Bergen Journal of Criminal Law and Criminal Justice • Volume 9, Issue 2, 2021, pp. 96-110.

Serious violence – a challenge and reason for reforms?

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1. Introduction

One of the great challenges to Nordic criminal law is the widespread perception that our world and our societies are becoming more brutal and that violence and serious crime are increasing rapidly. There is a sense that newspapers, TV news and social media focus on crime, brutality and war more than ever before and that the number of cases of deadly violence with firearms is increasing. The question of law and order and public safety has become one of the most important questions to the public in recent years.[1] This coverage influences people in general and politicians specifically. For a politician wanting to take voters' concerns seriously, there is clearly a point in discussing changes on the criminal policy agenda. This may be case regardless of the empirical research on, for example, the effectiveness longer prison sentences.[2] Voices have been raised from many quarters, arguing that more repression and longer sentences do not reduce crime or violence. Conversely, others have continued to claim that it does. .

One of the answers to the great challenges posed by increasing serious crimes, gang-violence and gang-related criminality could of course be to find ways to reduce the criminality. Many such solutions could be and have been introduced. One way to prevent people from committing crime is to imprison the perpetrators. The Swedish Government has several times argued to increase penalty scale and thus the amount of repression in the criminal law to answer the public's sense of insecurity. The situation is a challenge for criminal law, as well as law enforcement authorities.

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1 Bolling. Dödliga våldet ligger kvar på hög nivå. Dagens Nyheter. 6 February 2016. https://www.dn.se/nyheter/sverige/dodliga-valdet-ligger-kvar-pa-hog-niva/. Last accessed 16 October 2019.

Another political response to the increased perception of insecurity may be to reform different provisions of the national criminal law. Violent crime thus can be subject to substantial changes to the penal system, as an answer to this perceived challenge.

In Sweden, increased public perception of the problem of serious crimes have resulted in changes to the criminal code, notably the possibility of a longer sentence for people charged with serious violent crimes,[3] and changed wording when it comes to serious unlawful coercion and unlawful threat.[4] In the preparatory works to this legislative changes, the research on the effectiveness of more stringent sanctions is generally only briefly discussed.

Rising serious crime requires that large resources be allocated to investigations and prosecutions.[5] These resources – police investigations, forensic work, custody and court sessions – must be taken from somewhere. If more cases of serious crime occur, they must be investigated, often rapidly, and prosecuted. This impacts 'less serious' crime as investigations of more ordinary crimes are delayed and sometimes put aside and not considered a priority compared to the more serious crimes for example serious assault, murder and people spending significant time in custody. Over the last years, two types of crime have become increasingly mediatised: the so-called 'shootings', mainly involving young men in the outskirts of our main cities, and sexual violence.

2 E.g. Träskman, Fängelse: allas vårt favoritstraf, *Svensk Juristtidning* (2010) pp. 529–544; DN Debatt. Svagt stöd i forskningen för att hårdare straff minskar brotten. Dagens Nyheter. 29 January 2018. https://www.dn.se/debatt/svagt-stod-i-forskningen-for-att-hardare-straff-minskar-brotten/. 16 October 2019.

3 E.g. SOU 2014:18 *Straffskalorna för allvarliga våldsbrott*; Prop. 2016/17:108 *Straffskalorna för vissa allvarliga våldsbrott*.

