



## Parental liability to pay damages for children's criminal offences

*An evaluation of the 2010 reform*



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English summary of Brå report 2017:14

**The Swedish National Council for Crime Prevention (Brå) –  
centre for knowledge about crime and crime prevention measures**

The Swedish National Council for Crime Prevention (Brå)  
works to reduce crime and improve levels of safety in society  
by producing data and disseminating knowledge on crime  
and crime prevention work.

This report is a summary of the Swedish report  
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The Swedish report can be ordered from Brottsförebyggande rådet, [info@bra.se](mailto:info@bra.se)

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# Summary<sup>1</sup>

On 1 September 2010, parents with custody of a child became subject to more rigorous liability to pay damages<sup>2</sup>. Under the reform, parents may now be held jointly and severally liable with their child for damages<sup>3</sup> in respect of certain types of losses<sup>4</sup> which arise as a result of an offence for which the child is convicted. Prior to the reform, parents could only become liable to pay damages for their child's offence if it was determined that the parents had been negligent in their supervisory duty. In other cases, the child incurred sole liability.

The Government Bill states that the primary purpose of the reform was to combat youth criminality and prevent young people from “choosing a habitual criminal lifestyle”, but there was also a hope that the reform would improve the crime victim's situation by increasing the possibilities for an award of damages.

During the preparation of the proposed legislation, several consultation bodies questioned whether enhanced liability to pay damages would have an impact on youth criminality. Certain bodies argued that the enhanced liability to pay damages could have a counterproductive effect, among other things by triggering or reinforcing poor childrearing strategies and by minimising parents' willingness to cooperate in the criminal case. It was also pointed out that the crime victim's chance for victim compensation could be impeded since the reform entails that in order to receive victim compensation, the crime victim must be able to prove that neither the child or parents can pay damages. Moreover, the consultation reports emphasised that primary impact of increasing parental liability to pay damages would fall on families which already have significant problems and narrow financial margins.

The Government has received reports from, among others, the Crime Victim Compensation and Support Authority (BroM)<sup>5</sup> and the Swedish National Council for Crime Prevention (Brå)<sup>6</sup> that the reform has had a number of unfortunate consequences for parents, children, and crime victims. These reports point out that the reform has thwarted the original

<sup>1</sup> The Swedish original of this summary is available on Brå's website, [www.bra.se](http://www.bra.se). Click on the Publikationer tab, then enter the report number in the search field.

<sup>2</sup> Unless otherwise stated, our use of the term parent hereinafter refers only to parents who have custody of a child and are therefore subject to the legislation. This also applies to the use of the words mother and father.

<sup>3</sup> The amount of the parents' share of liability is limited to SEK 8,960 per claim.

<sup>4</sup> The liability relates to personal injury and property damage, as well as damage resulting from insult caused by the child by means of the criminal offence.

<sup>5</sup> Ju 2013/6695/L2.

<sup>6</sup> Brå 2014:11

purpose of increasing parental presence, supervision, and assumption of responsibility and that, in certain cases, it has become more difficult for crime victims to obtain compensation.

The Government Bill established that the reform should be followed up on over time, primarily to investigate the effects of the reform on the relevant children and parents, but also to track the consequences of the more rigorous liability to pay damages in respect of the parents' cooperation in criminal proceedings involving youthful offenders<sup>7</sup>.

Accordingly, in 2016, Brå was instructed by the Government to evaluate the reform regarding an increased liability to pay damages imposed on parents. The questions included in the instruction are as follows.

**1. To what extent have parents been ordered to pay damages, on the basis of the provisions of Chapter 3, section 5 of the Tort Liability Act, for losses caused by their children through the commission of a criminal offence?**

There are no compiled statistics regarding the number of instances of damages claims which the district court orders to be paid, nor are there statistics regarding the number of claims ordered to be paid by parents pursuant to Chapter 3, section 5 of the Tort Liability Act.

Accordingly, Brå has carried out its own survey of judges<sup>8</sup>, which shows that parents were ordered to pay damages in 53 per cent of the cases in which the child was ordered to pay damages. In those cases where the parents were not ordered to pay damages, it was because 85 per cent of the injured persons did not bring claims for damages against the parents. In three cases, the amount of damages was adjusted to zero.

