

Summary

Once a Thief, Always a Thief?

MEASURING THE EFFECTIVENESS OF THE CONDUCT CERTIFICATE

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It is noted in the 2013 Policy Report on Prevention Measures of the Dutch Ministry of Security and Justice that academic research has yet to be conducted on the effectiveness of the Conduct Certificate. This study is an initial effort to remedy this situation.

The study consists of three tracks. The first track sketches the policy frameworks and reconstructs the policy theory. To this end, the 2013 Policy Regulations and the parliamentary correspondence relating to these regulations are studied and relevant key respondents are interviewed. In addition, literature is consulted in the fields of law and criminology.

The second track pertains to Conduct Certificate screening in practice. The implementation of the policy is traced and the authors examine the extent to which it conforms in practice to the policy regulations. Various respondents are interviewed and figures provided by the Central Conduct Certificate Agency are used.

The third track focuses on two methods for measuring the effectiveness of the Conduct Certificate. The first method is based on an experimental design comparing a group whose requests for a Conduct Certificate were refused and a group whose requests were approved. There is also a second control group with criminal records comparable to the group whose requests were refused but who did not apply for a Conduct Certificate themselves. This method is tested with screening profiles of two branches, i.e. teachers (the education branch) and taxi drivers. The benchmark is a Conduct Certificate request dated 2011. The criminal antecedents of these respondents are also examined for the following period up to June 2016, as is their employment record up to the end of 2014.

The second method involves a simulation. The point of departure is not whether the respondents applied for a Conduct Certificate, but whether they were registered in the Judicial Documentation System, so there is a group with and one without criminal antecedents in 2012-2015. Both samples are selected at random from the Judicial Documentation System files. Then staff at the Central Conduct Certificate Agency notes whether the respondents would have been eligible

for a Conduct Certificate in 2011 if they had applied for one. This method is also tested with two screening profiles, one for teachers and one for taxi drivers.

Policy theory

It is clear from the Policy Regulations that the Conduct Certificate serves two main purposes, i.e. to keep individual criminal records from being public, thus safeguarding the individuals' privacy, and to protect society from offenders in certain positions. In each decision on whether or not to issue a Conduct Certificate, two issues are considered, the risk to society and the interest of the applicant.

This method does indeed keep the criminal records of individuals requesting a Conduct Certificate from becoming public; only the applicant is informed of offences relevant to the position involved. So this purpose is served. As to the second purpose, to protect society from offenders in certain positions, there is a general assumption that the chance of someone committing a criminal offence is greater if they have done so in the past. This general assumption is supported by the results of criminological research.

However, research results also show that there are exceptions to this empirical finding. The Policy Regulations on the Conduct Certificate take these exceptions into consideration. Via the introduction of reference periods, the fact is considered that after a given period of time, the predictive nature of prior offences tends to decrease. This is related to the type of offence and the age of the offender. In addition, attention is devoted to the frequency, timing and severity of offences. If it is considered necessary, attention is also devoted to the circumstances offences are committed under. The general conclusion is that the philosophy of the Conduct Certificate is built on a realistic foundation and can in theory be effective.

One important limitation though is that the primary Conduct Certificate screening is based upon Judicial Documentation System registrations. This greatly restricts its theoretical effectiveness since the Conduct Certificate can solely be used for people registered in the Judicial Documentation System; a great deal of crime remains concealed and is not registered in the system, so plenty of fish swim right through the net.

Criminological research shows that having a job can be an important link to society and can thus have a preventive effect. The design of the Conduct Certificate also has the implicit aim of not unnecessarily obstructing anyone's employment career. The requirements not only pertain to the type of criminal antecedents in a particular reference period (objective screening), but also an individual judgment (subjective screening) is taken into consideration.

Conduct Certificate screening in practice

The Policy Regulations refer to objective and subjective screening. In practice, the Central Conduct Certificate Agency draws this same distinction. The objective screening focuses on whether the person in question has relevant antecedents in the reference period. The Policy Regulations stipulate very precisely what the reference periods are, but are less specific about exactly what the relevant antecedents are. The day-to-day practice the Central Conduct Certificate Agency has developed in this connection helps to put the general guidelines of the Policy Regulations into effect. As a guideline, screening lists have been developed for each profile

with sections of the Codes of Penal and Special Criminal Law that are considered relevant. These lists are however dynamic and no more than a guideline. In the event that an applicant's request is refused and he appeals the decision, evaluating the implementation of the Policy Regulations is the job of the Court. At regular intervals, the Central Conduct Certificate Agency states that it updates its screening and issuing policy in accordance with the latest jurisprudence.

The Policy Regulations allow leeway to take the specific circumstances of each case into consideration. This is referred to as subjective screening. According to the Policy Regulations, how a criminal case was settled, the amount of time that has passed and the number of antecedents are all taken into consideration. These are also the elements the Central Conduct Certificate Agency bases its subjective screening on. Here again, the Policy Regulations do not prescribe exactly what weight is to be accorded to each of these elements and it is the Central Conduct Certificate Agency itself that formulates its own interpretation. In the event of relevant antecedents (on the basis of the objective screening), a second evaluation is also included in an effort to enhance the internal validity. Here too, the Court does the external evaluating if a negative decision on a request for a Conduct Certificate has been appealed.

