you are able to answer the question. Should you accept this appointment? Yes/No

Right answer: no. You have to contact the commissioning party as soon as possible and must explain that the investigative question fall outside the scope of your expertise.

(art. II.3: remain within the limits of your assignment and your expertise)

You have answered the commissioning party's question carefully, but based on your expertise you feel you need to provide the commissioning party with additional information. Is that allowed? Yes/No

Right answer: yes. You may provide the commissioning party with additional information, but limited. You may only report beyond the limits of the investigative question when there are – based on your expertise - remarks to make that are important for the assessment of a case by the judge.

(art. II.3: remain within the limits of your assignment and your expertise)

3. Examination

With your appointment as an expert, you will receive an assignment from the commissioning party. In **Section 51i** of the Dutch Code of Criminal Procedure, that assignment is described as an assignment to give information or carry out an examination with regard to an area in which you have specific or special expertise.

The assignment not only states the question to be examined, but also the period within you must submit a report.

In this part of the E-learning module, we look at the requirements your examination must meet.

Section 51i

- An expert witness shall be appointed and given the assignment to provide information about or to conduct an investigation in a field in which he has specific or special knowledge in the manner prescribed by law.
- The assignment which must be fulfilled for the purpose of the hearing in the criminal case and the period of time within which the expert witness must issue the written report shall be stated in the appointment.
- The expert witness shall also be charged to submit a true and complete report to the best of his knowledge.
- Rules pertaining to the qualifications that certain expert witnesses must have and the manner in which in other cases the specific expertise of persons can be determined or tested, shall be set by Governmental Decree

General requirements

After receiving and accepting the assignment, you are responsible for carrying out the examination and writing the report. It is up to you to determine how you carry out the assignment and how you gather the required information.

The law and the **Code of Conduct** of the NRGD describe a number of requirements your examination must meet. Those requirements have been formulated on the basis of the idea that it must be clear to all parties involved in the case (judge, public prosecutor, suspect (defence)) which examination has been carried out, on what basis you have come to the answer of the relevant question. Your findings must be verifiable and it must be possible for the other parties involved to refute them if necessary. This is not the result of any lack of trust in your expertise, but this is one of the basic principles of a fair trial, as laid down in **Article 6** of the European Convention on Human Rights (ECHR).

Article 6 ECHR

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - a. to be informed promptly, in a language that they understand and in detail, of the nature and cause of the accusation against them;
 - b. to have adequate time and facilities for the preparation of their defence;
 - c. to defend themselves in person through legal assistance of their own choosing or, if they do not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d. to examine or have examined witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
 - e. to have the free assistance of an interpreter if they cannot understand or speak the language used in court.

Statutory requirements

On the basis of **Section 51i (3)** of the Dutch Code of Criminal Procedure, you must carry out your examination truthfully, completely and to the best of your knowledge.

On the basis of **Section 229 (1)** of the Dutch Code of Criminal Procedure, you may approach the commissioning party with any questions for the purpose of the clarification and/or further specification of your examination assignment. This also applies when the assignment - in your expert opinion - should be amended or if you are of the opinion that the assignment or part of it is beyond the limits of your expertise.

Section 229 [translated]

1. The expert witness may turn to the examining magistrate for clarification of his assignment prior to issuing his report. The examining magistrate shall notify his answer thereon to the public prosecutor and the suspect. The examining magistrate may also order a meeting with the expert witness. He shall give the public prosecutor and the suspect the opportunity to be present at the meeting.
2. The notification to the suspect referred to in subsection (1) may be postponed in the interest of the investigation; the examining magistrate may decide for the same reason not to permit the public prosecutor and the suspect to be present at the meeting with the expert witness.

Code of Conduct

The requirements and rules you must observe as an expert are set out in the Code of Conduct of NRGD. The most important of these are discussed below, but it is recommended that you consult the **Code of Conduct** in full when you are appointed as an expert.

Act with integrity, independently and impartially

You are expected to carry out the examination with integrity, independently and impartially. You must not be guided by external interests and you make sure there is no apparent partiality or a conflict of interests during the examination. In case of any doubt, contact the commissioning party. If any real or attempted influencing of your work takes place, report this, both to the commissioning party and in your report.

