



Reducing isolation in detention

Situation and proposals

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English summary of Brå report 2017:6

**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.

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Summary

Each year, between 9,000 and 10,000 persons in Sweden are held in detention. The average detention period is two months and, in 2015, almost 500 persons were in detention for at least six months. Slightly more than two-thirds of the persons in detention are subject to restrictions which isolate them from both the outside world and from other persons in detention.

Of the persons who were in detention in 2015, 140 were children between 15 and 17 years of age. They are customarily detained for a shorter period than adults and, on the average, for one month. On the other hand, it is more common for this group than for adults to be subject to restrictions – specifically, in a full 81% of the cases.

Since the 1990s, Sweden has been the object of criticism from both the UN and the Council of Europe because such a significant number of persons in detention are in isolation by virtue of a decision regarding restrictions.¹ The UN Committee on the Rights of the Child has also criticised Sweden's isolation of children who are placed in detention and custody, and has exhorted Sweden to immediately cease isolation for all children and to amend its legislation to prohibit the isolation of children.

In this light, the Government appointed several committees during 2015 in respect of detention and the conditions in Swedish detention centres. The Detention and Restrictions Committee (*Häktes- och restriktionsutredningen*) was appointed for the purpose of submitting proposals aimed at reducing the use of detention and restrictions. The committee submitted its report in August of 2016. In addition, Brå was instructed to study detention and conditions in detention centres, which is the subject of this report.

Issues and methodology

The instruction states that Brå is to survey:

- the detained persons, their periods of detention, and the reasons for detention;
- the use of restrictions and the Prison and Probation Agency's application of activities to break isolation; and
- impediments to a humane, effective, and safe detention scheme, and provide proposals for how such a scheme can be developed.

¹ A review of detention and restrictions in 14 countries, conducted by the Swedish Prosecution Authority's Prosecution Development Centre in Malmö, showed that persons in detention in most countries are isolated to a significantly lesser extent than in Sweden (Swedish Prosecution Authority 2011).

Several different data sources have been used for the purpose of answering the questions posed in the instruction. These are:

- an extract from the register of the Public Prosecutor's *Cåbra* matter-management system in respect of all concluded detentions, 2014;
- a randomly generated selection of 525 motions for detention, 2014;
- statistics from the Prison and Probation Service's 24-hour measurements in respect of activities to break isolation, 2015;
- interviews with public prosecutors, Prison and Probation Service employees, and persons in detention.

Risk of impeding an investigation is the most common reason for detention

A person who is suspected, with probable cause, of offences punishable by imprisonment for at least one year can be the subject of a motion for detention if there is a risk (Swedish Code of Judicial Procedure, Chapter 24, section 1, first paragraph) that they may do any of the following:

influence the investigation (*risk of impeding the investigation*);

continue to commit crime (*recidivism risk*); or

attempt to avoid conviction or punishment by absconding (*flight risk*).

If the minimum sentence for the offence is imprisonment for two years or more, mandatory detention applies unless it is clear that there is no reason for detention (the so-called two-year rule or presumption (Code of Judicial Procedure, Chapter 24, section 1, second paragraph)).

Most people in detention in Sweden – slightly more than two-thirds – are placed into detention because the prosecutor decides that there is a risk that they will, in various ways, obstruct the investigation; this is referred to as a risk of impeding the investigation. Slightly more than one-half are detained due to the risk of relapse into crime during the course of the investigation (recidivism risk), and one-third due to the risk of flight. The so-called two-year rule is the basis for detention in one-tenth of the detentions studied. In such cases, more than one ground for detention is usually in play, usually a combination of the risks of impeding the investigation and recidivism.

The persons in detention have, most frequently, committed a property offence (38 per cent) or a violent offence (30 per cent). There is a certain tendency for women to be detained for more serious crimes than for men. This might indicate that the prosecutors are less inclined to detain women than men.

One can also see a clear pattern regarding when youth are detained, namely in respect of more serious offences, most frequently robbery, and risk of impeding the investigation. Taken as a whole, the report indicates that to a great extent, prosecutors limit detention of children to the most serious offences, consistent with the existing guidelines advocating moderation.

