

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

Pre-trial detention - but differently

Recommendation to the Dutch State Secretary of Security and Justice, dated July 4, 2011

Both the European Union and the Council of Europe have made proposals to reduce the implementation of pre-trial detention in the Member States and to promote the use of alternatives. The Dutch Minister of Security and Justice considers pre-trial detention and the available alternatives an important tool for providing an immediate response to criminal offences. These two developments demand an exploration of the possibilities to achieve the objectives of pre-trial detention by implementing their alternatives more broadly. In this connection, the Council thinks of forms of deprivation of liberty as alternatives to incarceration and of forms of deprivation of liberty that are less drastic than 24-hour detention at a detention centre.

Deprivation of liberty is applied within the context of suspension of pre-trial detention, immediately upon giving the order or at a later moment, under general or any specific conditions. In such cases, the suspect can be placed under supervision and care can be provided.

In this recommendation, the Council deals with the following questions:

- what are the alternatives to pre-trial detention?
- how can these alternatives contribute to the policy pursued for a more decisive implementation of criminal law and, at the same time, reduce pre-trial detention to the bare minimum?

The Council sees sufficient scope to extend this practice introducing conditions that are not implemented very often: electronic supervision, an obligation to report and a security deposit. Night detention is also a form of implementation that deserves strong encouragement as it offers the suspect the opportunity to continue his (legal!) activities such as school and work. Organizational problems in particular obstruct a broader implementation of suspension conditions. One goal may be to engage the probation and aftercare services more and more quickly during the pre-trial phase; more and more timely availability of care and accommodation facilities. Where the implementation of alternatives is not effected due to the lack of standards (for example the deposit based on financial capacity) or a lenient practice (obligation to report, electronic supervision), these can be developed. Alternatives to pre-trial detention can be promoted by means of legislation by:

- making the basic principle 'suspend unless' (Article 493(1) of the Dutch Code of Criminal Procedure) not just apply to juvenile criminal law, but also to adult criminal law;

- including possible alternatives in the law, such as also occurs in the case of suspended sentences (Legislative Proposal Suspended Sentence, amendment Article 14c of the Dutch Criminal Code).

*The recommendation can be obtained from the secretariat of the Council
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