In so far as we have been able to look behind the scenes at the Central Conduct Certificate Agency, we see no evidence in the screening that the agency deviates from the Policy Regulation guidelines or comes up against insurmountable obstacles. As is noted above, there is a certain amount of policy leeway for a further interpretation of the objective and subjective screening by the agency's Legal Division and adjustments can be made based on wishes expressed by society at large and judgments by the Court. At the same time, however, there are signs that the Central Conduct Certificate Agency has a limited interpretation of the subjective screening of the circumstances of the particular case. The focus is on the three elements, i.e. seriousness of the case, the amount of time passed and the number of antecedents, but in the framework of this quick scan, we are not able to determine the extent to which other information is taken into consideration in the subjective screening. The respondents representing other parties, i.e. probation officers and lawyers, indicate that they feel that as a rule, very few external sources are consulted for the subjective screening.

The figures indicate that the agency does not refuse many requests for a Conduct Certificate. In 2015 there were negative decisions on only 3,030 of the 862,496 applications, in other words 0.35%. If we only consider the 136,724 applicants registered in the Judicial Documentation System, the refusal percentage is 2.22%.

Measuring the effects: An experimental design

The test results of the experimental design confirm the assumption that individuals who are refused a Conduct Certificate are significantly more frequently registered as having committed a position-relevant offence in the four years after the Conduct Certificate request than individuals who a Conduct Certificate is issued to. Although the research population is limited to a hundred individuals in each group, the measured differences exhibit statistical significance, i.e. 39% for individuals refused a Conduct Certificate for a job in the field of education and 2% for those a Conduct Certificate is issued to. The difference between the percentages is slightly

smaller but still significant in the screening profile for taxi drivers, i.e. 56% are not issued a Conduct Certificate and 27% are.

In addition, the evaluation shows that the level of registered criminal activity among the applicants who are refused a Conduct Certificate is approximately 50% lower after this negative decision. This might indicate that the refusal stimulates them to better their lives, perhaps to be eligible for a Conduct Certificate in the future. It is also possible that the applicants already made this positive decision before requesting a Conduct Certificate. The difference between the applicants who are and are not issued a Conduct Certificate is so sizable that even if the instrument itself is responsible in part for their future behaviour, there is no doubt that in this connection, criminal behaviour in the past is a risk factor for criminal behaviour in the future.

The underlying reason for the Conduct Certificate as an instrument is that preventing individuals with a heightened risk of criminal behaviour from holding certain positions enhances the integrity of the branch. And this line of reasoning does seem to be a valid one. The evaluation also shows however that the overall effect of keeping these individuals from holding certain positions is relatively limited. This is because only a very small percentage of the applicants are refused a Conduct Certificate. The calculations show that refusals to issue Conduct Certificates to prospective teachers only prevents 2% of future registered criminal behaviour, and 9% in the case of taxi drivers.

Lastly, an effort is made to use this evaluation method to calculate the effect of Conduct Certificate refusals on the employment careers of the persons in question. The results suggest that a refusals to issue Conduct Certificates have a negative effect in this connection. However, the evaluation also shows that other factors can play a role as well and that individuals who have been refused a Conduct Certificate were already less active on the labour market prior to the refusal.

Measuring the effects: Simulation

The simulation has enabled us to calculate what percentage of applicants who commit position-relevant offences within four years after the request are obstructed by Conduct Certificate refusals. The simulation shows that 42% of the applicants in the field of education is obstructed by the screeners of the Central Conduct Certificate Agency and 58% would have been issued a Conduct Certificate. For taxi drivers, the percentages are 33% (obstructed) and 67% (not obstructed). So according to this simulation, as an instrument the Conduct Certificate does obstruct the future offenders it is designed to obstruct. This is more successful though with teachers than taxi drivers.

The chance that a Conduct Certificate refusal has been erroneously assessed (because the person does not commit any relevant Judicial Documentation System offences in 2012-2015, the four years after the simulated request) is – compared to the entire population – 0.62% for teachers and 1.23% for taxi drivers. If we compare this percentage of erroneously assessed refusals to that of persons with a Judicial Documentation System registration prior to 2012 (but no registration after the beginning of 2012), the percentages of erroneous refusals are as high as 5.4% for teachers and 10.8% for taxi drivers.

Measuring the effects: Final balance

Both the evaluation models indicate that the Conduct Certificate plays a useful role in identifying future offenders. The evaluation based on the experimental design shows however that the final effect of the instrument is not sizable. The screening of teachers obstructs 2% and the screening of taxi drivers 9% of the offenders in the four years after their Conduct Certificate request. These figures are in stark contrast with the results of the simulation. This leads us to conclude that as an instrument, the Conduct Certificate obstructs 42% of the future registered offenders as teachers and 33% as taxi drivers. What do these differences mean?

In our opinion, the crux of the matter is that the simulation is done with random respondents and the evaluation of the experimental design with people who actually applied for a teaching position or a job as a taxi driver. Apparently precisely the people who would have been obstructed by the Conduct Certificate screening are the ones least like to apply for a job where it is required, at least if we can assume that the results with prospective teachers and taxi drivers have a general validity. This would indicate either some manner of self-selection among individuals with an incriminating criminal record or a lack of interest on their part in jobs of this kind.