The number of persons in detention has declined – but not the percentage with long detention times

The number of persons who have been detained has gradually declined, from slightly more than 11,200 persons in 2010 to slightly more than 9,000 persons in 2015. Women comprise approximately seven per cent, meaning that they are underrepresented in relation to their percentage among persons suspected of offences seen as a whole.

Children are also underrepresented in relation to their percentage as persons suspected of offences, which is consistent with the intent to avoid detention of children. Only one per cent of the persons in detention were 15–17 years of age, while this age group comprises nine per cent of the person suspected of offences (information from 2014).

On average, children are in detention for one month. For adults, the average detention time is two months (and the median time is 38 days), and for persons 18–20 years of age, the average detention time is 52 days. The Prosecution Authority has, since 2010, reported annually on the number of persons in detention with detention times within various ranges (however not the average time). There, one can see, among other things, that the number of persons in detention with long detention times has, in principle, been unchanged during recent years, while the percentage has increased somewhat – from 28 per cent in 2012 to 32 per cent in 2015.

There are no clear regional patterns, apart from the detention of persons 15–17 years of age occurring primarily in the three large cities. It is not possible to discern whether this is due solely to regional differences in the structure of the criminality or whether it also is dependent on differences in the public prosecutors' way of determining the need to detain children.

The restrictions are seldom reconsidered

Restrictions may be imposed only on persons placed in detention due to a risk of impeding the investigation. Essentially all persons in this category are subject to restrictions. The restrictions almost always include limitations on both contact with individuals outside of the detention centre and with other detained persons. Restrictions on the ability to follow mass media and to possess newspapers and magazines are imposed to a lesser extent.

Among children in detention, the percentage with restrictions is even greater than that among adults – 81 per cent in 2014 (compared with 68 per cent among adults). This is consistent with the effort to avoid placing children into detention unless the risk of impeding the investigation is perceived as particularly great – in such case, a need to impose restrictions is found more frequently.

In most cases, the restrictions are in place during the majority of the detention period, averaging three-fourths of the total time. In respect of children subject to restrictions, the restrictions are imposed during 90 per cent of the period.

Consistent with the result that restrictions often apply during the majority of the detention period, interviews with public prosecutors disclose that detained persons seldom exercise their right to judicial appeal on the issue of whether all of the individual types of restrictions are necessary. More-

over, the public prosecutors seldom review and revoke the restrictions during the detention period, since they perceive that the risk of impeding the investigation on which the decision was based will persist throughout the investigation period.

For the purpose of reducing the use of restrictions, the Prosecution Authority adopted new guidelines during the autumn of 2015, entailing, among other things, stricter requirements for public prosecutors when presenting justification to the court for the need for each individual type of restriction. Brå's follow-up does not indicate that this has had any effect in respect of the percentage of detained persons who are subject to restrictions; it was as great during the first half of 2016 as during previous years.

Six of ten persons in detention who are subject to restrictions are isolated around the clock

The Prison and Probation Service can use various means to reduce the isolation of detained persons. These so-called activities to break isolation may, for example, entail being able to take a walk in the recreation yard, meeting other detained persons, receiving visits or telephone calls, or having a conversation with a member of staff. The goal of the Prison and Probation Service is that all persons in detention will have at least *two hours* of activities to break isolation each day, regardless of whether they are subject to restrictions. However, the Prison and Probation Service's measurement of such activities during seven separate 24-hour periods in 2015 shows that the reality falls far short of the goal. During a period of as long as 24 hours, activities to break isolation were provided to only 25 per cent of persons subject to restrictions. The nature of most common activities to break isolation did not involve any human contact – for example the person in detention was allowed to go for a walk or to occupy himself or herself with something outside of the cell.

The percentage who were given activities which involve contact with others for at least two hours was much lower. Not more than 12 per cent of the persons in detention subject to restrictions had daily human contact during an equally long period. The average time engaged in a measure which entails human contact was 48 minutes per 24-hour period. This most frequently involved conversation with personnel.

A significant percentage of persons subject to restrictions had no activities to break isolation which involved human contact during the entire measurement period. However, this group includes a significant number of persons who, for various reasons, personally declined such activities. In comparison with the measurement carried out by the Prison and Probation Service in 2014, the situation has not improved. The percentage of restricted persons who have had human contact has declined by nine percentage points since 2014.