4 Law (2017:332) on amendment to the Penal Code.

5 E.g. Prop. 2017/18:26 *Skjutvapen och explosiva varor – skärpta straff för de grova brotten* p. 1.

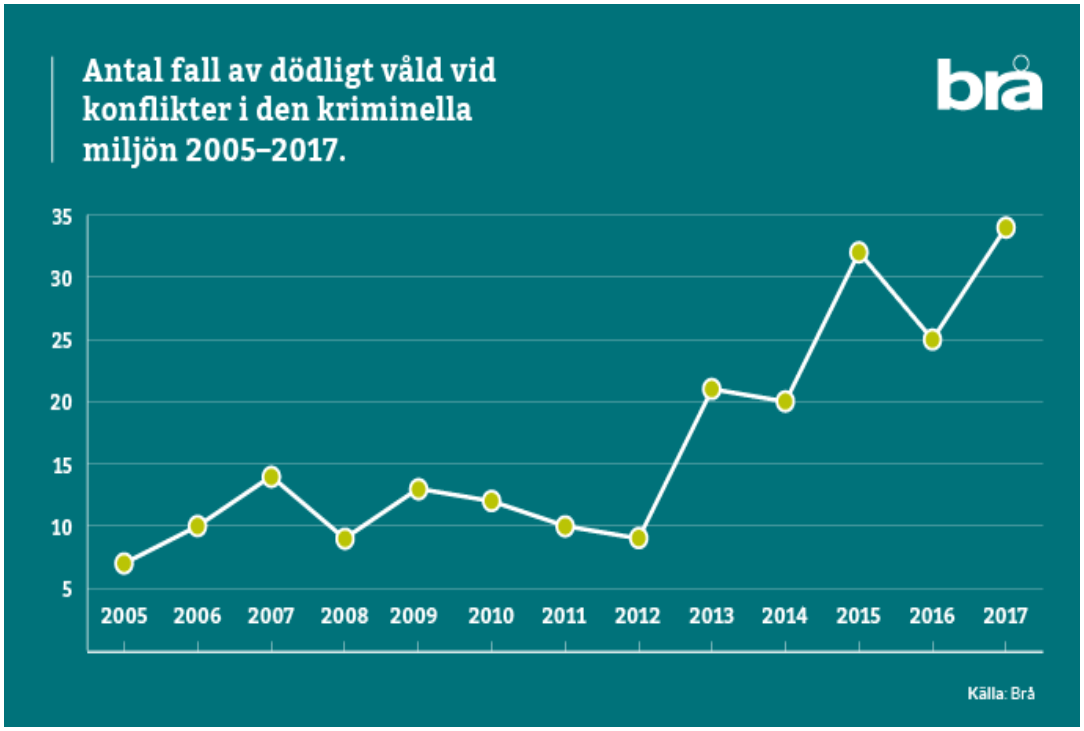

Figure 1. Number of conflict related cases of lethal violence in the criminal environment 2005 – 2017.[6]

The last years we have seen a number of new crimes and offences introduced in the Swedish penal code. The offences concern actions that already constituted crimes, serious crime and offences, but where the legislator has created a new crime for the more serious actions of the kind. This makes the more serious crime stand out and lead to a more severe punishment. The actions in question are qualified as more severe when compared with the 'ordinary' crime and therefore are perceived as extremely serious crime.[7]

This text discusses the changes in Swedish criminal law introduced in response to public's fear of serious crimes. It focuses on the changes in the criminal law and on the criminal policy debate in Sweden. It considers the changes in the penal code in light of the research on the effectiveness of increased levels of repression. Does locking perpetrators up prevent them from committing more crimes and decrease criminality. Is it a purely symbolic action? Or did these enactments have another cause?[8]

6 Brå-rapport 2020:4, *Dödligt våld i den kriminella miljön 2005-2017*, p. 23.

7 In Swedish *synnerligen grovt brott*.

8 Compare e.g. Victor (ed.), *Varning för straff: om vådan av den nyttiga straffrätten* (Fritze 1995).

All sexual crimes have their place in the discussion on challenges to Nordic criminal law and bring forth much of the same questions, arguments and answers as the increasing awareness of and actions towards serious violence. However, changes in law to this category of crime have a different dimension.[9] They require extensive analysis outside the scope of this chapter. Here, I discuss changes in criminal law from the year 2010 and onwards, but I do not offer an exhaustive overview on the regulatory actions taken against serious violent crime.

2. Earlier reasoning on punishment and consequences

Criminal justice issues are constantly high on the political agenda and are often the subject of public debate.[10] Looking back, these issues have long been relevant and criminal law has been debated, investigated and substantially changed on several occasions over the last century. This section reflects on the grounds of the penalty system, to which will be linked in the text at the end of the article.

The former Criminal Code from 1864 was characterised by the idea that punishment should be determined by merit and in proportion to the crime committed, in accordance with the principle of legality. During the first half of the 20th century, the idea that punishment should be replaced with care and treatment emerged as a reaction to the classic criminal justice school and these ideas were reflected in the new Penal Code. With the introduction of the new Penal Code in 1965, general prevention and individual prevention became the basic building blocks of the design of penalty system. Penalty scales were introduced for all crimes in the Penal Code, to highlight proportionality in this system.[11]This treatment concept, which has roots in the school of sociological criminal law, was also criticised. More and more voices were raised in the 1970s as a result of criminological research on the topic. Penalty scales were introduced for all crimes in the Penal Code, to highlight proportionality in this system.[12] During the first half of the 20th century, the idea that punishment should be replaced with care and treatment emerged as a reaction to the classic criminal justice theory and these ideas were reflected in the new Penal Code. This treatment concept, which has roots in the theory of sociological criminal justice, was also criticised. More and more voices were raised in the 1970s as a result of criminological research on the topic.[13]

