



Criminal Sanctions Inquiry

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Summary

Our assignment

Our overall mandate was to review the Swedish system of criminal sanctions for both adult and young offenders. Within the framework of this review we were assigned to:

- analyse and propose how it would be possible to reduce the use of imprisonment (Sw. *fängelse*), principally short sentences, while maintaining the credibility of the system
- analyse and propose how to avoid small differences in penal value resulting in considerable differences in the choice of criminal sanction
- analyse and propose how the importance of the nature of criminality (Sw. *brottslighetens art*) can be defined and its meaning clearly delimited
- adopt a position on and propose the criteria that should apply to previous criminality and the importance that such criminality should be attributed when choosing criminal sanctions and determining penalties and also with reference to the forfeiture of the grant of conditional release
- analyse and propose how to choose an intervention that does not constitute imprisonment at an institution, the content and structure of such interventions and also how they should be followed up as well as how reactions in the event of relapse into crime and other misconduct should be structured; As regards the choice of intervention, an investigation should be conducted into, for example, improved opportunities to adapt interventions to

the criminality and the extent to which the accused's personal circumstances should be attributed importance

- analyse and propose how it would be possible to increase the use of day fines (Sw. *dagsböter*), how to calculate the amount of day fines, how the implementation of day fines can be rendered more effective and what the reaction should be to a default in payment; review the relationship between day fines and monetary fines and also investigate other issues concerning fines that may arise
- adopt a position on whether an offender who has attained the age of 18 but not the age of 21 should be treated as an adult offender when determining punishment and choosing criminal sanction or either of these respects and also analyse how young people should be considered when determining penalties in those cases where a penalty is to be reduced
- evaluate whether the purpose of the 2007 reform of the care of young persons (Sw. *ungdomsvård*) and youth service (Sw. *ungdomstjänst*) sanctions has been achieved, focussing on the courts' choice of criminal sanction and the content of the sanctions
- conduct individual reviews of the sanctions of institutional care of young persons (Sw. *sluten ungdomsvård*), care of young persons and youth service as regards the status of the sanction, responsibility for management of the sanction, the choice of criminal sanction, its content and structure in general and also follow-up and reactions in the event of a relapse into crime or other misconduct
- investigate whether any new elements should be developed that may be particularly appropriate for young offenders
- make proposals to abolish or concerning greater restraint in the use of fines for offenders who have committed crimes prior to the age of 18
- review the rules governing the overlapping of crimes and changes to sanctions and therewith take particular account of the interest in simplifying the regulation and structuring it in a way that is more cohesive in principle.

One cross-cutting issue has been to consider whether to introduce a system for conditional imprisonment (Sw. *villkorligt fängelse*). In the event that no proposal is made for such a system, we have been assigned to propose how the system of criminal sanctions sought in our Terms of

Reference can be improved within the framework of the existing structure.

System of criminal sanctions for adult offenders

Problems and inadequacies relating to the system of criminal sanctions

During the course of our investigation work we identified a number of problems and inadequacies associated with the current system of criminal sanctions. These can be summarised as follows:

The system of criminal sanctions is complex and difficult to understand. Both the sanctions of a conditional sentence (Sw. *villkorlig dom*) and probation (Sw. *skyddstillsyn*) may be chosen as an alternative to imprisonment. The choice between them is not based primarily on the seriousness of the crime, but on prognostic criteria linked to the sentenced person as an individual and the risk of her or him relapsing into crime. This has resulted in difficulties in ranking sanctions according to level of intervention and anticipating the sanction that a particular crime will result in.

There are limited opportunities to gauge the punishments of a conditional sentence and probation. This means that these sanctions are not always perceived as proportionate in relation to the seriousness of the criminality. A crime with a low penal value may result in a sanction that is more severe than a crime with a high penal value. Furthermore, unjustified thresholds arise in the transition between a sanction that does not entail any deprivation of liberty and imprisonment. A minor difference in penal value may entail a significantly more severe sanction.

What the term of the sentence would have been if imprisonment had been chosen as a sanction is not specified when a conditional sentence or probation is imposed. For this reason, the person sentenced is not clear about the risks that he or she faces in the event of non-compliance with the sanction. The absence of a pre-assessed prison sentence also makes it difficult for the court setting aside a conditional sentence or probation to determine the term of the prison sentence that is to replace the sanction.

Increasing numbers of offences have started to be treated more stringently as a consequence of their nature. Legal practice in this respect provides no clear guidelines and principles, and may be perceived as inconsistent and arbitrary. Special treatment as a consequence of the nature of the criminality has also resulted in extensive use of short prison sentences and other severe sanctions.

The content of sanctions that do not entail a deprivation of liberty is sometimes unclear and insubstantial. It may therefore be questioned

whether they are always sufficiently severe for the crimes for which they are used.

Taken together this means that the system of criminal sanctions is not sufficiently clear and consistent and reduces opportunities for standards to be set through the choice of criminal sanction. Inadequacies may also mean loss of an opportunity to choose a criminal sanction that may be the most humane, typically the sanction that will reduce the risk of reoffending and that is the least costly.

General points of departures for a reform

In our opinion, a reform of the system of criminal sanctions for adult offenders should be based on the following points of departure:

- Criminalisation assumes sanctions that express the seriousness of the breach of the rules.
- Based on the requirement for humanity, sanctions may not be chosen that are more severe than are necessary to achieve the objectives of the penal system.
- There should be good preconditions for choosing a criminal sanction that does not entail a deprivation of liberty.
- Alternatives to imprisonment at an institution that do not entail the deprivation of liberty should have clear and predictable content, and it should be possible to pre-assess the determination of punishment and escalate such punishments in the event of a relapse.
- The choice of criminal sanction in each individual case should reduce the risk of reoffending as far as possible.
- The regulation of criminal sanctions must meet stringent requirements for legal certainty.
- The system of criminal sanctions must be flexible and provide scope for changes that are justified through criminal policy, without changes having to be made to the structure itself.
- As far as possible, there should not be any special treatment for any crimes owing to them belonging to a particular kind of offence.
- The ranking of different kinds of penal law intervention should be clearer and more realistic.

