

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

Temporary leave from the institution

Recommendation to the Dutch State Secretary of Justice, dated 12 February 2010

In this recommendation, the Council expresses its opinion concerning the draft legislative proposal to amend:

- the Code of Criminal Procedure (Sv), the Criminal Code (Sr), the Custodial Institutions Act (Pbw) and the Youth Custodial Institutions (Framework) Act (Bjj), in connection with the termination of the concurrence of regulations with respect to temporary leave from the institution during pre-trial detention, and
- the Code of Criminal Procedure in order to exclude the termination of pre-trial detention of foreign nationals subject to an exclusion order.

The amendment is intended to end the concurrence of regulations concerning temporary leave from the institution during pre-trial detention. It is recommended to only allow temporary leave from the institution due to personal circumstances during the execution of pre-trial detention on the basis of a regulation laid down in penitentiary law. It is further recommended to exclude the possibility of suspending pre-trial detention of foreign nationals subject to an exclusion order and of persons in respect of whom it is certain that they will be transferred or extradited.

The Council agrees with the main lines of the draft legislative proposal and the choice that is made in the proposal. The coexistence of two procedures that allow for temporary leave from the institution during pre-trial detention is undesirable. This legislative proposal constitutes a choice for a principled and substantively correct approach. The Council does make several comments:

- As a result of the proposed amendments to Article 570b Sv and 77j Sr, there would still seem to exist two possibilities for temporary leave from the institution, namely incidental leave and temporary release. The Council recommends avoiding this situation.
- It is important that it is clearly indicated in which cases the director of the institution is authorised to decide and in which cases the selection official is authorised to do so.
- The procedure for applying for temporary leave from the institution has to be structured in such a way that the director of the institution is able to personally weigh the interests, the detainee can be heard and a decision can be made as soon as possible.
- Incidental leave should remain possible for foreign nationals subject to an exclusion order.

*The recommendation can be obtained from the secretariat of the Council
PO Box 30 137
2500 GC The Hague
+31 (0)70 - 36 19 300,
www.rsj.nl*