Remain within the limits of your assignment and your expertise

When carrying out the assignment and writing your report, you should remain within the limits of your assignment and your expertise. This is only different if you, based on your expertise, are of the opinion that you must add comments that are of interest for the correct assessment of the case. Those comments must be recognisable as such in your report.

Safeguard the quality of your examination

You should only use suitable methods, devices and materials in order to complete the assignment. A suitable method is an examination method accepted and applied within your area of expertise. It is also expected that you carry out the examination with due observance of the rules and standards applicable in your profession. If no such rules exist or you deviate from them, you must mention this in your report.

The other requirements that apply to your report are discussed further down in this E-learning module.

Treat the examination documents as confidential and with the required professional care

You must, of course, treat the information provided to you and the data collected by you carefully. You ensure that your digital storage is secure. Moreover, as long as no decision has been taken in the case by the court and/or the court of appeal, you may not make any comments about the case in private.

4. Writing the report

The input of an expert can be decisive in a criminal case. It is your task to provide the parties involved with knowledge that they do not have or have insufficiently themselves, and your report must therefore be comprehensible for these parties.

In this part of the E-learning module, we will discuss the requirements that your report must - at least - meet.

Formal requirements

Formal requirements

Your report may be used as evidence in a criminal law case and, as was said above, must therefore be comprehensible. Based on Section 511 (1) of the Dutch Code of Criminal Procedure, your report must at least cover the following: the method you have used, the extent to which this method and its results can be considered reliable and your expertise in terms of the application of that specific method.

However, the law does not prescribe how the judge should deal with the content of expert reports. The general principle is that the judge is free to decide the selection and valuation of evidence. The Dutch **Supreme Court** says in this respect:

'If, in the opinion of the judge who judges the facts, the offence charged has been proved, it is the prerogative of that judge - according to settled case law of the Supreme Court - to use as evidence, within the limits of the law, that part of the available material which in their opinion is relevant for this purpose from the point of view of reliability and to set aside what in their opinion has no value for the evidence.'

Source: **ECLI:NL:HR:2004:AO5061**

Reliability

From this ruling it also follows that the evidence used by the judge must be reliable. While you are responsible for the content of your report, the judge is responsible for the ultimate decisions in the case in which you are acting as an expert. This means that the judge must also be able to verify independently whether your report is reliable. In order to facilitate that inspection and assessment, it is important that your report is comprehensible and can be verified.

Verifiability

Based on **Article 6 ECHR**, everyone has the right to a fair trial. An important guarantee for this is the right of the suspect (and their defence) to verify and contradict evidence in a criminal law case. Your report and your findings therefore must be clear and verifiable for all parties involved in the case. Accordingly, you must include the sources you have used (including any non-appointed experts) in

your report. The parties involved have the right to verify your report and the findings of your examination and to provide criticism if they wish.

Guideline for Forensic Reporting

The NRGD has made the **Guideline for Forensic Reporting** available as an aid for drawing up your report. The Guideline offers a reporting format forming a basis for writing a report that meets the requirements of comprehensibility, reliability and verifiability. You are free to use a different reporting format, if the report you have written meets the requirements of comprehensibility, reliability and verifiability. As an expert, you are responsible for the quality and content of your report.

Report feedback

When you have completed your examination and report, you may use the option to get feedback on your report via the NRGD. In that case, an experienced legal expert and/or jurist will not assess the report for the quality of its content (as you are the expert in this case), but will check whether the report is comprehensible: whether there is logical consistency and the conclusions are supported, whether too much professional jargon is used, etc.

Based on the feedback you receive, you can improve the report. You do not have to indicate what feedback you have received and which elements you have used, but you must state that you have requested and received feedback in general. Requesting report feedback is not compulsory, but it is strongly recommended for presenting the parties involved with the best possible report.

You can request report feedback via the **NRGD**, stating 'Ad Hoc Feedback', your name, email, telephone number and the case number of the public prosecutor of the case in which you are acting as an expert. The NRGD will only put you in touch with a feedback provider; you can then give the report to the feedback provider and communicate with them directly, without the further involvement of the NRGD. You can find more information about Report Feedback under **Frequently Asked Questions**.

After writing your report

You have completed your examination, dealt with any feedback and your report is ready. What is the next step?

Submitting your report

After completing your examination and report, you send the report, with your signature, to the commissioning party. Discuss with the commissioning party how

it should be sent. The commissioning party may also ask you to return or destroy the case information and/or items you received.