**2. Do parents have the ability to pay the damages which were ordered?**

Statistics from the Swedish Enforcement Authority from the period January 2015 through 30 June 2016 show that the majority of the parents ordered to pay damages paid their own share and their child's share within 30 days without the Enforcement Authority needing to make any collection attempts. During the same period, 15 per cent of the matters were unpaid after the Enforcement Authority's collection attempts. In 96 per cent of those cases, the parents already had debts with the Enforcement Authority. Of the 67 parents who did not pay their debt, 43 were mothers and 24 were fathers. In other words, mothers more frequently lack the financial margins necessary to pay damages under the joint and several liability.

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<sup>7</sup> Government Bill 2009/10:142.

<sup>8</sup> During August and September 2017, Brå sent forms to all judges in Sweden who handle cases where young people are accused of criminal offences. The forms were to be completed for each case in which a person 15 – 17 years of age was convicted of an offence during the coming three weeks (the period 21 August – 8 September 2017). The questions asked in the form included whether the decisions awarding damages also included the parents in those cases where the youth was found liable for the payment of damages. There were 140 forms received in return, reflecting the same number of cases. Of these, 76 included a decision awarding damages in respect of one or two parents (for more information regarding method, drop-out rate, and representativeness, see the methodology section).

### 3. What are the consequences of liability to pay damages on the families?

The interviews with social workers and parents who were found liable for damages does not support the proposition that the damages reform would lead to more parental involvement in children's lives. To the contrary – in the experience of a number of the interviewed social workers, the damage award is more likely to worsen the relationship between parents and children, as well as to impede the possibilities for constructive conversations with a positive impact on the child, particularly in families where the parent-child relationship is already strained. For single parents and families in a difficult financial situation, the additional financial burden of damages can also have a negative impact of the family's other children.

### 4. Has the increased liability to pay damages had any impact on the crime victim's possibilities for obtaining payment of damages or crime victim compensation?

Brå has not found support for the proposition that the reform has had a positive impact on the injured person's possibility to obtain payment of damages paid.

In order to answer the question, Brå has investigated whether, and the extent to which, the injured person's possibility to obtain payment of damages has changed. The reason for this is that the reform has not affected the injured person's right to damages. Instead, it has created the latitude to seek damages from more people than previously. Because there is a lack of statistics over time regarding the extent to which the damages have been paid, Brå has analysed the data from the Crime Victim Compensation and Support Authority's case management system. The number of applications for crime victim compensation have indeed declined since the reform, but Brå has determined that this is more an effect of fewer young people being found guilty of offences against the person than of more damages being paid as a result of the reform. According to the Enforcement Authority's statistics, parents also pay their children's damages to a significant extent.

Based on interviews with professionals, there is, however, reason to believe that those parents who are able to pay also did so to a significant extent prior to the reform.

Brå cannot find support for the proposition that the reform has had a negative impact on the injured person's possibilities to obtain crime victim compensation.

When the reform was instituted there were fears that it would have a negative impact on crime victims' possibilities to obtain victim compensation. The reason was that under the Crime Victim Compensation Act, the Crime Victim Compensation Board is entitled to reduce the amount of compensation which is paid by the parents' share where no such claim has been made at the time of the application. However, a review of the Crime Victim Compensation and Support Authority statistics show a relatively low number of partial and total denials due to failure to demand damages from the parents.

**5. To what extent has the increased liability for damages affected the willingness of the parents and youth to cooperate in the criminal case?**

There is a difference of opinion among professionals regarding whether the increased liability to pay damages has affected the willingness of the parents and youth to cooperate in the legal proceedings.

The primary perception reflected in the survey material is that the joint and several liability has had neither a positive nor a negative impact on the willingness of parents and youth to cooperate in the criminal case. Almost no survey respondents believe that the reform has had a positive impact on the parents' willingness to encourage the child to cooperate and tell the truth. A majority believe that the reform has had no impact on this whatsoever, while approximately one-quarter of the public prosecutors believe that the reform has had a negative impact in this respect.

