



The trend in limitations of investigation 2006–2014

*Interim report pursuant to the Government
instruction regarding Performance in respect
of investigation and prosecution*

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English summary of Brå report 2015:17

**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 Utvecklingen
av förundersökningsbegränsning 2006–2014, report no 2015:17.
The Swedish report can be ordered from Brottsförebyggande rådet, info@bra.se

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URN:NBN:SE:BRA-638

Summary

To ensure that the available investigative resources are used as effectively as possible, the police or public prosecutor may refrain from commencing a criminal investigation or close an ongoing criminal investigation under certain circumstances; this is known as a limitation of investigation. The rules governing limitation of an investigation are set forth in Chapter 23, section 4 a, of the Code of Judicial Procedure, which states that a preliminary investigation need not be commenced or may be closed:

1. when the penal value of the offence does not exceed imprisonment for three months and when continued investigation would lead to unreasonable costs (disproportionality cases); or
2. when there is reason to believe that the offence will not lead to any prosecution due to the rules regarding waiver of prosecution or special examination of prosecution.

The possibility to take decisions to limit investigations was implemented in 1982 and, for quite some time, such decisions could only be taken by the public prosecutor. However, the police are, since 2013, also entitled to limit an investigation in certain cases. The rules were changed in order to further streamline criminal investigations and to optimise use of available resources. One of the reasons was to avoid having the police conduct and report on a full investigation, only to have the public prosecutor later limit the investigation. (SOU 2010:43, SFS 1982:184).

The aim of the study

Brå has been instructed by the Government to analyse how different factors may have influenced performance in the justice system in respect of investigation and prosecution. The instruction comprises three subareas of which one, the subject of this interim report, is the use of limitations of investigation. The instruction states:

”Brå shall survey the extent to which limitations of investigation have been used over time and analyse the way in which such use has affected trends in person-based clearances. The project shall illuminate the significance of the police’s ability, since 1 January 2013, to limit investigation of offences in certain cases. The instruction also includes proposing, as necessary, how relevant statistics regarding the use of limitations of investigation can be generated on a rolling basis.”

The survey is based on data regarding decisions on reported offences and suspected offences from Brå’s statistical database during the years 2006–2014. In addition, Brå has conducted six interviews with investigation officers at the Swedish Police and the Public Prosecutor for the purpose of creating greater understanding of the results.

Limitations of investigation are most common in connection with multiple criminality

In 2014, approximately 61,200 decisions to limit an investigation were taken. Such decisions can be taken on a number of different legal bases. The overwhelming majority (47,800 or 80 per cent) of the decisions to limit an investigation were taken based on the rules governing waiver of prosecution (waiver of prosecution cases). These decisions often appear in situations where the perpetrator is suspected of several suspected offences simultaneously, and the anticipated sanction is deemed to be sufficient and adequate, even taking into consideration suspected offences which are not investigated. This type of case constituted 60 per cent of the waiver of prosecution cases in 2014.

The remainder (13,100 or 20 per cent) of the decisions to limit an investigation in 2014 were taken based on the rules governing special examination of prosecution and involve offences which do not fall within the scope of general prosecution (examination of prosecution cases).¹ Such offences are only to be investigated where special cause exists. Common types of such offences include defamation offences, certain cases of harassment, and fraudulent conduct. The breakdown between waiver of prosecution cases and examination of prosecution cases is relatively stable over time.

Most limitations of investigation relate to volume crimes

A decision to limit an investigation, in principle, be taken in respect of all types of offences. However, the conditions for limiting a criminal investigation vary in respect of different types of offences, among other reasons when there are public and individual interests that need to be taken into consideration. When deciding whether to limit an investigation, consideration must be given, for example, to the degree of humiliation and personal indignity and any claims for compensation. The most common situation is that decisions to limit investigations are taken in respect of commonly committed offences, such as fraud, theft, narcotics offences, and road traffic offences, as well as for offences against the person. These categories of offences represented a full 70 per cent of all decisions to limit investigations during 2014.

