

Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – Sweden

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This international profile presents information and evidence on the minimum age of criminal responsibility in Sweden. It specifically focuses on policies and practices about investigating offences committed by those under the age of criminal responsibility.

Key Findings:

- MACR is 15
- Imprisonment is rare for young people under 21
- There is special consideration of each particular case
- There are attempts to include children and young people in the processes and decisions
- The system is more lenient and protective when children are involved
- Major involvement of social services when children are suspected of crime
- All decisions are guided by the best interests of the child
- Specialised training is provided for every procedure involving children
- Emphasis on rehabilitation and support
- No child-specific rules on confidentiality

Background

In Sweden, promoting and protecting human rights (including the rights of the child), is an integral part of the national and foreign policies, and a child's perspective, according to the Convention on the Rights of the Child (CRC), will stand above all measures. The country aims to be an ideal environment for a child to grow up in and acknowledges the importance of CRC towards the successful fulfilment of that goal. Sweden plans to promote further awareness and knowledge on the rights of the child, building on the work done by the Ombudsman for Children. The Ombudsman monitors implementation of CRC in public authorities, municipalities and county councils, and promotes young people's knowledge and experience in order to inform decisions of professionals and decision-makers.

Swedish legislation in general complies well with CRC and since 2007 sanctions regarding young people became characterised by proportionality, predictability, consistency and adaptability to the specific needs of each child. However, decision makers are facing legislative and economic limitations and the challenge of making the voices of children and young people be heard in decisions that directly affect them. As a result, further improvements need to be made in terms of legislation and enforcement.

In Sweden, the MACR is 15 and there is no juvenile court. However, there is legislation for young people under 21 involved in offending. In general, imprisonment is avoided under 21. Imprisonment for a young person between 18 and 21 is considered only for serious crimes and between 15 and 18 is extremely rare and only considered on special cases. A young person under 21 may be sentenced to youth service, if he/she consents and the sentence has to be proportional. Those who are under 18 are considered children and are subject to special measures, assistance or treatment. These special measures are in some cases extended to those who are under 21. A young person over 18 may be sentenced to youth service only, if there are reasonable grounds for it. A young person between 15 and 18 is not usually prosecuted. For all young people under 18, social services have to be notified.

Prosecution Authority requests the input of social services during the investigation and before the final decision (the information prosecution should be made aware of is already set). It may waive prosecution if public or private interest is not disregarded and in special circumstances. There are formal processes in place as well as established institutions to ensure consistency in the collaboration among agencies. Prosecution Authority has been offering specialised training courses for prosecutors dealing with young people. Children (being victims, suspects or witnesses) may face difficulties understanding the investigation and trial process, for this reason local prosecution offices have specially trained prosecutors to handle cases involving children and young people and make sure they are heard.

Authorities (social services, police and prosecution and other relevant services) are expected to co-operate when children are involved in criminal proceedings and to be guided at all times by the best interests of the child. However, there are no set criteria or guidelines at a legislative level to assess the best interests, as authorities need flexibility and discretion to decide what is in the best interests of the child according to each particular case. The number of children in contact with the Police

in 2010 was 16,664. The number of convictions for the same year was 28,963.

Findings

Children should not be harmed in any way during the interview process. The child's best interests should be considered throughout and he/she should have the chance to provide his/her own narrative in a safe environment. There should be a limited number of interviews which should be conducted as soon as possible and no later than two weeks after the prosecution decides to start an investigation. The law sets specific time limits on the length of the investigations which should be completed as quickly as possible (usually within six weeks).

Children and young people (as victims, witnesses or suspects) are to be interviewed by a person specially trained. Also, a social services representative needs to be present during the hearings for the preliminary investigation if the young person is under 18, if this does not impede with the investigation. Most of the police investigations involving children are handled by specialist investigators, for whom a national curriculum has been developed based on the best interests of the child. The training is repeated every three years and includes 15 weeks of training on subjects such as investigative methods and interview techniques.

Children under 15 should be interviewed with their parent/guardian present, if not harmful to the investigation. Guidelines on interviewing children recommend the interviewer to meet with the child in advance at a familiar to the child environment, so that the child is familiar with the person.

During the interview, the interviewer should use language appropriate to the age and mental capacity of the child, allow plenty of time to answer questions and inform the child of what is to follow. However, the police have no legal obligation to inform the child of his/her right to a lawyer.

Before interviewing a small child or a child with disabilities, both interviewer and prosecutor should understand the intellectual capacity, maturity, vocabulary and memory of the child. Hiring an expert to assist is possible, e.g. child psychiatrist/psychologist, however, the young person or his/her lawyer can comment on the selection made.

