

Screening in Sint Maarten

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Inspection by the Law Enforcement Council into the screening of justice personnel in Sint Maarten

**Law Enforcement Council
May 2026**

Foreword

Before you lies the inspection report on the screening of justice personnel in Sint Maarten. For this purpose, the Council assessed the extent to which individuals who work or want to work within the justice sector are (re)screened in accordance with laws and regulations.

Integrity forms the foundation of a well-functioning organization, particularly in law enforcement. Public trust in the organizations within the justice sector is earned when staff demonstrate integrity, are accountable, comply with laws and regulations, and are subject to effective oversight.

The screening of justice personnel is a measure to promote integrity within the organizations. During this inspection, the Council assessed the screening process in light of applicable legislation and regulations, policies, and procedures. In doing so, the Council identifies (potential) bottlenecks, their causes, and areas for improvement.

Overall, the Council concludes that the (re)screening of individuals who work or wish to work as civil servants within the justice sector leaves much to be desired: it does not always take place in accordance with current laws and regulations. Furthermore, not all organizations adhere to the legal procedures for screening personnel. This entails risks to the performance of duties. It is therefore necessary that measures be taken and implemented to mitigate these risks. In this report, you can read more about the Council's inspection. Based on the results of the inspection, the Council calls on the Minister of Justice to take the necessary measures as soon as possible. Not only for the sake of screening justice personnel themselves, but also to promote overall integrity within the organizations and thereby contribute to the trust that citizens must be able to have in these organizations.

The Council expresses its gratitude to everyone who contributed to the completion of this inspection.

Law Enforcement Council

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List of Abbreviations

<i>Abbreviation</i>	<i>Meaning</i>
BW	Civil Code of Sint Maarten (<i>Burgelijke Wetboek</i>)
ICSM	Intelligence Center of Sint Maarten
IGD	Immigration and Border Protection Services (<i>Immigratie- en Grensbewakingdienst</i>)
IRC	Immigration Research Center
JVO	Four-Party Judicial Consultation (<i>Justitieel Vierpartijen Overleg</i>)
KPSM	Sint Maarten Police Force (<i>Korps Politie Sint Maarten</i>)
Coast Guard	Dutch Caribbean Coast Guard
LMA	National Ordinance on Substantive Civil Service Law
LRS	Sint Maarten National Detectives
MOT	Financial Intelligence Unit (<i>Meldpunt Ongebruikelijke Transacties</i>)
MvJ	Minister of Justice (<i>Minister van Justitie</i>)
OM	Public Prosecutor's Office (<i>Openbaar Ministerie</i>)
OMCARIB	Office of the Attorney General and Public Prosecutor's Office's in Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba (<i>Parket van de Procureur Generaal en de parketten van Curaçao, Sint Maarten en Bonaire, Sint Eustatius en Saba</i>)
PG	Attorney General (<i>Procureur Generaal</i>)
HR	Human Resources
J&IS	Judicial and Institutional Services
TCI	Criminal Intelligence Team (<i>Team Criminele Inlichtingen</i>)
VDSM	National Security Service Sint Maarten (<i>Veiligheidsdienst Sint Maarten</i>)
VGB	Certificate of No Objection (<i>Verklaring van Geen Bezwaar</i>)
VOG	Certificate of Good Conduct (<i>Verklaring Omtrent het Gedrag</i>)

Summary and Recommendations

Introduction

The Council considers it important that government employees — and specifically justice sector employees — act with integrity. This is because the work of the justice sector often involves handling sensitive information, and the integrity of its officials is indispensable in this regard. Citizens must also be able to trust that the government prioritizes the integrity of its employees. The research question is as follows: To what extent are individuals who work or wish to work within the justice sector (re)screened in accordance with laws and regulations? To answer this research question, three questions were formulated regarding legislation and policy, procedures, and bottlenecks.

Legislation and Policy

Legislation and Regulations

Based on laws and regulations, a Certificate of Good Conduct (VOG) and/or a security screening may be used for the screening and rescreening of personnel. The legal basis for a VOG and, where applicable, a security screening for job applicants and existing government employees is established, among other things, in the National Ordinance on Substantive Civil Service Law. In addition, provisions are included in the legal status regulations of the various organizations. The challenges experienced by a number of organizations in this context relate to changes in job descriptions due to the introduction of a new function book and the fact that certain positions have not (yet) been designated as positions of confidence via the National Decree on the Designation of Positions of Confidence.¹ As a result, the National Security Service Sint Maarten (VDSM) is unable to conduct security screenings for the relevant positions. This entails risks.

The ability to exchange data within the Kingdom for the purpose of a Certificate of Good Conduct (VOG) is important given the high mobility of people in terms of work and residence. However, the legal basis for this has not yet been (properly) established. This topic is also regularly discussed during the Four-Party Judicial Consultation (JVO).

Policy

During the application and selection process, most organizations utilize the intake policy (the requirements for appointment as a civil servant as set forth in Article 6 of the LMA) and the Government Employee Handbook to screen personnel, including by requesting a VOG and/or a security screening for applicants. Furthermore, most organizations primarily use performance management as a screening measure for existing personnel. This is due to the lack of a legal basis for conducting repeat screenings for personnel, unless they hold a position of confidence.

Procedures in Practice

Certificate of Good Conduct

¹ National Decree on General Measures, dated February 21, 2012, designating positions of confidence and establishing rules regarding the manner in which security screenings are conducted.

A VOG has no legal expiration date. However, because it represents a snapshot in time, organizations often set a validity period for new hires. The procedure for applying for a VOG is generally viewed favorably by organizations. The sometimes longer processing time due to capacity shortages at the Immigration and Border Protection Services (IGD) and the Public Prosecutor's Office (OM) is, however, seen as a bottleneck by some organizations. A number of organizations, however, find the assessment procedure for issuing a VOG — which only reviews criminal records — to be insufficient. Due to this lack of confidence in the results of a VOG, some organizations use other informal screening procedures. For example, they inquire about applicants within their own network and/or with the police to gain insight into an applicant's background. However, processing the collected personal data in this manner is not in compliance with laws and regulations. Furthermore, existing employees at the various organizations are not rescreened at a later date using a (new) VOG, as there is no legal basis for this. At J&IS, for example, employees do report relevant personal circumstances despite the lack of a legal basis for doing so. This is particularly the case when these circumstances relate to criminal or civil cases and may have implications for their position or for the integrity of the organization.

Security Screenings

It is not allowed to appoint someone to a position of confidence if that person has not obtained a Certificate of No Objection (VGB) through a security screening. Security screenings are executed exclusively by the VDSM. The limited capacity of the VDSM poses a bottleneck for executing security screenings. Where applicable, security screenings are therefore executed for the various organizations to the extent possible. The Coast Guard is an exception to this.

The procedure for designating positions of confidence at the IGD is currently being drafted. The Sint Maarten Police Force (KPSM) has already completed this procedure, but a number of security screenings still need to be executed in this regard.

Furthermore, all organizations are familiar with the procedures regarding security screenings. Most organizations are also satisfied with these procedures and with the results of the security screenings. This is primarily due to the trust they have in the VDSM's assessment procedure, which takes into account not only judicial records but also police records and specific data and intelligence.

Every five years, and if established facts or circumstances warrant it, a repeat security screening is conducted on an ad hoc basis. The individual and the employer are also required to report changes, as a change in (personal) circumstances may be grounds for initiating a repeat screening sooner. However, repeat screenings do not always take place every five years, as required by law. Opinions vary among organizations regarding who is responsible for overseeing this: the VDSM, the organization, or the individual concerned. Clarity is required on this matter.

Analysis and Conclusion

This inspection shows that the screening of individuals who work or wish to work as civil servants within the justice sector is, in part, in accordance with the applicable laws and regulations. While all organizations comply with the (legal) requirement for a VOG, action must be taken as soon as possible to ensure that security screenings are also conducted, where applicable, for the Coast Guard, the IGD, and the KPSM. The Council highlights the necessary changes to legislation, regulations, and policies regarding security screenings and positions of confidence in this context.

Additionally, not all organizations adhere to the legal procedures for the screening of personnel. For example, not all staff members who hold positions of confidence have undergone a security screening for this purpose.

The Council calls for greater attention to be paid to bringing the screening process into line with legal procedures and acting accordingly and makes four recommendations in this regard.

Recommendations

Based on the results of the inspection, the Council makes the following recommendations:

1. Bring the current policies, procedures, and existing deviating practices for the screening of justice personnel at the organizations into compliance with legislation and regulations.
2. Assess — in addition to the Coast Guard — the extent to which there are still high-risk positions within justice organizations that must be designated as positions of confidence and complete this process. As work is being done towards completion, also focus on mitigating measures to limit risks as much as possible.
3. To enhance the reliability of a VOG, encourage the necessary laws and regulations for the exchange of judicial data within the Kingdom to be amended or established where necessary.
4. Ensure that the required (repeat) security screenings for justice personnel in positions of confidence are conducted as soon as possible.

