



**FOLKETINGETS
OMBUDSMAND**

Thematic report 2020

Convicted persons with intellectual and developmental disabilities

Contents

1. What are the Ombudsman's general conclusions?	4
1.1. Introduction.....	4
1.2. General conclusions.....	4
2. What does the Ombudsman recommend?	5
3. What was the object of the Ombudsman's investigation?	7
4. Why did the Ombudsman choose this theme?	10
5. The Ombudsman's method	11
5.1. How was the investigation organised?.....	11
5.2. What did the Ombudsman investigate?	12
5.3. How were conditions investigated during the monitoring visits?.....	12
6. What did the Ombudsman find?	13
6.1. Is there a focus on crime prevention measures?	13
6.1.1. Is there a duty to implement crime prevention measures?	13
6.1.2. Are crime prevention measures implemented in practice, and are there targets for the measures?	15
6.1.3. Are the measures and their results documented?	18
6.1.4. Guardian representatives	20
6.2. Are the rules on leave observed?	20
6.3. Is there access to addiction treatment and sexological treatment or sex education?	23
6.3.1. Addiction treatment	23
6.3.2. Sexological treatment or sex education	25
6.4. Are force and other restrictions carried out in accordance with the applicable rules?	25
6.5. Is there a risk of conditions having a knock-on effect?	28
6.6. Do the social residential facilities prevent violence and threats between residents?	28

6.7. Do residents have access to relevant healthcare services?29
6.8. Is there a focus on prevention of suicide and self-harm?30
6.9. Statistical overview of the population30
6.10. Municipalities and consultation councils31

**Appendix 1 – Summary of the Ombudsman’s case about the
interpretation of the Leave Order33**

**Appendix 2 – Outline of rules on conditions for convicted persons
with intellectual and developmental disabilities35**

1. What are the Ombudsman's general conclusions?

1.1. Introduction

Persons with intellectual and developmental disabilities who have committed a criminal offence are in many cases not given a prison sentence. Instead, they may be given a so-called preventive measures sentence ('foranstaltningssdom' in Danish).

The aim of a preventive measures sentence is to prevent further offences. Persons who are given a preventive measures sentence may among other things be placed in a social residential facility or in a secure unit. During the placement, socio-educational measures are implemented.

A preventive measures sentence is not a punishment but can none the less involve considerable restrictions being placed on the convicted persons. As an example, a number of the convicted persons can only leave the social residential facility or the secure unit if they have been given permission to do so. Some of the convicted persons may also have their access to internet or telephone restricted.

The sentences may have a duration of 3 or 5 years or may be of indefinite duration. The fixed-term sentences may be extended. The sentences must not be maintained for longer or more extensively than necessary, and can be terminated.

When assessing whether a preventive measures sentence should be modified or terminated, the risk of new offences must enter into the assessment.

The Ombudsman's monitoring visits to social residential facilities and secure units for adults in 2020 were especially focused on conditions for convicted persons with intellectual and developmental disabilities who had been placed in a social residential facility or a secure unit according to a preventive measures sentence.

1.2. General conclusions

In general, the Ombudsman finds that social residential facilities and the responsible ministries should strengthen general and individual crime prevention measures in relation to convicted persons with intellectual and developmental disabilities.

This is, among other things, because a risk of the convicted person committing further offences can affect how long a preventive measures sentence should remain in force. It may thus be important to the duration of the preventive measures sentence whether socio-educational initiatives have

been put in place with a focus on learning skills that will enable the convicted person to avoid committing new offences, and whether the result of these initiatives has been documented.

Consequently, there is a risk that there may be situations where it is necessary for the preventive measures sentence to remain in force for longer than would have been the case if a sufficient focus had been kept on the overall preventive measures. This risk occurs among other things when:

- the social residential facilities provide socio-educational initiatives without identifying the necessary crime prevention measures
- the social residential facilities do not document the result of crime prevention measures
- the social residential facilities do not know who the convicted person's guardian representative is and therefore do not provide the guardian representative with relevant information
- the convicted person does not have access to relevant addiction treatment.

The Ombudsman also points out that statistical data are lacking in this field. There is for instance no knowledge of the number of current preventive measures sentences or developments in the duration of the sentences.

In addition, the Ombudsman has seen examples of convicted persons being or having been unlawfully under 24-hour watch. The Ombudsman's monitoring activities have also shown that there is a risk of convicted persons being unlawfully restricted in, for instance, their access to the internet or in leaving the social residential facility when the facilities do not ensure that staff know the special provisions in that field or when the provisions or the interpretation of the rules are unclear.

2. What does the Ombudsman recommend?

In general, the Ombudsman recommends that social residential facilities receiving persons with intellectual or developmental disabilities who have been sentenced to preventive measures:

- focus on the crime-prevention purpose of the preventive measures sentence, including determine objectives for the crime prevention measures, and ensure documentation thereof when the municipality has asked the social residential facility to implement such measures
- ensure that the social residential facility knows who the convicted residents' guardian representatives are and provides the guardian

representatives with the information necessary for the guardian representatives to do their job

- ensure that staff know the rules regarding leave, and that an adequate note is made on how leaves are conducted, including leaves which have proceeded without any problems
- ensure that staff know the rules of the Social Services Act on the use of force and other restrictions, including the special rules in Chapter 24 d of the Act on enforcement of criminal sanctions etc.
- have clear guidelines on reporting to the police any incidents of violence and threats etc. between residents, and that residents are informed of the guidelines and informed that a report to the police of criminal offences may have a negative impact on the possibility of having a sentence modified or terminated
- establish guidelines for the prevention and handling of suicide, suicide attempts and self-harm if residents are at risk of this happening, and that the social residential facilities record and analyse such incidents.

The Ombudsman further recommends that, in connection with the up-coming review of the rules on allowing persons serving a preventive measures sentence to leave the social residential facility, the Ministry of Justice consider drafting a set of guidelines on the rules.

The Ombudsman will discuss the general conclusions and recommendations with the relevant ministries (the Ministry of Social Affairs and Senior Citizens and the Ministry of Justice).

In addition, the Ombudsman will discuss with the ministries how to ensure a more detailed statistical overview of the number of convicted persons with intellectual and developmental disabilities placed in a social residential facility according to a preventive measures sentence.

Such an overview would be of help to central authorities in the assessment of the need for a general initiative in this field, including for instance changes in the rules or the drafting of new methods which can be used in crime-prevention socio-educational initiatives. It would also – continuously – serve to provide an overview of the adequacy of the number of places in social residential facilities which can receive persons sentenced to preventive measures.

On 24 June 2021, the National Board of Social Services issued a news item on a study of addiction problems among adults with intellectual and

developmental disabilities. The study is part of a project where a prototype for a new treatment initiative will be developed. The Ombudsman will ask the National Board of Social Services to be informed of the result of the study and the new treatment initiative.

Furthermore, the Ombudsman will discuss with the Ministry of Social Affairs and Senior Citizens and Local Government Denmark the information on the municipalities' execution of the tasks in this field that the Ombudsman received in connection with the monitoring visits. In this respect, the Ombudsman will discuss with the Ministry and Local Government Denmark whether municipalities also need an increased focus on the crime-prevention purposes of preventive measures sentences. Among other things, most municipal action plans received by the Ombudsman from the visited places either did not contain objectives or initiatives with focus on crime prevention measures or they only contained very general targets for the initiatives.

