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**NOTE EQUIVALENT TO AN
OPINION**

PREVENTION

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NOTE EQUIVALENT TO AN OPINION ON THE
SUSPENSION OF PRISON SENTENCES FOR MEDICAL
REASONS

Various AIDS associations have drawn the National AIDS Council's attention to the enforcement of the Law of March 4th 2002¹ and specifically article 10 on persons in custody suffering from severe diseases ; the new stipulations are likely to directly affect inmates with AIDS.

These stipulations, included in article 720-1-1 of the criminal procedure code, enable prison sentences to be suspended for "convicts who are proven to have a life-threatening disease or whose condition is not compatible with continued detention ". Either the judge in charge of the execution of sentences or the regional conditional-release jurisdiction (depending on sentence length or remaining time) can decide to suspend the sentence, if two different medical reports show conclusively that the inmate belongs to one of the situations mentioned above. The issue is brought before the judge either by the inmate (or his/her solicitor) or by the Public Prosecutor; the judge can also make the decision of his own accord. It must be noted that those working with prisoners play an essential part : prison integration and probation services (SPIPs), social workers, prison visitors, association volunteers, prison staff and particularly facility management and health care workers who have a 'right to report'.

For the National AIDS Council, the implementation of suspended sentences for medical reasons is a major progress in the rights of sick prisoners. It had formerly been possible to individualize sentences for health reasons : conditional release, partial discharge, or sentence served in installments. However, conditions for their implementation were rather restrictive and considered mainly as tools for inmates' rehabilitation. Article 10 of the Law of March 4th 2002 henceforth instates flexible sentences specifically designed to deal with health conditions.

The Council considers this to be satisfactory but does however feel that the public Authorities must attend to two crucial points for this new procedure to be truly and efficiently enforced ; France was after all recently found guilty by the European Court of Human Rights².

1 GENUINELY ENFORCING THE LAW : INFORMATION AND RIGHT TO ALERT

The possibilities of suspended sentences offered by article 720-1-1 of the criminal procedure code, one year after its implementation, still do not seem to be widely used by the legal authorities³ and awareness in prison settings is poor. The Council suggests that the public Authorities take steps so that the Law be enforced and live up to the legislator's ambitions.

The modalities of suspended sentences for medical reasons must be extensively circulated not only among inmates but also, considering the social exclusion and lack of family and legal support that some inmates experience, among those who work with them and who must act as relays for the enforcement of the law.

The Council acknowledges the circulars sent by the Ministry of Justice to the Prison Service's local authorities and also the Minister's strong commitment to a true implementation of the law⁴. More generally, the Council considers that all those involved within prison facilities must be included in the enforcement process of this law so that they are able to both inform the inmates and use their right to report to the legal authorities. To this end, the public Authorities must promote the circulation of information to associations

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and public and professional organizations involved in health, welfare and law. The National AIDS Council particularly recommends that the health care professionals in ambulatory care and consultation units be provided with the appropriate guidelines.

Moreover, genuine enforcement of the law means that the legal authorities will have to follow up reports on prisoners' health status and take subsequent legal steps. It is therefore essential that the sick inmates' close friends and relatives and also those who work in daily contact with them, be granted a right to alert the legal authorities, including the possibility of requesting a medical examination for inmates. Only the acknowledgement of such a right, truly compelling for the judge, will enable to deal with dramatic human situations.

2 ADVOCATING EGALITARIAN AND EFFICIENT ENFORCEMENT OF THE LAW : THE MANAGEMENT OF MEDICAL REPORTS

The essential role of medical reports in the enforcement of article 720-1-1 of the criminal procedure code must be emphasized, as the suspension of prison sentences cannot be decided without the conclusive and concordant opinions of two separate experts. The Council suggests that the public Authorities examine certain related difficulties.

In the first place, it must be noted that the terms of the law as regards the inmate's health status are extremely imprecise. In the law's first hypothesis, the detainee's illness must "compromise the vital prognosis " and in the second hypothesis, the condition must be " incompatible with continued detention ". Such notions give free rein to many different interpretations. Without disregarding the many situations related to patients, conditions and to the heterogeneity of custodial facilities, the Council considers advisable to harmonize medical experts' practices in this area. A common framework for analysis seems indispensable for an egalitarian enforcement of the law to the whole country in a field that directly involves public liberties. Work groups designed to define the criteria for suspended sentences could be set up so as to harmonize experts' practices. In anticipation of a national consensus conference they could be implemented in each court of appeal.

In the second place, the issue of the period of time between the two required medical reports is crucial in the case of persons with severe conditions. Instructions must therefore be given so that the medical examinations be carried out very swiftly in order to reach the target set by the law. A period of roughly fifteen days for the complete application process seems reasonable as regards persons who do not have very long to live. That period should be even shorter for the most serious cases, for instance through an emergency procedure.