

Rape – from report to conviction

A study of the criminal justice system's work in rape cases

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English summary of Brå report 2019:9

The Swedish National Council for Crime Prevention (Brå) –
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Foreword

Rape is a serious offence which can have a powerful impact on the complainant. Societal support is very important to those who have been victims, and many people see legal proceedings which lead to the perpetrator being convicted and punished as the most important vindication for the victim. Despite this fact, a very small percentage of the reports lead to prosecution and conviction. It is in this light that the Government has instructed Brå to study the criminal justice system's handling of rape, from report to verdict.

Brå has studied the characteristics of reports of rape of adult women, how the investigative work is conducted, and the reasons why so many investigations are dropped. The courts' operations are also explored. Finally, a smaller study has been conducted concerning whether different groups of persons suspected of rape are treated equally by the criminal justice system.

Brå hopes that the report can be valuable to the criminal justice system in their on-going task of improving work on rape cases. It is also hoped that the report can contribute to addressing the issue of the criminal justice system's possibilities to prosecute and convict individuals who have been accused of rape.

The study has been conducted by associate professor Stina Holmberg, senior research advisor at Brå, and Lars Lewenhagen, researcher at Brå.

Margareta Hydén, professor emerita of social work, and Petter Asp, professor of criminal law and Justice of the Swedish Supreme Court, have conducted an expert review of the report and provided valuable feedback. The report has been fact-checked by representatives of the Swedish Prosecution Authority and the Swedish Police Authority.

Stockholm, May 2019

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Summary

Rape is a serious offence. Societal support is very important to those who have been victims, and many people see legal proceedings which lead to the perpetrator being convicted and punished as the most important vindication for the victim. In reality, however, a very small percentage of the reports of rape lead to a conviction; during recent years, approximately 5 out of every 100 reported rapes led to a conviction. In light of the above, Brå has been instructed by the Government to conduct a detailed study of how the criminal justice system works with reports of rape. The main question is whether the potential exists to increase the number of prosecutions and convictions through better work by the police and public prosecutors.

The report is primarily based on a random sample of 785 reports from 2016, with appurtenant investigation material, regarding completed rapes against women who were at least 15 years of age. The material has been coded on the basis of some 70 variables. Brå has also read and analysed all verdicts from 2017 involving the rape of a woman who was at least 15 years of age.

The nature of the cases impacts the likelihood of prosecution

The most common scenario is that the parties are acquainted, even if it is not infrequent that the acquaintanceship was initiated as recently as the same day. One-third have a close relationship, while reports of attack rapes are uncommon. They represent only 5 per cent of the reports. The complainants are often young – one-half of them are under 24 years of age – while, on average, the men are six years older (30 years of age).

There are a number of circumstances in the nature of the police report which increase the likelihood that it will lead to prosecution, while other circumstances reduce that likelihood. Factors which increase the likelihood are the report being made immediately after

the incident in question occurs, the report involving rape in a situation of particular vulnerability, or clear elements of violence in the reported description of the act. In this light, we can observe the following:

- 40 per cent involve a “situation of particular vulnerability”, while 60 per cent involve rape by means of violence or threats.
- Approximately one-half of the reports describe some type of violence against the complainant, and 10 per cent involve aggravated violence, for example, the man choking, kicking, or hitting the complainant.
- One-third are reported on the same day as the incident occurred, while almost one-fifth are not reported until at least six months later.

One-half of the complainants are vulnerable women

The review of the reports shows that a large percentage of the women in the cases are vulnerable. The woman has been defined here as “vulnerable if the investigation shows that she has a substance abuse problem, cognitive disability, or psycho-social difficulties. In 15 per cent of the cases, the investigation shows that the complainant has a problem with alcohol or drugs. In 19 per cent of the cases, the complainant has a cognitive disability or a neuropsychiatric diagnosis (Asperger’s or ADHD). In an additional one-fourth of the cases psychological problems (which existed before the assault) are noted, such as severe anxiety, clinical depression or self-harming behaviour. Taken as a whole, the results from Brå’s coding shows that approximately one-half of the complainants have some form of vulnerability.

Why are vulnerable women overrepresented?

Why are vulnerable women overrepresented in the material? There are numerous international studies which support the proposition that the overrepresentation is, at least in part, due to actual exposure. One possible explanation for this could be that women with substance abuse problems, cognitive disability, ADHD, Asperger’s syndrome or severe anxiety and self-harming behaviour may to a greater extent find themselves in situations where they are at risk of being exposed to sexual assault.