The use of limitations of investigation has increased

The total number of decisions to limit an investigation doubled during the period from 2006 through 2014. The increase is primarily attributable to decisions taken regarding offences with reasonable suspicion, while decisions in respect of offences without reasonable suspicion were more constant over time. The decisions in the first type of cases were primarily taken based on the waiver of prosecution rules and it is primarily these cases which, in the long run, can affect person-based clearances.

The increased number of limitations of investigation can be explained, in part, by the increase in the total number of decisions regarding offences and suspected offences during the period. Approximately 42 per cent of the increase comprised fraud offences and narcotics offences, for which the reporting of offences has increased considerably. However, decisions to limit investigations have increased to a greater extent than the reported offences,

¹ In addition, there are other, more uncommon situations in which decisions are made to limit an investigation. These only comprise approximately 100 offences per year.

and the percentage of decisions to limit an investigation for all offences and suspected offences thus increased from 2.5 per cent in 2006 to 4 per cent in 2014. If the decisions to limit investigations which were taken regarding offences with reasonable suspicion are studied separately, a somewhat greater increase can, however, be seen. The percentage of decisions to limit investigations increased for this category by 3 percentage points, from 5 per cent to 8 per cent during the same period. Taken as a whole, the results from the survey indicate that the possibility to limit investigation of an offence has been used to a somewhat greater extent over time.

*New guidelines from the Prosecutor
General can explain the 2006–2009 increase*

The increase in the number and percentage of decisions to limit investigations has not been linear but, instead, has taken place in two phases during the study period. The first increase took place at the beginning of the period (2006–2009) and it is likely that the new guidelines issued by the Prosecutor General during that time may have been meaningful in terms of the increase in use towards the end of that period. The new guidelines clarified, among other things, that the public prosecutor has the ability to limit investigation of an offence that only during an ongoing investigation, but also after the police have written a final report on an investigation. This means that the area of use for limitations of investigation increased as compared with previously.

The number and percentage of decisions limiting investigations increased once again during 2013–2014, following a few years of decreased use. This time, the increase coincided with the police becoming authorised to take decisions to limit an investigation. Taken together with the increases of the two later years, both the number and the percentage of decisions reached the highest levels during the studied period.

The police's new powers had a clear breakthrough effect

On 1 January 2013, the police were authorised to take decisions to limit an investigation in certain case. The statutory change had a great breakthrough effect and, in 2014, half of the decisions were taken by the police. The quantitative increase which was noted in respect of decisions to limit an investigation in 2013–2014 can thus be attributed entirely to the police. During these two years, the percentage of decisions to limit an investigation also increased by 0.5 per cent. Looking only at the decisions which relate to offences with reasonable suspicions of crime, the percentage increased by almost 2 percentage points in 2013–2014. The results indicate that the police have not only taken over the decisions to limit an investigation which were previously taken by public prosecutors, but they have also increased the use of such decisions. However, the survey could not establish whether the increased use can be explained by the police's expanded powers or whether it would have taken place nevertheless. The statutory change has only been in force for a few years. A more certain analysis of the effect of the reform can be made when it has been fully established and in tandem with the expansion, by several years, of the time series for limitations of investigation.

The use of limitations of investigations for shoplifting, narcotics offences, and road traffic offences has increased since 2013

The investigation of the frequency of decisions to limit investigations within different categories of offence reveals that limitations of investigation are most common in respect of shoplifting and narcotics offences. Approximately 8–9 per cent of these types of offences were subject to limitation of investigation in 2014, which can be compared with 4 per cent for all types of offences. The police were responsible for 74 per cent and 62 per cent, respectively, of these decisions.

Limitations of investigation have also become increasingly common in these typical offences which are detected through police work, as well as for road traffic offences, particularly in recent years. The percentage of limitations of investigation for narcotics offences, road traffic offences, and shoplifting offences almost tripled during the 2013–2014 period. The police were responsible for the majority of the decisions to limit investigation of these offences, which reinforces the conclusion that the police's powers may have entailed an increased use of the limitations of investigation.

The decisions to limit an investigation are not being made more quickly since the statutory change

When the police were empowered to take decisions to limit an investigation, one goal was that it would enable the decision to be taken at an earlier phase in the investigatory process. However, in its analysis of the time between reporting and the time of the decision to limit investigation, Brå has not been able to see any clear change before and after 2013 in the average time between registration of a report and the time of the decision to limit an investigation. When one compares the periods, one can see that the aggregate median time until a decision to limit investigation was 70 days before 2013 and 69 days after 2013.

