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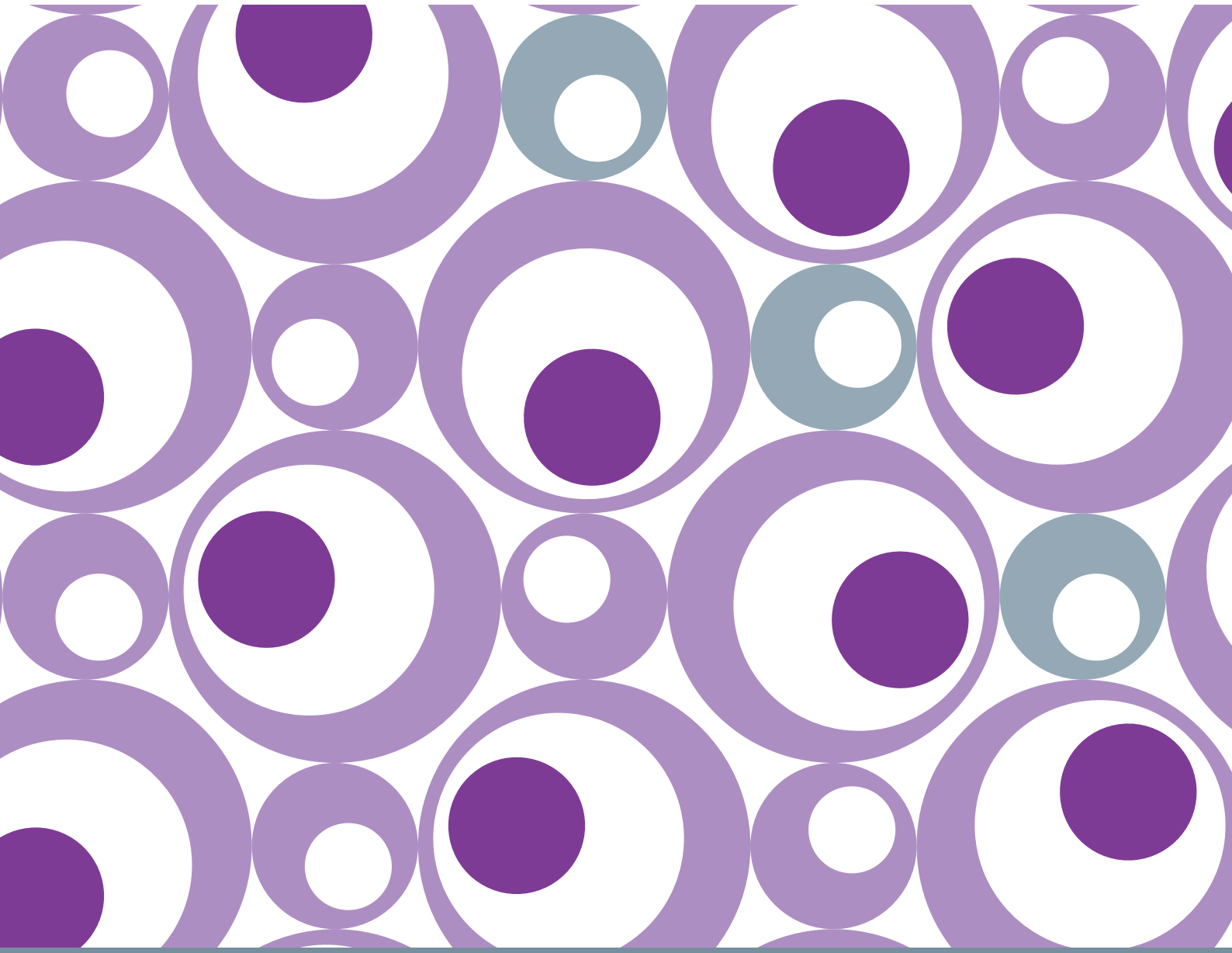

Longer prison sentences for serious violent crime in Sweden

An evaluation of the 2010 sentencing reform

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Summary

Background

In 2010, the Swedish Parliament passed a Bill focused on increasing the severity of the sentences imposed for serious violent offences (prop. 2009/10:147). This led to a number of legislative changes that then came into force on July 1st of the same year. The objective of these changes was to increase the length of the prison sentences imposed for serious crimes of violence and negligent homicide, to increase the degree of variation in the length of sentences imposed and to increase the severity of sanctions for recidivist offences.