- The consequences for those who do not comply with the obligations ensuing from a sanction imposed should be clarified.

Conditional imprisonment should be introduced into the system of criminal sanctions

We have made the assessment that the general points of departure that we have established are best satisfied if conditional imprisonment is introduced into the system of criminal sanctions. The objections that may be raised against such a system are in our opinion not strong enough to outweigh the advantages. We therefore propose that conditional imprisonment be introduced into the system of criminal sanctions.

The development of a system of criminal sanctions including conditional imprisonment

The place of a conditional prison sentence in the system of criminal sanctions

Conditional sentences and probation will be replaced by conditional imprisonment. This proposal means that the system of criminal sanctions for adult offenders will comprise two sanctions – fines and imprisonment – where a decision may be made in certain conditions that the prison sentence is to be conditional.

The meaning of ‘conditional imprisonment’

A decision that a prison sentence should be conditional will mean that the sentenced person will not need to serve the sentence at a penal institution provided he or she satisfies certain conditions. These conditions will comprise the person sentenced first refraining from continued criminality for a probationary period and second fulfilling the supplementary sanction with which the conditional prison sentence is combined. According to the main rule, the probationary period will be two years. The supplementary sanctions – which are described in more detail below – could possibly comprise, for instance, an obligation for the person sentenced to pay day fines, perform community service (Sw. *samhällstjänst*) or undergo care or treatment.

Preconditions for conditional imprisonment

There will be a presumption that a prison sentence of less than one year should be imposed conditionally.

It should also be possible to impose a prison sentence amounting to one year or more provided it can be combined with contract treatment that is sufficiently severe or where the enforcement of an unconditional prison sentence appears to be manifestly unreasonable considering the accused’s personal circumstances or other very weighty reasons.

Determination of punishment through choice of supplementary sanction

In our opinion, it is not enough for a conditional prison sentence to entail an obligation for the sentenced person to refrain from crime for a probationary period. For this reason, conditional imprisonment will be combined with a supplementary sanction.

The supplementary sanction should be chosen using the term of the prison sentence as a point of departure. This means that longer conditional prison sentences will be combined with more severe supplementary sanctions than shorter sentences, and that equally long conditional prison sentences will be combined with supplementary sanctions that appear to be basically as severe. An unconditional prison sentence must be imposed if there are no supplementary sanctions that are sufficiently severe.

As a point of departure, short conditional prison sentences –three months or less – should be combined with *day fines*.

To the extent that fines cannot be deemed to be a sufficiently severe supplementary sanction considering the term of the prison sentence or the accused’s previous criminality, the conditional prison sentence should, as a point of departure, be combined with *community service*.

Not all people are suitable for performing community service. If it is considered that community service would not be an appropriate sanction for the person sentenced, it should thus be possible for the supplementary sanction to comprise probation and supervision in accordance with a *probation and supervision sanction* (Sw. *övervaknings- och kontrollstraff*). This sanction should be basically as severe as the number of hours of community service that would otherwise have been imposed.

At the current time, short prison sentences can be served through intensive supervision with electronic monitoring (‘electronic tags’). This possibility should be withdrawn. There should instead be an opportunity to combine a conditional prison sentence with a prohibition for the person sentenced to leave their home: *house arrest* (Sw. *hemarrest*). House arrest should only be used as a supplementary sanction if the accused has previously committed crimes in such a way or to such an extent that the prerequisites would not otherwise have prevailed to decide that the prison sentence should be conditional.

If the accused is in need of care or treatment for addictive substance abuse or for some other particular circumstance that may be assumed to have contributed to the criminality committed, or if there are programme activities related to the offence of substance abuse that are

considered appropriate for her or him to undergo, the conditional prison sentence may be combined with a *care or influence sanction* (Sw. *vård- eller påverkanssanktion*) instead of day fines, community service, probation and supervision sanctions or house arrest. The main content of such sanction will be set out in a statement of views issued by the Prison and Probation Service (PPS).

A care or influence sanction must be sufficiently severe. This means that the sanction must basically be as severe as the number of day fines, the number of hours of community service or the number of months of house arrest with which the conditional prison sentence would otherwise have been combined. If it is obvious that the initiatives proposed by PPS are not sufficiently severe, the court should be able to combine the sanction with day fines, community service or a probation and supervision sanction.

It should only be possible to use *contract treatment* (Sw. *kontraktsvård*) as a supplementary sanction if the term of the conditional prison sentence amounts to one year or more, or if the accused has previously committed crimes in such a way or to such an extent that there would not otherwise have been the prerequisites to decide that the prison sentence should be conditional. The content of the contract treatment should be severe enough to basically equate to an unconditional prison sentence in terms of level of intervention.

The significance of a relapse into crime

General information about relapse

One of the fundamental points of departure for our discussions has been that those who relapse into crime should be sentenced to a more severe sanction than a person with no previous criminal record.

However, a precondition for taking a more severe attitude to previous criminality should be that the matter involves a relapse that is relevant. We have made the assessment that a relapse that occurred during the probationary period for a conditional prison sentence previously imposed should always be attributed relevance when determining the sanction for the new criminality, unless fines would be a sufficient sanction. A relapse after the end of the probationary period for a conditional prison sentence previously imposed or after an unconditional prison sentence may also be deemed to be relevant. When assessing the relevance of relapse in such a case, regard should be taken – in basically the same way as it is today – to the length of the period that must elapse since the previous judgment, the similarity between the old and new criminality and the seriousness of the criminality.