Young people under 15 cannot be arrested but can be detained up to three hours after a decision on release or after the conclusion of an interview. Young people under 18 are detained only if there are special reasons (law advises against depriving young people of their freedom). To make sure there will be no interfering with the investigation or re-offending, they are handed over to social services. The Swedish Police makes the necessary arrangements for Prosecution Authority to contact social and child protection services.

An investigation against a young person should be conducted by a specially trained police officer or prosecutor. If the child has been under investigation in the past, the same person should conduct the new investigation, if possible.

Children under 15 are subject to police investigation, if the sentence for the particular crime is imprisonment longer than one year or there is an attempt or conspiracy to

commit a crime, and to clarify whether someone 15 or over has participated in a crime (if necessary for finding stolen goods or if important for the public's or individual's interests). However, if the child is under 12, an investigation may only take place if there are extraordinary reasons to do so.

The young person should be informed when an investigation is discontinued or a prosecution is withdrawn. If under 18, his/her parents/guardians and social services should be informed and summoned to the interview, provided it does not harm the investigation. When a young person is suspected of a not serious crime, the police can question him/her right away, after notifying parents/guardians and social services, and giving them the opportunity to be present during the questioning. If the crime is serious, the parents and/or social services should be present during the interview, and if the crime is very serious, the young person can be arrested. In such cases, a legal representative is appointed.

Children between 15 and 18 may only be arrested if there are extraordinary reasons to do so. Children between 15 and 17 fall under the responsibility of social services and can, therefore, be handed over to them. Children under 15 should be interviewed after approval of the lead investigator is given and the interview should be video-recorded (for children above 15, it is possible if requested by the children). However, questions might be asked to clarify whether the child has offended. If interviewing should take place, social services should be informed about the time and place. In general, if a person (child or adult), does not appear for the interview or before the court, he/she may be brought in by the police.

Children under 15 cannot be held criminally liable. Children under 18 can be sentenced to jail, but only under special circumstances. The principal responsibility for children who offended lies with social services, who are considered best qualified to support young people.

In Sweden, there are no alternatives to judicial proceedings. However, children can be offered mediation between them and the victim, which is voluntary. If the child is under 12, mediation takes place only if there are special reasons.

There are no rules on confidentiality regarding children and the investigation is in the public domain as soon as it has been concluded, with the exception of the information included in the social services investigation. Court proceedings information is also publicly available, with exceptions provided in the Public Access and Secrecy Act (e.g. sexual abuse, child pornography, kidnapping). If it is believed releasing information will be harmful to the person to whom it relates to, secrecy is ensured. Hearings involving children suspects of crime are open to the public, unless a court decides otherwise.

There are particular sanctions that apply to young people between 15 and 21: care of young people, youth service, institutional care of young people. However, same sanctions as to adults can be applied to young people between 15 and 18: fine, imprisonment, conditional sentence, probation, community service, forensic psychiatric care. If the young person offends before reaching 21, special consideration is given to his/her age when determining the sanction, as the court may impose one less severe than the law dictates. The types of deprivation of liberty that may be imposed on a young person before reaching 21 are: imprisonment, forensic psychiatric care, institutional care of young people.

Young people under 18 may be sentenced to institutional care and, in exceptional cases, imprisoned; however, they are separated from prisoners over 18, unless in their best interest. Prisoners have the right to education, employment, and rehabilitation programmes (offending and substance misuse). When a young person is institutionalised, experts with the co-operation of social services and the consultation of the young person and the parents/guardians, develop a plan based on the young person's needs. Upon release, a transition plan is put in place as well as aftercare. Young people between 15 and 21 can be sentenced to care, if they have a special need for care or fall under the actions of social services; the type of care varies depending on the offender's needs.

There are special provisions in the Criminal Records Act regarding children. Generally, disclosure of information regarding a child is not prohibited, however judges can impose non-disclosure if it is to the best interests of the child. The time limits that apply for a young person's criminal record to be cleared are: three years where the prosecution decided not to prosecute; five years for probation, suspended sentence, care of young people, youth service, fines and 10 years for institutional care for young people. Criminal records can only be made available to the person concerned or certain authorities, e.g. Police, Tax Authority, Customs (crime prevention, discovery and investigation), Prosecution Authority (decision-making on investigation or prosecution), Court Service (sentence and its duration), Parliamentary Ombudsmen, Chancellor of Justice or Data Inspection (oversight activities), etc.

Evidence

The above presented information is based on data collected and collated through policy and evaluation documents and academic papers on the criminal justice system, human rights and rights of the child literature in Sweden. Further contacts were made (Ministry of Justice, Swedish Police) to collect relevant information, however, no information has been made available to date.

As a final note, given the limited time to collect the data, the limited sources available as well as the length of the expected output, we should be aware of the restricted outcome of the fieldwork and the data collected. Triangulation of the collected data took place where possible; where not possible, the most recent publication was taken into consideration.

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