1. Introduction

1.1 Background

In its 2025 annual plan, the Council indicates that it will conduct an inspection focused on screening individuals who work or wish to work within the justice sector.² This is in light of the justice sector’s mandate, the often sensitive information it handles, and the integrity of its officials, which is indispensable in this context.

The integrity of the state is one of the foundations of the rule of law. Public trust is largely based on this. To safeguard this as much as possible, it is important that government personnel—and specifically those in the justice sector — act with integrity. It is therefore necessary that measures be taken and implemented to mitigate the risks of unethical conduct. The Council has addressed the topic of integrity in various reports.³ The Council notes that in recent years, alongside positive reports, staff members of various justice enforcement agencies have also received negative publicity as a result of identified breaches of integrity. This undermines the trust that citizens have in the government.

An important measure to promote the integrity of new and existing staff within the government — and more specifically within the justice sector — is the (re)screening of personnel. This screening is conducted in accordance with the legal classification as a civil servant and depends on the type of position and the job level of the civil servant in question. At a minimum, this involves a Certificate of Good Conduct (VOG) and/or a security screening for new staff, or a current VOG and/or a repeat (security) screening for existing staff.

1.1.1 Background

Since 2014, various institutions have published reports on integrity within the Government of Sint Maarten.^{4,5,6,7,8} All of these reports contain numerous findings with accompanying recommendations to improve and promote integrity within the government, including within the Ministry of Justice.

The Price Waterhouse Coopers report⁹ states the following regarding the screening of personnel by the government of Sint Maarten:

“There also appears to be limited screening conducted on all employees. A senior official in the Ministry of General Affairs stated that references from former employers are collected, but ‘criminal checks’ are only conducted on certain individuals deemed to be in ‘positions of confidence.’ The National Security Service of Sint Maarten (“VDSM”) conducts background screenings on “positions of confidence,” according to interviewees, and a National Decree containing general measures, dated February 21, 2012, governs the appointment to positions involving confidentiality and establishes rules regarding the conduct of security investigations. The list of positions screened does not appear to be comprehensive of all high-risk positions within the Government of Sint Maarten.”

The following recommendation from the same report is therefore relevant to this inspection:

² The Law Enforcement Council (hereinafter: the Council) is responsible for the general inspection of the organizations within the justice system in Curaçao, Sint Maarten, and the Netherlands with respect to the public entities of Bonaire, Sint Eustatius, and Saba (hereinafter: the Caribbean Netherlands). Furthermore, the Council is responsible for the general inspection of the quality and effectiveness of justice cooperation between the countries.

³ See, for example, the reports “Inspection: Infrastructure for Combating Corruption” (2014) and “Anti-Corruption Infrastructure on Bonaire, St. Eustatius, and Saba” (2015).

⁴ PWC, (2014). *Integrity inquiry into the functioning of the Government of Sint Maarten*. Pg. 138.

⁵ Commission on Integrity in Public Administration, (2014). *Doing the right things right*.

⁶ Audit Chamber, (2014). *Baseline study Sint Maarten. State of affairs institutional integrity management 2014*.

⁷ Transparency International, (2015). *St. Maarten 2015 National Integrity System Assessment*.

⁸ Integrity Chamber, (2021). *Quick scan of the integrity infrastructure of government ministries. Ministry of Justice*.

⁹ PWC, (2014). *Integrity inquiry into the functioning of the Government of Sint Maarten*, p. 138.

“Confirm that mandated criminal background checks are being consistently conducted on all employees prior to their employment with the government and confirm that comprehensive and accurate pre-hire screening is being conducted in a timely manner on individuals working in senior positions and high-risk departments.”

1.2 Objective

The objective of the inspection is to assess the extent to which individuals who work or wish to work within the justice sector are screened and rescreened. The inspection also focuses on the procedures used in practice for (re)screening. In doing so, the Council identifies (potential) bottlenecks, their causes, and areas for improvement. In this way, the Council contributes to promoting integrity within the justice sector.

1.3 Central Question

The central research question is:

To what extent are individuals who wish to work within the justice sector (re)screened in accordance with legislation and regulations?

To answer the central question, the following sub-questions have been formulated:

1. What do the laws and regulations regarding the (re)screening of justice personnel entail?
2. What procedures are used in practice by justice organizations when screening or rescreening justice personnel?
3. What challenges (if any) arise when (re)screening justice personnel?

1.4 Scope

Inspection period: The inspection focuses on the period from 2014 through February 2025.

(Re)Screening: One of the (basic) measures to promote the integrity of new and existing staff and minimize risks.

In this inspection, screening refers to measures concerning a VOG and/or a (repeat) security screening in order to assess a person’s reliability and suitability for a position.

Target group of this inspection: Civil servants who (through a successful application) intend to work or are already working at the following justice organizations in general and specialized positions for which a VOG or a security screening is required:

- Immigration and Border Protection Services (IGD);
- Sint Maarten Police Force (KPSM);
- National Detectives (LRS);
- Public Prosecutor's Office Sint Maarten (OM);
- Dutch Caribbean Coast Guard (Substation Sint Maarten);¹⁰
- Point Blanche Prison and Detention Center (Prison);
- Financial Intelligence Unit (MOT);¹¹

¹⁰ The Coast Guard for Aruba, Curaçao, and Sint Maarten, as well as for the public entities of Bonaire, Sint Eustatius, and Saba (also known as the Coast Guard of the Kingdom of the Netherlands in the Caribbean) is formed through a collaboration between the countries. The Coast Guard was established under the Kingdom Coast Guard Act and has various tasks, including investigative duties, supervisory duties (in various areas), and service-providing duties. The Coast Guard falls under the jurisdiction of the Ministry of Defense for administrative purposes. With regard to the cooperation in the performance of the Coast Guard’s justice duties, the Council has inspection authority.

¹¹ The Council has no inspection authority with respect to the MOT; they voluntarily cooperated with the inspection.

- Judicial & Institutional Services (J&IS)¹² .

1.5 Assessment Framework

To answer the main and sub-questions formulated, the Council established an assessment framework based on criteria set by the Council. The criteria are based on legislation and regulations, policy, various research reports, and other relevant information.

1.6 Research Approach and Method

The inspection was conducted in accordance with the following phases:

1. Orientation phase: general exploration of the subject and drafting of the action plan.
2. Desk research: literature review and preparation of the written questionnaire and interviews.
3. Data collection: processing questionnaires and conducting interviews.¹³
4. Analysis and reporting: based on the main and sub-questions, the collected information was analyzed and the draft inspection report was prepared.
5. Feedback and finalization: the interviewees and the Minister of Justice were given the opportunity to respond to the draft interview reports and/or the draft report, after which any comments were incorporated, and the report was submitted to the Council members for approval.
6. Submission of the report: the report was submitted to the Minister. Six weeks after the report was submitted to the Minister, the Council made the report public by posting it on its website.

1.7 Reading Guide

Following the introductory Chapter 1, Chapter 2 describes the legal framework. The third chapter describes the findings regarding the screening of justice personnel. The final Chapter 4 contains an analysis of the findings, the conclusion, and the recommendations. Appendix 1 of this report provides a brief overview of the relevant laws, regulations, and policies. Appendix 2 contains an overview of the current positions of confidence within the justice sector.

¹² Formerly the Sint Maarten Judicial Institutions Foundation (SJIS).

¹³ The Council sent a written questionnaire to the IGD, the LR, the Public Prosecutor's Office, and the Coast Guard as part of the inspection. Providing figures on the subject was also part of this. Only the Public Prosecutor's Office responded and provided figures. The Council reviewed the questionnaire with the other organizations by means of an interview.

2. Legal Framework

2.1 Introduction

2.2 Legislation, Regulations, and Policies

2.2.1 Legislation and Regulations

Relevant provisions for the screening of justice personnel¹⁴ can be found in legislation at the Kingdom and national levels. These include provisions in the Kingdom Act on the Police of Curaçao, of Sint Maarten and of Bonaire, Sint Eustatius and Saba, the Kingdom Act on the Public Prosecutor's Offices of Curaçao, Sint Maarten, and Bonaire, St. Eustatius, and Saba, the National Ordinance on Substantive Civil Service Law (LMA), the National Ordinance on the National Security Service, the National Ordinance on the Coast Guard, the Legal Status Decree for Police Personnel, and various other national decrees. These are discussed below. See also [Appendix 1](#) for a complete overview of the laws and regulations relevant to this subject.

A person may only be considered for appointment as a civil servant if, in accordance with Article 6 of the LMA, they are, among other things, of good moral character, as evidenced by a certificate issued by the competent authority, is a Dutch national, has been declared fit on the basis of a medical examination, and, where applicable, has undergone a security screening and been found suitable on that basis.

Based on legislation and regulations, the following measures may be used for the screening and rescreening of justice personnel/civil servants:

- Certificate of Good Conduct (VOG); and/or
- Security screening.