It should be possible to impose conditional imprisonment several times

It should be possible to impose conditional imprisonment on someone several times. The fact that a crime constitutes a relevant relapse should thus not always impede the imposition of a new conditional prison sentence. In our opinion, the consequences of a system whereby conditional imprisonment can only be used once before an unconditional prison sentence is unavoidable would be unacceptable. There would be a significant increase in the number of inmates at institutions and this would disregard the principle of humanity that we considered should form the basis of a new system of criminal sanctions.

Relapse during the probationary period for a conditional prison sentence

If the person sentenced relapses into crime during the probationary period for a conditional prison sentence previously imposed, this would entail a breach of one of the conditions for the conditional prison sentence. This is something that must have repercussions. For this reason, a relapse during the probationary period for a conditional prison sentence should as such comprise one reason for deciding against imposing a conditional prison sentence for the new crime.

However, there should be power to impose conditional imprisonment on another occasion provided sufficient consideration of the relapse is taken through combining the conditional prison sentence with a supplementary sanction of a more severe kind than would otherwise come in question. This means, for instance, that a conditional prison sentence that would otherwise have been combined with day fines could be combined with community service or a probation and supervision sanction, or that a conditional prison sentence that would otherwise have been combined with community service could be combined with house arrest. It should also be possible for a care or influence sanction to be used as a supplementary sanction in the event of relapse, subject to the precondition that such a sanction is sufficiently severe considering both the term of the prison sentence and the previous criminality.

Relapse after the expiry of the probationary period for a conditional prison sentence

The reasons for imposing another conditional prison sentence are not as strong if the new crime is committed after the expiry of the probationary period for a conditional prison sentence previously imposed.

Even if the relapse is relevant, it should be possible to decide on a prison sentence being conditional in such a situation, if it is possible to take sufficient account of the previous criminality through the level of intervention of the supplementary sanction with which the conditional prison sentence is combined. The court can then either choose a more

severe kind of supplementary sanction or, for example, more day fines, more hours of community service or a more severe care or influence sanction than would otherwise have come into question.

Unconditional imprisonment where supplementary sanctions are not sufficiently severe

An unconditional prison sentence should be imposed as a point of departure if the choice of a supplementary sanction does not take sufficient account of the accused's previous criminality.

However, it should be possible to decide on a conditional prison sentence if the enforcement of an unconditional prison sentence appears to be manifestly unreasonable considering the accused's personal circumstances or other very weighty reasons.

The significance of relapse when determining punishments

When determining punishments it should be possible to consider relapses into crime on basically the same grounds as is currently the case, whereby a more severe fine or longer prison sentence is imposed than would otherwise have come into question. However, as regards imprisonment, this possibility should be restricted to only refer to unconditional prison sentences.

Forfeiture of conditional release granted

It should only be possible to decide on the forfeiture of a conditional release granted from an unconditional prison sentence previously imposed if the accused is sentenced to unconditional imprisonment for the new criminality. Our proposals do not otherwise involve any fundamental changes to the provisions governing forfeiture of a conditional release granted owing to relapse into crime.

Dealing with prison sentences previously imposed that have not been fully enforced when the person sentenced is sentenced for another offence

A distinction should be made between new and newly discovered criminality

If the party sentenced for another offence commits a crime before the sanction has been fully enforced, the court must take account of the previous sanction when determining the sanction for the new offence. The same thing applies if it transpires that the person sentenced has committed other criminality prior to the judgment and this criminality is adjudicated in a later judgment ('newly-discovered criminality'). The legislation currently treats both of these situations in basically the same way. Regardless of whether the matter involves a new offence or a

newly-discovered offence, the court can make a choice between allowing the previous sanction to also encompass the additional criminality, imposing a special sanction for the additional criminality or removing the previous sanction and imposing a joint sanction for the criminality in both judgments.

In our opinion, a fundamental distinction should be made between new and newly discovered criminality. In contrast to a newly-discovered offence, a new crime is a relapse and should thus always result in a more severe sanction than if the accused had no previous criminal record.

The preconditions for deciding that a prison sentence previously imposed should encompass additional criminality

It should only be possible to decide that a prison sentence previously imposed (conditional or unconditional) should also encompass criminality adjudicated on in a subsequent judgment if this involves newly-discovered criminality. Furthermore, the newly-discovered criminality must be of no particular relevance compared with the criminality encompassed by the original judgment.

A special sanction for the criminality in the new judgment

The court should basically always impose a special sanction for the criminality if there is no question of allowing the prison sentence previously imposed to cover the additional criminality as well. This means that the sanction previously imposed remains in force and will be enforced in accordance with the provisions of the original judgment. It should only be possible to remove a sanction previously imposed in exceptional cases.

Decision that a conditional prison sentence previously imposed should be enforced at an institution

A relapse into crime during the probationary period for a conditional prison sentence should not automatically result in a prison sentence having to be enforced at a penal institution. Instead the relapse should in the first instance be taken into account by imposing a more severe sanction for the new criminality, either conditional imprisonment, including a more severe supplementary sanction, or – if this is insufficient – an unconditional prison sentence.

However, if the relapse cannot be deemed to have been sufficiently taken into account by imposing an unconditional prison sentence for the new criminality, the court should be able to decide that the conditional prison sentence should be enforced at an institution. In the event of such a decision, account should be taken of what the person sentenced has

already undergone as a consequence of the conditional prison sentence by performing all or parts of the supplementary sanction.

If a decision is made that a conditional prison sentence is to be enforced at an institution, the person sentenced will no longer be liable to perform the supplementary sanction with which the conditional prison sentence was combined. If no decision is made to enforce a conditional prison sentence at an institution, the obligation to perform the supplementary sanction remains in force, although a new sanction is imposed for the new criminality.

The content of sanctions supplementary to conditional imprisonment

PPS is responsible for enforcing conditional imprisonment

PPS will be responsible for enforcing conditional imprisonment. One of the main purposes of the work of PPS during enforcement should be to prevent a relapse into crime. Enforcement should be based on the principles of humane, meaningful and appropriate treatment of offenders.

