

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

## **Detention Planning**

*Recommendation to the Dutch State Secretary for Security and Justice, dated 10 February 2012*

In his letter of 8 November 2011 to the Lower House of the Dutch Parliament, the State Secretary for Security and Justice outlined the details of his plan for detention planning.

The Council is of the opinion that the fundamental meaning of the new proposals comes down to changing the starting point for granting leave and other privileges from 'yes, unless' to 'no, unless'. After all, each detainee starts in a 'basic level of treatment regime' without privileges and these privileges are only granted to him or her after (and for as long as) he or she shows responsibility and initiative and moreover, granting these privileges serves a specific objective. The Council cannot endorse this 'no, unless' approach. The Council advocates, precisely on the basis of the social reintegration principle, an approach in which the detention phases are characterised in principle by granting more and more privileges. The maxim 'yes, unless' means that the process of social reintegration is carried out by increasing privileges, as long as the detainee complies with the relevant agreements made and conditions set. The 'unless' implies that the privileges could be limited or withdrawn if the detainee does not (yet) appear to be able to handle them and thus the safety of the victim or others comes into play. In the 'yes, unless' approach, the right to privileges in the regime is formulated on a positive basis. A right to privileges in the regime is implicit in the nature and character of the deprivation of liberty and the resultant social reintegration assignment. The proposed policy will be, in the view of the Council, difficult to enforce – both from the viewpoint of treatment and management - and it anticipates that a decrease in the possibilities for social reintegration will lead to a serious risk of increased recidivism.

*Privileges: yes, unless*

- Effective social reintegration of detainees requires a policy of increasing privileges in accordance with the 'yes, unless'-principle. This means that the detainees are granted privileges necessary for social reintegration or care, unless the detainee does not appear to be able to handle these privileges. Gradually allowing increased responsibilities and privileges is principally and functionally part of the organisation of detention, in which the encouragement and stimulation of detainees should be the norm.
- Therefore, there are fundamental objections to a 'no, unless' approach, in which a detainee is only granted privileges after he or she has earned them by good behaviour.

- Precluding certain categories of sentenced persons from detention planning is in violation of the principle of individualisation.
- The argument that a more severe detention regime and a (an even) more restrictive privileges policy meet the interests of victims of crime has, in the opinion of the Council, been insufficiently founded.
- The 'earned privileges principle' is not the right approach to privileges in the context of care and interventions, as it suggests that receiving care and participating in behavioural interventions will make the detainee's stay 'more pleasant', which he or she first has to earn by good behaviour. Care and behavioural interventions should be provided because the detainees need them and not because (or if) this makes him or her feel happy and satisfied.

*A copy of the Recommendation can be obtained on request from the Secretariat of the Council*

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