Lastly, the Ombudsman will discuss the varying use of so-called consultation councils ('samråd' in Danish) with the Ministry of Social Affairs and Senior Citizens and the Ministry of Justice. Some municipalities use consultation councils, meaning a group of several experts in the field jointly carrying out a professional assessment of, for instance, recommendations for whether or not a sentence should be modified or terminated. Other municipalities carry out this assessment themselves.

On the Ombudsman's website is an overall list of the monitoring visits carried out in 2020 and the recommendations given during the visits. See en.ombudsmanden.dk/introduction/Monitoring_visits/monitoring_visits/adults_2020.

As part of the theme, the Ombudsman has investigated three general cases regarding the legal framework for convicted persons with intellectual and developmental disabilities. Two of the cases have been made public at the Ombudsman's website as [FOB 2021-23](#) and [FOB 2021-26](#) (in Danish only). There is a summary of the third case in Appendix 1.

3. What was the object of the Ombudsman's investigation?

The Ombudsman has investigated conditions for convicted persons with intellectual and developmental disabilities. In this report, the term 'intellectual and developmental disability' is used instead of 'mental retardation'.

What is an intellectual and developmental disability?

The WHO's International Classification of Diseases, ICD-10, defines mental retardation as: 'A condition of arrested or incomplete development of the mind, which is especially characterized by impairment of skills manifested during the developmental period, skills which contribute to the overall level of intelligence, i.e. cognitive, language, motor, and social abilities.'

Source: WHO, ICD-10 Version: 2019

As mentioned, persons with intellectual and developmental disabilities who commit offences are in many instances not sentenced to imprisonment. They can instead be given a so-called preventive measures sentence. The aim of preventive measures sentences is to prevent further offences and may mean that the convicted person is placed at a general social residential facility or a secure unit. The placement can be of fixed or indefinite duration. Five types of preventive measures sentences are used. The court can, in addition, lay down terms for instance on the convicted person receiving treatment for any addictions.

The five types of preventive measures sentences

Type 1 – Sentence to placement in a secure unit for persons with extensive mental disabilities.

The convicted person is placed in a secure unit. In secure units, windows and outer doors are locked 24 hours or almost 24 hours a day. Normally, no maximum duration is stipulated in these cases. Currently, only the social residential facility Kofoedsminde has secure units.

Type 2 – Sentence to placement in a social residential facility for persons with extensive mental disabilities with the option of being transferred to a secure unit if the municipality finds this relevant.

The convicted person is placed in a social residential facility but the municipality can decide to transfer the convicted person to a secure unit without court approval. The sentence can be without maximum duration or for a maximum duration of five years.

Type 3 – Sentence to placement in a social residential facility for persons with extensive mental disabilities.

The convicted person is placed in a social residential facility. The sentence can be without maximum duration or for a maximum duration of five years.

Type 4 – Sentence to supervision by the municipality with the option of transferring to a social residential facility for persons with extensive mental disabilities.

As a starting point, the convicted person is only under supervision. However, the municipality can decide to place the convicted person in a social residential facility without court approval. The sentence can be without maximum duration or for a maximum duration of five years.

Type 5 – Sentence to municipal supervision so that the person with intellectual and developmental disabilities comply with the supervising authority's stipulations on residence and work.

The convicted person cannot be placed in a social residential facility pursuant to the sentence. The order is intended for persons with intellectual and developmental disabilities needing social support in everyday life. The supervision may be supplemented with special conditions. The sentence can have a duration of up to three years.

Source: The Director of Public Prosecutions' guidelines on mentally deviant criminals.

Fixed-term sentences can be extended. The sentences can, in addition, be modified or terminated. These decisions are made by the courts.

The investigation of the theme was limited to convicted persons with intellectual and development difficulties placed in a social residential facility or a secure unit in accordance with a type 1-3 sentence and convicted persons with a type 4 sentence where the municipality has decided that the convicted person must be placed in a social residential facility according to the sentence.

4. Why did the Ombudsman choose this theme?

The background for the Ombudsman choosing to investigate conditions for convicted persons with intellectual and developmental disabilities was the following:

- Convicted persons with intellectual and developmental disabilities constitute a vulnerable group and do not always understand their own rights or possibilities of complaint. Furthermore, as mentioned above, preventive measures sentences can be of an indefinite duration, and the convicted persons can be subject to the sentence for many years before it is terminated.
- Persons sentenced to preventive measures are subject to rules which allow the possibility of restrictions of basic rights. The rules are found in a number of laws and appurtenant executive orders. The overall responsibility for the field is divided between the Ministry of Justice and the Ministry of Social Affairs and Senior Citizens (including the National Social Services Board). The interpretation of the rules is not always clear.
- Conditions for the convicted persons are managed across a number of authorities etc., including
 - courts of law
 - the Director of Public Prosecutions and the various regional public prosecutors
 - municipalities
 - consultation councils
 - social residential facilities
 - guardian representatives
 - the National Knowledge and Specialist Consultancy Centre – VISO
 - the municipalities' addiction treatment programmes.

This target group is not in all instances part of the core activities area of the authorities etc. In many places, this target group is thus small and the cases few in relation to establishing routine procedures and identifiable practices in cases involving convicted persons with intellectual and developmental disabilities.

- There is no survey of the overall number of persons with intellectual and developmental disabilities who have been given a preventive measures sentence.

Appendix 2 shows an outline of some of the central rules and provisions concerning conditions for convicted persons with intellectual and developmental disabilities.

5. The Ombudsman's method

5.1. How was the investigation organised?

The theme was investigated through 17 monitoring visits to social residential facilities which receive convicted residents, including the secure units at the social residential facility Kofoedsminde. The 17 social residential facilities comprised seven facilities run by a municipality, six facilities run by a region (including the secure units at Kofoedsminde) and four privately run facilities. All visits were announced.

The monitoring visits were carried out as part of the Ombudsman's general monitoring activities pursuant to Section 18 of the Parliamentary Ombudsman Act and as part of the Ombudsman's task of preventing persons who are or who can be deprived of their liberty from being exposed to for instance inhuman or degrading treatment, cf. the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The Ombudsman's work to prevent degrading treatment etc. pursuant to the Protocol is carried out in cooperation with the Danish Institute for Human Rights and with DIGNITY – Danish Institute Against Torture. DIGNITY and the Institute for Human Rights contribute to the cooperation with, respectively, special medical and human rights expertise, among other things meaning that staff with expertise in these two fields participate on behalf of the two institutes in the planning and execution of and follow-up on monitoring visits.

As part of the preparations for the investigation, the Ombudsman had meetings with the Consultation Council for Offenders with Intellectual and Developmental Disabilities in the Region of Southern Denmark (*Samrådet for*

udviklingshæmmede lovovertrædere i Region Syddanmark), the East Jutland Consultation Council in Aarhus Municipality (*Det Østjyske Samråd i Aarhus Kommune*), a privately run social residential facility, a representative for the National Association for People with Intellectual and Developmental Disabilities (*Landsforeningen LEV*), a representative for the Public Prosecutor of Copenhagen and with two representatives for the National Association of Patient Advisors and Guardian Representatives in Denmark (*Landsforeningen af Patientrådgivere og Bistandsværger i Danmark*). The purpose of the meetings was to gather background information about conditions in the field.