Reduced administration and workload?

Although the statutory change has not shortened the time between reporting and a decision to limit an investigation, it has relieved the police of the burden of sending investigations to the public prosecutor for decisions to limit an investigation. On the other hand, the police have instead acquired the new and demanding task of evaluating and taking decisions to limit an investigation. Accordingly, the aggregate workload for the police has probably not decreased significantly. However, the three police officers who were interviewed do perceive that their caseload has decreased since 2013. They also said that final reports on investigations can now be submitted to the public prosecutor more quickly. However, for the prosecutors, the reduced number of final reports regarding offences in the matters which follow from the police's authority to limit investigations should have entailed a savings in resources. This is also something that they state in the interviews.

How have person-based clearances been affected?

During the most recent years, both the number and percentage of offences with person-based clearances has decreased. Between 2011 and 2014, the number of offences with person-based clearances declined by 16 per cent, while the person-based clearance rate decreased by three percentage points. This has raised the question of whether this is a result of more limitations of investigation for offences. A limitation of investigation in a criminal investigation means, in practice, that fewer criminal matters are subject to

prosecution decisions, particularly in the form of prosecution or waivers of prosecution. Theoretically, those offences where the preliminary investigation is either not commenced or is closed with a decision to limit the investigation could have led to person-based clearances had the investigation of the offence instead been completed.

Limited latitude to influence the number of offences with person-based clearances

It should first be emphasised that decisions to limit an investigation constitute a very small percentage of all decisions in respect of reported offences. They comprised 4 per cent of the decisions in 2014, while 80 per cent were closed for other reasons and 15 per cent had person-based clearances. This means that decisions to limit an investigation cannot have had any major significance in respect of the number and percentage of offences with person-based clearances. Stated differently, offences with person-based clearances have declined since 2011 by approximately 38,600 decisions (of which 26,000 referred to prosecution decisions) while limitations of investigation increased by 4,050 decisions during the same period. The latitude for impact is, in other words, limited.

The magnitude of the conceivable effect of limitations of investigation also depends on an estimate of how great a percentage of the offences in which the investigation was limited could have led to person-based clearances. Firstly, only offences with reasonable suspicion in which investigation was limited could, in practice, have been prosecuted had the decision to limit the investigation not been taken. Furthermore, in respect of offences with reasonable suspicion, one should remember that the requirements for deciding to limit an investigation are somewhat lower than those for waivers of prosecution. Specifically, a waiver of prosecution requires that the suspected person confesses to the offence, which is not necessary for limitation of investigation. Taken as a whole, this means that only part of the offences with limited investigations could have had person-based clearances had the decision to limit the investigation not been taken.

Hypothetically, the person-based clearance rate could have been slightly less than 2 percentage points higher

Nevertheless, limitations of investigation are not entirely without significance in respect of the reduction in person-based clearances. Brå's calculations indicate that the person-based clearance rate would have declined even if no offences had been subject to limitations of investigation, but that the decline would have been approximately 1 percentage point less during the period (2006–2014). Under the same premises, the person-based clearance rate would have been slightly more than two percentage points higher. However, the impact was lower at the beginning of the period. In respect of the conceivable effects on the level after the police were authorised to limit investigations (2013–2014), the results indicate that the person-based clearance rate would have been approximately 0.5 percentage points higher had the statutory change not taken place.

On the other hand, the impact on the number of offences with person-based clearances may have been significantly greater. Brå's analyses show that the level of the number of offences with person-based clearances would have been up to 20 per cent higher during the period had there been no possibility to limit an investigation. Since the number of decisions to limit an investigation are relatively few in relation to the number of offences with person-based clearances, they do not, however, have any greater

impact on actual trends in person-based clearances of offences over the period. However, one can see a small difference in the trend for 2013–2014, since the calculation showed that the number of offences with person-based clearances, instead of declining, would have increased somewhat (2 per cent) had the possibility to limit an investigation not existed. The overall conclusion is, however, that the use of limitations of investigation cannot explain the reduction in the number of offences with person-based clearances since 2011, other than to a relatively small extent.