9 Compare e.g. Lagrådsremiss. En ny sexualbrottslagstiftning byggd på frivillighet. 21 December 2017. https://www.regeringen.se/4b00ca/contentassets/3f31cebd430043d59bbd91195721b4b2/en-ny-sexualbrottslagstiftning-byggd-pa-frivillighet. 16 October 2017.

10 Asp, Straffrätten – i går, i dag och i morgon, *Svensk Juristtidning* (2016) pp. 138–161.

11 Wersäll, Är loppet kört för en reformering av påföljdssystemet?, *Svensk Juristtidning* (2016) p. 190.

12 *Ibid.*

13 Borgeke, Påföljdsval och straffmätning, nytt vin i gamla läglar?, *Svensk Juristtidning* (2004) pp. 885–909.

A report from the Swedish National Council for Crime Prevention, BRÅ, argued that, when choosing a new penalty, one should do away with the treatment ideology and embrace a more realistic view of what can be achieved within the framework of criminal penalties.[14] The report was a breakthrough for so-called neoclassicism, with the introduction of the key notions of penal value and proportionality as driving forces of the penalty choice in Swedish criminal law rather than the idea of treatment or care. The 1980s saw a number of research projects into criminal law and the basic principles of the penalty system. This led to the return of the concept of proportionality in the Criminal Code through the 1988 penalty reform. The new legislation came into force on the 1 January 1989. The reform put the principles of proportionality and equivalence at the forefront while somewhat limiting the importance of the prognosis in a certain case. The value of predictability was also emphasised.[15] At the same time, there was a widespread stance on prison sentences among criminal justice researchers and in legislative debates, namely that prison sentences were negative and that imprisonment should be avoided as far as possible.[16] There have been a number of subsequent research into the penalty system since, but apart from changes in 1999, they have not resulted in any extensive or paradigm-shifting changes. What has been done and continues to be done are changes regarding penalties and certain types of crime.[17]

3. Changed perception of serious violent crime

The directives to the 2010 Culpability Reform stated that the public view on serious violent crime had changed.[18] The public opinion on how serious a certain crime or an offence is can change over time on the basis of societal developments. When the public opinion has undergone a more durable change that cannot be accommodated within the frames of the current legislation, the law must change to maintain its legitimacy. Such a change in the public opinion is, according to Government's proposal 2009/10:147, something that may induce a change in the law.[19]

14 Brottsförebyggande rådet (BRÅ), 1977:7, *Nytt straffsystem: idéer och förslag: Nytt straffsystem* (LiberFörlag/Allmänna förl. 1977).

15 Asp 2016 p. 140.

16 See Prop. 1980/81:44 *Om sänkt minimitid för fängelsestraff* p. 9; NJA 1982 p.17; Penal Code Ch 30 art. 4.

17 See e.g. SOU 2007:90, SOU 2008:85, SOU 2012:34, and Ds 2017:38.

18 Dir. 2007:48 Tilläggsdirektiv till straffnivåutredningen.

19 Prop. 2009/10:147 *Skärpta straff för allvarliga våldsbrott* p. 9 f.

The public tolerance towards violence is reflected in the report statistics, as analysed in the BRÅ-report 'More severe penalties for serious violent crime'.[20] BRÅ was of the opinion that nothing points towards a situation where violence is increasing or becomes more evil.[21] However, from the annual National Safety Survey, BRÅ concludes that *the exposure to* crimes such as assault, sexual crime, robbery and threat is increasing.[22]

The Government's view has been that the risk of being affected by permanent physical injuries has radically decreased because of the increased standard of living and technical development. Many measures to prevent accident are taken in working life and on roads. Nowadays there are also far better opportunities to treat or prevent accidents and diseases thanks to good access to medical treatment and years of progress in the field of medicine. In this context, as everyday life involves less risk than before, violent crime is seen as relatively more dangerous. There is also the knowledge that violent crime not only causes the victim physical violence but often also psychological injuries and that even relatives of the victim can be affected by worries for the victim and anxiety and insecurity for themselves. According to the Government's proposals, this necessitates more severe penalties. Serious crimes can also provoke fear to numerous people, for example if the crime are committed in public places or target specific groups of people.[23]