As part of the theme, the Ombudsman chose to initiate three general own-initiative investigations to clarify the interpretation of the rules in the field. Two of the cases have been made public at the Ombudsman's website as [FOB 2021-23](#) and [FOB 2021-26](#) (in Danish only). There is a summary of the third case in Appendix 1.

5.2. What did the Ombudsman investigate?

The following was investigated under the year's theme:

- Are efforts being made to ensure that residents are no longer at risk of committing offences, and is enough done to document these efforts (item 6.1.2 and 6.1.3)?
- Do the municipality and the social residential facility observe the rules when making decisions on applications for leave (item 6.2)?
- Do residents have access to relevant addiction treatment and sexological treatment or sex education (item 6.3)?
- Does the social residential facility observe the special rules on use of force and other restrictions against convicted residents (item 6.4)?
- Is there a risk of conditions having a knock-on effect (item 6.5)?
- Does the social residential facility prevent violence and threats between residents (item 6.6)?
- Do residents have access to relevant health service treatment (item 6.7)?
- Is there a focus on prevention of suicide and self-harm (item 6.8)?

5.3. How were conditions investigated during the monitoring visits?

Prior to the individual monitoring visit, the latest supervisory report and any supplementary data from the local social supervisory authority were obtained.

In addition, the Ombudsman obtained any supervisory reports from for instance the Danish Patient Safety Authority and any decisions etc. from the Danish Working Environment Authority.

In the opening letter for the individual monitoring visit, management was asked for information on a number of factors and for copies of the material on the subject. This concerned information on residents' preventive measures sentences, municipal action plans and the social residential facility's educational plans, leave permissions and leave protocols.

During the monitoring visits, management, staff and to the widest possible extent residents, guardian representatives, guardians and relatives were interviewed about conditions for the residents, including in particular convicted residents placed in the social residential facility.

6. What did the Ombudsman find?

6.1. Is there a focus on crime prevention measures?

6.1.1. Is there a duty to implement crime prevention measures?

As mentioned under item 1 above, the purpose of preventive measures sentences is to prevent further offences. A preventive measures sentence is not a punishment but it can still result in considerable restrictions for the convicted persons. By way of example, a preventive measures sentence can mean that convicted persons are placed in a social residential facility or a secure unit, and some of the convicted persons may only leave the social residential facility or the secure unit if given permission to do so. Convicted persons may also be restricted in their access to the internet or telephones.

The public prosecutor monitors that preventive measures sentences do not remain in force for longer and more extensively than necessary. The public prosecutor has a duty to bring such questions before the courts, which then make decisions on whether or not to change or terminate preventive measures sentences. Such questions can also be brought before the courts at the request of the convicted person or the guardian representative.

In the assessment of whether or not a preventive measures sentence should be modified or terminated, the risk of new offences (including the nature and gravity of the offences) and the character and duration of the preventive measures sentence are among the factors that are taken into account. The potential risk of the convicted person committing further offences therefore affects how long a sentence remains in force. It can thus affect the duration of a preventive measures sentence that socio-educational initiatives are

implemented, with a focus on achieving skills so that the convicted person can avoid committing new offences.

For use in the assessment, the public prosecutors obtain statements from the social residential facility, the municipality and the so-called consultation councils. The public prosecutors do not, however, instruct municipalities and social residential facilities in what kind of socio-educational initiatives they should implement.

The municipalities have a duty to receive persons with a preventive measures sentence in social residential facilities. Pursuant to the Act on Due Process, municipalities must also carry out a special crime prevention supervision. In a case raised by the Ombudsman in connection with the theme, the Ombudsman could not disregard the opinion of the Ministry of Social Affairs and Senior Citizens that the duty to carry out crime prevention supervision pursuant to Section 16 a of the Act on Due Process only occurs when it has been decided specifically by judgment or sentence etc. that a person shall be subject to supervision by the social authorities. In practice, this means that, according to this provision, the supervisory duty does not include persons who are deprived of liberty due to having been sentenced to placement in an institution (type 1-3 sentences).

Furthermore, in the same case the Ombudsman did not overall have a basis for disregarding the opinion of the Ministry of Social Affairs and Senior Citizens, according to which the provision on crime prevention supervision does not obligate municipalities to implement, as part of the supervision, crime prevention measures towards those persons who are within the scope of this provision.

However, he did point out that several matters could give reason to suppose that, according to circumstances, there can be a duty to implement crime prevention measures. Among other things, he pointed out that it is specified in the National Board of Social Services' handbook, 'Handbook on charged and convicted citizens with intellectual and developmental disabilities – Statutory provisions and crime prevention measures' that the municipalities may have a duty to implement crime prevention measures. He also pointed out that in the guidelines of the Ministry for Children and Social Affairs on legal rights and administration in the social field, it is cited that municipal implementation of the criminal sentence makes relevant, and must take into account, an assessment of the citizen's need for aid and support pursuant to the Act on Social Services.

In connection with the case, the Ministry of Social Affairs and Senior Citizens stated that, according to the Act on Social Services, the municipalities have a duty to implement measures which are suitable for the individual citizen, and

that the supervision and duty to act can, according to circumstances, mean that the municipal council must implement socio-educational initiatives pursuant to the Act on Social Services which can also have a crime-preventing effect. The municipality will also have to implement measures based on conditions in the sentence which fall within the Act on Social Services or other relevant legislation.

The Ombudsman informed the Ministry of Social Affairs and Senior Citizens, the Folketing's Legal Affairs Committee and the Folketing's Social Affairs and Senior Citizens' Committee of his assessment of the case. See the Ombudsman's statement in the case [FOB 2021-23](#) (in Danish only) at the Ombudsman's website.

It appears from several judgments from the European Court of Human Rights that there may be a duty to implement crime prevention measures towards some persons deprived of their liberty. The Ombudsman is not aware of any judgments where the Court has taken a position on the Danish system regarding persons with intellectual and developmental disabilities being sentenced to preventive measures.

6.1.2. Are crime prevention measures implemented in practice, and are there targets for the measures?

During the monitoring visits, it was investigated whether the social residential facilities had a focus on implementing crime prevention measures towards the convicted person.

Targets for social work

Clear and relevant targets are crucial to the quality and effect of practice. When clear targets are formulated, transparency and systematism in the initiatives are achieved together with agreement on what to aim for.

Source: 2016 publication from the National Board of Social Affairs and the National Research and Development Centre for Welfare and Health (SFI), 'Lovende praksis på det specialiserede socialområde' (Promising practice in the specialised social field).

Three examples of the municipalities' action plans and the social residential facility's educational plans or similar material were collected prior to each monitoring visit.

The purpose of a municipal action plan is to clarify the target for the initiatives, to secure a cohesive and systemic effort, and to clarify the duty of all persons, agencies and administrative branches. Among other things, an

action plan must indicate what measures are necessary in order to reach the target.