However, one cannot preclude the possibility that, to a certain extent, the overrepresentation may also be a result of the fact that women in such groups are more inclined to report offences. This may be explained by the fact that the MeToo movement clearly showed that sexual assault is not something that affects only a limited group of women. Perhaps the risk of traumatisation after the incident is greater if the woman was already in a crisis or had a particular vulnerability, and thus the motivation to file a police report might be greater.

On average eight investigation activities are carried out

A report of rape almost always leads to the commencement of an investigation - this takes place in 94 per cent of the cases. On average, eight investigation activities are carried out during the investigation. The primary activities are interviews with the complainant, the suspect, and witnesses.

The complainant is interviewed in nine out of ten investigations, while the suspect is interviewed in approximately one-half of the cases. One difficulty in the work is that one in three complainants does not want to participate in the investigation, which, in principle, makes it impossible to bring the case to prosecution. Six out of ten complainants are assigned injured party counsel, but seldom before the first interview.¹

Traces of the suspect's DNA in 5 per cent of the investigations

The most common supporting evidence by far is provided by witnesses who observed something before or after the reported incident, or who heard about what happened from the complainant. When possible, the police usually also attempt to obtain stronger evidence by means of DNA tests, drug tests, and written evidence, such as forensic examination of mobile telephones. However, these efforts are seldom successful. Traces of the suspect's DNA are present in only 5 per cent of the investigations. In slightly more than one in ten cases, the police obtain written evidence which supports the description of the criminal act as charged.

Chronological aspects are significant

Chronological aspects may have great significance in terms of the possibility to clear the reported rapes. Firstly, as was mentioned previously, it is more difficult to investigate an incident which happened less recently. The reason is that, in such case, it is not possible to obtain certain technical evidence, and the risk of destruction of written evidence increases. For example, there is an increased risk of the parties having changed mobile telephones since the incident. There is also an increased risk of witnesses forgetting what they saw or heard.

Secondly, chronological aspects are significant insofar as the police must utilise the possibilities to obtain all existing evidence as quickly as possible. Brå's review shows that this is not always the case. Sometimes the police miss the opportunity to obtain available evidence in connection with a brand-new report, and they sometimes allow investigations to "sit on the back burner" for a while in order to work with something else. This working method reduces the like-

¹ The law has been strengthened as of 1 July 2018, such that injured party counsel must be offered to the injured party at the same time as a preliminary investigation regarding a sexual offence starts.

likelihood of a prosecution. In addition, the longer the investigation takes, the greater the risk that the complainant backs out.

Reasons why cases are closed

In order to obtain a clearer picture of the most common reasons why rape investigations are closed, Brå has categorised the *primary* reasons why the cases were closed in the 736 closed cases in the material.² The breakdown of the reasons for closure in 2016 is as follows:

Table 1. The reports broken down by primary reason for closure.

Non-response category	Number	Percentage (%)
Formal defect in report	49	7
Probably did not happen	79	11
Could not be investigated	81	11
Not rape as defined under the law	41	6
The investigation raised doubt	150	20
The complainant backed out	80	11
Suspect not located	31	4
Insufficient evidence	225	31
Total	736	100

As is clear from the table, the most common primary reason for closure is that the evidence is insufficient. In these cases, there is a participating complainant and an identified suspect. The complainant's statement meets the criteria for rape and the central elements have not been disproven. However, the public prosecutor determines that the evidence is not strong enough to commence an indictment before a court.

In more than two-thirds of the closed reports, however, the lack of evidence was not the primary reason why the case was closed. In many cases, the reason for closure was that the investigation clearly showed that the facts recounted by the complainant did not constitute a rape as defined under the law, or raised doubts as to whether this was the case.³ In other cases, there was refuting evidence which raised doubts regarding whether the reported incident actually happened in the way described by the complainant.

Finally, a significant number of the investigations were dropped because the complainant stated from the outset that she did not want to participate or dropped out after some time had passed. In total, this is the primary reason in almost one-fifth of the closed investigations.

² The categorisation is based on Brå's own assessment and not on the formal grounds for closure invoked by the public prosecutors.

³ It should be emphasised here that in some of the cases, where it was uncertain whether the legal criteria for rape were met as the law was worded in 2016, would probably meet the criteria after the amendment of the legislation on 1 July 2018.