Other reflections

Two possible areas for improvement have been identified

Based on the interviews which we conducted, Brå has observed two possible areas for improvement in respect of limitations of investigation. The ideas are based on a small number of interviews but are believed nevertheless to be relevant.

The first area for improvement relates to the exchange of information in respect of the decisions to limit an investigation which were made in matters for which the police submitted a final report to the public prosecutor. In order to ensure that satisfactory information regarding the police's decisions to limit investigations can be communicated between the police and the public prosecutor, in 2013 the Swedish National Police Board produced national guidelines for documentation of decisions to limit investigations by the police in matters in which a final report was submitted to the public prosecutor (Swedish National Police Board 2013b). The guidelines state that police decisions to limit an investigation are to be noted in a service memo, which then is sent to the public prosecutor along with the matter. The purpose of this documentation is to provide the prosecutors with satisfactory information regarding the aggregate picture of the offence and the suspicions of offences in a matter; this is something which, pursuant to the guideline, is necessary to enable the public prosecutor to make a proper assessment of the scope and composition of the prosecution. However, the police and public prosecutors who Brå interviewed do not feel that this routine works in a satisfactory manner, and certain interviewees did not even know about the routine. Although only a few interviews were conducted, in our opinion there may be cause to review compliance with the guidelines within the Police and whether there is cause to improve the inter-agency communication regarding limitations of investigation. In conjunction with such a review, one can also weigh the possibilities involved in instituting structured and digital inter-agency communication of decisions to limit an investigation in order to reduce the number of desks that a decision crosses and ensure that the information reaches the recipient.

Another area for improvement involves the need for general guidelines and regulations for the police's work with limitations of investigation. The police have been charged with a new and complicated task, with stringent requirements in terms of knowledge about the application of the sanctions system. The Prosecutor General noted the complexity in terms of assessment, not in the least in respect of when the decision is taken at an early stage, in the guidelines (Prosecutor General 2008). In the report from the committee considering limitations of investigation, it was determined that conditions existed which would enable the police to complete this task as long as the national investigation officer training was supplemented with theoretical and practical content regarding the application of the provisions for limitations of investigation. In addition, it was emphasised that

the then-Swedish National Police Board should issue regulations and general guidelines regarding limitations of investigation, which in relevant parts would conform to the Prosecutor General's guidelines in the area (SOU 2010:43). Since 2012, national investigation officer training includes a unit which addresses limitations of investigation. However, in the interviews with police officers, it was learned that continuing education varies in different parts of the country in respect of limitations of investigation. In certain localities, police training efforts have been far too cursory, while in other localities, officers have received thorough and ongoing continuing education. According to the interviewees, a consequence may be that the assessments prior to a decision to limit an investigation run the risk of consuming a great deal of time. It was even felt that actually investigating all offences required fewer resources than taking a decision to limit an investigation. If the Police produce general guidelines and regulations for police work in terms of limitations of investigation, as is recommended, this determination should be made easier. Such regulations would benefit from being preceded by supplementary training efforts for the purpose of ensuring a high and even level of knowledge throughout the country.

It is important to include limitations of investigation in analyses of operational results

The analyses in the study show that decisions to limit an investigation can have a certain impact on person-based clearances. This underscores the importance of considering the connection between person-based clearance decisions and limitations of investigation when following up and analysing the results of the investigatory bodies, primarily the Police. Looking only at information regarding offences with person-based clearances without considering decisions for reasons of procedural economy which were taken prior thereto can lead to a far too negative impression of the results. An inspection report from the Swedish National Police Board which was conducted in 2013 observed a risk that opposition to limiting investigation of offences might arise if production goals in the operations are too narrow and do not include limitations of investigation.

In order to make more satisfactory determinations of the results of operations, it is therefore important to include limitations of investigation in the analysis. Brå has embraced this in a developing the new statistics for processed offences by separately reporting decisions to limit investigations and, above all, by considering decisions to limit an investigation in the newly developed metric of prosecution percentage, which calculates the percentage of offences with person-based clearances based on all investigated offences.



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