2.2.1.1 Certificate of Good Conduct

According to Article 15(3) of the National Ordinance on Judicial Documentation and Certificates of Good Conduct¹⁵, a VOG simply means that the investigation into the conduct of the person concerned, conducted with due regard to the purpose for which the certificate was requested, has not revealed any grounds for objection against that person. For the investigation, the Minister may use extracts from criminal records, data derived from police records in the person's current or former place of residence or stay, and other written documents related to the issuance of the VOG (Article 23). Article 18(1) of the same national ordinance stipulates that the request for issuance of a VOG must be made by the person regarding whose conduct a statement is sought.

2.2.1.2 Security Screening

Article 1h of the National Ordinance on the National Security Service¹⁶ defines a security screening as the execution of a screening regarding the fulfillment of positions of confidence. Article 1h of the same national ordinance stipulates that these are positions with the Government of Sint Maarten, or elsewhere in Sint Maarten, that present the potential to harm national security.

Security screenings are conducted at three levels: A, B, and C. A-level screenings are the most extensive and in-depth. A B- or C-level screening is more of an administrative inquiry.

¹⁴ The term "justice personnel" refers to both civil servants and contract employees. The individual employment contract stipulates that all rules applicable to civil servants also apply to employees working on a contract basis.

¹⁵ AB 2013, GT no. 572.

¹⁶ AB 2010, GT no. 4.

According to Article 3, paragraph b of the National Ordinance on the National Security Service, the Service has, among other tasks in the interest of national security, the duty to execute security screenings. In Sint Maarten, only the VDSM may execute security investigations within the meaning of the aforementioned national ordinance.

The relevant positions of confidence subject to screening are listed by ministry and implementing agency, including the Ministry of Justice, in the appendix to the National Decree on the Designation of Positions of Confidence and the Execution of Security Screenings (National Decree on Positions of Confidence).¹⁷ See [Appendix 2](#).

Furthermore, with regard to persons holding positions of confidence, the Minister orders a renewed security screening every five years and, if proven facts or circumstances give him cause to do so, on an ad hoc basis (Article 45, paragraph 1).¹⁸ The VDSM brochure on positions of confidence and security screenings states that the individual and the employer are required to report any changes, as a change in (personal) circumstances may warrant an accelerated repeat screening.¹⁹

2.2.1.3 Screening at the organizational level

Furthermore, the ability to request a VOG and/or security screening depends on the legal status regulations and the corresponding job classification manual of the relevant judicial organization where the staff is employed or wishes to be employed. On December 27, 2023, the national decree establishing the approved function book was signed by the Minister of Justice for the Ministry of Justice, with the exception of the Coast Guard, the J&IS, and the OM. These three organizations have a different legal status. The legal requirements for each organization are briefly explained below.

Police

Article 8(f) of the Legal Status Decree for Police Personnel, which applies to the KPSM, the Sint Maarten National Detectives (LRS), and part of the IGD (Border Protection officials),²⁰ it is stated that only a person of good moral character is eligible for appointment as a police officer tasked with performing police duties. This must be evidenced by a certificate issued by the competent authority.

Furthermore, appointment as a police officer is only possible if, based on an investigation initiated by the Minister (involving the collection of judicial records and police data on the individual by the Criminal Intelligence Service and Info-Unit) into the individual's reliability and suitability, there appears to be no objections to the appointment. This does not apply if the position involves a position of confidence (Article 17, paragraphs 1 and 2).

Articles 20, 21, and 22 of the decree govern the appointment and placement of civil servants in positions of confidence. Provisions are also included regarding the referral of a person for a security screening and the renewal of the security screening after a period of five years or if facts or circumstances arise that justify an earlier renewal. These provisions correspond to Articles 44 and 45 of the National Ordinance on the National Security Service. The LMA applies to the other part of the IGD — namely, civil servants other than those of the Border Protection.

Coast Guard

¹⁷ AB 2012, no. 9.

¹⁸ Explanatory Memorandum to the National Security Service Ordinance: The security screening is repeated periodically, every five years, provided the individual still holds this position or due to special circumstances.

¹⁹ [BROCHURE Positions of Trust and Security Screenings.pdf](#)

²⁰ Article 1(e) of the Sint Maarten Police Status Decree, AB 2023, no. 65, defines a police officer as: 'The official appointed to perform police duties with the Sint Maarten Police Force, the National Detectives, and Border Control, as well as the official appointed to perform technical, administrative, or other support tasks in the service of the police.'

According to the National Ordinance on the Legal Status of the Coast Guard, a person regarding whom there is reason to doubt that he will faithfully perform his duties as a civil servant under all circumstances is not eligible for appointment as a civil servant with the Coast Guard.²¹ Article 2 provides that, unless otherwise provided by or pursuant to this National Ordinance, the LMA applies to civil servants. Furthermore, Article 3(1) of the National Decree on the Legal Status of the Coast Guard provides that a security screening shall be executed by the Minister (of General Affairs) with respect to the person concerned.²² The security screening includes, among other things, the judicial information obtained for the purposes of the security screening, with due regard to the provisions of or pursuant to the National Ordinance on Judicial Documentation and on Certificates of Good Conduct.

Public Prosecutor's Office

The legal status of the Public Prosecutor's Office is governed by the the Kingdom Act on the Public Prosecutor's Offices of Curaçao, Sint Maarten, and Bonaire, St. Eustatius, and Saba and the LMA. Articles 26 and 27 of this Kingdom Act stipulate, among other things, that the legal status of members of the OM is regulated by or pursuant to a general measure of the national government. Article 4a of the Act on the Legal Status of Judicial Officers²³ provides that appointment as a judicial officer or a judicial officer in training is possible only if the person is in possession of a certificate of good conduct, not older than three months and issued in accordance with the Judicial and Criminal Proceedings Data Act²⁴. For other officials who work at the Office of the Attorney General but who are not members of the Public Prosecutor's Office, and who are appointed by the minister of the country where they will primarily work (upon the recommendation of the Attorney General), the legal status is governed by the civil service regulations applicable in that country (i.e., the LMA).

No positions of confidence have been designated for the Public Prosecutor's Office in the first instance. The position of Advocate General is a position of confidence; however, it is not a position within the Public Prosecutor's Office in the first instance in Sint Maarten.

Prison and MOT

The prison and the MOT both fall under the LMA in terms of legal status. For example, the director of the MOT is appointed, suspended, and dismissed by national decree, and the remaining staff are appointed as civil servants or hired under an employment contract, taking into account the range of the staff and the job descriptions (Article 9, paragraphs 1 and 2, of the National Ordinance MOT).²⁵ Prison staff are appointed, suspended, and dismissed by national decree (Article 15 of the National Ordinance on Principles of the Prison System).²⁶

J&IS

The J&IS (foundation) is governed by the Civil Code (BW) in terms of its legal status. The Civil Code contains no provisions regarding the screening of staff. However, Article 611 of Book 7A of the Civil Code stipulates that the employer and the employee are obligated to behave as a good employer and a good employee, respectively. At the J&IS, no positions have been designated as positions of confidence.

²¹ Article 5, paragraph 1, of the National Ordinance containing rules regarding the legal status of the civil servants of Sint Maarten who are employed by the Coast Guard for Aruba, Curaçao, and Sint Maarten, as well as for the public entities of Bonaire, Sint Eustatius, and Saba.

²² National Decree containing general measures for the implementation of Article 4, Article 5, paragraph 3, and Article 7, paragraph 2, of the National Ordinance on the Legal Status of the Coast Guard.

²³ Under the Judicial Organization Act, the term "judicial officers" also includes chief public prosecutors, deputy chief public prosecutors, senior public prosecutors A, senior justice officials, justice officials, deputy justice officials, acting justice officials, single-judge court justice officials, and acting single-judge court justice officials at the district public prosecutor's offices, the National Public Prosecutor's Office, the Functional Public Prosecutor's Office, the Central Processing Public Prosecutor's Office, and the General Public Prosecutor's Office.

²⁴ BWBR0014194

²⁵ AB 2019, no. 24

²⁶ AB 2013, GT No. 431

2.2.2 Policy

Government Employee Handbook

The purpose of the Government Employee Handbook (the handbook) is to provide government employees with information about the government's personnel and organizational policies. The handbook contains only a brief summary of the various policy measures and provides few further details. One of the topics covered in the handbook is the intake process. It states, among other things, that a condition for appointment as a government employee is that the individual must submit a certificate of good conduct and that candidates from abroad must obtain this certificate in their country of residence. It refers here to Article 6 of the LMA.

Intake Policy

There is a government-wide intake policy that applies to the civil service.²⁷ The intake policy lists the requirements for appointment as a civil servant as set forth in Article 6 of the LMA, with the exception of the security screening. In addition, the intake policy also specifies a number of cases in which a fixed-term employment contract may be chosen upon entry into service. One such case is when there are reasons preventing someone from being appointed to the civil service (yet). An example given is a person awaiting a VOG and/or a medical examination. In that case, an employment contract may be entered into until these conditions are met. If the results are negative, the contract is terminated.

VOG Policy

A policy document for the assessment of VOG applications was published by the Ministry of Justice in 2021.²⁸ The following five assessment criteria are listed therein:

1. the time that has elapsed since the conviction or the out-of-court settlement;
2. the nature and severity of the criminal offense;
3. the manner of handling and the severity of the imposed sentence or measure, and
4. the number and nature of the records registered during a specific period,
5. all factors related to whether, based on the aforementioned data, there is a serious suspicion that the applicant poses a threat to public order and society.