Next steps

Once you have submitted your report, it is up to the commissioning party or the judge to decide what will happen next. There are a number of options:

- *You do not hear from the commissioning party again*
The report is added to the file, there are no further questions and your assignment has come to an end. You send the commissioning party an invoice (see below).
If you are working on behalf of the suspect (defence), it is up to the suspect to decide whether or not the report will be submitted as evidence in the criminal law case.
- *The commissioning party has further questions*
If you have been formally appointed as an expert or if your report is submitted as evidence in the criminal law case by the defence, your report will be added to the file. The report will be shared, in principle, with the other parties in the proceedings (Public Prosecutor, the suspect (defence) and the judge). If the commissioning party or one of the parties in the proceedings has any further questions, these will be put to you in writing. You should also answer these questions in writing, if they are within the scope of your expertise. It may be the case that your assignment has then come to an end. You send the commissioning party an invoice (see below).
- *You are called to appear at the hearing*
Sometimes answering further questions will not provide sufficient clarity and you will be asked to explain your findings and conclusions at the hearing. This option is the subject of the next part of this E-learning module.

5. Appearing at the hearing

If you have to appear at the hearing, you will receive a call to appear by mail. You will then be obliged to appear at the hearing.

Before the hearing

Always make sure you bring a valid ID and the invitation or call to appear at the hearing.

Report to the reception clerk on arrival. You will then go through a security check where your bag and coat will be checked.

The courtroom

The hearing is usually public but you often cannot be present in the courtroom until you are heard. When it is time for you to be heard you will be called in by an usher. Bear in mind that this may be later than the time when you were expected.

At least the following persons will be present in the courtroom: the representatives of the court (one or three judges), a court clerk, a public prosecutor and the suspect and/or the suspect's lawyer.

At the hearing

At the hearing, you will be sworn in by the presiding judge of the court or the court of appeal. This means you promise you will speak truthfully and in good conscience. All parties in the proceedings can ask you questions. If you are unable to answer a question - for example because it is outside your expertise - it is important that you say so. This also applies if you need more time to give a correct answer.

The **Code of Conduct of the NRGD** will also give you a good idea of your role when appearing at a hearing. Therefore, it is recommended that you read this before the hearing.

6. Practical info

Invoicing for your examination and report

Once you have concluded your activities, you can send the commissioning party an invoice for the number of hours you have spent on your examination and writing the report.

If you report on the instructions of the judiciary or the public prosecutor, send your invoice to:

Section (e.g. District Court Public Prosecutor's Office, East Netherlands)
attn Accounts Payable Department
PO Box 10082
3505 AB Utrecht

If you issued an offer for your examination in advance and it has been approved, you can apply your own hourly fee. In all other cases you must calculate your hourly fee in accordance with the **Fees in Criminal Cases Decree**. You can find other invoice requirements below under the invoice requirements of the National Service Centre of the Public Prosecution Service (DVOM) in the PDF:

Invoice requirements flyer (Dutch)

If you are reporting on the instructions of the suspect (defence), you must send your invoice for the number of hours you have worked directly to the suspect (defence).

Invoicing for your time at the hearing

If you are called to appear at the hearing and the commissioning party is the public prosecution service or you have been appointed as an expert, you can submit a separate billing form for this to the commissioning party. You will then get the standard hourly fee as provided for in the **Fees in Criminal Cases Decree**.

Billing form for witnesses/experts (Dutch)

Billing form for physicians and paramedics (Dutch)

About this E-learning module

This E-learning module Criminal Law for Ad Hoc Experts has been compiled with great care, but the relevant legislation and regulations will always prevail. If you have any questions, comments or suggestions about the content, please contact deskundigenregister@nrgd.nl.

If you have any specific questions about your role as an expert in a case or about your examination assignment, please contact the commissioning party.

Would you like to find out more about experts in criminal law? The specialist courses of Leiden University and the OU / Maastricht University consortium discuss the subjects dealt with in this module in more detail.

This E-learning module Criminal Law for Ad Hoc Experts has been produced within the framework of the Ad Hoc Project on behalf of the Minister of Justice and Security, under the supervision of the NRGD and in cooperation with the Judiciary, the Public Prosecution Service, the National Expertise Coordinator (Police) and forensic and academic organisations.