



Mentally disordered criminal offenders: Legal and criminological perspectives

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ARTICLE INFO

Keywords:

Criminology
Criminal offender
Compulsory psychiatric care
Forensic psychiatry
Proactive law
Severe mental disorder

ABSTRACT

Legal research in Sweden has traditionally focused on a systematization of the legal rules and their practical application, while the task of studying the effects of the application of the laws has been handed over to other branches of the social sciences. In contrast, new legal theories focusing on proactive and therapeutic dimensions in law have gained increasing attention in the international arena. These approaches may be better suited for evaluating legislation governing compulsory psychiatric care. Theoretical discussions and studies of causal mechanisms underlying criminal behaviour, as well as the implementation and value of instruments for predicting behaviour, are relevant to contemporary criminological research. Criminal behaviour varies across different groups of perpetrators, and the causes can be sought in the interplay between the individual and social factors. Multi-disciplinary efforts, integrating research from forensic psychiatry, psychology, sociology, and criminology, would be beneficial in leading to a better understanding of the causes underlying criminal behaviour.

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1. Introduction

Specific regulations concerning mentally disordered criminal offenders are found in almost every legal system. The idea that an offender suffering from a mental disorder should receive special treatment in the penal process is deeply rooted in most societies. Another cornerstone of penal law is the legal principle of guilt – that persons breaking the law without being mentally or physically able to possess the required intent should not be punished. Consequently, the perpetrator according to most penal systems is required to be mentally sane to be ascribed legal responsibility. The Swedish system constitutes one of few exceptions to this rule, in that a person who has committed a crime under the influence of a severe mental disorder is not exempted from legal responsibility. If a person commits a crime under the influence of a severe mental disorder, the court may sentence him or her to forensic psychiatric care according to Section 31:3 of the *Swedish Penal Code (1962:700)*.¹ Note that the court still has to prove the existence of criminal intent for offenders that are judged severely mentally

disordered. If no such intent can be found, the person accused cannot be sentenced to either prison or forensic psychiatric care.

Both the academic and the public debate concerning the Swedish system address several important issues, such as possible causes of criminal behaviour, the structure and content of psychiatric care and correctional treatment, and the function of the legal system, to name a few. These problems are not only treated within the field of forensic psychiatry. Two other fields for which these questions are directly relevant are law and criminology. Important societal values such as democracy, justice, and humanity are put to the test in providing care for individuals with psychiatric problems. Ideas of who should receive care, as well as the content and structure of such care are influenced by these overarching values (*Government Legislative Bill, 1990/91:58*).

Any legal regulation of compulsory psychiatric care is necessarily the result of a series of difficult adjustments made in order to satisfy colliding interests within both psychiatry and law, such as the patient's right to and need for care and his or her conflicting interests of autonomy, integrity and right to fair trial. Other dilemmas concern the patient's need for protection from his/herself as well as the demand on behalf of the caregiver to consider not only the patient's needs but also public safety. Relevant areas in criminological research include possible explanations for criminal behaviour, evaluations of risk assessments among subjects in correctional treatment and patients in forensic psychiatric care, and the overall discussion about the posited conflict between treatment and punishment. Against this background, this article discusses current research in law and criminology concerning the question of when and how to treat mentally disordered criminal offenders. We will also allocate a

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¹ The citation system for Swedish legislation is year of adoption, and then chronological number as addressed by the Swedish Parliament. The Swedish criminal code thus was adopted in 1962 and was the 700th measure addressed by the Parliament that year. Section 31:1 refers to the Section 1 of Chapter 31 of the code. Swedish legislation is available in Swedish at www.notisum.se and www.lagrummet.se. An English translation of the Penal Code is available from the website of the Government Offices of Sweden at <http://www.sweden.gov.se/sb/d/3926/a/27777>.