



## Summary

### Advisory report on the use of disciplinary punishments and separation in detention

The Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (hereinafter referred to as the 'RSJ') has, on its own initiative, issued an advisory report in which it reflects on the use of disciplinary punishments and separation in detention. The advisory report sets out what the RSJ believes is necessary to achieve a balanced and careful implementation of the policy on disciplinary punishments and separation.

#### Background

In 2016, the sanctions list (*sanctiekaart*) and the policy framework 'Separation in detention' (*Afzondering in detentie*) came into use, regarding the use of disciplinary punishments and separation in detention. The sanctions list was a guideline consisting of various maximum disciplinary punishments per situation, within the scope of Article 51 of the Custodial Institutions (Framework) Act (*Penitentiaire beginselenwet*). The policy framework focused on the separation policy in detention, regarding both disciplinary punishments and public order measures. The policy framework stated that the object was to reduce the use of (long-term) separation of prisoners.

The sanctions list contained restrictions that were stricter than those in the Custodial Institutions (Framework) Act. Therefore the sanctions list has been reviewed in 2019. As a result, in three situations the sanctions list was extended to the legal possibilities provided for in Article 51 of the Custodial Institutions (Framework) Act. Additionally, an information sheet was added, containing the basic and legal principles to be observed when imposing disciplinary punishments in detention. During this review in 2019, the policy framework 'Separation in detention' was withdrawn.

In July 2021, subsequently, the sanctions list itself was also withdrawn and two changes were made to the information sheet which accompanied the reviewed sanctions list from 2019. The information sheet was issued to the management boards of the penitentiary institutions (PIs). This version of the information sheet (2021) is not publicly available.

The object of the sanctions list and the policy framework 'Separation in detention' was to standardise the policy on disciplinary punishments and separation in the various PIs throughout the Netherlands. The fact that both documents were withdrawn within just several years after implementation asks, in the opinion of the RSJ, for a reconsideration of the disciplinary punishments and separation policy in detention. Hence, the RSJ has taken the initiative to issue this advisory report.

## Conclusions

### *Additional policy necessary on disciplinary punishments and separation*

In this advisory report, the RSJ observed that it is necessary to supplement existing policies through the formulation of additional policy on the use of disciplinary punishments in detention. Both the person-specific approach and the framework set out in the Custodial Institutions (Framework) Act leave a great deal of room for interpretation. It is not clear to the RSJ to what extent underlying legal principles have an effect within the abovementioned policies as this has not been made explicit. While the information sheet (2021) names various legal principles, the RSJ believes that the information provided is not exhaustive, as the resocialisation principle and the principle of minimum restrictions are not named (Article 2 of the Custodial Institutions (Framework) Act). The RSJ believes that these principles should serve as a starting point for the development of additional policy on disciplinary punishments and separation in detention settings. The RSJ is also of the opinion that the public awareness of the information sheet is inadequate, as it is not publicly available.

There are various harmful effects that a prisoner may suffer after being placed in separation, such as psychotic symptoms and symptoms typical of post-traumatic stress disorder and depression. No specific separation policy is currently available, other than as part of the person-specific approach. Therefore, the RSJ advises to develop a separation policy, in which the reduction of separation will be a concrete policy objective. Moreover, there should be worked towards the situation in which separation is no longer used as a disciplinary punishment but solely as a public order measure.

### *The development of indication points for implementation*

In the context of legal uniformity and legal certainty, the RSJ considers it important that PI directors will develop indication points on the use of disciplinary punishments together. When doing so, PI directors should focus on achieving a positive change in the behaviour of prisoners and on preventing adverse effects of detention.

When implementing the separation policy, PI directors should constantly strive to reduce the amount of time prisoners spend in separation, avoiding solitary confinement in all cases. In addition, the RSJ advises PI directors to use more inventive and restorative special conditions when imposing suspended disciplinary punishments.

### *Preconditions*

According to the RSJ, disciplinary punishments and separation in detention should be applied on a person-by-person basis, be accompanied by an adequate underlying reasoning, and be in accordance with the legal principles set out in Article 2 of the Custodial Institutions (Framework) Act and the principles of proportionality, subsidiarity and effectiveness. The RSJ believes that implementation on the basis of these requirements will only be possible once the following preconditions have been met: 1. The role and duties of prison officers have been reviewed, 2. Prison staff have been given further training and education, 3. Availability of a sufficient number of places in specialist detention facilities, and 4. Improvements in the registration, monitoring, analysis and evaluation of disciplinary punishments and separation in detention.



## Recommendations

1. Swiftly develop a policy on disciplinary punishments and separation in detention to supplement existing policies, based on the resocialisation principle and the principle of minimum restrictions (Article 2 of the Custodial Institutions (Framework) Act).  
According to the RSJ, this additional policy must have the objective to reduce the use of separation as a public order measure and to abolish the use of separation as a disciplinary punishment.
2. Ensure that the policy on disciplinary punishments and separation, including the yet to be developed additional policy, are known to everyone concerned with detention practice. Also ensure that it is possible to consult this policy online via official publications.
3. Ensure that the basic principles of proportionality, subsidiarity and effectiveness are set out explicitly in the Custodial Institutions (Framework) Act, in view of Articles 23, 24 and 51-55.
4. Add a greater obligation to state reasons for disciplinary punishments and public order measures that lead to far-reaching restrictions on the freedoms of prisoners to Chapters V and IX of the Custodial Institutions (Framework) Act. This applies to separation in particular.
5. Work together with PI directors to achieve a situation in which separation is only used as a public order measure and not as a disciplinary punishment.
6. Ask PI directors to jointly formulate indication points for the use of disciplinary punishments.
7. To prevent solitary confinement, ask PI directors to put provisions in place for a prisoner in separation to have contact with a behavioural expert on a daily basis, after which the behavioural expert advises the PI director on a daily basis on whether or not separation should be continued.
8. Ask PI directors to focus more on the use of inventive and restorative special conditions (Article 53(2) of the Custodial Institutions (Framework) Act) when imposing suspended disciplinary punishments.
9. Take steps to review the role and duties of prison officers.
10. Ensure that prison managements boards are provided with good-quality (legal) support and that the imposed disciplinary punishments have an adequate underlying reasoning.
11. Invest in training that will enable prison staff to recognise behaviour caused by psychological problems and problems prompted by a slight mental impairment. Ensure that the training provided also improves knowledge of ethnic and intercultural aspects.
12. Ensure that a sufficient number of places are available in specialist facilities like extra care facilities and forensic psychiatric centres for prisoners with psychological problems.
13. Improve the management information system so that it becomes a source of reliable figures. These figures must include not just the number of disciplinary punishments and public order measures imposed, but also the duration of these



punishments and measures, the behaviour that led to their imposition and the form in which they have been imposed.

14. Analyse, monitor and evaluate the number of separations and the reasoning that has led to the separation in order to reduce the number of separations.

You can consult the advisory report on the [website](#) of the Council for the Administration of Criminal Justice and Protection of Juveniles.