There has also been a long standing conversation on the so-called 'crimes of a certain nature' in the provision in Chapter 30, section 4 part 2 of the Penal Code. This provision states that the court when considering the sentencing may consider not just the penal value, but also *the nature of the crime* or crimes. These considerations are normally made at a later stage, when the court decides which sanction to impose upon the offender, but point to a difference in the nature of crimes that according to the lawmaker can be specifically considered. These crimes considered to be of a certain nature include crimes that have become more widespread, crimes that are difficult to prevent and detect, and crimes that have adopted more malignant forms.[24] These include, for example, unprovoked assault taking place in the street and crimes involving weapons. Discussions about these crimes, how they should be

[20] Brottsförebyggande rådet (BRÅ), 2014:6, Skärpta straff för allvarliga våldsbrott, utvärdering av 2010 års straffmätningsreform. https://www.bra.se/download/18.6cde4de61493868542d201/1414754115245/2014_6_Sk%C3%A4rpta%20straff_kortversion.pdf. 16 October 2019.

[21] Brottsförebygande rådet (BRÅ), 2014:6, Skärpta straff för allvarliga våldsbrott: utvärdering av 2010 års straffmätningsreform.

[22] Brottsförebyggande rådet (BRÅ), 2017:1, Nationella trygghetsundersökningen 2016: Om utsatthet, otrygghet och förtroende. https://www.bra.se/download/18.37179ae158196cb172d6047/1483969937948/2017_1_Nationella_trygghetsundersokningen_2016.pdf. 16 October 2017.

[23] Prop. 2009/10:147 *Skärpta straff för allvarliga våldsbrott*, p. 10. The corresponding reasoning can be found in SOU 2014:18 *Straffskalorna för allvarliga våldsbrott* and Prop. 2016/17:108 *Straffskalorna för vissa allvarliga våldsbrott*.

[24] Påle and von Hirsch, Artbrott, *Svensk Juristtidning* (1999) pp. 241–258.

treated and how the 'certain nature' of these crimes works are often ambiguous.[25] However, some parallels can be drawn to the current situation, where certain types of crimes are considered more serious and, while they do not lead to 'automatic' prison sentence, trigger rule changes in the form of a larger possible range of severe penalties. In the preparatory works, the legislator notes the view that serious violent crime has changed over time and has come to be seen as more blatant than before.

The government proposal 2009/10:147 states that a steady increase in the number of violations reported to the police confirm that some crimes are now perceived as more socially threatening which justifies reviewing the penalties for these crimes.[26] According to the proposal, "[t]his stricter view should be reflected in a level of punishment for violent crimes that is proportionate to their gravity and is higher than the level of interventions for mainly the crimes of property'.[27]

4. A gradually increasing penalty level for serious violent crimes with emphasis on attacks on life or health

The 2010 law amending the Penal Code introduced new rules in the general penalty measurement rule in chapter 29, section 1, part 2. This meant that the courts, when assessing the punishment value, consider the damage, violation or danger that the act caused, what the defendant realised or should have realised about this, and the intentions or motives that the defendant had. In particular, the court should consider if the act involved a serious attack on someone's life, health or safety. The crimes targeted by the measure are mainly gross assault and other serious forms of violence, namely crimes with a penalty value exceeding six months before the reform, such as kidnapping, unlawful deprivation of liberty, gross violation of integrity or of a woman's integrity, robbery and gross robbery, and serious cases of unlawful coercion, unlawful threats, extortion, violence or threats to civil servants, and interference in a judicial matter. Sexual crimes can also be covered by the wording of serious attack, as well as attempts to commit, prepare for and conspire to commit any of these crimes.[28]

25 See Borgeke, Brottets art – några tankar kring en svårgripbar företeelse, *Svensk Juristtidning* (1999) pp. 218–240; and Thunberg, På vilka grunder särbehandlas artbrott i dagens rättspraxis?, *Svensk Juristtidning* (1999) pp. 259–260.

26 Prop. 2009/10:147 *Skärpta straff för allvarliga våldsbrott* p. 10.

27 *Ibid*. p. 11. For a discussion on the more recent development on the view on crime and penalties, see Asp 2016; Wersäll 2016; Borgeke, Reglerna för påföljdsbestämning – en juridik i förändring. *Svensk Juristtidning* (2016) p. 176.