Persons who are not subject to restrictions are also isolated for a significant portion of the 24-hour day. However, they often meet with other detained persons outside of their cells for several hours each day.

Obstacles to activities to break isolation

The obstacles to a “humane, effective, and safe detention scheme” which Brå addresses pursuant to the instruction primarily concerned activities at the detention centres, not the public prosecutors’ detention decisions.² The report emphasises the circumstances for the persons who are subject to restrictions, but will also address those which affect all persons in detention.

Brå reports on seven different types of obstacles:

1. Ambiguities regarding the party responsible for taking the initiative to reduce restrictions.
2. High demands imposed by the prosecutors.
3. Shortage of personnel at the detention centres.
4. Restrictive rules and routines at certain detention centres.
5. Unwieldy administration surrounding relatives’ consent to contact.
6. Language barriers.
7. The detained person’s refusal of activities to break isolation.

Obstacles to reducing or removing restrictions

The first two are obstacles to the removal or reduction of a detained person’s restrictions after part of the detention period. In terms of the first obstacle, it is unclear whether the Prison and Probation Service or the public prosecutor has primary responsibility for taking the initiative to roll back restrictions. The second obstacle raised by Prison and Probation Service employees is that they perceive the prosecutors as sometimes far too passive in respect of reassessing the question of whether there is still a need for restrictions.

Obstructive routines and shortage of personnel

Three more central obstacles which are addressed are restrictive rules and routines at certain detention centres, time-consuming administration when obtaining consent to contact, and a shortage of personnel at the detention centres. Staffing is the obstacle which is of the greatest significance in terms of the activities to break isolation available to the persons in detention – both those detained with restrictions and those without. As a result of a limited number of employees, the work entailed in activities to break isolation competes with other tasks of a more unavoidable nature, such as transporting detained persons to trials. Due to personnel shortages, some detention centres have more limited visiting hours and hours when detained persons may use the telephone than do others.

Language barriers make it more difficult to break the isolation

Almost one-third³ of the persons who are in detention have a native language other than Swedish; this is probably an underestimate. In order to break their isolation, there must be someone who speaks their language at the detention centre. In practice, personnel at the detention centres do not speak all of the languages which are represented among the detained persons, and even though there may be two detained persons who speak

² In the final discussion in the report, Brå also offers proposals which involve the prosecutors’ initial decisions regarding restrictions and detention periods.

³ According to applications for detention orders reviewed by Brå, almost 30 per cent of them needed an interpreter.

the same language, they cannot speak with each other if they are included in the same criminal investigation. It is reasonable that the feeling of isolation is aggravated by the inability to communicate with people in their surroundings.

Some persons in detention decline interaction with others

An additional impediment to activities to break isolation is that the person in detention personally declines to participate; this is not uncommon. For example, this may be the case in respect of enquiries as to whether the detained person wants company, i.e. share a cell with another detained person during part of the day. They can experience this as forced contact with a person with whom the individual may have nothing in common. There are also persons who decline because they don't feel well enough to want, or have the energy, to interact with others.

Brå's assessment

In the concluding section, Brå presents a number of proposals for developing the activities, based on the reported results. The proposals made by the Detention and Restrictions Committee in its report (Swedish Government Official Reports 2016) are another point of departure for Brå's discussion. The following is a brief summary of the issues which Brå addresses and the proposals which it offers.

Measures to reduce the number of persons in detention and shorten the detention times

Brå supports the proposals submitted by the Detention and Restrictions Committee in the Swedish Government Official Reports, first and foremost discontinuing the so-called two-year rule,⁴ setting the maximum time from detention until prosecution at six months unless extraordinary reasons exist, introducing two alternatives to detention (home arrest or neighbourhood detention with electronic monitoring), and placing children under 18 years of age into a special juvenile home instead of detention. However, the expectations in respect of these proposals should not be set too high. The home arrest and neighbourhood detention with electronic monitoring alternatives are primarily intended for persons who have been in long-term detention on grounds other than a risk of impeding the investigation. According to Brå's calculations, this group is relatively small. The degree of impact on the total number of persons in detention if the two-year rule is discarded is also unclear since, in the case of such serious offences, the prosecutors often find that there is a risk of impeding the investigation, a recidivism risk, or a flight risk. Moreover, because there are not many persons who are detained longer than six months before prosecution, the proposed shorter limits for time in detention would probably only affect a very limited number of the persons in detention.