Certain potential to increase the number of prosecutions with better police work

There is a theoretical potential to increase the number of prosecutions through better work on the part of the police and public prosecutors chiefly in the cases where the primary reasons for closure were that the complainant did not want to participate, the police did not locate the suspect, or the evidence was insufficient. Such cases comprise approximately one-half of the closed cases. Other cases would be much more difficult to bring to prosecution, irrespective of the quality of the investigative work.

Brå's more in-depth review of 200 investigations showed that there were shortcomings in a great number of the investigations. These shortcomings take the form of protracted investigations and failure to take possible investigation measures. Examples include:

- In some of the cases, the interviews with the parties could have focused more clearly on the central questions of when, where, and how.
- The accounts provided by the complainant and the suspect were not always sufficiently verified, despite of the fact that it was possible to do so.
- There was not always sufficient investigation of whether the criteria for a situation of particular vulnerability existed. The opportunities to run a quick breathalyser test, ask witnesses about the complainant's condition, obtain camera images, etc., were not always taken.
- Forensic study of the parties' mobile telephones did not take place often enough or with sufficient speed, which led to a risk that important evidentiary material would be missed or deleted.
- Investigators sometimes wait far too long to interview the suspect.

However, the fact that Brå finds shortcomings in the investigations does not mean that in the absence of the shortcoming, it is likely that the act would have been proven sufficiently to lead to prosecution. Brå estimates that approximately 3 per cent of the closed cases could have gone to prosecution with better investigation work.⁴ This would increase the percentage of reports in 2016 which led to prosecutions from 6 per cent to 9 per cent.

⁴ The estimate is based on the fact that it was found that one-third of the 200 investigations studied in depth which had shortcomings could have led to prosecution with better work from the police and public prosecutors.

One out of three prosecutions does not lead to a conviction.

Of the 208 verdicts regarding completed rapes of adult women which were handed down in 2017, two-thirds were convictions and one-third were acquittals. This breakdown has been constant over the past ten years. In order to find the reasons why the percentage of acquittals is so high, Brå has divided the verdicts from 2017 into three categories based on the strength of the evidence in the case.

Level 1 means that the evidence was strong. This involves, primarily, the suspect's confession or witnesses who saw the incident or technical evidence which documented the incident, for example film or sound recording on a mobile telephone.

Level 2. In these cases, there is both a witness and other written or technical evidence, but they do not provide equally unambiguous support for what has happened. In addition to witnesses who spoke with the complainant after the incident, this could involve, for example, alarm calls, medical reports and DNA tests, drug tests, and text messages.

Level 3. In these cases, the only support for the complainant's account is witnesses who saw something around the time of the incident or spoke with the complainant after the incident.

In almost one-third of the cases, there is no evidence stronger than a supporting witness who did not personally witness the incident. In slightly more than one-tenth of the cases, the evidence is strong. This shows how difficult it is to find strong evidence in rape cases and provides context for the low conviction rate.

Brå's data does not support the presence of discrimination

Several Swedish and foreign studies present results which would indicate that the criminal justice system treats different groups differently. In this context, Brå has supplemented its study with an investigation of this issue. The groups which were investigated were those with Swedish roots⁵ and foreign roots, respectively, those without and with a completed upper secondary education, respectively, and those who had previously been convicted of offences under Chapters 3 or 6 of the Swedish Penal Code (offences against life and health, as well as sex offences) and those who had not been so convicted, respectively.

The overall result of the analyses which were conducted is that at first blush one can perceive a number of differences between the compared groups when looking at decisions made by the criminal justice system. However, a deeper analysis reveals that most of these differences can be explained by the nature and evidentiary status of

⁵ "Swedish roots" means that the person was born in Sweden and at least one of their parents was born in Sweden.

the cases. However, the results differ somewhat depending on the different groups studied.

The suspects with foreign roots are prosecuted more often than those with Swedish roots, and are convicted more often. There are more investigation activities in the cases where the suspect has foreign roots, and coercive measures are used to a greater extent. A closer analysis reveals, however, that essentially all significant differences between the groups can be explained by differences in the typical nature of, and strength of the evidence in, the cases. However, there is an exception in the form of the difference in respect of the number of investigation activities, which cannot be fully explained. Suspects with Swedish roots are investigated, on average, less thoroughly than suspects with foreign roots.

Significant differences in the percentage of individuals prosecuted can also be seen when the suspects are divided into two groups based on educational level. The suspects with a low educational level are prosecuted more often than those with a mid-level or high-level education. Here as well, the difference in frequency of prosecution can be explained by differences in the nature of the cases.