28 Prop. 2009/10:147 *Skärpta straff för allvarliga våldsbrott* p. 14.

5. Assault, gross assault and extremely serious assault

The crime of gross assault was divided into gross assault and extremely serious assault in 2010. The criminal offenses for these violent crimes have since been further tightened. Shortly after the 2010 reform, the government in a 2013 directive stated that there was a need to review the penalties for serious violent crimes with the aim of achieving an increased level of punishment.[29]

The government justified introducing the crime of extremely serious assault on the basis of its apparent disappointment that the penalty scale, as stated in its 2009 Government proposal, 'is used to a limited extent and that punishment is often determined strikingly close to the penalty minimum'.[30] The underlying motive of the legislator, found in all preparatory works creating a particularly serious crime, is to make the courts consider all the circumstances relevant to the punishment value and to determine a proper punishment for each act.[31]

Here, the lawmaker hoped that dividing the gross crime into one gross crime and one extremely serious crime would emphasise the objective circumstances characteristic of the most serious violent crime. It was considered that the most serious crimes were so reprehensible that the punishment should be closer to or even higher than the punishment for manslaughter which has a penalty term of six years. By way of comparison, the proposal notes that the minimum penalty for serious rape and gross robbery is four years. It, thus, points out that the previous punishment level for the most serious offenses was not proportionate to the seriousness of the crime, nor was it considered to be at a reasonable level compared to other types of crime.[32]

The 2017 Government's proposition led to a law that further increased the penalties in Chapter 3, Section 6 of the Penal Code, with a minimum penalty for the gross assault of one year and six months and of five years for extremely serious assault.[33] The same law increased the minimum penalty for gross unlawful coercion and gross unlawful threat to nine months and for gross robbery to five years. The government with the 2017 reform wanted a stronger reaction to intentional serious violent crime than had been the case before the 2010 reform, together with a secure and lasting realisation of the reform's purpose. The 2010 reform was considered to have had some effect but in need of further strengthening.[34]

29 Dir. 2013:30 *Översyn av straffskalorna för vissa allvarliga våldsbrott*.

30 Prop. 2009/10:147 *Skärpta straff för allvarliga våldsbrott* p. 17.

31 See e.g. Prop. 2015/16:111 *Synnerligen grova narkotikabrot*t p. 1.

32 Prop. 2009/10:147 *Skärpta straff för allvarliga våldsbrott* p. 17.

33 Prop. 2016/17:108 *Straffskalorna för vissa allvarliga våldsbrott* p. 25.

34 *Ibid*. p. 25.

6. Several (criminal law) tools against organised crime

A category of crimes that has drawn much attention in both national and international contexts in recent years is the crime that is characterised by a higher degree of organisation. There is no agreed definition.[35] Yet more organised crimes are considered to pose one of the greatest challenges to the community. It is therefore important that criminal law tools to counter this type of crime be effective. A 2015 Government's proposal increased punishment to commit, prepare for and conspiracy to commit serious crimes.[36] This applies, among other things, to attempts to commit, prepare and conspire to commit gross unlawful threats, gross extortion, interference in a judicial matter and gross and extremely serious unlawful possessing of weapons.

The proposal also contained a call for a new regulation that anyone who has a controlling influence in an association and who does not prevent specific serious crimes within the framework of the association could be sentenced for this negligence.[37] The parallel is found in Chapter 23, Section 6, paragraph 2 of the Penal Code. Criminalising a passive behaviour is not in itself controversial, but so far there had only been limited obligations to, under certain circumstances, report or reveal some serious crimes – the criminalisation for failing to *prevent* a crime is an odd bird in the Swedish penal forest.

The government further proposed to introduce new circumstances to consider when assessing whether a crime is serious, as a way of ensuring that aggravating circumstances impact sentencing.[38] Crimes containing elements of threats must be considered in assessing whether the crime is gross. This includes whether the act includes threats made significantly more serious by means of weapons, explosives, a weapon dummy, includes alluding to violence capital, or has otherwise been of a serious nature.[39] Such wordings are, since becoming law, also found in Chapter 4, Section 4, part 2 of the Penal Code, as circumstances that must be considered in the offense of gross unlawful coercion and, in the same way, in the criteria in Chapter 4, Section 5 of the Penal Code, when it comes to gross unlawful threat.[40]

35 Sjöstrand, *Smugglingsbrott som ekonomisk och organiserad brottslighet – Rättspolitik – Rättsregler – Rättstillämpning* (Santérus 2009), Chapters 2-3.