In the investigation which the Ombudsman raised on his own initiative towards the Ministry of Social Affairs and Senior Citizens as part of the theme, cf. item 6.1.1 above, the Ministry has stated that the municipalities do not generally have a direct duty to draw up an action plan for convicted persons with intellectual and developmental disabilities. The direct duty to do so occurs when force is used against the citizen. See the statement in the case on [FOB 2021-23](#) (in Danish only) at the Ombudsman's website.

The social residential facilities will often draw up an educational plan or something similar which contains targets for the specific measure(s) which must be implemented at the facility.

The monitoring teams examined whether crime prevention targets and initiatives had been selected for persons with preventive measures sentences in the municipalities' action plans and the social residential facilities' educational plans.

In municipal action plans received from two of the visited facilities, there was a focus on crime prevention measures. The plans contained examples of specific measures which in the municipality's assessment were necessary. In addition, there was one facility where there generally were no crime prevention targets and initiatives in the received municipal action plans but where a target was indicated in the action plan of one resident where the most obvious reason for it would have to be that it had a crime-preventive aim.

The municipal action plans received from the other 14 visited facilities either did not contain targets or initiatives with focus on crime prevention measures or contained only very general targets for the initiatives. Out of these 14 places, 13 social residential facilities had not in their educational plans etc. expressly identified what targets or initiatives were necessary for crime prevention measures.

There were, in addition, four social residential facilities which did not receive information regarding the residents' sentences or which had to obtain the information themselves. It is of course important that social residential facilities are aware of any sentencing conditions such as for instance addiction treatment or other crucial information of importance to the relevant measures, for instance the type of crime committed. On that basis, one social residential facility management was recommended to ensure that the facility had the necessary information on what residents had been convicted for and the conditions for placement at the facility.

The visiting teams discussed these issues with management at the social residential facilities they visited. Often, management and staff stated that the overall socio-educational initiatives constituted the crime prevention measures. For instance, one social residential facility stated that all of the socio-educational initiatives towards one particular resident were about preventing the resident from hitting. Another social residential facility sought to ensure structure for a resident to prevent new offences being committed. It was also stated, however, that there cannot be an expectation in all cases that the socio-educational initiatives can result in a permanent improvement of the convicted person's behaviour.

Typically, however, managements of social residential facilities could see the benefit of determining what conditions it would be especially necessary to work on in order to stop the person in question from committing offences, and to document developments within these targets.

The visiting teams did not recommend to social residential facility managements to ensure a focus on crime prevention measures when no targets for crime prevention measures had been set in the municipal action plans. This is because social residential facilities do not have an independent legal duty to implement crime prevention measures.

However, it was pointed out as a focus point in six of these facilities to document targets for crime prevention work in the educational plans.

In addition, in one case management was recommended to ensure that sub-targets and initiatives necessary to and part of crime prevention measures be described in the social residential facility's implementation of crime prevention targets in the municipal action plans for residents. Only very general crime prevention targets were indicated in the municipality's action plans but the municipality and the social residential facility had agreed that the facility would implement the general targets in concrete crime prevention measures.

In regard to another facility, an own-initiative case was raised with the municipality, as the overall socio-educational and treatment initiatives seemed inadequate. The convicted person was transferred to another institution, and the Ombudsman closed the case without giving a statement.

In a third facility, management was recommended to ensure that measures be implemented in relation to residents who do not observe the rules for their leaves, and that these measures are documented.

A fourth facility was recommended that the facility seek professional assistance in relation to a specific resident with a view to ensuring an acceptable and non-transgressive behaviour with regard to sex, and that the facility in this connection set up educational targets and initiatives necessary to the crime prevention measures.

The Ombudsman does not have the socio-educational qualifications to make a detailed assessment of socio-educational initiatives, including whether the initiatives can have a crime-preventive effect. However, it is the Ombudsman's impression that initiatives were generally implemented with a view to helping residents with their basic challenges.

In this context and based on information from the social residential facilities, the Ombudsman takes into account that the implemented socio-educational initiatives can also have a crime-preventive effect. However, it had far from always been identified which specific socio-educational targets to achieve in order to prevent new offences from being committed. This may carry a risk that there is insufficient focus on the overall preventive measures and thereby means that preventive measures sentences have to remain in force.

The information forms part of the basis for the general recommendation that social residential facilities receiving persons with intellectual and developmental disabilities, who have been given a preventive measures sentence, maintain a focus on the crime-preventive purpose of the preventive measures sentence, including determining targets for the crime prevention measures and ensure documentation of the results thereof when the municipality has asked the facility to implement such measures.

6.1.3. Are the measures and their results documented?

Documentation of the results of the socio-educational initiatives

Good documentation and evaluation contribute to giving the citizen the best possible (socio-educational) assistance.

Source: The National Board of Social Affairs' handbook 'Håndbog for socialtilbud – Resultatdokumentation og evaluering' (Handbook for social services – Documentation and evaluation of results. In Danish only).

A number of social residential facilities said that they had not been instructed in what was necessary to document in statements to the public prosecutors on maintaining etc. preventive measures sentences. Nor were the facilities always briefed on the contents of the authorities' or consultation councils' statements to the public prosecutors. These social residential facilities

therefore had no certain knowledge of what is taken into account when assessing whether a preventive measures sentence can be modified or not.

In practice, documentation was typically done in journals or daily logs. At several facilities, it was possible to use bookmarks so that documentation on the individual target or measure could be retrieved. Since, as mentioned above under point 6.1.2, in many cases no identification had been made of what targets and initiatives were necessary in order to prevent further offences being committed, there was for that reason in many places no possibility of documenting the initiatives within targets that related to crime prevention measures, either.

The visiting teams did not give recommendations on documenting crime prevention measures if there were no targets for crime prevention measures in the municipalities' action plans. This is because social residential facilities do not have an independent legal duty to initiate crime prevention measures.

One recommendation was given on documentation of the initiatives towards a particular resident. Furthermore, in three places it was selected as a special attention point to increase the focus on documenting crime prevention measures – and the results thereof. In addition, several social residential facilities would, in continuation of the monitoring visit, consider starting to indicate targets and initiatives or otherwise link documentation of targets, initiatives and results.

In addition to the importance for the quality of the initiatives, documentation of the initiatives and the results thereof are also important to social residential facilities being able to deliver a true and adequate description of the resident's progress. Thus, a well-documented description can be essential when decisions are to be made on leave or statements are to be given for use in the public prosecutor's supervision of preventive measures sentences not remaining in force for longer than necessary. When making these assessments, the risk of the convicted person committing new offences is among the things taken into account.

The data form part of the basis for the general recommendation that social residential facilities receiving persons with intellectual and developmental disabilities who have been sentenced to preventive measures have a focus on the crime-prevention purpose of the preventive measures sentence, including laying down targets for the crime prevention measures and ensure documentation of the results thereof when the municipality has asked the social residential facility to implement such initiatives.

6.1.4. Guardian representatives

A guardian representative must be appointed for persons with a preventive measures sentence. The guardian representative must keep informed of the convicted person's condition and ensure that the stay at the social residential facility and other measures do not extend longer than necessary. The guardian representative can request that issues on changing or rescinding the preventive measures sentence be brought before the courts.

The social residential facility has a duty to inform the guardian representative of the placement and must furthermore provide the guardian representative with any information necessary for the guardian representative to carry out the duty in a responsible manner.

