

Presentation title:

Correcting attrition in sexual offences: Lessons learned from Sweden?

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In Sweden, the Welfare State and gender equality have fused, as illustrated by e.g. prioritizing gender equality in several policy areas, which to a high extent include criminal law and policy. Since the 1970s reforms concerning sexual offences have been supported by gender-equality arguments. Recently, the #metoo movement affected the regulation on sexual offences. In the light of the #metoo movement, a reform was made in 2018, which introduced involuntariness as an actus reus element in the provision on rape and, also, negligent rape as a new offence. But what lessons can be learned from Sweden? Can statutory reform actually contribute to correct attrition in sexual offences? When analyzing the 2018 reform, particularly the statutory law on rape, two areas of attrition exist: (1) the construction of the statutory law, (2) the gap between the statutory law, its policy background and the case law. Consequently, there are disconnects between, on one hand, the construction of the statutory law and its application, and on the other the political ambition of the 2018 reform. This, in turn, results in ambiguity in the application of the rape provision, suggesting a lack of legal certainty and foreseeability. Evidently, although the 2018 reform politically marked an important normative shift, several legal issues were left unsolved. Until adjusted, the attrition identified, will remain.