PPS should be assigned to ensure the enforcement of the supplementary sanction with which the conditional prison sentence is combined.

To the extent that the sentenced person is in need of support and help through measures that may be assumed to reduce the risk of reoffending, this need should be met within the framework of the supplementary sanction with which the conditional prison sentence is combined.

Requirements for sobriety and freedom from drugs

As a general requirement during the enforcement of conditional imprisonment, the sentenced person may not be under the influence of alcohol or addictive substances when the supplementary sanction is being performed. It should be possible to test sobriety and freedom from drugs by taking samples.

Fines as a supplementary sanction

It may be possible to combine conditional imprisonment with a minimum of 50 and a maximum of 200 day fines.

Community service

It may be possible to combine conditional imprisonment with a minimum of 40 and a maximum of 240 hours of community service.

A precondition for community service is that the sanction is appropriate with regard to the accused as an individual and considering other

circumstances. This implies that it should be possible to assume in advance that the community service will be carried out. There is no requirement for the accused to consent to community service. However, a situation where the accused actively opposes such sanction may be a circumstance that means that community service is not considered to be an appropriate supplementary sanction.

As is the case today, community service will mainly comprise an obligation to perform unpaid work. However, it should be possible for a small proportion of the number of hours of community service imposed to comprise activities to prevent reoffending, such as an obligation to participate in programme activities or maintain contact with a probation officer. If so, this is something that should be decided by PPS in the course of enforcement.

PPS will be responsible for arranging a community service placement for the person sentenced. There will be a slight expansion of the area within which community service placements may be sought in relation to the current situation by making it possible to engage private employers to the extent that the activity being conducted is considered appropriate for community service and there are good opportunities to supervise the work.

The probation and supervision sanction

As stated above, a probation and supervision sanction will constitute an alternative to community service where this sanction is considered to be inappropriate. The probation and supervision sanction should last for a period that equates to the term of the conditional prison sentence, though at least three months and at most one year.

The fundamental content of a probation and supervision sanction will comprise a duty for the person sentenced to maintain close contact with a probation officer appointed by PPS. PPS should be able to replace all or parts of the duty to maintain contact with an obligation for the person sentenced to participate in programme activities related to crime or substance abuse.

If the term of the conditional prison sentence exceeds two months, the probation and supervision sanction will also include an obligation for the person sentenced to regularly report to PPS or another authority or person nominated by PPS.

When the term of the conditional prison sentence amounts to six months or more, the probation and supervision sanction will include a further reinforcing component. In the first instance the reinforcement component will comprise a prohibition for the person sentenced to leave their home for two normal non-working days (for her or him) per week

for the same number of weeks as the number of months for which the probation and supervision sanction lasts ('weekend house arrest').

If weekend house arrest is not considered suitable or it otherwise appears to be more appropriate, the reinforcement component should instead comprise a prohibition for the person sentenced to stay at a particular specified place during certain times or within a particular specified area, a prohibition for the person sentenced to leave a particular specified area during certain times, or an obligation for the person sentenced to stay at a particular specified place during certain times.

It should be possible to monitor compliance with the reinforcement component using electronic aids.

PPS will determine the issue of which reinforcing components form part of a probation and supervision sanction and how this is to be structured in each individual case. It should be possible to appeal against a decision made by PPS at an administrative court.

House arrest

In the same way as the current possibility of enforcing a short prison sentence through intensive supervision with electronic monitoring, house arrest will entail a prohibition on the person sentenced leaving their home. It should be possible to monitor the prohibition using electronic aids. House arrest will only be lifted during periods when the person sentenced is working or conducting alternative employment outside the home and for a small number of hours per week during which he or she is afforded an opportunity to deal with personal matters such as, for instance, shopping.

In order for house arrest not to be perceived as more severe than an unconditional prison sentence, it should last for a period corresponding to two thirds of the term of the conditional prison sentence, though at least 14 days and at most eight months.

A precondition for combining conditional imprisonment with house arrest is that the sanction is appropriate with regard to the accused as an individual and considering other circumstances. A situation where the accused actively opposes house arrest may be a circumstance that means that house arrest is not considered to be an appropriate supplementary sanction. Other such circumstances may be that the accused is not considered capable of handling the electronic equipment required to monitor the enforcement or that the offence is directed at a person with whom he or she shares a home.

Care or influence sanction

It should be possible for a care or influence sanction to completely or partially comprise an obligation for the person sentenced to participate in programme activities related to crime or substance abuse run by PPS. However, the sanction could also comprise other measures of a care or treatment oriented nature such as, for instance, substance abuse care or psychiatric treatment proposed by PPS following consultation with other public bodies.

It should also be possible for a care or influence sanction to include a duty for the person sentenced to maintain contact with a probation officer appointed by PPS.

One precondition for combining conditional imprisonment with a care or influence sanction should be that the accused is in need of and is suitable for undergoing the measures proposed by PPS.

Contract treatment

As is the case today, contract treatment should entail an obligation for the person sentenced to undergo treatment for addictive substance abuse or in respect of some other particular circumstance that has contributed to the offence having been committed and that requires care and treatment, in accordance with a plan drawn up for her or him.

A precondition for combining conditional imprisonment with contract treatment will still be that the accused declares that he or she is prepared to undergo care or treatment in accordance with the contract treatment plan drawn up.

Contract treatment should always constitute a more severe supplementary sanction than a care or influence sanction. The level of intervention should basically correspond to the level applicable to an unconditional prison sentence of a duration as imposed conditionally.

Inadequate enforcement of sanctions supplementary to conditional imprisonment*General information about inadequate enforcement*

Part of the conditionality of a conditional prison sentence will be that the person sentenced must perform the supplementary sanction with which the sentence is combined. The enforcement of the conditional prison sentence will be inadequate if the person sentenced does not comply with the supplementary sanction. The reasons behind inadequate enforcement may be that the person sentenced opposes performing the supplementary sanction, that he or she is not capable of performing the sanction or that it is inappropriate for the sanction to be performed.