In five out of 17 social residential facilities, the Ombudsman has recommended that management identify the residents' guardian representatives so that the facility can observe its notification duty in relation to the guardian representatives. In two facilities, management was advised on the facility's notification duty towards the guardian representatives. In one facility, management was recommended to change internal guidelines so that the facility's duty to notify the guardian representative appeared, and in another facility, management was recommended to ensure that the facility provide the guardian representative with the necessary information.

The Ombudsman recommends in general that social residential facilities receiving persons with intellectual and developmental disabilities who have been sentenced to preventive measures ensure that the facility knows who the convicted residents' guardian representatives are, and provides the guardian representatives with the information necessary for the guardian representatives to carry out their task.

6.2. Are the rules on leave observed?

Convicted residents with type 1-3 sentences are not allowed to leave the social residential facility without permission. There are rules on permissions for leave in the so-called Leave Order (Executive Order on Leave for inmates serving a sentence of imprisonment or safe custody). The authority to make this decision is (generally) distributed between the municipalities and the local public prosecutors. The decisions of the local public prosecutors can be appealed to the Director of Public Prosecutions. It is not possible to appeal the municipalities' decisions on leave.

As part of the theme of convicted persons with intellectual and developmental disabilities, the Ombudsman has carried out a general own-initiative investigation of the rules on leave permissions, as the rules have given rise to considerable doubt and varied practices. The Ombudsman raised a number of questions concerning understanding of the relevant rules, including

questions regarding authority. This has brought about a clarification of, especially, questions of who has the authority to make decisions on leave.

The Ombudsman has brought to the Ministry of Justice's attention that the applicable rules in the Leave Order may result in some practical challenges, for instance:

- when the municipality or the social residential facility principal cannot make a decision on leave for urgent admission to a psychiatric hospital
- when social residential facilities, which have not been entrusted with the authority to make decision on leave, cannot make a decision on leave for emergency admissions to a somatic hospital.

The Ministry of Justice has stated that the Ministry in the next parliamentary session will institute a revision of the rules on leave. In this connection, the Ministry has indicated that statutory authority should be provided so that the authority to make decisions on leave in certain instances can be left to the facility management, including regional and private facilities.

Please see the summary of the Ombudsman's statement in Appendix 1.

It is important that the social residential facilities and the municipalities are familiar with the rules on leave and the interpretation of these rules. Among other things, this is because leave constitutes a modification of the placement sentence, as the resident, for a temporary period, does not have a duty to remain at the facility. In addition, leaves are often a part of the socio-educational initiatives which are meant to ensure that the convicted person can be a part of the surrounding community without being at risk of committing new offences. The leaves are thus an important element in the overall crime prevention measures which social residential facilities deliver.

On that background, among other things, it is important to carry out a true documentation of how leaves have proceeded, including whether they have proceeded without any problems. Information in this regard may enter into the assessment of later applications for leave and in the assessment by the public prosecutors and courts of whether to maintain the preventive measures sentence.

Some social residential facilities said that there were differences in the way municipalities interpret the rules in the Leave Order. There may also be differences of interpretation within the individual municipality. During the visits, the Ombudsman learned of several examples of various cases of doubt and variation in practice:

- One municipality demanded that applications for leave were sent 30 days before the requested leave from the social residential facility. In other places, a decision was made shortly before or on the same day that the leave was to be held.
- One social residential facility had the impression that the region – not the municipality – could make a decision on permission to leave the facility.
- There was doubt as to when the municipalities could give a convicted person permission for many leaves at once, and when a new decision had to be made on each individual leave.

In the final analysis, the varied practice can have a bearing on whether or not a preventive measures sentence remains in force, as the convicted person during leaves will have the possibility of practising and showing that the person can cope outside the setting of the social residential facility.

One social residential facility stated that the local social supervisory authority and the public prosecutor had varying opinions of the facility's authority to make decisions on permissions for leave, and that this had complicated a clarification of whether it was the facility or the public prosecutor who should make the decision.

In two instances, the Ombudsman gave recommendations with the purpose of ensuring that staff were familiar with the rules in the Leave Order. In addition, in 12 instances management was informed of the Ombudsman's general case regarding the Leave Order. Because of the general case, a number of questions regarding the Leave Order were not investigated in relation to the individual social residential facility. The Ombudsman has informed the Ministry of Justice of examples where there is in practice doubt regarding the way in which the Leave Order is to be interpreted, or where it present challenges.

Leaves were typically documented in a special log or in records. In a few places, leaves were documented in diaries or journals – often with the possibility of 'tagging' the information under the subject 'leave'.

In six places it was pointed out as a focal point or recommended to management to ensure that the social residential facility carry out adequate documentation of leaves. There could for instance be a lack of information on the leave having proceeded without problems.

As mentioned above, during the monitoring visits the Ombudsman has seen examples of a varied practice and doubt as to the interpretation of the rules on permissions for leave on the part of municipalities and social residential

facilities. As mentioned, it is not possible to appeal the municipalities' decisions. Therefore, there is no possibility of ensuring a uniform practice via a central complaint body. At the same time, there is no guidance on how to interpret the relevant rules.

The Ombudsman recommends that in connection with the forthcoming amendment of the rules on permission for persons with a preventive measures sentence to leave the social residential facility, the Ministry of Justice consider drafting adequate guidelines on the rules.

The Ombudsman recommends in general that social residential facilities receiving persons with intellectual and developmental disabilities and a preventive measures sentence ensure that staff are familiar with the rules on leave and that an adequate record is written on the conduct of leaves, including leaves which have proceeded without problems.

Furthermore, the Ombudsman's observations under this point are included in the basis for the recommendation that social residential facilities receiving persons with intellectual and developmental disabilities and preventive measures sentences have a focus on the crime-prevention purpose of the preventive measures sentences, including determining targets for the crime prevention measures and ensure documentation of the results thereof when the municipality has asked the facility to implement such measures.

6.3. Is there access to addiction treatment and sexological treatment or sex education?

6.3.1. Addiction treatment

Alcohol and drug abuse are risk factors in relation to criminal behaviour in convicted persons with intellectual and developmental disabilities.

Source: The National Board of Social Affairs' handbook 'Håndbog om domfældte og sigtede udviklingshæmmede' (Handbook on convicted and charged persons with intellectual and developmental disabilities. In Danish only)

During several of the monitoring visits, the social residential facilities pointed out that several of the convicted persons with intellectual and developmental disabilities had substance abuse problems.

This may influence the possibility of having a preventive measures sentence modified or terminated if the convicted person is helped out of any substance abuse. This is because of a possible connection between the convicted person's substance abuse and the risk of further criminal behaviour. In some

cases conditions on substance abuse treatment are laid down in the preventive measures sentence.

During six monitoring visits, management said that it is difficult to find suitable municipal services on treatment of substance abuse which are targeted at persons with a cognitive function impairment. The social residential facilities also asked for guidance on how to handle convicted persons who do not voluntarily seek substance abuse treatment.

Some social residential facilities said that they tried to help residents with substance abuse problems through general pedagogical measures. Other facilities said that they used a special method for this which takes into account the level of cognitive function. One facility used VISO (the National Knowledge and Specialist Consultancy Centre).