36 Prop. 2015/16:113 *Bättre straffrättsliga verktyg mot organiserad brottslighet*.

37 *Ibid.*

38 *Ibid.* p. 59 f.

39 *Ibid.* p. 61 f.

40 Law (2017:332) on amendment to the Penal Code.

7. More stringent views on serious crime required increased punishment for unlawful possession and use of weapons

In 2018, 306 shootings and 162 cases of destruction causing public endangerment by blasting occurred in Sweden. Such actions have become a priority issue for both law enforcement authorities and the government.[41] The crime of extremely serious unlawful possessing of weapons was introduced in Chapter 9, Section 1 a § of the Offensive Weapons Act,[42] along with some other changes such as penalties and permission issues. This is described in the 2013 Government's proposal for sharpening the Offensive Weapons Act.[43] The regulation's purpose targets tools that are often part of serious violent crimes, namely firearms. The proposition emphasises that the punishment for crimes concerning the possessing or use of weapons was not changed during the first 20 years of the law, but that there have been changes in crime, for example that criminal groups and gangs have access to weapons to a greater extent than before and that the use of weapons has also increased. An increasing number of shootings, resulting in dead or severely injured victims have been observed. According to the government, this development, coupled with a stricter view of intentional attacks on individuals' physical integrity, which also led to previously mentioned higher penalties for violent crimes and the introduction of a new crime of extremely serious assault, justifies a more stringent view of unlawful possessing and use of weapons and more severe penalties for weapon-related crime.[44]

The more repressive approach to serious violent crimes and weapon-related crime has also recently led to higher penalties.[45] The penalties for gross unlawful possessing and use of weapon has, through the law amending the Offensive Weapons Act,[46] changed from imprisonment between one to four years to imprisonment between two to five years. Simultaneously, the minimum penalty for extremely serious weapon-related crime was raised from three years of imprisonment to four years, with a maximum penalty of six years. The maximum penalty for the normal degree of these crimes was increased from two to three years. The law's amendment took place relatively quickly which was criticised by the Council of Legislation.[47]

41 Regeringskansliet. Utredning presenterar nya åtgärder mot skjutvapenvåldet och sprängningarna. 2 July 2019. https://www.regeringen.se/pressmeddelanden/2019/07/utredning-presenterar-nya-atgarder-mot-skjutvapenvaldet-och-sprangningarna/. 16 October 2019.

42 The Offensive Weapons Act (1996:67), amended by law (2014:894).

43 Prop. 2013/14:226 *Skärpningar i vapenlagstiftningen* p. 33.

44 Prop. 2013/14:226 *Skärpningar i vapenlagstiftningen* p. 33 f.

45 Prop. 2017/18:26 *Skjutvapen och explosiva varor – skärpta straff för de grova brotten.*

46 Law (2017:1139) amending the Offensive Weapons Act.

47 Prop. 2017/18:26 *Skjutvapen och explosiva varor – skärpta straff för de grova brotten* p. 8.

The same government proposal also dealt with the illegal occurrence and use of explosives, mainly hand grenades, which use has increased in recent years.[48] To counteract this development, it was therefore also proposed that the penalties for gross violations of the permit requirement for explosive goods be changed from imprisonment for at least one and not more than four years to a minimum of two and a maximum of five years; that the minimum custodial penalty for the extremely serious crimes be raised from three years for four years; and that the maximum penalty for breach of the permit requirement for explosive products of the normal degree be changed from two years in prison to three years. The amendments are now included in the law on flammable and explosive goods.[49] Another preparatory work on the topic is a memorandum entitled 'A stricter view of weapon related crime and smuggling of weapons and explosives'.[50] The proposed amendments in the Offensive Weapons Act would result in more weapon-related crimes be judged as gross or extremely serious and that customs authorities' powers be extended so that consignments assumed to contain weapons or explosive goods, such as hand grenades, can be stopped.