Failing to enforce a conditional prison sentence is unacceptable. Inadequate enforcement must therefore always have reactions. The reactions in the event of inadequate enforcement should be clear, consistent and predictable. They should be stepped up gradually.

Supervision of enforcement

It is up to PPS to formulate the enforcement of sanctions supplementary to conditional imprisonment to enable clear and effective supervision.

Layman probation officers and assistant supervisors appointed by PPS will be obliged to notify PPS if the person sentenced fails to fulfil her or his obligations under the supplementary sanctions. The same applies to external care providers who are responsible for care or treatment within the framework of a supplementary sanction.

Reactions in the event of inadequate enforcement

Inadequate enforcement will first be dealt with by PPS stressing the importance of the performance of the supplementary sanction through informal adverse comments or making adjustments that fall within the ambit of the sanction imposed. Such adjustments may, for instance, comprise replacing a small proportion of the community service work with programme activities or replacing a component of the care or influence sanction with another component that is more appropriate for the person sentenced.

If such informal measures are insufficient, PPS will be able to issue special orders concerning, for example, sobriety and freedom from drugs or contact with a probation officer, the purpose of which is to enforce the supplementary sanction. PPS should also be able to issue the person sentenced with a caution.

If a caution has already been issued or if it may be assumed that the person sentenced will not perform the supplementary sanction despite a caution being issued, the parole board will have the power to extend the probationary period for the conditional prison sentence to a maximum term of four years or replace the supplementary sanction with another sanction that is at least as severe as the original sanction. The sanction should preferably be replaced by a supplementary sanction with a corresponding level of intervention. If this is impossible, then it should be possible to choose a more severe supplementary sanction.

In the final instance, inadequate enforcement will result in a decision for the conditional prison sentence to be enforced at a penal institution. Such a decision will be made by a general court. Actions concerning enforcement at institutions will be brought by PPS.

Preventive detention (Sw. omhändertagande)

If measures are taken as a result of the inadequate enforcement of a sanction supplementary to conditional imprisonment, the parole board will be able to decide that the person sentenced should be committed to preventive care.

PPS should be granted the right to immediately commit the person sentenced to preventive care if he or she fails in respect of the enforcement of a house arrest or contract treatment and it is thus relevant to bring proceedings for the enforcement of the conditional prison sentence at an institution. This option ensures that house arrest or contract treatment that is disregarded may be immediately withdrawn and the person sentenced is deprived of their liberty.

Preventive detention will not be permitted to last for more than a week as a main rule.

Right of PPS to appeal against a decision made by the parole board

With a view to achieving more uniform practice and thereby increased predictability for matters relating to the inadequate enforcement of conditional imprisonment, PPS is entitled to appeal against a decision issued by the Prison and Probation Board in such matters. PPS should not have the status of a party before the parole board, but the right to appeal will instead stem directly from law.

Transfer to care under LVM

We propose that the transfer to care under the Care of Abusers (Special Provisions) Acts (1988:870 – LVM) will no longer constitute a sanction for an offence. To the extent that the person sentenced is in need of care or treatment for abuse, this need will instead be satisfied within the framework of the supplementary sanction with which a conditional prison sentence is combined.

Responsibility for the cost of care and treatment

We have made the assessment that the cost of such care and treatment, which may form part of a care or influence sanction but does not comprise such programme activity as conducted by the PPS under their own auspices, should be allocated according to the normalisation principle. This means that the primary responsibility for costs lies with the public authority or body that would have paid for the measure if it had not comprised part of the sanction for an offence.

As regards contract treatment, the current procedure is that PPS is responsible for the costs that arise prior to the point in time when

conditional release would have taken place if the sanction had been determined to be imprisonment. The normalisation principle applies to any costs that subsequently arise. PPS's responsibility for contract treatment costs should be extended to encompass a period corresponding to the term of the conditional prison sentence, as the current need for a municipal cost guarantee may mean that contract treatment cannot be imposed. As today, any costs that subsequently arise will be allocated in accordance with the normalisation principle.

The nature of criminality

In our assessment, there is no need within the system of criminal sanctions, including the conditional imprisonment that we are proposing, to provide special treatment for any offence or any kind of offence as a consequence of the nature of the criminality. This means that the issue of whether a prison sentence should be imposed conditionally will be determined exclusively on the basis of the penal value of the offence and other circumstances of relevance to the determination of the punishment, the accused's previous criminality and humanitarian aspects referable to the accused as an individual.

We assume that some of the circumstances that currently constitute grounds for special treatment when choosing a criminal sanction as a consequence of the nature of the criminality will begin to have a more significant influence on the penal value of the offence instead.

Fines

Amount of day fines

A day fine penalty should always be more severe than a monetary fine penalty. Day fine penalties should therefore always exceed what can currently be paid in monetary fines, i.e. SEK 4,000

Day fines should be set at SEK 4,000 and the number of day fines that ensue as a consequence of the criminality, at least 30 and at most 150, or 200 when fines are being used as a joint penalty for several offences. There will be a fixed amount for each day fine, from and including SEK 30 up to and including 1,000, according to what is considered reasonable with regard to the accused's income, wealth, maintenance obligations and general financial circumstances. This will apply both when fines are imposed as an independent penalty and as a supplementary sanction to conditional imprisonment or care of young persons.

Enforcement of day fine penalties

In order to reduce the proportion of fines that are handed over for collection and in that way also increase the effectiveness of fine

enforcement, the possibility should be introduced for respite and a longer payment time limit for day fine penalties. In those cases where the fine debtor makes a written request within the time limit of 30 days applicable to payment, the National Police Board will permit an extended payment time limit of a further 90 days. The fine debtor will then be afforded an opportunity to pay the amount in three separate instalments over a period of three months or make the entire payment in one deposit.