Finally, in respect of the group of suspects previously convicted of offences against the person, it can be observed that prosecutions against them lead to a conviction more often than against those with previous convictions. This is explained by the fact that, in general, the evidentiary level is stronger than for the comparison group.

There may be differences which have not been detected in Brå's material.

However, there is cause to emphasise that the conclusion that differences between the groups in general appears to have "legitimate" explanations is based on the relatively limited material which was available. It is possible that differences in handling could have been identified with more material, where for example it would have been possible to break the group of suspects with foreign roots into smaller groups. There may also be factors which affect which decisions are taken, which cannot be discerned from the documentation in the preliminary investigations and verdicts. For example, the criminal justice system's resolve and assessments of reliability may have been affected at every level by difficulties in communicating with the suspect, and this could not be discerned from the documentation in the case or the verdict. Possible difficulties in making oneself understood to the criminal justice system might, in such cases, originate in both foreign roots and low levels of education. In this context, it can be mentioned that the group of suspects most convicted of offences are those with foreign roots and low levels of education. According to several studies, needing to use an interpreter or speaking with an accent can make it more difficult for the suspect to recount their version of the chain of events and be perceived as credible (Brå 2008b, Lainpelto 2019).

Brå's assessment

Brå's general conclusion from the study is that police and public prosecutors generally expend extensive efforts to clear filed rape reports. It is also clear that the work has improved during recent years. For example, the percentage of complainants who are assigned injured party counsel has increased when compared with previous reviews.⁶ The police also used rape kits more often in 2016 than during the period 1995-2006.

However, in Brå's view, there are possibilities to improve investigations of rape, and such improvements would be meaningful for both the complainant and the suspect.

On the other hand, the review does not indicate that it is possible to achieve a dramatically higher percentage of clearances through better investigation work. Even with better work on the part of the police and public prosecutor and with the anticipated effects of the 2018 change to the law, most reports of rape will still be closed.

Improvements to increase the clearance rate

Brå's study shows, however, that there are still possibilities to improve the work of the police and public prosecutors in investigations of rape. Despite the fact that Brå's study includes both an analysis of the work of the police and public prosecutors as well as that of the judiciary, our suggestion for improvement is essentially limited to the activities of the police and the public prosecutors. This is because assessing the courts' interpretation of the law and proposing improvements is beyond the scope of Brå's instruction. Briefly, we propose the following:

- Shorten investigation times.
- Always interview individuals who are under reasonable suspicion, and do it as quickly as possible.
- Don't fail to investigate whether the criteria for a situation of particular vulnerability are fulfilled.
- Ensure high-quality interviews.
- Act in such a way to minimise, to the greatest extent, the risk of the complainant dropping out.
- Document well - for efficiency and due process.

Legal proceedings which protect and strengthen the complainant

The success factors for increasing the clearance rate are set forth above. However, it may also be important to have a metric for suc-

⁶ In their review from 2005, the Swedish National Police Board and the Swedish Prosecution Authority found that three out of ten injured parties in cases under the supervision of a public prosecutor received injured party counsel. In a report from Brå (2009), the percentage was estimated at four out of ten commenced preliminary investigations. In this study, six out of ten injured parties in investigations led by public prosecutors were assigned injured party counsel.

cess which is more directly focused on the complainant's perception of the criminal justice process, since an investigation and possible trial which does not lead to a conviction can affect the complainant in different ways. In the worst case, such a process can be experienced as an additional trauma. However, there is also potential to strengthen the complainant and contribute to healing, despite the fact that the suspect was not convicted. With this perspective, Brå emphasises that it is important for the criminal justice system to place weight on:

- the police and public prosecutors treating the woman with respect and empathy in interviews and in other contacts with the complainant;
- at an early stage, informing the woman of the possibility to receive support during the legal proceedings in the form of injured party counsel, crime victim support services, or protected housing;
- conducting as swift an investigation as possible;
- as far as is legally possible, providing ongoing feedback regarding what is done in the investigation and how the investigation is proceeding;
- offering protection if the suspect is threatening (remand, assistance with protected housing);
- empathetically explaining the legal prerequisites for a conviction and the import of a negative outcome (it does not establish that the suspect was not guilty, but rather that it was not possible to prove that he was guilty);
- providing empathetic and respectful interaction during the trial.



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