During the monitoring visits, information on substance abuse and treatment of substance abuse gave rise to the following recommendations etc.:

- The Ombudsman raised an own-initiative case towards a municipality concerning measures for a resident where the treatment needs against substance abuse were not met. The resident was transferred to another institution, and the Ombudsman closed the case without a statement.
- There was a risk at one social residential facility that residents resumed previous substance abuse or started substance abuse because for instance other residents were substance abusers. The Ombudsman recommended to the facility's management to ensure that the pedagogical treatment had an increased focus on preventing substance abuse.
- At another social residential facility, there was widespread substance abuse among residents. The facility's management was recommended to ensure that staff know how to handle the situation when a resident returns to the facility intoxicated by alcohol or drugs after being on leave. Management was also encouraged to seek information on how to handle substance abuse.
- At one social residential facility, management was recommended to ensure that a clear understanding is established among staff on how to handle problems related to cannabis dealing.

Information on substance abuse and substance abuse treatment is included in the basis for the Ombudsman's general recommendation that social residential facilities receiving persons with intellectual and developmental disabilities and a preventive measures sentence focus on the crime-prevention purpose of preventive measures sentences, including determining

targets for the crime prevention measures and ensure documentation of the results thereof when the municipality has asked the facility to implement such measures.

On 24 June 2021, the National Board of Social Affairs published news of a study of substance abuse problems among adults with intellectual and developmental disabilities. The study is part of a project in which a prototype for a new treatment initiative will be developed.

The Ombudsman will ask the National Board of Social Affairs to be informed of the result of the study and the new treatment initiative.

6.3.2. Sexological treatment or sex education

Some of the convicted persons with intellectual and developmental disabilities are convicted of offences involving sexual abuse.

Generally, convicted persons had access to either sexological treatment in a psychiatric setting, including with the oligophrenia team (specialists in psychiatric patients with intellectual and developmental disabilities), special VISO courses or sex education at the social residential facilities. Therefore, conditions did not give the monitoring teams cause to make any recommendations.

Information on a lack of initiatives towards convicted persons with an inappropriate behaviour gave cause for the following recommendations etc.:

- In respect of one particular resident, one social residential facility was recommended to seek professional assistance with a view to ensuring an acceptable and non-transgressive sexual behaviour.
- Another social residential facility described how a resident stated that he was sexually attracted to children. The Ombudsman raised an own-initiative case towards the municipality concerning measures for the resident. The resident was transferred to another institution, and the Ombudsman closed the case without a statement.

6.4. Are force and other restrictions carried out in accordance with the applicable rules?

Chapter 24 of the Social Services Act contains rules detailing the kind of restrictive measures that can be used without consent against persons with a substantial and permanent impairment of mental function who, pursuant to Social Services Act rules, are receiving personal and practical help or socio-education assistance etc., treatment or offers of activation. The restrictions may be for instance use of physical force in connection with restraining the person. A number of the rules were amended on 1 January 2020. The

general rules on use of force according to Chapter 24 of the Social Services Act apply, regardless of whether the resident has received a preventive measures sentence.

In addition, Chapter 24 d of the Social Services Act contains special rules on the enforcement of criminal sanctions etc. which allow restrictions against convicted persons who have been placed in a social residential facility in accordance with a preventive measures sentence. There is for instance authority to restrict the convicted person's access to telephone and internet, to examine the convicted person's housing unit and to lock the convicted person's housing unit for the night.

Restrictions pursuant to the special rules on the enforcement of criminal sanctions etc. are carried out according to the municipality's decision thereon. However, the social residential facility's principal may in urgent cases make a provisional decision, which will subsequently have to be submitted to the municipal council for approval.

There is a right to complain about both restrictions according to the general rules on the use of force and restrictions according to the special rules on the enforcement of criminal sanctions etc. In some cases, a complaint can be submitted to the municipal council, and in other cases, a complaint can be submitted to the National Social Appeals Board. Restrictions involving a deprivation of liberty can be brought before the courts. The restrictions must be registered and reported to the municipality, among others. The convicted person will then have the opportunity to make a statement on the matter.

If staff do not know the legal scope for the use of force and other restrictions, there is a risk that unlawful restrictions will be carried out – perhaps without the resident being advised of the possibility of complaining about the restriction. There can for instance be a risk that staff restrict a resident's access to the internet without a prior decision from the municipality and without the resident being advised of the possibility of submitting a complaint about the restriction. There may also be a risk of staff using physical force without the conditions in this respect being met.

The Ombudsman recommended to four social residential facilities to update local guidelines and instructions regarding the use of force in accordance with applicable rules.

The Ombudsman also gave recommendations to three social residential facilities to ensure that staff were familiar with the rules on restrictions in accordance with the special rules on enforcement of criminal sanctions. One facility was advised that the planned restrictions of a resident's access to the

internet could be subject to the special rules on enforcement of criminal sanctions, etc.

In general, the social residential facilities were focused on advising residents of the possibility of complaining about the use of force or other restrictions. However, at one facility, management was recommended to draw up guidelines for the use of force. In this connection, it was taken into account that two residents had said that they had not been advised of the possibility of complaining. At another facility, it was pointed out as a special attention point to ensure that debriefings were held, as it was part of the debriefings to advise residents that they could complain about a use of force. At two facilities, management was recommended to update local guidelines and instructions regarding the use of force in accordance with applicable rules, including applicable rules for guidance on complaint.

Three social residential facilities pointed to a dilemma in a new rule in the Social Services Act that the facility's staff principal must regularly inform relatives, representatives with lasting power of attorney, guardians or other representatives of any restrictions carried out against a resident. The rule is absolute and established to ensure that residents unable to complain themselves about restrictions can receive assistance to do so. However, the facilities stated that residents are not always interested in relatives etc. being informed.

Five social residential facilities stated that they monitored or had monitored convicted residents round the clock. In one facility, this could for instance be carried out by staff either entering or letting themselves into the resident's housing unit or by the resident sleeping with the curtains drawn back so that staff could see the resident.

As part of the theme, the Ombudsman raised a case with the Ministry of Social Affairs and Senior Citizens regarding round-the-clock monitoring of convicted persons with type 2-4 sentences. The Ombudsman agreed with the Ministry that there is no authority for a social residential facility, in order to prevent escape in general, to monitor residents in areas at the sole disposal of the individual resident by gaining access to the resident's housing unit without consent or to demand that the resident makes it possible for staff to look into the housing unit from the outside.

The Ombudsman has recommended to the Ministry to ensure that the social residential facilities are made aware that they do not have the authority to thus monitor without consent residents placed in the facility in accordance with a sentence in areas which are at the sole disposal of the individual resident, unless a decision has been made of locking up a resident according to the Social Services Act in order to prevent escape.

See the statement in the case on [FOB 2021-26](#) (in Danish only) at the Ombudsman's website.

The Ombudsman recommends in general that social residential facilities receiving persons with intellectual and developmental disabilities and a preventive measures sentence ensure that staff are familiar with the rules in the Social Services Act on the use of force and other restrictions, including the special rules in Chapter 24 d of the Act on enforcement of criminal sanctions, etc.

6.5. Is there a risk of conditions having a knock-on effect?

The majority of convicted persons with intellectual and developmental disabilities who are placed in a social residential facility according to a sentence are placed at a general facility with non-convicted residents.