The reform involves an addition to Chapter 29, Section 1, Paragraph 2 of the Swedish Penal Code, which states that in assessing the penal value of offences, special consideration should be taken of whether the act involved "a serious attack on a person's life or health or personal security". This addition served to increase the penal value of violent crimes in general, with the Bill in which the legislation was presented to Parliament recommending an increase of twenty to thirty percent. In order to further increase the severity of sentences for the most serious instances of aggravated assault, the sentencing scale for aggravated assault was differentiated into two parts, so that in cases where an assault offence may be viewed as extraordinarily aggravated, the court should sentence the offender to a prison term of no less than four years and no more than ten years (Penal Code, Chapter 3, Section 6, Paragraph 2). The sentencing scale for other aggravated assault offences involves a prison term of no less than one and no more than six years. The minimum sentences for aggravated extortion and for aggravated cases of negligent homicide were raised from six months' to one year's imprisonment.

In order to increase the degree of variation in the length of sentences imposed, the opportunities for applying the penal code provisions regarding aggravating and mitigating circumstances (Penal Code, Chapter 29, Sections 2–3) were expanded via the removal of various intensifiers. It was also to be regarded as an aggravating circumstance if the offence had constituted a part of criminal activity that had been conducted in organised form, or if the offence had been preceded by special planning (Penal Code, Chapter 29, Section 2, Paragraph 6). Further clarification was also introduced regarding the way that recidivism is to be taken into consideration as a factor that should increase the severity of sanctions (Penal Code, Chapter 29, Section 4).

The National Council's task and the conduct of its work

In the spring of 2012, Brå (the Swedish National Council for Crime Prevention) was instructed by the government to evaluate what effects the sentencing reform had produced (Ju2012/860/KRIM). This report presents the results of the evaluation, and is organised on the basis of three central research questions:

- Have the sentences imposed for serious violent offences become more severe?
- Has there been an increase in the degree of variation in the length of the sentences imposed?
- Has the clarification of the requirement to consider recidivism produced any measurable effects?

In order to answer these questions, three sets of data have been analysed. A general statistical overview of the severity of sentences and of the degree of variation in sentence length is provided on the basis of data drawn from the convictions register specifically for this purpose. These data relate to convictions from the years 2000–2012 for assault, robbery, rape, attempted murder and manslaughter, extortion, and negligent homicide in combination with assault. In addition, 469 court judgements from the years 2008–2012 relating to extraordinarily aggravated assault (all cases), aggravated assault (a sample of approximately 20 percent, and all those resulting in a sentence of at least four years' imprisonment) and attempted murder and manslaughter (one-third of the cases) have been collected and analysed in detail. Focus group interviews have also been held with prosecutors and judges.

Clear increase in the severity of sentences for the most serious violent offences

The convictions data analysed by the National Council show that the sentences imposed for aggravated assault (including those for extraordinarily aggravated assault), i.e. the offence type that was

most central to the reform, increased by a mean of two months (the median increase was three months). This increase remains when controls are included for other factors of relevance to sentence length – inter alia prior criminal record, number of offences in the conviction and the proportion of preparatory offences. Nor can the longer sentences be explained by an increase in the seriousness of the violent offences coming to court in terms of changes in the type of violence used (knife, blunt force etc.) or the nature of victims' injuries. Instead, the analysis of court judgments shows that the violence examined by the courts under the same offence definitions has become less serious over time. This is likely to be due to the fact that a greater number of acts that prior to the reform had been defined as common assault, subsequent to the reform came to be defined as, and to result in convictions for, aggravated assault – something which the Swedish Supreme Court has also interpreted as constituting one of the intentions associated with the sentencing reform (see e.g. NJA 2011 p. 89, paragraph 10). This development is likely to have restricted the extent to which the reform has produced a visible effect on sentence lengths in the convictions statistics (since average sentence lengths in the convictions statistics are calculated separately for common assault and aggravated assault respectively). If the length of the sentences imposed by the courts is instead studied for specific types of criminal acts, such as knife violence or blunt force violence, sentence length can be seen to have increased by 20–30 percent subsequent to the reform – which corresponds to the size of the increase recommended in the Bill in which the reform was introduced.

Sentences for (completed) murder have also become significantly longer, although this is probably largely due to the fact that the determinate sentence length for murder was increased to 18 years one year prior to the introduction of the sentencing reform. The sentences for completed manslaughter and for attempted murder and attempted manslaughter have only increased very marginally however. At the same time, the National Council's examination of court judgements shows that it is not unusual for the courts to refer to the sentencing reform in judgements relating to attempted murder and manslaughter (see also NJA 2013 p. 376). The analysis of court judgements also shows that subsequent to the reform, judgements relating to attempted lethal violence offences include less serious acts, that would probably previously have been defined as aggravated assault. In other words, there is much to suggest that the sentencing reform has also had an effect in relation to these offence types, and that the effects of the reform that are visible in official convictions statistics represent an underestimate of the reform's actual impact.

