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2011-01-11

Today's hearing is only preparatory. Some information may not be today.

Today conducted a hearing in London which deals with the issue of transfer of Julian Assange under the European Arrest Warrant. The hearing is only a preparatory and negotiating the thing is, reportedly scheduled to take place in early February. Chief Prosecutor Marianne New has no information to give today.

For questions about including the consent provisions of British legislation on sexual crimes refer to the government survey, SOU 2010:71 Sexual crime laws - the evaluation and reform, Chapter 5.4.

Print

For Swedish Prosecution Authority cited document on British law on sexual offenses, see Section 5.4 of:

<http://cryptome.org/0003/uk-sex-law.pdf>



REGERINGSKANSLIET

Government Offices of Sweden

Proposed amendments to the legislation on sexual crimes

On 27 October 2010 the Sexual Offences Commission of 2008 submitted its report Sexualbrottslagstiftningen - utvärdering och reformförslag (Legislation on sexual crimes - evaluation and proposed reforms) (SOU 2010:71) to Minister for Justice Beatrice Ask. The Commission has evaluated the application of the legislation on sexual crimes introduced in 2005 to follow up and examine how the provisions on sexual crimes have worked in practice and whether the aim of the reform has been achieved.

The Commission proposes a number of amendments to the legislation on sexual crimes, including:

- broader provision on rape so that more cases of sexual exploitation will be regarded as rape,
- a new consent-based provision is introduced to be called sexual abuse,
- broader scope of application for the provision on rape of a child,
- harsher penalties for sexual exploitation of children and gross sexual abuse of children, and
- broader provisions on sexual molestation.

The Commission assesses that, overall, the protection of personal and sexual integrity and sexual self-determination has been strengthened and made clearer through the 2005 sexual crimes reform. Protection for children has also been enhanced. Punishment for sexual crimes against children is now generally more severe than before the reform.

However, a number of deficiencies in the sexual crimes legislation and its application still remain. The Commission therefore proposes amendments to the legislation to further improve the protection of personal and sexual integrity and sexual self-determination.

Sexual crimes against adults. Coercion or absence of consent as a basis for criminal liability?

The current legislation on rape and other serious sexual violations of adults proceeds from the premise that the offender has used coercion (violence or threat) or exploited the fact that the victim is in a state of helplessness. Consent to a sexual act is a central issue when assessing whether or not the act constitutes a sexual crime. The Commission is of the view that the role of consent should be stated directly in the legislation. For this reason, and because the concept of 'state of helplessness' is too narrow to cover all forms of punishable sexual exploitation, it is proposed that the legislation be expanded and supplemented.

A broader provision on rape is proposed, which would mean that it should be punishable not only to inappropriately exploit someone who is in a state of helplessness but also someone who otherwise has difficulties in protecting their sexual integrity. This could be the case, for example, if a person is taken to a place that is unknown to them and is sexually abused there. Another example may be the exploitation of a person under the influence of drugs or alcohol who is in a threatening or vulnerable situation.

The Commission also proposes the introduction of a new and consent-based provision to be called sexual abuse. Through the offence of sexual abuse it is criminalised to carry out a sexual act with a person without the permission of that person. It is proposed that the provision should be subsidiary to the provisions on rape and sexual coercion, i.e. be applied only if the act does not constitute rape or sexual coercion. The proposed penalty for the crime is imprisonment for a maximum of four years. The provision makes clear the significance of consent and, in addition, ensures appropriate punishment for someone who engages in an act with someone who does not consent to it, whether or not coercion or exploitation has taken place.

Sexual crimes against children

The Commission proposes a somewhat broader scope of application for the provision on rape of a child. This means that certain cases that today are defined as the less severe crime sexual abuse of a child will instead be defined as rape of a child. This emphasises that defining a certain sexual act against a child will not, as in principle happens at present, be the same as when committed against an adult.

Changes are proposed to the penal scales for the offences sexual exploitation of a child and gross sexual abuse of a child. These changes imply a certain strengthening of penalties but mainly aim to even out threshold effects in relation to the more serious crime of rape of a child.

Sexual molestation

The provision on sexual molestation will be broadened in several ways, in part to meet the requirements of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. One part of the broader provision will make it explicitly punishable to induce a child to witness a sexual act.

Background

New and reformed legislation on sexual crimes entered into force in April 2005. The reform involved a number of new and wide-ranging changes. For example, the crime of rape was expanded by lowering the requirement of coercion and including the most serious cases of sexual exploitation in the provision on rape. Furthermore, some special penal provisions were introduced for sexual crimes against children, for example rape of a child and sexual abuse of a child, where the requirement of coercion was removed completely. Another important change was that the dual criminality requirement was removed to make it possible to sentence perpetrators in Sweden when they have committed serious sexual crimes against children abroad. Moreover, the statutory limitation period for certain sexual offences against children was extended.

Last updated 07 December 2010

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