Performance Management Policy

Article 15 of the LMA stipulates that the manner in which the civil servant performs their duties is regularly reviewed by the competent authority or on its behalf through performance reviews and the preparation of performance evaluations. Performance management is a key policy priority for the Ministry. This is also evident from previous research by the Council.³⁸

²⁷ Intake Policy 2012. Annex to LB 2011/1908.

²⁸ OFFICIAL GAZETTE OF SAINT MAARTEN Volume 2021, number 27 Date: December 10, 2021.

3. Findings: Screening measures for justice personnel

Criterion:

The screening of justice personnel takes place in accordance with relevant legislation and regulations.

This chapter describes, based on the established criteria, the findings regarding the screening and rescreening of individuals who work or wish to work within the justice sector. The Council assesses the procedures in practice within the framework of the VOG and security screening measures.

3.1 Legislation, Regulations, and Policies

Criterion:

There are local laws, regulations, and policies regarding the (re)screening of justice personnel. Where required, public servants have a certificate of good conduct and/or undergo a security screening in accordance with legislation, regulations, and policies.

Policies for the screening of justice personnel are known and implemented.

3.1.1 Legislation and Regulations

The following laws and regulations are primarily used as the basis for (re)screening in practice: the LMA, the National Ordinance on the National Security Service, the National Ordinance on Judicial Documentation and Certificates of Good Conduct, as well as various national ordinances and national decrees regarding legal status. These are also cited by the various interviewed organizations as the overall framework.

For the appointment of justice personnel to a (position of confidence), the screening measures VOG and/or security screening are applied. The rescreening of justice personnel in the same position (during employment) can only take place if it concerns a position of confidence. Legislation and regulations do not provide for the rescreening of individuals by means of a VOG.

VOG

The VOG has been a topic of discussion in recent years during the Judicial Four-Party Consultation (JVO). This is because there is significant mobility within the Kingdom regarding work and residency, which means that public safety must be safeguarded as much as possible. A VOG can help with this.²⁹ At the JVO meeting in June 2023, the importance of exchanging judicial data between countries in connection with a VOG screening was highlighted. The ministers endorsed the importance of this issue and the progress made on the matter.³⁰ In 2023, Deloitte Dutch Caribbean conducted a study commissioned by the Dutch Ministry of Justice and Security to explore the possibilities for the European Netherlands to exchange judicial data with the Caribbean part of the Kingdom for the purpose of a VOG screening.³¹ Interviewees within the Judicial & Institutional Services (J&IS), for example, report that the exchange of judicial data between the countries is far from optimal. This is because the exchange of such data regarding personnel and clients is currently not possible.

²⁹ Letter to Parliament with periodic report on the main points of the JVO January 2024.

³⁰ House of Representatives of the States General, kst-36410-IV-5.

³¹ Deloitte (2023). Policy Analysis: Data Exchange for VOG Screening in the Kingdom. Final Report, April 26, 2023.

During the JVO in January 2024, the mandate was given to ensure the proper legal basis and necessary legislative amendments.³²

Security Screenings

The VDSM is currently working on further updating the National Decree on Positions of Confidence. The intention is to amend the appendix listing the positions. This is partly due to the changes brought about by the new function book for the justice sector (across the ministry and the Coast Guard). In certain cases, although the job title has changed, the job descriptions in the function book have remained the same. According to the VDSM, these positions can still be screened in accordance with the existing appendix. In other cases, positions have been removed and new ones added. This requires adjustments to the appendix of the National Decree on Positions of Confidence in order to conduct a security screening. Together with the organizations, the VDSM aims to complete the process of updating the appendix by 2026 at the latest.

Coast Guard Laws and Regulations

Despite years of efforts to this end, neither the Coast Guard itself nor the positions of confidence within the Coast Guard have, to date, been included in the appendix to the National Decree on Positions of Confidence. As a result, security screenings for prospective Coast Guard personnel cannot be executed in practice. Although the National Decree on the Legal Status of the Coast Guard itself refers to the execution of a security screening by the minister, this cannot, due to the legal structure, serve as a basis or create the authority for its implementation, according to the Coast Guard. According to the Coast Guard, this is because the—higher-ranking—National Ordinance on the National Security Service stipulates that security screenings may be conducted exclusively and therefore only by the VDSM. The National Ordinance on the Legal Status of the Coast Guard contains no provision regarding the execution of (security) screenings in this context. Furthermore, a security screening or a repeat screening may only be conducted if the positions are included in the aforementioned annex to the National Decree on Positions of Confidence.

Until recently, despite the foregoing (the absence of a statutory mandate for the VDSM regarding the Coast Guard), there were (temporary) cooperation agreements between the Coast Guard and the VDSM under which the VDSM executed initial security screenings but did not execute repeat security screenings. The Council received a copy of these cooperation agreements from the Coast Guard. The document notes that the cooperation agreements are supported by current laws and regulations applicable to both the Coast Guard and the VDSM. However, at the time of the inspection, the Coast Guard indicated that these cooperation agreements had been suspended pending the implementation of the new Coast Guard function book. In its response, the VDSM stated that the security screenings for the Coast Guard were temporarily put “on hold” pending the revised Coast Guard function book. This was to ensure that the correct job title would appear on the VGB. This was resolved approximately two months ago and the VDSM, has since then, resumed conducting security screenings for the Coast Guard.

Legal Status Civil Servants Justice Organizations

National Detectives

For the Sint Maarten National Detectives (LRS), the implementation of the new function book has not affected its ability to conduct security screenings, as the appendix to the National Decree on Positions of Confidence refers to “all positions at the LRS.”

KPSM

³² House of Representatives of the States General, kst-36410 IV.

The implementation of the new function book also had no impact on the KPSM, as positions of confidence had already been designated or described in accordance with the new function book prior to its implementation.

IGD

The aforementioned annex still refers to the Immigration and Naturalization Service, while the service is officially called the Immigration and Border Protection Services. The head and all positions³³ at the Immigration and Naturalization Service are listed in the annex. In the case of the Immigration and Border Protection Services, new positions have been added, job titles changed, and/or positions removed as a result of the new function book. In 2024, the IGD³⁴ determined which new/amended positions (in addition to the position of head) need to be designated as positions of confidence with the corresponding category in accordance with the National Decree on Positions of Confidence. This process was carried out in collaboration with the Secretary-General and the VDSM. The organization is currently awaiting feedback from the VDSM to finalize the process. Ultimately, the goal is for every position within immigration to be designated as a position of confidence.

Prison and MOT

In both services, only the position of director is a position of confidence. A VOG is required for all other positions. In the new function book for the prison and the MOT, new positions have been added, job titles changed, and/or positions removed. This therefore requires, where applicable, an amendment to the National Decree on Positions of Confidence.

Coast Guard

The Coast Guard has a new (draft) function book and legal status regulations. Based on the function book, an overview has been created with new job titles, accompanied by the Coast Guard's proposal for the corresponding security screening category (A, B, or C). This is based on the job titles and associated categories used by the Ministry of Defense in the Netherlands. Most positions require a B-level security screening. The function book had been submitted to the Minister of Justice for approval since late 2024 and was approved in the second half of 2025.³⁵ The changes still need to be implemented in the National Decree on Positions of Confidence. The Coast Guard indicates that there has been little support from the ministry in recent years. This has led to significant backlogs, particularly regarding personnel (legal status). This has had negative (financial) consequences for its personnel policy. In the meantime, the Coast Guard is proactively trying to find a solution to the bottleneck regarding the inability to execute security screenings, as this entails significant integrity and security risks for the Coast Guard organization and operations. A request for further information on this matter was not responded to within the given time frame. The purpose of a security screening is to minimize the risks associated with appointing a person to a position of confidence.

3.1.2 Policy

The handbook and the intake policy serve as guidelines for the MOT, the IGD, the LRS, and the KPSM in the application and selection process. These documents also refer to the mandatory pre-employment screening via a VOG and/or a security screening. Throughout this process, they receive support from the Human Resources department of the Ministry of Justice as needed. Several interviewees indicate that this means, among other things, that the department verifies whether the appointment recommendations (including documentation, such as a VOG/or a VGB

³³ Positions at the Immigration and Naturalization Service, subject to assessment by the Head of the Immigration and Naturalization Service in consultation with the Director of the Service, where it can reasonably be expected that, in the performance of the duties, the employee comes into contact or will come into contact with information that could undermine the continued existence of the democratic legal order, the integrity of public administration, the security, or the vital interests of Sint Maarten.

³⁴ At the end of 2023, the critical position of Director of the IGD, which had been vacant for some time, was filled.

³⁵ At the time of writing this report, the function book was approved: [Prime Minister Marcelina Commends Approval of Coast Guard Function Book](#) .

following a positive security screening screening) for the appointment of new staff are correct and in accordance with the relevant policy. They also indicate that (since October 2024) new staff undergo an onboarding session. The handbook is handed out to staff during this onboarding. The IGD and the prison confirm that new staff have completed this session.