We have made the assessment that the opportunity to convert unpaid fines into imprisonment should be increased for that group of offenders who consciously avoid payment. It is currently stated that fines can be converted if it becomes obvious that the party fined for default has failed to pay the fines or if there are otherwise special reasons for this conversion to be called for in the public interest. The requirement that it should be 'obvious' that the person fined has defaulted should be removed.

Fines as a sanction supplementary to conditional imprisonment

Fines imposed as a sanction supplementary to conditional imprisonment will in the first instance be enforced through recovery and collection under the provisions of the Fines Enforcement Act (1979:189). However, if it becomes clear during the probationary period for the conditional prison sentence that the preconditions for converting fines under the Fines Enforcement Act have been satisfied, the court should remove the fines on the action of the prosecutor and substitute them with another supplementary sanction or decide that the conditional prison sentence should be enforced at an institution.

Grounds of fairness

We have conducted an overall review of the provisions relating to grounds of fairness referred to in Chapter 29, Section 5 of the Swedish Penal Code. This section contains provisions entailing that when determining sanctions, the courts should consider a number of circumstances relating to the perpetrator's personal circumstances or something that occurred after the offence that may justify a less severe criminal sanction.

On the whole we have found that the grounds of fairness are well-balanced and sufficiently exhaustive. However, we propose the introduction of two new grounds for the mitigation of sentences. In the first instance, the current provision on the mitigation of sentences in respect of those who have voluntarily denounced themselves will be supplemented so that the court also takes a less severe view when the accused, through admission or in some other way, has cooperated in the investigation of their own offence. In the second instance, a new

provision will be introduced entailing that as grounds for the mitigation of a sentence account should be taken of whether a sentence determined according to the penal value of the offence would appear to be disproportionately severe considering other legal sanctions ensuing from the offence ('cumulation of sanctions'). Although it is already an obligation of the courts to consider the cumulation of sanctions, it is prescribed explicitly by this provision.

We also propose the removal of the requirement for special reasons to go below the minimum penalty with reference to the grounds of fairness.

Levels of punishment in certain special cases and multiple criminality

Our assignment also included a review of the rules for determining punishments in the event of multiple criminality and also the levels of punishment for narcotics crime and other offences typically related to quantity. We are not submitting any proposals relating to levels of punishment. As regards multiple criminality we have made the assessment that the current system is reasonably well-balanced and that there is no reason to propose any major changes. As mentioned above, we are submitting proposals whereby a distinction should be made between new and newly-discovered criminality when legal proceedings are taken in respect of offences before a previous judgment has been fully enforced. According to this distinction, crimes committed after the earlier judgment has been fully enforced should also be deemed to be a relapse into crime and not assessed together with previously prosecuted offences according to the principles concerning the determination of punishments in the case of multiple criminality.

System of criminal sanctions for young offenders

Overall points of departure

We have had the following points of departure for our discussions.

- The system of criminal sanctions for young offenders functions quite well. However, there is a need for new elements.
- Social services should retain the main responsibility for young offenders. Cooperation with police, prosecutors and courts should be improved and made more uniform.
- Greater equality in treatment and conformity should be achieved when different cases of youth sanctions are enforced at different municipal authorities.

- When choosing a criminal sanction, there should not be any special treatment for young offenders owing to the nature of the offence.

Offenders under the age of 18 will be sentenced to a youth sanction

As a main rule, the sanction for anyone committing a crime before attaining the age of 18 will be determined as a youth sanction. Exceptional grounds are required to sentence anyone to the institutional care of young persons if they are under the age of 18 at the time of the criminal act.

If the accused has attained the age of 18 at the time of the sentence and it would be inappropriate to determine the sanction as a youth sanction considering the age of the accused, it should be possible to determine a sanction in accordance with the provisions applicable to adult offenders. Exceptional grounds are required in such cases for the imposition of an unconditional prison sentence.

Care of young persons and youth service

There is an ongoing and continuous need for both central and local cooperation between social services and stakeholders in the judicial system, i.e. the Swedish Prosecution Authority, police authorities and courts. In order to ensure that all of the authorities affected contribute to local cooperation in relation to routines and the processing of matters concerning young offenders, an obligation is prescribed in the Act with Special Provisions concerning Young Offenders (1964:167 – LUL) for public authorities to work to promote such cooperation.

Care of young persons

The current scope of application for the care of young persons (i.e. the requirement that there should be a specific need for care or other measures) will be retained. However, it should be clarified in the Social Services Act that, when a statement of opinion under Section 11 of LUL is required, it is the responsibility of the social welfare committee to ensure that an assessment is conducted of whether the young person has a special need of measures for the purpose of counteracting adverse developments. This may enable the National Board of Health and Welfare to strive for a more uniform interpretation of the term ‘specific need for care or other measures’ through regulations and/or general advice. Training and regional cooperation may also mean that the term is interpreted in a more uniform way at different municipal authorities.

If measures forming part of a young person’s contract or care plan have already been fully implemented at the time of the prosecution, this

should not constitute any impediment to imposing a 'care of young persons' order. The court will then be able to order that the sanction is deemed to have been enforced.

The social services should always be aware of the suspected criminality and its seriousness when drawing up a statement of opinion and proposed measures. This may be achieved through better compliance with the rule concerning the presence of social services at police questionings and by the prosecutor informing the social services about suspected criminality.

The legislation should further clarify the responsibility of the court for ensuring that the young person's contract and care plans meet the requirements for clarity and concreteness.

The duty to act expeditiously prescribed under Section 4 of LUL should not constitute an impediment to affording social services sufficient time to draw up a young person's contract and care plan within the prosecutor's deadline for instituting proceedings. If social services need to be able to prepare proposed measures, the prosecutor should be allowed in conjunction with this the opportunity of exceeding the special prosecution deadline contained in Section 4 of LUL.