8. Penalty scale of murder - an ongoing change

In 2014, the provision in Chapter 3, Section 1 of the Penal Code was amended so that the penalty for murder with aggravating circumstances is now life imprisonment. The change aimed to ensuring that life imprisonment be used to a greater extent and constitute the normal punishment in the majority of cases.[51] In February 2016, the Supreme Court ruled that the wording of the law was not consistent with the statements in the preparatory works, and that the wording would take precedence, which meant continuing to assess the punishment value in the same way as the courts had done since the 2009 reform of the penalty scale for murder.[52] Thus, the 2014 enactment to increase the punishment for murder did not have any effect.[53] The situation had almost been foreseen by the Council of Legislation which had objected to the government's proposal and, among other things, asserted that the proposal's wording would in practice limit the possibilities of using the life sentence. The Council of Legislation had also pointed out that the requirement of aggravating circumstances to receive a life sentence typically exists in a murder case and that it appeared as contradictory that such circumstances would exist in most case.[54] The 2017 memorandum 'Lifetime imprisonment for murder' proposes an alternative wording to increase the use of life

48 *Ibid*.

49 Law (2010: 1011) on flammable and explosive goods; amended by lag (2017:1138).

50 Ds. 2019:14 En strängare syn på vapenbrott och smuggling av vapen och explosiva varor.

51 Prop. 2013/14:194 *Skärpt straff för mord* p. 17.

52 NJA 2016 p. 3

53 Justitieutskottets betänkande 2016/17:JuU16 Straffrättsliga frågor p. 17.

54 Prop. 2013/14:194 Skärpt straff för mord p. 35.

in prison sentences for murder.[55] The memorandum has been reviewed with varying responses.[56] In a 2018 government's proposal, the Government concludes that the purpose of the new proposed amendment in Chapter 3 Section 1 of the Penal Code is that the lifetime penalty be considered to a much greater extent than before.[57] Overall, the proposal means that the provision for murder would state that a sentence of life imprisonment should be considered when the act was preceded by careful planning, characterised by cunningness, aimed at promoting or concealing other crime, entailed severe suffering for the victim, or was otherwise particularly reckless.[58]

9. A stricter view of crime consisting of attacks on social functions

Attacks, violence and threats to socially useful functions and against emergency services, including police and ambulance personnel, have been increasingly noticed in recent times. The National Prosecutor General was appointed special investigator in December 2016 to consider legal changes to achieve a modern criminal law which protects 'blue light personnel' and other socially useful functions, professionals and persons who have the task of helping others. His report questioned whether current penalties reflect sufficiently well the very serious consequences that can arise in attacks on so-called blue light activities, not only for the people who are exposed to the attack but also in relation to the interests that these activities are set to protect. The report also questions whether the existing applicable penalties sufficiently reflect the gravity of the attack on blue light personnel and activities.[59] The sub-report 'Strengthened criminal law protection for blue-light activities and other socially useful functions' suggested a new crime of blue light sabotage and a, increased penalty scale for gross violence against civil servants.[60] A new Government proposal did not adopt a proposed change to Chapter 29 of the Penal Code which would made an aggravating circumstance that the accused attacked someone with violence or threat of violence in or due to his or her professional practice as an aggravating circumstances.[61] The consideration was deemed too wide. To strengthen the protection of civil servants, the Government agreed with the proposal on violence or threats against civil servants.

55 Ds 2017:38 Livstidsstraff för mord p. 45.

56 Ju2017/06954/L5 Remiss av Ds 2017:38 Livstidsstraff för mord.

57 Prop. 2018/19:138 Straffet för mord.

58 *Ibid.* p. 1.

59 SOU 2018:2 Stärkt straffrättsligt skydd för blåljusverksamhet p. 13.

60 *Ibid*. p. 21; Prop. 2018/19:155 Ett stärkt straffrättsligt skydd för blåljusverksamhet och myndighetsutövning.

61 Prop. 2018/19:155 Ett stärkt straffrättsligt skydd för blåljusverksamhet och myndighetsutövning.

10. Changes in the penal code: Symbolic measures without support in research or an adaptation to societal developments and public views on crime?

The fundamental basis for penalty scales is the seriousness of the crime. The penalty should reflect how serious, reprehensible and blameworthy, a certain crime is. A more serious crime should be punished more severely than a less serious crime and equally serious crimes should be punished equally severely.[62] These principles of proportionality and equivalence are expressed in the central provision on sentencing in Chapter 29 Section 1 of the Swedish Penal Code. According to this provision, penalties must be determined within the scope of the applicable penalty scale according to the blameworthiness of the actual crime and in line with the key notion of the uniform application of law. When assessing the penalty value, the judge must consider the damage, violation or danger that the act has caused; what the defendant was aware of or should have been aware of as to the consequences of that act; and the intentions or motives behind that act. It is particularly important to take into account if the act constituted a serious attack on someone's life, health or safety.