The application and selection process for the Public Prosecutor's Office (OM) Sint Maarten and the Coast Guard Substation on Sint Maarten is carried out by the central HR departments of their respective organizations (OMCARIB and KWCARIB) in Curaçao.

The J&IS, as a foundation, has its own internal policy on this matter. The Council received a copy of this policy.

Furthermore, as indicated, the Ministry has established a policy for assessing the issuance of a VOG. In the aforementioned study by Deloitte Dutch Caribbean, it is noted that in practice, judicial data is in fact (also) used for this purpose. However, the distinction made in the Caribbean territories between the "criminal record" (pending cases) and the "criminal history" (finalized cases) hinders the current and desired practice of VOG assessments. Article 23(1) of the National Ordinance on Judicial Documentation and Certificates of Good Conduct is used for this purpose. This provision specifies the types of data that may be used for assessing a Certificate of Good Conduct. However, Article 23 does not automatically apply to the criminal records of the other islands.³⁶ In its response, the Ministry states that only the criminal record is used for the assessment of a VOG.

3.2 Screening Measures in Practice

The following sections describe the screening process using a VOG and/or a security screening in practice.

3.2.1 VOG

Criterion:

For the investigation, the Minister may use extracts from criminal records, data derived from police records in the person's current or former place of residence or stay, and other written documents related to the issuance of the VOG.

The request for issuance of a VOG is made by the person regarding whose conduct a statement is requested.

3.2.1.1 Screening: application and selection process

For the screening of justice personnel, all organizations refer to their application and selection process, in which screening by means of a VOG and/or security screening is the final step of this process. All organizations indicate that a VOG is always submitted as required.

Existing staff at justice organizations are only rescreened if they hold a position of confidence, according to all interviewees. A number of organizations also indicate that, given the five-year interval for rescreening in general, performance reviews conducted as part of performance management are, in practice, also used as a form of (veiled) rescreening. This is because unethical behavior can also be discussed and addressed during these reviews if necessary. The VOG process consists of the application, the processing of the VOG, and the issuance of the VOG.

³⁶ Deloitte (2023). Policy Analysis on Data Exchange for VOG Screening in the Kingdom. Final Report. April 26, 2023.

3.2.1.2 VOG Application

All successful applicants are requested by the justice organizations under review to submit a VOG. The form for this is partially completed by the relevant organization. The applicant uses the form to submit a request for a VOG to the IGD. This process is not otherwise described internally by the various organizations. Without the VOG, the person will not be hired, or the temporary employment contract will be terminated pending its issuance, according to all interviewees.

Public Prosecutor's office

The OM CARIB is currently developing a policy on screening incoming and current staff. There is an internal process for requesting a VOG, which has not yet been formalized in process agreements. The intention is to implement this (in part) by 2026 at the latest. According to the OM, the HR department is currently responsible for ensuring that VOGs are requested in a timely manner and that the issued VOGs are archived in the personnel file.

3.2.1.3 VOG Implementation: Role of the IGD and the OM

The intake process for a VOG was initially carried out by the Public Service Center of the Ministry of General Affairs. A few years ago, it was transferred to the Ministry of Justice (Central Staff Office) and ultimately — according to the IGD — assigned to the IGD as an (informal) task. This was done through an informal (non-written) agreement, according to the IGD. In its response, the Ministry states that the intake process for a VOG is no longer conducted by the IGD, but has for some time been handled (once again) by the Ministry's Central Staff Office and the Department of Judicial Affairs.

First, the request is processed. In Sint Maarten, this involves entering the request into a Customer Relationship Management system and sending a confirmation of receipt to the applicant. By law, only certain data is considered for the purpose of a VOG investigation. This includes extracts from criminal records, data obtained from police records in the person's current and former places of residence or stay, and other written documents related to the issuance of the VOG.³⁷ Once the application has been paid for and is complete, it is sent to the OM for an administrative check in the judicial systems.³⁸

The data taken into account by the OM are: criminal records. According to the OM, the legislation does not provide for anything beyond this. According to an interviewee from the Ministry, the VOG does not provide insight into police information. Previously, this information was requested separately, but that is no longer the case. In its response, the Ministry states that the then-minister made the policy decision to no longer conduct checks in police systems. The KPSM also states in its response that a VOG is a separate process without input from the KPSM.

According to the prison, the information provided about the applicant for the purpose of a VOG is too limited. It should encompass more than just a check in judicial systems; it should also include police information. The IGD and the MOT also believe that the judicial data underlying a VOG are insufficient to assess an applicant's suitability to work within the justice sector.

The decision on whether or not to issue a certificate must, in principle, be made by the Minister of Justice (MvJ) within 14 days of the request being submitted. Although the IGD initially indicated during the interview that there was a backlog due to a capacity shortage at the IGD and the OM, a Ministry official stated in a later interview that the backlog in question had been cleared as of June 10, 2025.

³⁷ AB 2013, GT No. 572. Article 23, paragraph 1.

³⁸ Deloitte (2023). Policy Analysis: Data Exchange for VOG Screening in the Kingdom. Final Report. April 26, 2023.

3.2.1.4 Issuance VOG

The VOG is issued by the MvJ. If the investigation into the individual's conduct does not reveal any objections to that person, the Minister issues the requested certificate. In other cases, he refuses to issue the certificate. In the event of a refusal, the person may appeal within 14 days of receiving the notification by filing a complaint with the Court of First Instance. The justice organizations interviewed all indicate that there have been no instances of individuals being appointed to a position following a refusal to issue a VOG. For example, at the OM, if a VOG is not issued, this is discussed by the HR department with the relevant Chief Public Prosecutor and the Attorney General. In such cases, employment cannot commence in accordance with Article 6 of the LMA. The questionnaire submitted by the OM indicates that, at least for the years 2022 through 2024, all new staff have submitted a VOG. The other organizations surveyed did not provide figures.

The organizations handle the option mentioned in the recruitment policy — to hire staff before the screening (VOG) is completed — in various ways. For example, the prison has indicated that it has made use of this option, despite the potential risks involved. This is due to the significant capacity shortage. The MOT states that individuals cannot begin working at the MOT until the results of the VOG are known. The J&IS notes that if a VOG is not obtained on time, the decision is still made to allow the individual to start based on capacity considerations. This is then noted in the employment contract. If the VOG is negative, the individual is subsequently removed from the position.

3.2.2 Security Screenings

Criterion:

It is prohibited to assign a person to a position of confidence unless the Minister has previously declared, on the basis of a security screening conducted by the service, that there are no objections to the person's performance of that function from the perspective of the continued existence of the democratic legal order, the integrity of public administration, or the security or other compelling interests of Sint Maarten.

The Minister shall conduct a renewed security screening every five years with respect to persons holding a position of confidence, and on an ad hoc basis if facts or circumstances give him cause to do so.

3.2.2.1 Security Screening: General

Justice personnel in a position of confidence require a higher level of screening than a VOG due to the (sensitive) nature of the position. This is done through a security screening. If the position is listed in the appendix, a screening is always requested by the relevant organization and is always conducted by the VDSM, according to all interviewees.

The security screening process consists of a request, the execution of the security screening, and the issuance of a VGB.

3.2.2.2 Request Security Screening

The National Decree on Positions of Confidence entered into force on April 20, 2012, and the VDSM has been conducting security screenings based on it ever since. However, this meant that at the time of its entry into force, individuals were already working in positions classified as positions of confidence. The VDSM notes that at the time, it was particularly important for the VDSM to inform employers and those involved about positions of confidence and the importance

of a security screening, which it did. Since then, the backlog with regards to existing staff has been tackled. However, a number of security screenings still need to be conducted in this context.

General informational meetings organized by the VDSM on the execution of security screenings are currently — years later — only held at the management level within organizations. The most recent meeting took place in March 2025 with the Secretaries-General of the various Ministries. The Secretary-General of Justice has designated security screenings as a priority. The report by the Audit Chamber on security screenings within the government also garnered significant attention.³⁹ Furthermore, the VDSM makes information available via its website regarding the security screening procedure, as well as topics such as travel abroad and cyber threats.

The VDSM emphasizes that positions are designated as positions of confidence only if the position could pose a danger or risk to the continuation of the democratic legal order, the integrity of public administration, or the security or other vital interests of Sint Maarten.

The various justice organizations indicate that job postings for positions that are also designated as positions of confidence must state that a security screening will be conducted by the VDSM. The VDSM also requests that organizations communicate this in advance.

Once the application and selection process is complete, the employer submits the application for the selected candidate, including the start date of employment. The security screening must be completed before the candidate's start date. Following the employer's application, the selected candidate must complete the (online) "Personal Data Declaration" form.

3.2.2.3 Execution Security Screening: Role of VDSM

Security Screening

The VDSM states that the basic principle is that organizations themselves are responsible for ensuring that individuals act with integrity and for taking their own measures to promote this. A security screening requires an in-depth look into a person's life and infringes upon their privacy; therefore, it must not and cannot be taken lightly. In addition, the VDSM must also take into account its capacity to execute security screenings. The processing time for a security screening is on average 8 weeks and may be extended by a maximum of four weeks. According to the VDSM, this processing time is generally met.

