

Summary

Advisory report 'Short-term Detention in Focus'

The Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (hereinafter referred to as 'the Council') has issued an advisory report on 'meaningful alternatives to short-term detention'. The Council advises the Minister to strive to reduce the number of short-term detentions and instead stimulate meaningful (or more meaningful) penalties.

Rationale

A vast proportion of detentions in the Netherlands are short-term. About three quarters (74%) of all detentions have a duration of less than three months. This concerns not only short-term prison sentences, but also other modalities such as pre-trial detention and detention as a substitute penalty. The Council believes that the number of short-term detentions must be reduced, and advocates a meaningful, socially relevant and effective response to socially unacceptable behaviour. Such a response should help to redress the distress and disturbance between victim and offender that has been caused by the crime.

An effective response to norm-breaking behaviour is a necessity in any society. Besides, in the case of a serious criminal offence, people will inevitably sometimes have to be imprisoned. This given, however, does not legitimise the large number of short-term detentions in the Netherlands.

Conclusion

Short-term detentions are not very effective and/or meaningful. It offers very limited possibilities for behavioural change and reintegration. In addition, even a short period of detention may cause 'detention damage', like the possible loss of a job, income, or housing and due to the stigma (for the offender and their environment) associated with imprisonment. Furthermore, the risk of recidivism after detention is high and detention is expensive in comparison to alternatives.

In addition to being relatively ineffective, short-term detentions only partially meets the various penal objectives. The deterrent effect of detention is limited and there are only limited opportunities to participate in rehabilitation and reintegration activities during and following a short-term detention. Nor does detention contribute to redress. The penal objective of retaliation is - rightly - met, but meeting this objective alone is insufficient in the opinion of the Council.

Recommendations

The Council advises the Minister to strive to reduce the number of short-term detentions and to stimulate meaningful (or more meaningful) sanctions. This calls for a customised

approach, with each modality requiring a different approach. The Council's recommendations focus on the following three modalities: pre-trial detention, imprisonment (including *zelfmelders*: convicted persons reporting for detention) and detention as a substitute penalty.

Pre-trial detention

- a. Encourage the suspension of pre-trial detention under specific conditions, possibly involving the use of electronic means of supervision.

Alternatives to short-term prison sentences

- b. Reconsider the ban on community service (Section 22b of the Criminal Code), so that judges are able to impose community service where deemed appropriate. In line with this, the Council is not in favour of extending the ban on community service, as included in the Bill on Extension of the Ban on Community Service, and recommends its withdrawal.
- c. The range of special conditions allows judges to attach personalised conditions to a suspended sentence. Therefore, the Council recommends encouraging suspended sanctions.
- d. Include electronic detention as a main sentence in Section 9 of the Criminal Code. Additionally, include in the law the possibility to combine electronic detention with special conditions.
- e. *Zelfmelders* should be eligible for alternatives to short-term detentions if a considerable period of time elapses between the judgement and the actual execution of the prison sentence. The Council recommends exploring the possibilities in this regard.

Reducing detention as a substitute penalty

- f. Before imposing a sanction, have a more frequent and better investigation carried out into which sanction is appropriate and feasible. To that end, seek advice from the probation service more regularly and ask them to more explicitly consider and advise on alternatives. More personalised sanctions can prevent conversion to detention as a substitute penalty.
- g. Improve the execution of community service and the collection of fines, which will help to avoid enforcement of detention as a substitute penalty.
- h. When returning a failed community service, have the probation service attach a recommendation to the judge on an appropriate response.
- i. In addition to substitute detention, include in the law the possibility of substitute community service, so that a fine imposed by the court can be converted into substitute community service.

The advisory report is available on the [website](#) of the Council for the Administration of Criminal Justice and Protection of Juveniles.

