

Criminal Records in Sweden

Regulation of Access to Criminal Records and the Use of
Criminal Background Checks by Employers

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Abstract

This thesis examines the regulation of access to criminal records in Sweden and the actual and potential use of criminal background checks by employers in hiring processes. In recent years, more and more Swedish employers have been required by law to check their job applicants' criminal records. In a parallel process, also the number of enforced subject access requests has increased considerably in that same period. The aim of this thesis is to analyse and explain these two trends and consider their implications for future use of criminal records in Sweden and elsewhere. The analysis draws upon government documents, newspaper articles, interviews with employers using enforced subject access, and interviews with union and employer organization representatives, with the aim of capturing the vocabularies of motive that were evoked and put to use in attempts to justify and legitimize either access restrictions or the extended use of criminal records data in hiring decisions.

In Paper I, I examine how subject access, indirect employer access, and the notion of privacy have been understood and defined throughout the history of the Swedish Criminal Records Registry, and how practices and policies in the area have evolved over time.

In Paper II, I investigate how employers who use individuals' right to subject access as a means for obtaining copies of their criminal record account for their practice, and how unions and employer associations have responded to the adoption of it.

In Paper III, I challenge the 'governmentality' tradition in criminology and the way the use of criminal record checks is interpreted within it. As an alternative way of formulating and understanding the issue, I propose that it be looked at from a symbolic perspective.

In Paper IV, my analysis utilizes the perspective of the sociology of scandals to help develop a better understanding of function creep in the area of data protection. This I do through an examination of the process leading, first, to the introduction of mandatory vetting of childcare workers and teachers in Sweden in 2001, and, then, to the inclusion later on of also other employer categories in the scope of the relevant legislation.

Based on these analyses, I argue that the changes in the access to individuals' criminal records reflect the state's way of governing the interpretation of the criminal records database. Whether actors are denied or allowed access to information contained in the criminal history record database depends on the prevailing cultural representations regarding notions such as 'privacy', 'data protection', 'databases', 'sensitive information', and 'power'. Moreover, I argue that the function creep in the use of criminal history data in Sweden can be initially explained by the occurrence and publicity of scandals that highlight the vulnerability of a group of dependents, making it defensible to resort to privacy-intrusive methods such as criminal record checks, with the continuing function creep then being made possible by a changing moral landscape that, following the initial amendment, renders the method morally more defensible among the policy makers and the public at large.

Keywords: Criminal records, criminal background checks, surveillance, function creep.