According to Article 5 of the National Decree on Positions of Confidence, the security screening must focus exclusively on the five types of data specified therein, including judicial data, police data, and specific data and intelligence. The VDSM states that it always attempts to verify data from multiple sources whenever possible.

For the purposes of the security screening, individuals are required to apply for a VOG (Article 5(a)) in the country where they reside. One of the biggest challenges the VDSM faces involves requesting data from the OM. The VDSM's requests for information are forwarded by the OM to the Office of the Attorney General in Curaçao for processing. However, changes made on Sint Maarten are not always processed in a timely manner in the systems on Curaçao. This issue has been discussed with the OM. According to the VDSM, the OM has indicated that matters related to this process are being addressed. Depending on the target group, the VDSM also adapts its field research methods for gathering further data and intelligence (Article 5(c), (d), and (e)). For example, interviewing justice personnel sometimes requires different questioning techniques to gather the desired information.

³⁹ Court of Audit, (2014). *Baseline Study Sint Maarten. State of Affairs Institutional Integrity Management 2014.*

Repeat security screening

According to legislation and regulations, a repeat security screening for a person in a position of confidence must take place every five years. The VDSM takes the initiative to send reminders about this to all organizations. Sometimes, the individuals in positions of confidence also take the initiative themselves for a repeat screening. Ideally, the VDSM would like to see organizations take more responsibility for this themselves. The MOT believes that the VDSM should retain control in this matter. In practice, the five-year deadline is exceeded. This is due to a lack of capacity at the VDSM.

3.2.2.4 Issuance Certificate of No Objection

The Minister of General Affairs is informed of the results of a security screening. If the result is positive, a VGB is issued. In the event of a refusal to issue a VGB, the individual is first notified of the intention to refuse. This gives the individual the opportunity to withdraw, according to the VDSM. The VDSM also indicates that most refusals concern security screenings in the B and C categories. Individuals have six weeks to file an objection in the event of a refusal.

The justice organizations interviewed all indicate that there have been no instances of individuals being appointed to a position or remaining in a position following a refusal of a VGB.

3.2.3 Approach to required VOGs and/or Security Screenings by the organizations

Criterion:

A certificate of good conduct is requested from all prospective justice personnel before they are appointed and, if applicable, a security screening is conducted.

All justice personnel in positions of trust are rescreened every five years.

All justice organizations indicate that they make use of a VOG and/or a security screening where required. In addition to these measures, a number of organizations also have other (statutory) screening measures in place, such as a background check and background checks, as part of their recruitment and selection process. These are also discussed below to the extent relevant. Applicants are not informed by the relevant organizations if there is a deviation from existing legal procedures during the application and selection process.

3.2.3.1 KPSM

Interviewees from the KPSM indicate that, as part of the screening process and in accordance with legislation and regulations (Article 13(1) of the Legal Status Decree), a background check and a home visit (environment check) are always conducted at the applicant's (aspiring candidate) residence. The background check is conducted by the KPSM's "info-organization", under the responsibility of the HR department. The role of management in the screening process is to provide information and monitor the process. In addition to these measures, a VOG is submitted, and if applicable, a VGB is issued. During the application and selection process, candidates are informed verbally and in writing about the screening, according to the KPSM.

According to the KPSM, security screenings are executed by the VDSM based on relevant legislation and regulations. In addition to the national decree on positions of confidence, the KPSM, together with the VDSM, has drawn up a protocol classifying positions within the KPSM (A, B, or C level positions of confidence).³⁸ Security screenings and rescreenings are generally executed. On rare occasions, delays may occur during the security screening process. If this happens, the VDSM always communicates this. According to the KPSM, they experience relatively few problems with the screening of personnel. For example, the KPSM is satisfied with the quality and reliability of the security screening. This is reportedly due in part to the fact that

the VDSM is part of the Intelligence Center Sint Maarten (ICSM) and has access to the available information, according to the KPSM.

Furthermore, the KPSM is concerned about the screening of personnel at other organizations, given the importance of this for mitigating security and integrity risks within the justice chain.

Follow-up screenings are executed, including for the Chief of Police. The VDSM realizes this through the list of positions of confidence established in consultation with the KPSM.

3.2.3.2 Security screenings Coast Guard

At the Coast Guard, candidates are informed about the screening process. As part of the Coast Guard's application and selection process, a VOG must be submitted and, if applicable, a VGB must be issued. A home visit is also conducted for applicants.

For certain positions within the Coast Guard, a security screening must be executed. According to the Coast Guard, individuals cannot be hired until the security screening is completed. In the current situation, however, as previously indicated, there are personnel in training for whom a security screening cannot be executed for the time being. This can lead to significant integrity and security risks, according to interviewees. As previously indicated, the security screenings by the VDSM were temporarily put "on hold," and the Coast Guard's new function book first had to be approved.

As noted earlier, the VDSM does not conduct repeat security screenings for existing Coast Guard personnel.

3.2.3.3 OM

The OM states that its screening is (legally) limited to issuing a VOG for new personnel. This is despite the fact that in some cases (certain positions), the OM considers a more in-depth screening desirable. However, the actual procedure for screening new personnel does not deviate from the relevant laws and regulations, according to the OM.

As previously indicated, there are no positions of confidence at the OM (Sint Maarten), so repeat security screenings are not required.

3.2.3.4 Prison

In addition to their application and selection process, prison management verbally requests the KPSM to conduct a background check once someone has applied to the prison. The prison indicates that candidates are not informed of this. Potential ties to gangs is one of the high-risk aspects that, according to the prison, must be investigated, as the pool of potential applicants consists primarily of young adults. The outcome of this investigation is communicated verbally by the Chief of Police to the prison director. The prison and the KPSM are aware that this is an informal procedure for which there is no legal basis. Therefore, according to both organizations, no substantive police information is provided. Instead, a red flag/green flag system is used. Red indicates a serious criminal history. Green indicates no criminal history or a minor one. Additionally, applicants are asked to submit a VOG.

In response to the above, the prison adds that a background check is not always requested from the KPSM. According to the director, this has not occurred in the past five years and that this practice dates back to earlier years.

Only the position of prison director is a position of confidence and, as such, is subject to a security screening. The security screening has been executed for the current acting director. A repeat screening has not yet been executed. The prison indicates, however, that it is desirable to also categorize other management positions, for example section heads, as such given the nature of

the roles. This is especially necessary with the introduction of the new function book, which has created new positions. The candidate is asked to submit a Certificate of Good Conduct (VOG).

3.2.3.5 IGD

As previously indicated, appointment as a police officer (in this case, border control officer) is only possible if, based on an investigation initiated by the Minister (criminal records and police data of the individual concerned by the Criminal Intelligence Service and Info-Unit) into the individual's reliability and suitability, there appear to be no objections to the appointment. This does not apply if the position involves a position of confidence. According to the IGD, however, the screening process is the same across the board for IGD staff, meaning that no distinction is made between administrative staff and police officers (border control). In this context, the IGD has the Immigration Research Center (IRC) conduct a background check on applicants at the time they apply. According to the IGD, the applicant's privacy is protected by the fact that no (police) information is provided by the IRC to the IGD. The IRC uses the so-called traffic light model. This means that the person is labeled red, green, or orange. Orange means there is a problem, but that it can in principle be excused; green means there are no problems; and red means a "no go." Later in the process, a VOG is requested from the applicant.

The head of the IGD holds a Category A position of confidence and has undergone a security screening as such. Security screenings still need to be executed for existing personnel, and the backlog will be tackled. The plan is to begin the security screenings with the current section heads and then proceed with the "employees" currently on staff. Individuals working in joint teams will also be given priority for security screening, according to the IGD.

In response, the Ministry states that, given the large number of unfilled managerial positions within the IGD and the Ministry's budgetary constraints, it is unclear when the screening process for current IGD staff can begin.

The IGD notes that the process of filling out the online form as part of a security screening application is perceived as not user-friendly. As a result, existing personnel, who are currently undergoing the screening process as part of the effort to close the backlog, sometimes temporarily drop out of the process. This has been discussed with the VDSM. The VDSM indicated that if there are problems with the online process, individuals can instead pick up a copy of the forms at the VDSM office. However, this poses an obstacle for people, causing them to temporarily drop out as well, according to the IGD. Ultimately, IGD staff members will have to complete the process once all positions within the IGD have been designated as positions of confidence.

No repeat screenings have yet been executed for the IGD.

3.2.3.6 National Detectives

In addition to the aforementioned application and selection process, which involves requesting a VOG from the applicant, the LRS also conducts a background check on the applicant within its own systems (Criminal Intelligence Team (TCI)) as part of its screening process. According to the LRS, applicants are informed that a background check will take place as part of the application and selection process. This is done in the interest of transparency. The LRS conducts the background check for the purpose of its own decision-making regarding the applicant. The public prosecutor responsible for the TCI determines what information is disclosed in the form of an official report. This is done based on guidelines from the PG titled "Provision of Information," according to the LRS.