As would be expected, sentences for aggravated extortion and aggravated negligent homicide have become longer following the reform, primarily as a result of the increase in the length of the minimum sentence for these offences. For aggravated extortion, the increase corresponded to approximately 1.5 additional months of

imprisonment, whereas the increase in the sentences imposed for aggravated negligent homicide was more marked – from an average of 1.4 years prior to the reform to one of 2.5 years subsequent to the reform coming into effect.

By contrast, convictions data at the aggregate level show no increases in the length of the sentences imposed for common assault, rape, extortion (non-aggravated offences) or robbery. In the case of common assault, however, the absence of such an increase may largely be a result of the fact that a larger number of assault offences have been defined as constituting aggravated assaults subsequent to the reform, which means that the actual effects of the increased sentences are not always visible in convictions data. In a similar way, it is possible that the lack of any visible increase in the sentences imposed for rape may be a result of the extension of the legal definition of rape (introduced in 2005) which has led to a larger number of less serious sexual crimes being defined as rape than was previously the case.

In summary, then, the sentencing reform has had an impact on the length of the sentences imposed for the most serious violent offences – first and foremost aggravated assault, but also to some extent murder and manslaughter and attempted murder and manslaughter, and also aggravated negligent homicide and aggravated extortion.

Greater variation in the length of sentences imposed for assault

The question of longer average sentence lengths is closely linked to that of whether there has been an increase in the level of variation reflected in sentencing decisions. If longer average sentences were due to the lower levels of the sentencing scale having been "truncated", this might in theory mean that the variation in the length of imposed sentences might in fact become smaller. On the other hand, if minimum sentences continue to be employed, but to a lesser extent than previously, this should produce a greater degree of variation in the length of sentences imposed.

Convictions data show a very clear increase in the degree of variation in the sentences imposed for assault offences. The total variance in sentence length (as measured by the standard deviation) has increased. In particular, there has been a clearly visible shift towards an increase in the number of sentences that lie above the minimum sentencing level for aggravated assault, at a few months over one year. There have also been some changes in the use of the upper sections of the sentencing scale for aggravated and extraordinarily aggravated assault. Sentences of four years or more were relatively unusual during the period immediately following the reform, but were nonetheless more common than they had been prior to the reform (5 percent as compared with 2 percent). There has also been a shift in relation to sentences for common assault, with a somewhat

larger number of prison terms of at least six months being imposed subsequent to the reform.

Prosecutors and judges interviewed by the National Council described the intention to achieve a more differentiated use of sentencing scales by removing intensifiers from the relevant penal code provisions and thus broadening the field of application for mitigating and aggravating circumstances (Penal Code, Chapter 29, Sections 2–3) as a positive development. At the same time, they expressed doubts about the actual impact of this change. A number of those interviewed argued that the provisions in question had been viewed in this way even prior to the middle of 2010, when the reform came into effect. The National Council's examination of court judgements indicates, however, that references to aggravating circumstances have been made more frequently in the courts' judgements subsequent to the reform, although the experiences described by those interviewed suggest that this may be due to the significance of these circumstances being documented more often, and not necessarily to their being taken into consideration more often. As regards the mitigating circumstances specified in Chapter 29, Section 3 of the Penal Code, the court judgements examined from the period subsequent to the reform contained references to these factors to approximately the same low extent as the judgements examined from the period prior to the reform coming into effect.

If aggravating circumstances have in fact come to be taken into consideration to a greater extent in the context of sentencing, this may constitute a third factor that, together with the recommended increases in sentence length, and the introduction of the extraordinarily aggravated assault offence, may have contributed to the aggregate increase in the length of the sentences imposed for aggravated assault. At the same time, however, the National Council's interviews with prosecutors and judges show that there is some level of uncertainty as to how the increased use of aggravating circumstances should be combined with the recommended general increase in the length of the sentences to be imposed.

Particularly in relation to the consideration of various circumstances in individual cases, those interviewed by the National Council emphasised the importance of the role played by prosecutors, a factor which is rarely given attention in connection with the application of new legislation.

