

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

Home Detention, Repeated
(*Thuisdetentie in de herhaling*)

Recommendation to the Dutch State Secretary of Justice, dated September 29, 2009

The Minister of Justice has presented a draft legislative proposal on home detention to the Council for the Administration of Criminal Justice and Protection of Juveniles. The Minister has proposed to regulate home detention in the Penal Institutions Act (*Penitentiare beginselenwet*) as an enforcement modality of a custodial sentence or pre-trial detention. This implies that the sentence or pre-trial detention, respectively, will be enforced, wholly or in part, at a place outside a penitentiary institution, generally in the residence of the detainee concerned.

The Council is favourably inclined towards less far-reaching alternatives for the deprivation of liberty, such as home detention. In spite of this, the Council has serious objections against this draft legislative proposal, because the Council considers it on principle incorrect that a short-term *deprivation* of liberty imposed by the court could be fully converted by an administrative body into a *restriction* of liberty. The difference between a short-term custodial sentence and home detention is so considerable that a custodial sentence cannot be converted into home detention just like that by another body than the court. The Council does, however, endorse the proposal to apply home detention instead of pre-trial detention. Home detention is pre-eminently suitable for this. The Council also endorses the possibility of combining electronic supervision with the enforcement of a community service order.

Home detention is subject to criteria and grounds for exclusion. These should be listed exhaustively in the Act instead of in a Governmental Decree, which is currently the intention.

The Council furthermore recommends the following:

- Formulate clearer rules for the situations in which the detainee is permitted to leave his house;
- Provide possibilities for work and education during home detention;
- Formulate the power to enter the home detainee's house more explicitly;
- Continue benefits during home detention, for instance, a social assistance benefit;
- Regulate the internal legal position in respect of the enforcement of home detention by including the right of complaint and the right of appeal for those who undergo home detention in the Penal Institutions Act.