The perception of how serious a certain crime is may change over time, notably as a result of societal developments. Other reasons may also influence this perception, such as increased media reporting and more emphasis on victims and public safety. The legislature can influence how a crime shall be punished by determining the penalty scale. The Government considers, as stated in several preparatory works discussed above, that there are reasons for a more stringent approach to serious crimes, including a tightening of penalties. The purpose of hardening sentences for gross and extremely serious crimes is clear. The government's proposal on firearms and explosives, notably, posits that stronger punishments will lead to higher respect for the law.[63]

These proposals, new laws and reforms of the criminal system have sometimes been criticised. The proposals have been criticised for having been pushed through too quickly; worded in excessively vague terms so that they do not lead to changes in practice; or not being supported in criminal policy research. Indeed, research suggests that longer penalties may not decrease criminality and that stricter penalties are therefore not the way to go.

62 Prop. 2017/18:26 *Skjutvapen och explosiva varor – skärpta straff för de grova brotten* p. 11.

63 *Ibid*. p. 17.

An important piece of research in the criminological debate about just prison sentences and tighter penalties is a 2010 article by the late professor in penal law, Per Ole Träskman.[64] The article discusses several criminal law theories, highlights several reasons for being critical of imprisonment as a punishment, and advocates for reducing the use of prisons. Träskman points to, among other things, research disputing the rehabilitative function and generally preventive function of custodial sentences. The author also emphasises research indicating there is no clear connection between the proportion of the population wanting more stringent penalties and rates of criminality. Conversely, however, there is a connection between people's perception of crime development and calls for more severe punishment. [65] A large body of research makes similar claims as Träskman.[66]

Another body of research has made opposite conclusions and argued that prison sentences can have deterrent effects.[67] Westberg, for instance, presents different research on the topic, that has studied among other Italian and French prison amnesties combined with various harsh penalties for recidivism. He concludes that harsh sentencing can recidivism retaliation. Westberg also presents three studies that posit that longer prison sentences reduce to some extent violent crime and discusses the fact that Sweden has the second lowest carceral population in the European Union. [68]

Given this background, what should be the reaction of legislators when initiating changes in penalty scales? Contemporary reforms, according to Asp, are not characterised by any belief that reforming the criminal justice system will have a tangible effect on crime.[69] Asp states that proportionality can be invoked both by, on the one hand, those who have a more instrumental view of criminal law and believe that criminal law can affect individuals' actions and, on the other hand, those who have a more pessimistic view of the importance of criminal law on criminality.

From this very limited glimpse of the criminological debate on levels of punishment, one cannot draw far-reaching conclusions. However, one can state that the Swedish legislator, in preparatory works, has not focused on the question of whether longer

64 Träskman 2010 pp. 529–544.

65 *Ibid*. p. 542.

66 See e.g. Du Rees and Sarnecki. Skärpta straff fel metod att minska brottsligheten. DN Debatt 8 August 2013 https://www.dn.se/debatt/skarpta-straff-fel-metod-att-minska-brottsligheten. 17 december 2019; Flyghed et al. Svagt stöd i forskningen för att hårdare straff minskar brotten. Dagens Nyheter. 29 January 2018. https://www.dn.se/debatt/svagt-stod-i-forskningen-for-att-hardare-straff-minskar-brotten/. 16 October 2019.

67 Gudmundson, Strängare straff fungerar visst. Svenska Dagbladet. 20 July 2009. https://www.svd.se/strangare-straff-fungerar-visst. 16 October 2019.

68 Westberg, Visst leder hårdare straff till färre brott. Svensk Tidskrift. 19 January 2018. http://www.svensktidskrift.se/visst-leder-hardare-straff-till-farre-brott/. 16 October 2019.

69 Asp (2016) pp. 138–161.

punishments has any effect in one way or the other. The consistent starting point has been the public's perception on crime and calls for harsher penalties. The legislator has not discussed the effect of such criminal policy reforms. This suggests that public opinion, rather than research, has a greater influence on the legislator's view of what is the correct level of proportionality and equivalence between crime and punishment and of what is perceived to be a just and proportional punishment for a certain crime.