The clarification of the requirement to consider recidivism was in effect "no change at all"

The clarification introduced in Chapter 29, Section 4 of the Penal Code regarding the significance of prior criminality in relation to sentencing decisions has not produced a statistically measurable effect. The aggregate increase in the sentence length for aggravated

assault, for example, was found to be similar for persons with no prior convictions for violent offences during the past five years and for persons with a prior conviction of this kind. The prosecutors and judges interviewed by the National Council regarded the new clarification as "no change at all". It was regarded as self-evident that recidivism had been taken into account as a factor that increased the severity of the sanction imposed even prior to the introduction of the reform. Another explanation proffered for the absence of a measurable effect was that the provision is very rarely applied, since consideration of recidivism is primarily applied either in relation to the forfeiture of a parole release, or in relation to the choice of the type of sanction to be awarded by the court (e.g. prison, suspended sentence, probationary sentence). It is only when it is not possible to apply the consideration of recidivism in this way, which is very rarely the case, that the provision in Chapter 29, Section 4 of the Penal Code should be applied. The National Council's examination of court judgements also showed that it was very unusual for courts to explicitly refer to this provision – either before or after July 1st 2010. The Supreme Court (NJA 2012 p. 79) has also noted that there is no need, following the reform, to apply Chapter 29, Section 4 of the Penal Code in a different way to that in which it has been applied since its introduction in 1989. Certain experts have also concluded that the reformulation of the provision in actual fact represents a curtailment of the provision's area of application, despite the fact that the intention was quite the reverse.

Too early to draw firm conclusions

Prosecutors and judges interviewed by the National Council were agreed that the introduction of the new "extraordinarily aggravated assault" offence was in fact the only really concrete measure included in the sentencing reform, at least in that part of the reform focused on serious violent offences. Some were unaware of the other changes introduced, such as the recommendations included in the Parliamentary Bill that specified how much sentence lengths should be increased by. This raises the issue of how information on legislative changes is disseminated within the justice system in general. Some of those interviewed also questioned what impact these aspects of the reform might have had, in part because the reform had been formulated using a highly unusual legal-technical method, and in part because the reform had produced a number of threshold effects (e.g. offences that had previously led to convictions for common assault, were now leading to convictions for aggravated assault). At the same time as many were critical about the way in which central aspects of the reform (i.e. the recommended increases in sentencing length) had been specified only in the Parliamentary Bill, rather than being integrated into the legislation itself, there was also an understanding that the sentencing scales themselves, e.g. for aggravated assault, did not need to be adjusted and that what was instead needed was for the upper areas of these sentencing scales to be utilised more often than had previously been the case.

Given the unusual legislative technique employed to bring about the intended increase in sentencing severity, i.e. by including recommended sentencing increases in the Parliamentary Bill, rather than by making changes to the sentencing legislation itself, those interviewed emphasised that the evaluation of the reform had been conducted too soon after the reform had come into force. It was argued that more time is required for such changes to have an impact on the complex sentencing process in a way that would produce a clear effect. It was further felt that a judgement from 2011 from the Supreme Court (NJA 2011 p. 89) may initially have served to soften the effect of the intended increase in sentences – at least in relation to the new offence of extraordinarily aggravated assault – but that this may change in time, and may in fact already be in the process of changing.

Besides the fact that the implementation of changes in legal practice can take time, the short follow-up period may also create methodological problems. The time lag between the time an offence is committed and the conviction date reduces the strength of statistical analyses, particularly for relatively rare categories of offences. The possibilities for drawing firm conclusions are thus limited for offence categories other than aggravated assault, which was the focus of several of the reform's measures intended to increase the severity of sentences. It is furthermore difficult to isolate statistical effects specific to the reform itself during a period when several different areas of the legislation have been reformulated in ways intended to increase sanctioning levels, and where the same provisions are sometimes affected by more than one of these reforms simultaneously.

Using legislation on stiffer sanctions to reflect a more serious view of crime

A special addition to the governmental inquiry underlying the reform (SOU 2008:85, p. 402) describes research showing that when the public are provided with detailed information about specific criminal cases, they show no propensity to demand more severe sentences. While it is no doubt true that tolerance for violence has been in general decline viewed from a longer term perspective, this is likely to be less true in relation to the most serious violent offences, which have always been condemned by the public. It is nonetheless these specific offences that were chosen as the focus for the sentencing reform. If the reform's primary objective has been that of making a normative statement, the National Council's evaluation contains indications that such statements might more effectively be made by means of the introduction of new offence definitions. The introduction of the offence of extraordinarily aggravated assault was described in the National Council's interviews as being the aspect of the reform that had attracted the most attention within the justice system itself. It is also reasonable to assume that new offence definitions have a greater chance of having an impact on the public consciousness than increases in the length of sentences imposed by the courts.