

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

Recommendation on the proposed draft legislation making the bringing of prohibited items into custodial institutions a criminal offence

Recommendation to the Dutch Minister of Security and Justice, dated 15 June 2017.

On 15 June 2017 the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles issued a legislative recommendation on making the bringing of prohibited items into custodial institutions a criminal offence. The measure concerns items that are not illegal outside the institution but are prohibited inside, such as mobile telephones.

The Division's advice is in principle positive with regard to the proposed criminalisation under Section 429a, first paragraph of the Dutch Criminal Code (Section I), which deals with bringing into an institution or a ward therein items the possession of which is prohibited in that institution or ward. However, the Division suggests limiting the scope of application to visitors and other persons not related to the institutions such as suppliers and maintenance personnel. In its estimation, penalizing staff and detainees would not be opportune. The regulation applies to penitentiary institutions, forensic psychiatric centres and correctional institutions for juvenile offenders. The Division wishes to know if the regulation will also apply to immigration detention centres, where a more moderate regime is intended. In the Advisory Division's opinion, the following conditions must be met to allow for effective implementation of the law: 1) accessibility of the rules of the institution/ward prohibiting the possession of specific items, 2) cooperation between the Custodial Institutions Agency, police and Public Prosecution Service to ensure optimal law enforcement and 3) sufficient resources for law enforcement. Among other things this means institutions must have sufficient staffing to conduct regular and unannounced inspections of cells and communal spaces such as yards and gyms.

The Division's advice is negative with regard to the proposal under Section 429a, second paragraph, of the Criminal Code (Section I) to expand the scope of the criminal offence to include bringing in (non-prohibited) items in contravention of the applicable procedures laid down in institutional and ward rules. The explanatory memorandum to the legislative proposal cites as an example bringing in a letter containing a prohibited item, whereas bringing in a prohibited item is already a criminal offence under the first paragraph of this section. The Division deems it undesirable to extend the definition of 'prohibited items' to (non-prohibited) items brought in by means contrary to the applicable procedures.

The recommendation (in Dutch) can be downloaded from the RSJ website www.rsj.nl.