

***Recommendation from the Council for the Administration of Criminal Justice and
Protection of Juveniles***
- Summary -

Legislative Proposal Suspended Sentence

Recommendation to the Dutch State Secretary of Justice, dated 22 April 2009

The draft legislative amendment is intended to stimulate the use of the suspended prison sentence under special conditions, especially because the short-term prison sentence does not contribute much to behavioural change. The purpose of setting special conditions is to bring about a change in the behaviour of the sentenced person. This may lead to a reduction in recidivism. In addition, the special conditions that can be set as part of the *suspended sentence*, have been adjusted to the conditions that can be set as part of the *release on parole*.

To provide more clarity about the possible conditions to be imposed these are explicitly included in the law. The powers of the Public Prosecutor in the case of non-compliance with the conditions are also laid down in the law. Furthermore, the legislative proposal is related to the cancellation of the training order as a punishment in itself and its inclusion in the suspended sentence.

The Council is of the opinion that the inclusion of the list of possible conditions in the Act will provide more clarity about the contents of the conditions. This is commendable from the point of view of legal certainty. The clear and effective proceedings in the case of non-compliance with the conditions strengthens the deterrent effect of a possible execution of the suspended sentence. This underlines the sanction element of the suspended sentence, also because of the possibility of far-reaching or strict conditions.

The Council agrees to the objectives of the proposal, but does not expect that the proposed legislative amendment will in itself lead to a wider application of the suspended sentence, nor that the underlying objective of reducing recidivism will be achieved. In the first place, the legislative change will hardly lead to any substantial reform as regards the conditions to be imposed: almost all conditions can already be imposed under the current laws and regulations. In the second place, the extent of the application and the effectiveness of the special conditions will strongly depend on the implementation by the probation and aftercare services and the Public Prosecutor.

New is the condition for foreign nationals who have an obligation to leave the Netherlands pursuant to the Aliens Act 2000. Similar to the release on parole, the condition can be imposed on them that they leave the Netherlands and do not return. According to the Council, this condition has no added value as regards the decision already taken pursuant to the Aliens Act and will, therefore, propose the State Secretary to reconsider this as part of the suspended sentence.

In the legislative proposal the probation and aftercare responsibilities have been grouped under supervision. The Council stresses the need to emphasize the guiding and supporting role of the probation and aftercare service.

Concerning the procedures of the Public Prosecutor, the Council points out that policy should be developed, not only to be able to act quickly in the event of non-compliance with the condition, but also to be able to act adequately, i.e. on the basis of a careful consideration of the seriousness of the offence.