All positions within the LRS are classified as A-level security positions. The LRS states that all personnel have undergone an initial security screening. Individuals may not assume the position until the security screening has been completed. As part of an A-level security screening, the VDSM is authorized to conduct an in-depth review of individuals' backgrounds. If necessary, the VDSM requests additional information. Applicants and current staff are expected to cooperate with this process. The VDSM also consults the TCI for information. According to the LRS, the security screening is sufficiently comprehensive. The LRS is therefore generally satisfied with the security screening and has confidence in it. Screening applicants from abroad, however, is complicated and a challenge. According to the LRS, it is difficult for the VDSM to obtain information from certain countries.

LRS personnel undergo a repeat security screening every five years. The VDSM notifies the LRS when a repeat screening has to be conducted. According to the LRS, to date, there has been no instance where personnel failed to undergo a repeat screening. However, it does occasionally happen that it takes longer than five years for the repeat screening to take place. The LRS believes this is due to a capacity shortage at the VDSM.

Furthermore, based on the "Code of Conduct for the Sint Maarten National Detectives 2019," personnel are required to report changes in personal circumstances (engaging in secondary employment, financial well-being, contacts) to management. This is due to potential conflicts of interest.

3.2.3.7 JI&S

As previously indicated, there are no positions of confidence at JI&S. During the application process, applicants are asked to request a VOG in the country where they reside. If the VOG is not obtained in time, the decision may still be made to allow the person to start work based on capacity considerations. This is then noted in the employment contract.

3.2.3.8 MOT

The screening of new personnel requires to a VOG or a security screening to take place as part of the application and selection process. The MOT deviates from existing legal procedures during the application and selection process by informally inquiring about applicants within its own network as part of its screening. This is due to the sensitive information that the MOT holds and manages in its records, according to the MOT.

The position of MOT Director is a position of confidence, and the Director has undergone a security clearance and has since also undergone a repeat screening. The MOT believes that more positions at the MOT should be eligible for a security screening. This is because the MOT handles sensitive information from service providers. Therefore, according to the MOT, it is important that a reassessment of positions of confidence take place.

4. Analysis, Conclusion, and Recommendations

4.1. Analysis

4.1.1 Introduction

In this inspection, the Council assessed the extent to which individuals who work or wish to work as civil servants within the justice sector are (re)screened in accordance with legislation and regulations. Based on the findings in Chapter 3, this chapter presents an analysis, conclusions, and answers to the sub-questions and the central question. At the end of the chapter, the Council makes four recommendations.

The Council identifies potential bottlenecks (i.e., sub-question 3) in both the legal framework and policy (sub-question 1; section 4.1.2) and in screening in practice (sub-question 2; section 4.1.3).

4.1.2 Legal framework and policy

Sub-question 1: *What does the legislation and regulations regarding the (re)screening of justice personnel look like?*

Legislation and regulations

VOG and security screenings

Although the term “screening” is not used as such in legislation and regulations, they do provide a framework regarding the VOG and security screenings to promote the integrity of new and existing staff. Requirements are set for the (ethical) conduct of staff, including in Article 6 of the LMA. This article refers to the VOG and the security screening as measures to ensure good moral character. The provisions in the legal status decrees for personnel also apply. The screening of personnel through a VOG and/or security screening is largely determined by the legislation and regulations governing the legal status of personnel. This forms the basis for conducting the security screening. However, it is not sufficient in itself to be able to have a security screening executed exclusively by the VDSM. The positions must also be listed in the appendix to the national decree on positions of confidence in order to actually qualify for a security screening. The Council concludes that the screening procedure for the justice organizations covered by this inspection, with the exception of the Coast Guard, is thus legally regulated. The measures involving a VOG and/or security screening are taken by the various justice organizations to mitigate risks and promote integrity within the organization.

The Council notes in this inspection that, as part of the screening of new justice personnel, individuals are subject to at least a VOG requirement. For all organizations (except J&IS), submitting a VOG is legally mandatory, and it is also a requirement of the justice organizations that new personnel submit one. Justice personnel who also hold a position of confidence are legally required to undergo a security screening. A bottleneck is the completeness of the appendix to the national decree on positions of confidence (see below).

Furthermore, the legal framework also ensures that after an appointment, or for existing staff, screenings continue to take place to (continue to) limit risks (rescreening). However, rescreening of existing personnel is only required every five years and only in the case of positions of confidence. A bottleneck is the lack of capacity at the VDSM, which causes this deadline to be exceeded.

Coast Guard

Although the National Decree on the Legal Status of the Coast Guard stipulates that a security screening must be conducted with respect to the individual concerned, none of the Coast Guard's positions are listed as positions of confidence in the decree. Consequently, none of these positions can be (re)screened by the VDSM, as there is no legal basis for doing so. The Council finds it concerning that there is no (legal) basis for the VDSM to screen new and existing Coast Guard personnel. This state of affairs entails high risks for the organization. The Council further believes that it is appropriate that the (temporary) cooperation agreements have been terminated, given that this deviating practice is contrary to the law. The statements on this matter in the cooperation document are therefore incorrect. In this regard, the Council made (part of) Recommendation 1.

Furthermore, the new justice function book requires prompt follow-up actions to enable the necessary security screenings to be conducted for the changes regarding certain positions. The fact that changes have been made to the positions in the new function book at a number of organizations means, in practical terms, that certain positions still need to be included in the appendix. Work is currently underway on this. Until then, this results in the (legally speaking) inadmissibility and impossibility of conducting security screenings, even though these are necessary. Organizations do not always agree with what they consider to be the sometimes limited designation of certain positions as positions of trust (whether or not they should be designated as such).

The function books of the Ministry and the Coast Guard have now been approved. According to the Council, it is now therefore important to ensure that the National Decree on Positions of Confidence is updated promptly, so that not only the initial security screenings but also the repeat screenings can take place. This also applies to (new) positions at other justice organizations. Furthermore, given the potential risks, the Council believes it is important to implement mitigating measures in the interim period until the update is completed, in order to limit the risks. In this context, the Council has formulated Recommendation 2.

Data exchange

To increase the reliability of a screening, it is important that authorities have access to judicial data on a person when conducting an assessment in the context of a VOG. This should also apply to individuals applying for a position within the Kingdom from another country. The absence of data poses risks to security and integrity. Although the inspection shows that, in practice, criminal records are exchanged for the purpose of a VOG, the Council considers it necessary to establish a legal basis for the full and reciprocal provision and use of criminal records. In this context, the Council has formulated Recommendation 3.

Policy

The Council notes that, where applicable, the various organizations follow the guidelines outlined in the handbook and intake policy during the application and selection process. The J&IS has its own policy on this matter. The Council notes that the VOG is included as a screening measure in the intake policy and the handbook, but the security screening is not. The Council finds that government policy lacks a detailed definition of the concept of screening, the security screening,

and their place within the application and selection process. The Council has observed that not all organizations handle the screening process in the same way and apply their own procedures, which are not always in accordance with the relevant laws and regulations. The Council also notes that the Ministry does not make full use of all available options when assessing the VOG. For example, police records are not taken into account.

The Council considers it important that the screening of personnel takes place in a consistent and systematic manner and within the legal framework. This also prevents arbitrariness. Focusing on the concept and ensuring its uniform implementation within the policy framework may contribute to this. In this context, the Council has formulated Recommendation 1.

Screening is the final step in the internal application and selection process, and the government must design its policy in such a way that risks are reduced or eliminated. This is achieved by taking the necessary organizational measures.

Sub-question 2: *What procedures are used by justice organizations in practice for the (re)screening of civil servants?*

4.1.3 Screening in practice

The Council has determined that the procedures for issuing a VOG and conducting a security screening are legally established. These have not (yet) been further detailed internally by the justice organizations. The OM is currently working on this with regard to the VOG. In addition, a number of organizations (KPSM, MOT, prison, and IGD) deviate from the existing statutory procedures during the application and selection process (see below).

The screening (VOG and/or VGB) is generally conducted in a timely manner in accordance with applicable procedures. However, there can sometimes be delays in the issuance of a VOG. As a result, in the past, individuals have been hired (under certain conditions) before the screening was completed. Even though this practice is in line with the hiring policy, the Council considers this approach risky because no assessment has yet been made regarding the person's dependability. However, based on this inspection, it was not found at any of the organizations that applicants or existing staff had been hired or remained employed following a negative screening result. The Council notes that no file review was conducted as part of this inspection.

The Council has determined that the procedure of the prison, querying the KPSM as a screening measure during the application and selection process, is an informal procedure that lacks a legal basis. Furthermore, the screening by the IGD's IRC also deviates in part. The Council considers it undesirable for the police and the IRC to provide a signal (not police data) regarding applicants where this is not applicable. The Council emphasizes that applicants have a right to privacy. In addition, gathering information through informal networks cannot be considered an official source. The legitimacy and reliability of information gathered in this manner are not guaranteed, and assessing someone based on this is therefore, at the very least, undesirable. Moreover, applicants are not informed about this, have not given their consent, and are unaware of any legal remedies. Although the Council understands the perceived need for this, it emphasizes that a formal legal framework is the only appropriate way to proceed and that this can prevent the aforementioned practice. A solution in line with the law and potential policies to mitigate this — including in the interim — must therefore be found. The Council has also addressed this in Recommendation 1.

