

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

*title* : *Home detention*  
*submitted to* : *The State Secretary for Justice*  
*date* : *6 July 2007*

The Council approves the introduction of home detention as a new form of principal punishment, since it avoids the main disadvantages of a regular custodial sentence. Nevertheless, the Council regrets that offenders sentenced to home detention will not be offered behavioural interventions and treatment, while in some cases such programmes would reduce the chance of re-offending. The new form of punishment does not therefore offer opportunities for improvement. In addition, the Council feels that offenders would benefit from counselling, so that tensions in the home situation can be reduced or obviated. This would not only be beneficial to the offender and his family, but it would also increase the chance that the punishment would be successful. Furthermore, the Council considers it important that those sentenced to home detention be able to continue to take part in the labour process, but the proposed regulation excludes this possibility.

The Council notes that after home detention with electronic surveillance has been introduced as a form of principal punishment, it can no longer be imposed as a special condition for a suspended sentence or when pre-trial detention is suspended. A principal punishment may not as well be imposed as a special condition. A combination of home detention and another principal punishment could have a favourable effect under certain circumstances, for example if community service orders are used to give the offender sentenced to home detention a meaningful way to pass the day. The Council would not condone any combination with a principal punishment involving the loss of liberty, unless the custodial sentence was equal in length to the pre-trial detention already endured. Full combinatory options for custodial sentences and home detention might negate the positive effect of home detention. The Council would like to see home detention used as a special condition to the suspension of pre-trial detention, but for that a legal basis would be necessary once home detention has been implemented as a principal punishment. The Council notes that there is no mention in the proposal of the legal position of offenders sentenced to home detention, and it recommends that this should be rectified. A number of other points remain unclear in the draft legislation proposal. These include:

- the positioning of home detention in the criminal justice system. This calls for decisions *in principle* about retribution, prevention and resocialisation;
- continuation of social welfare benefits during the period of home detention. This calls for further elaboration;
- the exceptional circumstances under which the offender may leave the premises. No procedure has been proposed for leaving the house, leave and temporary release;
- the power to enter a house without the permission of the offender.

The Council assumes that home detention can contribute to a reduction of the pressure on cell capacity, but points out that expectations in this respect need to be moderated.