



Summary

Advisory report on the amendments of the Regulations on Model House Rules for Penitentiary Institutions

Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)

On 29 July 2021, the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (*Raad voor Strafrechtstoepassing en Jeugdbescherming*; hereinafter referred to as 'the RSJ') has issued an advisory report on the amendments of the Regulations on Model House Rules for Penitentiary Institutions. In this advisory report, the RSJ discusses the proposed amendments to unsupervised visits in Section 3.8.1 of the Appendix to the Regulations.

Amendments to unsupervised visits

The amendments to unsupervised visits relate to demonstrating a close and long-term relationship with the visitor, the condition of being promoted and a full body and clothing search on the detainee after every unsupervised visit.

Demonstrating a close and long-term relationship with the visitor

The existence of a close and long-term relationship between the detainee and visitor is one of the conditions for receiving unsupervised visits. According to the explanatory notes to the draft regulation, the detainee can prove this relationship with a marriage certificate, a notarial cohabitation contract or an extract from the population register showing that the visitor is registered at the same address. The suggestion is made that this is an exhaustive list. However, according to the regulations and case law of the RSJ Appeals Committee, this is not the case. The RSJ recommends that the explanatory notes to the regulations be amended in such a way that it is clear that the detainee can also prove 'the close and long-term relationship' with a visitor using documents other than the three mentioned and that the list is not exhaustive. In addition, the RSJ recommends that the explanatory notes should state when unsupervised visits can take place, namely for visits by a partner, but also for visits by children and other family members in the family room.

New condition for unsupervised visits: the detainee must have been promoted

The RSJ believes that this condition is in line with the new system of promotion and demotion, which operates on the basic principle that negative behaviour by the detainee that leads to demotion harms order and security in the institution. Based on regulations and case law of the RSJ Appeals Committee, it is already possible to refuse unsupervised visits on the grounds of negative behaviour by the detainee that harms order, peace and security in the institution. Refusal of unsupervised visits due to negative behaviour by the

detainee does not constitute a violation of Article 8 of the ECHR, the right to family life, provided that the refusal is well founded and that other contact with the partner remains possible. A detainee who has been demoted can still apply for supervised visits.

Full body and clothing search after every unsupervised visit

The presence of contraband in penitentiary institutions is a major problem. However, there is no legal requirement for the prison director to conduct body and clothing searches on detainees after every unsupervised visit. According to the RSJ Appeals Committee, systematic body searches may be contrary to Article 3 of the ECHR, which prohibits torture and inhuman or degrading treatment or punishment. Because a body search is a stressful experience, the RSJ is of the opinion that a weighing-up of interests should always take place, in accordance with Section 29(1) of the Custodial Institutions (Framework) Act (*Penitentiaire beginselenwet*). The RSJ recommends that the draft text and explanatory notes to the regulations be amended, for example by adding the words 'in principle'.

The full advisory report (in Dutch) can be consulted on the RSJ website.