Certificate of Good Conduct

The Council has also noted that all organizations require at least a VOG for the appointment of justice personnel. However, most organizations currently question the added value that a VOG provides, due to the type of data on which it is currently based. The general consensus is that it often provides insufficient insight into applicants' backgrounds. This is because the investigation is limited to the procedure of requesting judicial data and does not include police data or information regarding other personal behaviors and circumstances. This is despite the scope provided for this in legislation, regulations, and policy. The discrepancy between police records in current and former places of residence or stay (Bonaire, St. Eustatius, Saba, St. Maarten, Curaçao, and the Netherlands) and the Public Prosecution Service's central registry can also pose significant risks. As a result, some organizations deviate from existing screening procedures and deal with this in a creative manner. Although the Council can somewhat understand that organizations devise practical solutions to obtain more relevant information given the potential risks, the Council believes that this also entails certain (integrity) risks for the organization. Although a number of organizations argue that the lack of the aforementioned data is perceived as unacceptable due to the potential security and integrity risks they face, everyone must comply with the law, including organizations. The Council has also addressed the foregoing in Recommendation 1.

Security screenings

In practice, not all positions of confidence within the various justice organizations are screened in accordance with legal requirements and procedures. At the KPSM, there are existing staff members who have not yet undergone a security screening. This is partly because positions of confidence had to be determined by the VDSM in consultation with the head of the department, and partly due to the VDSM's capacity constraints in conducting security screenings. Although the KPSM has already identified the positions of confidence, there are still personnel who must undergo a security screening. This is an ongoing process. As for the IGD, the process of identifying positions of confidence only began in 2024 and has yet to be completed. Furthermore, a legal solution must still be found — as previously indicated — for (repeat) security screenings of Coast Guard personnel.

The Council is of the opinion that security screenings for the aforementioned organizations must be conducted in accordance with the law as soon as possible. In this context, the Council has formulated Recommendation 4.

The Council finds that organizations where a security screening is part of the screening procedure are generally satisfied with this procedure.

The Council notes that a repeat screening does not take place at these organizations unless the position involves a position of confidence. For a few individuals, this screening has yet to take place. The Council believes that this should be done every five years, as required by law. In the Council's view, the failure to conduct and standardize security screenings and repeat screenings where necessary and required entails risks such as reputational damage and the leaking of confidential information by staff who lack integrity. The Council believes that more attention must be paid to this. This is also to ensure the integrity of the organizations can be safeguarded. After all, the provision was not created without reason.

4.2 Conclusion

Main question: *To what extent are individuals who work or wish to work as civil servants within the justice sector (re)screened in accordance with legislation and regulations?*

The inspection reveals that individuals who work or wish to work as civil servants within the justice sector are (re)screened in part in accordance with legislation and regulations. All organizations comply with the (legal) requirement for a VOG. However, not all organizations adhere to the legal procedures when gathering information during the screening of personnel. Greater attention must be paid to this by bringing such practices into line with the legal procedures. Action must be taken as soon as possible to update legislation and policy for the Coast Guard, the IGD, and the KPSM. This is to ensure that their personnel, who are also required to undergo a (repeat) security screening, receive when necessary. The Council highlights the necessary changes to legislation and regulations regarding security screenings and the designation of positions of confidence within the Coast Guard. The Council also notes the backlog that still needs to be addressed by the IGD and the KPSM regarding the execution of security screenings for personnel.

The justice chain is one of the highest-risk chains and is responsible for enforcing the law. The Council believes that, for this reason, organizations and the minister must pay greater attention to personnel screening and compliance with legislation and regulations. If this is lacking or insufficient, it undermines not only the integrity of the chain but also public trust in the justice system. The Council has therefore formulated a number of recommendations for improvement in the context of this inspection.

4. 3 Recommendations

Through its inspection, the Council has provided insight into the screening of justice personnel. The Council has identified a number of issues in this regard and is making four recommendations to the Minister of Justice for improvement:

1. Bring the current policies, procedures, and existing deviating practices for the screening of justice personnel at the organizations into compliance with legislation and regulations.
2. Assess — in addition to the Coast Guard — the extent to which there are still high-risk positions within justice organizations that must be designated as positions of confidence and complete this process. As work is being done towards completion, also focus on mitigating measures to limit risks as much as possible.
3. To enhance the reliability of a VOG, encourage the necessary laws and regulations for the exchange of judicial data within the Kingdom to be amended or established where necessary.
4. Ensure that the required (repeat) security screenings for justice personnel in positions of confidence are conducted as soon as possible.

Appendix 1. Legal Framework

This appendix provides a brief overview of the relevant laws and regulations.

Laws and Regulations

- *Kingdom Act on the Police of Curaçao, of Sint Maarten, and of Bonaire, Sint Eustatius, and Saba*⁴⁰
- *Kingdom Act on the Coast Guard for Aruba, Curaçao, and Sint Maarten, as well as for the public entities of Bonaire, Sint Eustatius, and Saba*⁴¹ ;
- *Kingdom Act on the Public Prosecutor's Offices of Curaçao, Sint Maarten, and Bonaire, St. Eustatius, and Saba*⁴²
- *National Ordinance on Substantive Civil Service Law*⁴³ ;
- *National Ordinance on the National Security Service*⁴⁴ ;
- *National Ordinance on Police Data*⁴⁵
- *National Ordinance on Judicial Documentation and Certificates of Good Conduct*⁴⁶ ;
- *National Ordinance containing rules regarding the legal status of civil servants of Sint Maarten employed by the Coast Guard for Aruba, Curaçao, and Sint Maarten, as well as for the public entities of Bonaire, Sint Eustatius, and Saba*⁴⁷
- *National Decree containing general measures, dated February 21, 2012, designating positions of confidence and establishing rules regarding the manner in which security screenings are executed*⁴⁸ ;
- *National Decree containing general measures of August 4, 2014, amending the National Decree on the designation of positions of confidence and the execution of security screenings in connection with the extension of the transitional judicial period*⁴⁹ ;
- *National Decree containing general measures, dated January 27, 2005, implementing Article 4, Article 5, paragraph 3, and Article 7, paragraph 2, of the National Ordinance on the Legal Status of the Coast Guard*^{50, 51} ;
- *National Decree containing general measures, dated December 22, 2023, establishing rules regarding the legal status of police officers (Legal Status Decree for Police Personnel)*⁵² .
- *National Decree, containing general measures, of March 7, 2023, amending and supplementing the appendix to the National Decree on the designation of positions of confidence and security screenings.*⁵³
- *Ministerial Regulation implementing Article 12, paragraph 1, subparagraph b, and Article 13 of the National Ordinance on Judicial Documentation and Certificates of Good Conduct.*

⁴⁰ BWBR0028079

⁴¹ Stb. 2010/388.

⁴² BWBR0028072

⁴³ AB 2019, no. 24.

⁴⁴ AB 2010, GT No. 4

⁴⁵ AB 2010, GT No. 61

⁴⁶ AB 2013, GT No. 572

⁴⁷ AB 2013, GT No. 659

⁴⁸ AB 2012, no. 9.

⁴⁹ AB 2014, No. 57

⁵⁰ AB 2013, No. 473.

⁵¹ National Decree containing general measures, dated December 19, 2024, amending the annex to the National Decree containing general measures on the legal status of the Coast Guard, implementing Article 4, Article 5, paragraph 3, and Article 7, paragraph 2, of the National Ordinance on the legal status of the Coast Guard, AB 2024, no. 43.

⁵² AB 2023, No. 66.

⁵³ AB 2023, No. 13

Appendix 2. Positions of Confidence at the Ministry of Justice

Advocate General
Secretary General
Chief of Staff to the Minister of Justice
Secretary of the Executive Office
Head of the Judicial Affairs Department
Chief of the Sint Maarten Police Force
Commissioners of the Sint Maarten Police Force in charge of criminal investigations
Wiretap Unit Staff Member
Positions within the Sint Maarten Police Force, subject to assessment by the Chief of the Sint Maarten Police Force in consultation with the Head of the Service, where it can reasonably be expected that, in the performance of their duties, the employee will come into contact with information that could undermine the continued existence of the democratic legal order, the integrity of public administration, the security, or the vital interests of Sint Maarten.
Head of the Prison and Detention Center
Head of the Immigration and Naturalization Service
Positions at the Immigration and Naturalization Service, to be assessed by the Head of the Immigration and Naturalization Service in consultation with the head of the Service, where it can reasonably be expected that in the performance of their duties, the employee comes into contact or will come into contact with information that could undermine the survival of the democratic legal order, the integrity of public administration, the security, or the vital interests of Sint Maarten.
National Coordinator for the Immigration Chain
All positions at the National Detectives
Head of Customs
Head of the Financial Intelligence Unit

Colophon

Law Enforcement Council

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