In order to satisfy the need to evaluate the methods and forms of sanction used in Sweden, a consideration should be made to assign the National Board of Health and Welfare – in collaboration with other stakeholders – to evaluate the effects that the various methods, programmes and sanctions applied to young offenders have in order to counter a relapse into crime.

Youth service

Explicit consent on the part of the accused should not be a precondition for imposing youth service as an independent sanction or as a sanction to reinforce the care of young persons. However, the fact that the young person actively opposes performing youth service should be considered when assessing appropriateness.

An assessment of whether youth service is an appropriate sanction should be made more uniform at different municipal authorities. The National Board of Health and Welfare should through regulations and/or general advice work to promote a more uniform interpretation of the term 'appropriateness'. Training and regional cooperation may also lead to this term being interpreted in a more uniform way.

The enforcement period for youth service should be made more uniform. The enforcement of youth service should start no later than two months from when the judgment entered into final force, unless

there are special reasons not to do so. If there are no special reasons, youth service will be enforced for no longer than a period of six months. In addition, the enforcement period should as far as possible be adapted to the number of hours imposed. Special provisions concerning this are being incorporated into the Social Services Act.

It will be clarified in the Social Services Act that a small proportion of youth service should always comprise specially arranged activities. In this connection it should be explicitly stated that the specially arranged activities should include elements that serve as guidance, the aim of which is to deter the young person from relapsing into crime.

Fines and cautions

Under our Terms of Reference, we were directed to consider ways of abolishing or in any event reducing the use of day fines for offenders between the ages of 15 and 17.

We have concluded that the area of application for youth service or other youth sanctions should not be extended to such cases where youth service is currently considered to be too severe, i.e. such cases that currently result in a greatly mitigated day fine penalty. Instead we propose that if anyone has committed a crime prior to attaining the age of 18 and the penal value is such that there is no call for a sanction that is more severe than a low number of day fines, the court should be able to impose a *caution* (Sw. *varningsstraff*). When assessing whether a caution is sufficiently severe, special consideration should be taken of whether the young person has previously committed a crime. A caution will be one of the youth sanctions and it should be listed in the criminal records like other criminal sanctions.

If the criminality is such that it may be expected that the young person would have been sentenced to a caution if a prosecution had been instituted, it should be possible for the prosecutor to grant a waiver of prosecution.

Institutional care of young persons

As specified in our Terms of Reference, we have considered whether there is also a need for a longer deprivation of liberty in the case of institutional care of young persons in order to counter very serious criminality. However, we have concluded that there should be no increase in the maximum period for the institutional care of young persons (four years).

We have also considered whether there is a need for better opportunities for supervision and support in the early period following the cessation of the deprivation of liberty. A supplement to the Social Services Act will

clarify the responsibility of the Social Welfare Committee in terms of satisfying the special need for support and assistance that young people may have following the enforcement of the care of young persons.

A slightly extended opportunity to decide on preventive initiatives without the consent of the young person should be introduced ('compulsory treatment without institutional placement') under Section 22 of the Care of Young Persons (Special Provisions) Act. In cases where institutional care of a young person has been enforced, the requirement that the young person's tendency to take risks of a recent nature is toned down as a precondition for compulsory treatment without institutional placement.

Need for new sanctions

There is currently no appropriate sanction in many cases where the young person cannot be sentenced to the care of young persons and youth service is not an appropriate sanction. In other cases, neither care of young persons nor youth service is sufficiently severe, but there are no exceptional grounds for a sanction entailing the deprivation of liberty. A sentence of probation is often imposed in such a case, which it must be said constitutes an inappropriate sanction. A high fine is imposed in other cases, which is another inappropriate sanction for a young person. We are proposing two new sanctions to cover these gaps in the system of criminal sanctions.

Duty of young person to maintain contact

We propose the introduction of a new youth sanction called *duty of young person to maintain contact* [Sw. *kontaktskyldighet för unga*]. The content of the sanction should as far as possible comprise the measures that may currently be included as part of the measure 'specially qualified contact person' [Sw. *särskilt kvalificerad kontaktperson*] under the social services legislation. The Social Welfare Committee in the young person's home district will be the body responsible for the management of this sanction.

An order imposing a duty on the young person to maintain contact should be made in those cases where the seriousness of the offence and the young person's previous criminality call for a sanction that is more severe than low fines or a caution, but where the preconditions for either care of young person or youth service do not prevail. An order imposing a duty for a young person to maintain contact need not be preceded by any assessment of needs or any assessment of whether the sanction is appropriate for the young person. Nor does the consent of the young person or custodian constitute a precondition.

A sentence for a young person to maintain contact will impose a duty on her or him to maintain contact with a specially appointed contact person for a period of between two and six months. The court will determine the length of the duty to maintain contact based on the penal value of the offence and other circumstances affecting the determination of punishment.

The content of the enforcement will comprise contact with the contact person as a point of departure. To the extent that it is deemed to be effective, this time can partly be used to participate in programme activities or other activities aimed at countering the risk of a relapse into crime.

It could be possible to use ‘duty of young person to maintain contact’ as a reinforcement sanction for the care of young persons, subject to the same preconditions as youth service.

Youth probation

We propose the introduction of a new youth sanction called *youth probation* (Sw. *ungdomsövervakning*). This sanction will be applied in those situations where neither care of young person, youth service nor duty of young person to maintain contact would be a sufficiently severe penal law reaction.

The choice of youth probation should not be preceded by any assessment of needs or any assessment of whether the sanction is appropriate for the young person. Nor does the consent of the young person or custodian constitute a precondition.

Youth probation should involve clear restrictions on the young person’s freedom of movement, without involving a stay at an institution, in order for it to be sufficiently severe. The content of the sanction should focus on treatment as far as possible, including intensive persuasive measures, the aim of which is to avert a budding career in crime and criminal ways of thinking.