The interview material also shows a number of examples where parental interest in the criminal justice process sometimes is split as a result of the joint and several liability to pay damages. A number of interviewed police officers, judges, and public prosecutors have, for example, seen some parents pressuring their children to lie or withhold information in order to avoid paying damages, or that their cooperation is primarily due to their self-interest and not support of their child. Some also believe that there is sometimes a disproportionately larger focus on joint and several liability in the criminal case.

The judges and public prosecutors are most positive in respect of the impact of the reform on the parents' attendance at the trial, although a clear majority in this instance as well also believe that the reform has not had a positive impact in this area. In their survey responses, one in five judges and one-third of the public prosecutors state that the reform has had a positive impact on parental attendance. The responses are diverse in the interview material, and the judges' responses are prominent as being most negative. Based on their experience, four of six judges state that the reform has had a clear negative impact on parental attendance at trial.

**6. Has the increased parental liability to pay damages in any respect not led to an intended effect or has it had undesirable consequences? In such case, what are the possible causes?**

The impact of the joint and several liability rules have a particularly harsh impact on single mothers. Brå's survey of judges revealed that in 16 per cent of cases, a mother alone was ordered to pay damages (compared with 1 per cent where a father alone was found liable). For the period January 2015 – 30 June 2016, of those parents who failed to pay their debt following collection attempts by the Swedish Enforcement Authority, approximately one-half of the debts were those where only a single parent had payment liability and, of those, the majority were mothers. Moreover, mothers attend trials to a greater extent than fathers, resulting in fathers avoiding liability for the joint and several portion since the claim is often withdrawn in respect of the parent who is not present. In Brå's survey of judges, a mother alone attended the trial in 25 per cent of cases, which is the same frequency as for both parents attending. A father alone attended in only 4 per cent of cases.

The short deadlines applicable to the criminal justice system's administration of juvenile cases, in combination with the joint and several liability, leads to a more cumbersome procedure for service of process, which often creates problems for the court. Our interview data shows that the administrative problems can become very tangible and quite costly. Due to the reform, both the accused child and the child's parents must be served. If the party seeking damages is a minor, which is often the situation in juvenile cases, a power of attorney from the injured person's guardian is also required.

Brå's survey indicates that there are several due process problems from the parents' perspective. These include insufficient information regarding their joint and several liability, the consequences to them of late claims (such as problems in comprehending claims and presenting grounds for adjustment, or difficulties encountered by the court in respect of arranging for interpreters) and that their roles as parties to the case are handled differently by different judges.

## **7. Has the reform had any impact on youth criminality?**

Brå has not been able to find support for the proposition that the reform has had any impact on youth criminality.

There is an absence of the prerequisites necessary to enable empirical analysis of the effect of the reform on youth criminality. In order for the reform to have an effect, it is necessary that parents – and preferably children as well – know how the damages rules are formulated. The Brå study which was conducted in the 1990s before the reform was implemented showed, however, that most parents did not know which rules applied. Most believed that they were solely liable for their children's damage awards, i.e. greater liability than that entailed in the 2010 reform.

However, the parental lack of knowledge regarding the damages rules which was discussed during several interviews militates against a conclusion that the reform may have had a preventive effect on the public at large. Brå's interviews with social workers and parents also do not provide any support for the proposition that the reform has had a preventive effect on youth who commit offences or who are in the risk zone for the commission of offences. Rather, these interviews show that there is a risk that parental liability to pay damages could have a detrimental impact on socially vulnerable parents in terms of their childrearing abilities. Trends in youth criminality also do not indicate that the impact has had any general effect.

## Brå's assessment

In summary, one can observe that the increased parental liability to pay damages has led to a series of problems in respect of application. The evaluation also shows that it is unlikely that the reform has attained its intended crime preventive effect. Moreover, it has led to a series of negative effects for injured parties, parents, and the criminal justice system. In Brå's opinion, there are thus two paths available.

The first is to discontinue primary liability for parents of children who are ordered to pay damages due to a criminal offence.

The second is to retain primary liability, but to adjust the rules to reduce some of the negative effects identified by Brå. If the primary liability remains, Brå is of the opinion that the following measures must be taken.

- Reduce the risk of negative consequences for financially vulnerable families.
- Increase parents' due process rights.
- Increase injured parties' possibilities to benefit from the reform.
- Improve the possibility for following up on how the system is working.





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