Several of the visited social residential facilities had residents placed in accordance with a sentence and persons who had been referred to a place at the facility according to the general rules of the Social Services Act.

During the monitoring visits, the Ombudsman did not receive any information of instances where the special rules applicable to convicted persons placed at a social residential facility in accordance with a sentence were used towards non-convicted persons. See item 6.2 on the rules in the Leave Order and item 6.4 on the rules in the Social Services Act on enforcement of criminal sanctions, etc.

Consequently, the monitoring teams did not give any recommendation regarding this issue.

6.6. Do the social residential facilities prevent violence and threats between residents?

All 17 social residential facilities had a focus on preventing violence and threats between residents. The preventive measure is often individually planned and a part of the overall pedagogical measures.

In one case, the Ombudsman recommended drafting an anti-violence policy with a view to prevention, as there could be a risk that staff did not have a uniform approach to prevention of violence and threats.

In four cases, the Ombudsman recommended that guidelines be established for registering violence and threats between residents. The registration enables social residential facilities to follow developments and analyse when and towards whom violence and threats are made. This will also give facilities a better chance of preventing further episodes of violence and threats.

In eight cases, the Ombudsman recommended or urged management to ensure the establishment of a policy, or the adjustment of a policy already in place, on reporting violence and threats etc. to the police. This includes setting guidelines for what to report and who has responsibility for making the report.

In 12 instances, management was recommended or urged to ensure that residents are made aware of the social residential facility's policy on reporting to the police, and in 12 instances, management was recommended or urged to ensure that the resident is informed that a report to the police of criminal offences may have a negative impact on the possibility of having a sentence modified or terminated.

The Ombudsman recommends in general that social residential facilities receiving convicted persons with intellectual and developmental disabilities and criminal measures sentences have clear guidelines for reporting to the police violence and threats etc. between residents, and that residents are informed of the guidelines and of the fact that a report to the police of criminal offences may have a negative impact on the possibility of having a sentence modified or terminated.

6.7. Do residents have access to relevant healthcare services?

Whether residents receive relevant healthcare treatment can depend on healthcare staff understanding the special needs which persons with intellectual and developmental disabilities may have.

Most social residential facilities described access to a general medical practitioner and hospital treatment, including psychiatric wards, as well-functioning. Therefore, the visiting teams did not give any recommendations in this regard.

However, two social residential facilities experienced among healthcare staff a varying understanding of the special needs which persons with intellectual and developmental disabilities may have. There can for instance be challenges involved in waiting in a crowded waiting room, not having a permanent general medical practitioner or in attending blood sample appointments. There may also be challenges in relation to having residents fully assessed if healthcare staff do not have a sufficient knowledge of the target group.

Other social residential facilities had a close cooperation with for instance the residents' general medical practitioners and psychiatric wards. One facility stated for instance that residents can go in through the back door so they avoid waiting in the waiting room. In another facility, the psychiatrist visited the facility.

In one case, there were great challenges in getting a resident assessed at the psychiatric ward because the resident also had an addiction. Some of the social residential facilities also experienced that residents were being discharged too quickly from the psychiatric ward, and without a clear action plan.

6.8. Is there a focus on prevention of suicide and self-harm?

In 13 of the visited social residential facilities, there were residents who were to a minor or major extent at risk of self-harming or attempting suicide. This risk was dealt with through pedagogical methods, supervision and through cooperation with the psychiatric sector or VISO.

It can be critical for the life and health of residents that staff, including temporary staff, know what they can do to prevent and handle suicide, suicide attempts and self-harm.

In six instances, management was recommended or urged to ensure that guidelines are established for how suicide, suicide attempts and self-harm are prevented and handled and how the causes of the incidents are analysed.

Guidelines for prevention and handling of suicide attempts etc. will also be able to support that staff have the necessary knowledge, and will therefore also be able to support the prevention of such incidents.

Another tool for preventing suicide and self-harm is registration and analysis of such incidents. A recommendation to do so was given in four cases.

The Ombudsman recommends in general that social residential facilities establish guidelines for prevention and handling of suicides, suicide attempts and self-harm if there is a risk of this among residents, and that the facilities register and analyse such incidents.

6.9. Statistical overview of the population

Statistics Denmark and the Ministry of Justice's Research Office make a survey of the number of new preventive measures sentences every year.

The preventive measures sentences in the Ministry of Justice's survey include both sentences for treatment and hospitalisation in the psychiatric sector and the type 1-5 sentences described under item 3. The number of new type 1-5 sentences is thus included in the survey's data but it is not possible to see how large a percentage of the overall number of preventive measures sentences that type 1-5 sentences constitute. Every year in the years 2015 till 2019, between 771 and 835 new preventive measures

sentences were passed. Of these, between 39.9 and 43.6 per cent of the sentences were of indefinite duration.

The survey solely concerns new preventive measures sentences and does not contain information on the number of current sentences where the convicted person is still subject to the preventive measure sentence or information on the average duration of the sentences.

The municipalities made a survey in 2019 and 2020 of the number of convicted persons with type 1 and type 2 sentences. The municipal survey was carried out among other things to uncover whether there are a sufficient number of places in secure units.

So there is no information on the number of current type 1-5 sentences and the duration thereof spread out over the individual types of sentences. Such information would have given an overview of whether the number of current sentences is rising or falling and whether there is any development in the longer or shorter duration of sentences. Such an overview would be of help to central authorities in the assessment of a possible need for a general initiative in the field, including for instance amendments of the rules or the drafting of new methods which can be used in crime-preventive, socio-educational initiatives. It would also – on a continuous basis – give an overview of the adequacy of the number of places at social residential facilities which can receive persons sentenced to preventive measures.

The Ombudsman will discuss with the Ministry of Justice and the Ministry of Social Affairs and Senior Citizens how to ensure a more detailed statistical overview of the total number of convicted persons with intellectual and developmental disabilities placed in a social residential facility pursuant to a preventive measures sentence spread out on the individual sentence types, including statistics on the average duration of the sentences, thus making it possible to get an overview of the population and developments therein.

6.10. Municipalities and consultation councils

Generally, it is the municipality which monitors and makes decisions about persons with a preventive measures sentence. In practice, however, in a number of cases it was the social residential facility which made decisions on leave, and in some cases the execution of the monitoring tasks was left to the social residential facility or other authorities.

Some municipalities have entered into agreements on the establishment of so-called consultation councils. There are no statutory rules on consultation councils but the use of consultation councils typically means that a number of experts together take part in carrying out a professional assessment of for instance the recommendation on whether or not a sentence should be

modified or remain in force. In other places, it is the municipality itself which carries out this assessment. The assessment is used by the prosecution service and the courts.

The Ombudsman's investigation did not include the consultation councils or the municipal processing of the cases on placement of and socio-educational support to convicted persons with intellectual and developmental disabilities.

As part of the investigation, the Ombudsman has, however, received data which indicate that also the municipalities could benefit from having an increased focus on the crime-prevention purpose of preventive measures sentences, crime prevention measures and the rules on, among other things, leave.

