

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

- Summary -

Draft legislative proposal Amendment of the Custodial Institutions Act (*Penitentiaire beginselenwet*), the Young Offenders' Institutions Act (*Beginselenwet justitiële jeugdinrichtingen*), and various other Acts in connection with the personal contribution towards a stay in a custodial institution (Prisoners' Personal Contribution Towards Their Stay)

Recommendation to the Dutch State Secretary for Security and Justice, dated 7 March 2014

The draft legislative proposal Prisoners' Personal Contribution Towards Their Stay makes it possible to charge a personal contribution of € 16 a day to prisoners and persons detained under a hospital order (*terbeschikkingstelling*) for their stay in a custodial institution and to impose a hire charge on electronically-tagged offenders for an electronic ankle bracelet. In addition, a parental contribution is due to be introduced for the parents of juveniles who are staying in a young offenders' institution.

The Council considers this concept legislative proposal to be counterproductive and advises that it should not be submitted.

There is no substantiation or motivation for changing the current principle of the State paying for the costs of detention. The legislator previously made the deliberate choice to stop possible benefit payments to prisoners *instead of* charging a personal contribution.

The level of the personal contribution and the increases proposed in respect of the Coalition Agreement are also not substantiated in the draft legislative proposal.

Taking into account the target groups as well as the very limited possibilities for prisoners to generate income, the Council considers the draft legislative proposal to be contrary to the principle of resocialisation. The proposed personal contribution amounts to € 112 per week, while prisoners receive no benefit payments and are only able to earn around € 15 per week (persons under a hospital order receive € 33 including pocket money and clothing allowance). This means on balance that debts will be accrued or that existing debts will increase. It should not be forgotten that debts represent a criminogenic factor. Besides the fact that a personal contribution in these circumstances hinders a successful return to society, it also increases the risk of recidivism and in connection with this the risk of reduced safety for society including the related costs.

Considering the fact that this will often involve a build-up of (or increase in) debts, which can be claimed and will have to be repaid over many years, the personal contribution will be experienced as an additional punishment (additional suffering) and this may continue for years *after* the end of the prison sentence. The Council considers this to be contrary to the principle of minimum limitations, which entails the prison sentence itself involving the deprivation or limitation of liberty, but which does not limit the prisoner in his/her lifestyle any more than the situation of detention necessitates.

Furthermore, it appears from the draft legislative proposal that the guilt or the culpability is assumed to represent a legal ground in relation to the costs that society incurs when enforcing the punishment. However, the culpability is a ground for the punishment as such and relates to the offence committed. It is up to the courts to decide whether this should be weighed up against other elements of the punishment. What applies to persons under a hospital order is that the culpability does not relate well with the fact that they have been declared by the courts to be partly or wholly not accountable for their actions.

The draft legislative proposal is lacking an impact analysis, which means that there is no view of the feasibility and the consequences of the proposed measure. The Council is surprised that the draft legislative proposal has nevertheless been put up for consultation. The implementation costs are expected to be high. In 2008 the State Secretary of Justice at the time announced that the Central Judicial Collection Agency (CJIB) charged € 1,570 per case in connection with collection charges. There are expected to be at least 29,000 cases annually. By also taking into account the increased risk of recidivism, it is therefore highly unlikely that the envisaged net proceeds of €60 million can be realised.

Insofar as it has been possible to find out, there is *no* regulation in other countries comparable to the draft legislative proposal. Although a regulation for personal contribution towards a stay in prison exists in Germany, the implementation of that differs to a greater extent from this draft legislative proposal. Denmark had a regulation in the past involving a personal contribution, but that was withdrawn in 1994 because prisoners accrued debts while in detention and those debts subsequently hindered the resocialisation process.

The draft legislative proposal, which includes a parental contribution for juveniles staying in a young offenders' institution, is intended to tie in with the Youth Care Act, but differs from this in important areas (such as the age limit, the special clauses and the proposed level of the contribution). In addition, the Council considers it desirable in connection with the successful return of the juveniles into society to involve the parents with the implementation of the punishment and not to impose any further (financial) thresholds, bearing in mind the travel costs already involved in connection with visits during the detention period.

Electronically-tagged offenders do not stay in an institution and therefore they are able to work or receive benefit payments in order to provide for their cost of living. By charging for the costs of the means of surveillance, the impression is emphasised that requiring a personal contribution is a punishment (additional suffering), which gets in the way of resocialisation and, bearing in mind the increase in the criminogenic factor of the debt, therefore leads to a higher chance of recidivism.

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