The National Board of Institutional Care (SiS) will be the body responsible for the management of this sanction.

Youth probation will last for a period of at least six months and at most one year. The court should determine the length of the sanction based on the penal value of the offence and other circumstances affecting the determination of punishment.

When a person is sentenced to youth probation, an individually designed enforcement plan will be drawn up, based on an extensive and comprehensive survey and investigation of the young person’s situation.

It should be possible for the enforcement plan to govern issues relating to the young person's housing, schooling, occupation and leisure time, treatment for substance abuse, other care and treatment or other corresponding measures aimed at ensuring that the young person will not reoffend and will otherwise develop in a favourable way.

In addition to this, the enforcement plan will include mandatory decisions for the young person to maintain contact with a specially appointed coordinator and also certain restrictions on movement. These restrictions on freedom of movement will comprise either leaving the home during the evenings at weekends and at night at weekends or other restrictions on movement that may be assumed to prevent reoffending, for example a prohibition on staying in certain places or within certain areas. It should be possible to monitor compliance with these restrictions on liberty by using, for example, electronic aids. It should be possible to phase out these restrictions on liberty if the young person complies with other parts of the enforcement plan.

The enforcement plan will also include decisions relating to freedom from drugs and drug control.

If the person sentenced does not attend meetings with the coordinator, it should be possible to collect her or him through the summary assistance of the police following a request by SiS. It should also be possible to enforce restrictions on liberty in certain cases with the assistance of the police.

New determination of criminal sanction after a previous youth sanction

If a person who is sentenced to care of young persons, youth service, duty of young person to maintain contact, youth probation or institutional care of young persons commits another crime prior to the sanction being fully enforced, the court should under certain conditions be able to decide that the previous sanction imposed should also relate to the other crime instead of determining a new sanction for additional criminality ('judgment of absorption'). It will only be possible to make such a decision if the additional offence – when compared with the criminality covered by the previous judgment and considering the sanction for that offence – is of no particular relevance or there are otherwise special reasons for such a decision.

The court will also under certain conditions be able to remove the previous youth sanction imposed and impose a joint sanction for the aggregated criminality. In that case, the main rule is that it should only be possible to impose another youth sanction. It should only be possible to issue such a decision if there are special reasons to do so and if the judgment was issued prior to full enforcement of the previous sanction.

Offenders in the age group 18 to 20 years

Part of our Terms of Reference was to consider whether offenders in the age group 18 to 20 should be treated as adult offenders when determining punishments and choosing criminal sanctions or any of these respects.

We propose that special reasons should not constitute a precondition for sentencing offenders in the age group 18 to 20 to imprisonment, regardless of whether the prison sentence is conditional or unconditional.

The special youth sanctions ‘care of young person’, ‘youth service’ and ‘institutional care of young persons’ will be reserved for persons who have not attained the age of 18 at the time of the crime. The same will apply to the sanctions of ‘caution’, ‘duty of young person to maintain contact’ and ‘youth probation’. However, it should also be possible to sentence those who have committed a crime after having attained the age of 18 but before attaining the age of 21 to care of young persons if there are special reasons to do so.

If the penal value is such that the offence may result in imprisonment and the perpetrator is under the age of 21, her or his age will also continue to be taken into account when determining punishment. However, for offences where the penal value only justifies a fine, no special consideration will be taken of the age of the perpetrator in conjunction with the determination of punishment if he or she had attained the age of 18 at the time of the offence.

Financial consequences of our proposal

Our proposals will primarily have a rather substantial impact on PPS.

The proposals mean that there should be no special treatment for certain crimes or kinds of crime owing to them being of a particular nature. As a point of departure a prison sentence of less than one year should be imposed conditionally, unless the accused has previously committed crimes to such an extent that the imposition of a conditional prison sentence cannot come into question. One consequence of this should be quite a significant reduction in the number of unconditional prison sentences of less than one year.

Our proposals also mean that the content of sanctions which do not entail a deprivation of liberty for adult offenders (i.e. conditional imprisonment with various supplementary sanctions) will be clearer and in many cases more severe. There will thereby be a significant increase in the need for initiatives from the probationary services.

Our proposals also mean that a conditional prison sentence will always be enforced. If enforcement cannot be implemented by the person sentenced performing the supplementary sanction with which the conditional prison sentence is combined, the supplementary sanction must be replaced or – ultimately – the conditional prison sentence enforced at an institution.

Our proposals regarding sanctions for young offenders entail new and extended commitments for the social services and the National Board of Institutional Care. The number of young persons sentenced to the new sanctions – duty of young person to maintain contact and youth probation – may also be assumed to rather limited, several hundred a year.

The readjustment that the proposals entail for PPS will result in readjustment costs for the public authority. These costs may initially be assumed to mean that the public authority's costs increase compared with today. However, in the long run we consider that the cost of PPS's new commitments will be balanced by the reduction in the number of inmates at institutions.

It may be assumed that there could be a slight increase in the cost of enforcing youth sanctions, primarily as a consequence of the introduction of the youth probation sanction. The proposed changes as regards care of young persons and youth service together with the introduction of the sanction 'duty of young person to maintain contact' may be expected to contribute to the enforcement of the sanctions for young people becoming slightly more expensive than they are today.

In addition to PPS, our proposals may be expected to result in training and readjustment costs for other public authorities obliged to apply the new provisions such as, for instance, the general courts, the Swedish Prosecution Authority, SiS, the police authorities and the Enforcement Service. The proposals will also have repercussions on procedural law, which will be investigated in another context.

Implementing our proposed changes to fines would result in a significant increase in revenues for the State.

Overall we consider that our proposals will not increase public expenditure. However, it should be emphasised that the effects of our proposals are largely dependent on other changes taking place within the area of criminal policy.