⁴ The two-year rule is a presumption that a person who is suspected of an offence which is punishable by not less than two years' imprisonment must be detained.

Measures to reduce the number of persons in detention who are subject to restrictions

In Brå's opinion, there is a palpable risk that the proposals by the Detention and Restrictions Committee will have a rather limited effect on the number and percentage of persons in detention who are subject to restrictions. Accordingly, there may be cause, during a pilot period, to try somewhat more extensive changes. One possibility could be instructing a selected local public prosecution office to increase the number of detained persons who present a risk of impeding an investigation who are allowed contact with other detained persons from the current almost 0 per cent to, for example, 50 per cent. This would entail the prosecutors limiting decisions regarding restrictions to visits and telephone calls to a greater extent than that currently employed, but permitting, from as early as the first day, companionship by sitting in the same cell during the day or general association with other inmates who are not part of the same investigation.

The pilot project could be followed up on and evaluated in respect of effects on investigatory work and the percentage of convictions. By way of suggestion, the pilot project could entail the Prosecutor-General making available public prosecutors with specific expertise as advisors or sounding boards, both in terms of general implementation and in individual cases.

Measures to moderate restrictions

In March 2016, the Prosecution Authority and the Prison and Probation Service (Swedish Prosecution Authority 2016b) generated a joint proposal to implement special cooperation meetings regarding the inmates who are anticipated to have long-term detention subject to restrictions. Not later than when an inmate has been subject to restrictions for three months, the Prison and Probation Service shall convene a cooperation meeting between the responsible detention centre personnel and the senior investigating officer. The purpose of the cooperation meeting would be to make possible activities to break isolation and to jointly find solutions to make the inmate's time in detention easier. According to the report, this type of cooperation meeting would be held much earlier in respect of youth in detention. Brå supports the proposal.

Measures to reduce time in isolation

Brå supports the Detention and Restrictions Committee's proposal that children in detention shall have a statutory right to spend at least four hours a day with other people, and that adults shall have a right to at least two hours of such interaction per day. In Brå's opinion, so-called restricted association (*Sw. restriktionsgemenskap*) – i.e. the possibility to associate with other inmates who are subject to restrictions, is preferable to companionship in a cell. This is consistent with the Detention and Restrictions Committee's proposal. Work in this direction has begun at the Prison and Probation Service but needs to be developed and followed up on.

Brå also supports the Detention and Restrictions Committee's proposal for measures to facilitate the detained person's contact with relatives and friends, for example, making it possible to call mobile telephones and telephones which are connected to IP telephony. In Brå's opinion, the detained persons' routines for visits and telephone conversations should be made

more uniform and adapted to the detention centres with routines that reduce the detained person's isolation to the greatest extent.

The risk that a detained person will become too isolated is particularly great among those who do not speak fluent Swedish. This group is estimated to comprise at least one-third of the persons in detention. In order to gain a better understanding of the situation for this group, Brå proposes that the Prison and Probation Service, in its continued 24-hour measurements, register not only the detained person's age and gender but also whether they have difficulty understanding Swedish and, in such case, the language which they speak.

Overall measures to make time in detention more humane

Many of the shortcomings in the detention environment which have been identified in Brå's survey affect all persons in detention, regardless of restrictions. This involves, not in the least, the suitability of the premises and the personnel resources. The interviews with inmates reveal that a number of them have experienced psychological distress, and perceived that it took too long for personnel to notice this fact. In Brå's opinion, one can consider the necessity of a system, comprising a few simple evaluative questions asked by personnel of each person in detention each day, in order not to miss an individual who feels poorly and may need extra support.

In order to make these proposals concrete and improve the situation for all persons in detention – both those subject to restrictions and those who are not – the Prison and Probation Services' resources to implement improvements must be secured.