By way of example, the municipal action plans received from 15 of the visited facilities either contained no targets or initiatives focused on crime prevention measures or only contained quite general targets for the measures. A first review of 15 examples of decisions on placement of a convicted person with intellectual and developmental disabilities in a social residential facility pursuant to a preventive measures sentence also indicated that municipalities do not always manage to make a decision in immediate continuation of the preventive measures sentence or of a change in the preventive measures sentence. Lastly, some of the social residential facilities stated that there could be differences in the municipalities' interpretation of the Leave Order.

The Ombudsman will discuss the information on the municipalities' execution of the tasks in this field which the Ombudsman received in connection with the monitoring visits with the Ministry of Social Affairs and Senior Citizens and with Local Government Denmark, including whether also the municipalities have a need for an increased focus on the crime prevention purpose of preventive measures sentences.

In addition, the Ombudsman will discuss the varied use of consultation councils with the Ministry of Social Affairs and Senior Citizens and with the Ministry of Justice.

Yours sincerely,



Niels Fenger

Parliamentary Ombudsman

Appendix 1 – Summary of the Ombudsman’s case about the interpretation of the Leave Order

In continuation of the monitoring visits, the Ombudsman started an own-initiative case on the interpretation of the rules on leave from the facility where a person with a preventive measures sentence has been placed.

The rules are to be found in Executive Order No. 200 of 25 March 2004 on leave etc. for persons who have been placed at a hospital or an institution according to a criminal sentence or pursuant to a decree on dangerous behaviour, as amended by Executive Order No. 1184 of 6 December 20212 (the Leave Order).

The rules apply to convicted persons with a preventive measures sentence type 1-3.

The following appears from the Ombudsman’s statement in the case:

- When the Leave Order refers to ‘the county council’, it must be understood to mean the municipal council whose duty it is to provide assistance to the citizen.
- The municipality cannot make a decision on urgent admission to a psychiatric ward.
- A social residential facility’s principal can only make a decision on leave in those instances where the municipality can make a decision on leave, and where the municipal council – within the same municipal organisation – has delegated its authority to the social residential facility’s principal.
- Social residential facilities do not have an independent authority to make decisions on leave for emergency hospitalisation.
- It is not a requirement that decisions on permission for leave must be made on the same day as the leave is held.
- The municipality can only give single permissions for escorted leave for more than 3 hours.
- The municipality can give permission for several separate leaves, each lasting for less than 3 hours.
- The authority which has given permission for the leave must also decide whether the leave can be carried out if the social residential facility on the day of the leave considers that it will be unsafe to go through with the

leave.

- A temporary telephone system will be established to enable social residential facilities to reach the prosecution service in those situations where there is a need for the prosecution service to consider revoking a leave permission issued by the prosecution service. The Ministry of Social Affairs and Senior Citizens will enter into a dialogue with Local Government Denmark on the possibility of establishing a similar telephone system in relation to revocation of those decisions on leave that the municipal council has made.
- The municipalities cannot demand that an application for permission on leave be submitted 30 days at the latest before the time of the desired leave.
- It can be left to the convicted person's relatives to supervise the convicted person during escorted leave of more than 3 hours' duration.
- Only the social residential facility's staff can supervise the convicted person during escorted leave of less than 3 hours' duration.
- The Leave Order will be amended, and it is expected that, in the coming parliamentary session, an initiative will be taken for a revision of the rules on leave.

In his statement, the Ombudsman pointed out a number of practical challenges which he had learned during his monitoring visits that the current scheme in the Leave Order can cause.

Appendix 2 – Outline of rules on conditions for convicted persons with intellectual and developmental disabilities

Criminal Code

(Consolidation Act No.1851 of 20 September 2021)

- Section 16 – rules on exemption from punishment due to an intellectual and developmental disability ('mental retardation')
- Sections 68 and 69 – rules on other measures than punishment found suitable to prevent further offences
- Sections 68 a and 69 a – rules on duration and extension of certain preventive measures sentences and indefinite preventive measures sentences
- Section 71 – rules on the appointment of a social security guardian
- Section 72 – rules on the public prosecutors' supervision of preventive measures sentences and on modification and termination of preventive measures sentences.

Act on Legal Protection and Administration in Social Matters

(Consolidation Act No.1647 of 4 August 2021)

- Section 9 – rules on the residential municipality, and on which municipality is obliged to provide assistance to a citizen (the acting residential municipality. In Danish, 'handlekommune'). Includes rules on the possibility of authorising the residential municipality to discharge the duties of the acting residential municipality.
- Section 16 a – rules on the acting residential municipality's duty to carry out supervision for crime-prevention purposes.

Act on Social Services

(Consolidation Act No. 1548 of 1 July 2021)

- Chapter 16 – rules on personal assistance, care and attendance
- Chapter 18 – rules on treatment, including social treatment for drug abuse
- Section 108 – rules on facilities suitable for long-term accommodation for persons who, due to substantial and permanent impairment of physical or mental function, need extensive assistance for general day-to-day functions or care, attendance or treatment where such needs cannot be

addressed in any other way. Such accommodation is referred to in this report as 'social residential facility'. Also rules on the municipalities' duty to receive persons who have been ordered by the court to be accommodated in facilities for persons with substantial impairment of mental function or to be subject to supervision.

- Chapter 24 and 24 a – rules on forcible measures and other restrictions of the right of self-determination. Also contain rules on registration and reporting of the forcible measures and other restrictions, and on informing relatives of forcible measures and restrictions and of channels of complaint and judicial review.
- Chapter 24 d – rules on enforcement of criminal sanctions etc. Contains, among other things, authority to restrict access to telephone and the internet and to lock the convicted person in his or her housing unit at night. Also contains rules on registration and reporting of restrictions and channels of complaint
- Section 140 – rules on the municipality's action plans. There is, among other things, a duty to draw up an action plan when a citizen has been the subject of a use of force
- Section 148 – rules on supervision of support and services to the individual citizens
- Chapter 30 – rules on complaint and judicial review

The Health Care Act

(Consolidation Act No. 903 of 26 August 2019)

- Chapter 40 – rules on treatment for alcohol abuse
- Chapter 41 – rules on sessions with doctors and medical drug abuse treatment

The Guardianship Act

(Consolidation Act No. 1122 of 28 May 2021)

- Chapter 2 – rules on guardianship for adults
- Chapter 3 – rules on guardianship and guardian cases regarding adults

The Executive Order on Leave

(Executive Order No. 200 of 25 March 2004, as amended by Executive Order No. 1184 of 6 December 2012)

- Rules on permission for temporary leave from the social residential facility, including who shall make the decision and what to take into account when making the decision

Executive Order on guardian representatives

(Executive Order No. 947 of 24 September 2009, as amended by Executive Order No. 1512 of 17 December 2019)

- Rules on the approval and appointment of guardian representatives and duties and powers of guardian representatives

Executive Order on forcible measures and other restrictions in the right of self-determination towards adults, and on special safety measures for adults and on duty to receive persons in accommodations pursuant to the Social Services Act

(Executive Order No. 1239 of 22 November 2019)

- Rules on forcible measures and other restrictions
- Rules on registration and reporting
- Rules on secure units (units with locked outer doors and windows)
- Rules on the municipalities' duty to make decisions on convicted persons' stay in social residential facilities in accordance with a preventive measures sentence (duty to receive. In Danish, 'modtagepligt')