

Talking about the Relevant Issues of Community Correction Legislation

Shuli Wang

Jilin Justice Officer Academy, Changchun, Jilin, 130062, China

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Abstract: The pilot work of community correction is a reform of penalty execution system to implement the criminal policy of tempering justice with mercy in our country. With the further implementation of the criminal policy of tempering justice with mercy in our country and the comprehensive trial of community correction, the scope of the trial continues to expand and the number of community prisoners continues to grow. In particular, the “community correction law (draft for comments)” (hereinafter referred to as the “draft for comments”) has further promoted the legislative work of community correction, but there is no denying that the draft for comments still needs to be improved in many aspects. Based on the experience and problems of the earliest pilot areas, this paper proposes that legislation should focus on solving four major problems: the scope of application of community correction, the executive authorities, rewards and punishment measures and the personal risk assessment of community prisoners.

1. Introduction

After six years of pilot projects, community correction has been launched nationwide in 2009, but the old problems in the pilot projects have not been solved and new problems in the promotion have emerged (such as weak financial resources, brain drain and vast regions in the western region). With the promulgation of the 8th Amendment to the Criminal Law, the legal basis for community correction has been solved to a large extent. Although the Criminal Law Amendment (VIII) uses few words in community correction, it solves the problem of questioning the legality of community correction [1]. As “Criminal Procedure Law” is one of the basic criminal laws and is closely related to community correction work, if community correction is stipulated in “Criminal Procedure Law”, the situation of “insufficient legal basis for community correction pilot work” will undoubtedly be greatly changed [2]. With the review and adoption of the criminal law amendment, the community correction system will be established for the first time in China's criminal basic law, which will further promote the in-depth development of China's criminal justice system reform and the further improvement of China's criminal law level [3]. The premise of its formation is: a law with national effect. According to the experience and problems of the earliest pilot areas, the author believes that legislation should focus on solving four major problems.

2. Definition of Community Correction Concept

In many cases abroad, “community correction” is regarded as an academic concept. Different scholars have different definitions of community correction. Chen Yuchen believes that community correction can be broadly defined as “a correction field that monitors criminals and provides services to them outside the detention center and prison environment [4]. Fang Shu defines community correction as: community correction is a non-custodial penalty execution system that supervises, reforms and assists criminals in the community according to law [5]. The community correction system only restricts, rather than deprives, personal freedom, and pursues more educational purposes. It is committed to helping people who once harmed society to return to society again. It has forward-looking, plastic and unpredictable future values. In terms of its nature, it should not be limited to the execution of some non-custodial sentences. In the “community correction law of the people's Republic of China (draft for comments)”, this law is applicable to “community correction activities involving supervision, education and assistance to criminals

sentenced to public surveillance, probation, parole or temporary execution outside prison.” Mainly community prisoners. That is, criminals who commit minor crimes, are old and weak, sick and disabled, have little subjective malignancy or are not suitable for being punished by imprisonment.

3. Basic Principles of Community Correction Legislation

3.1 Principle of Rule of Law

Legislation ruled by law is the premise and foundation for the country and society to move towards the state of rule by law and realize the ideal of rule by law. The system or law on community correction is abstract in terms of literal expression, so the readers can grasp mainly its stipulation or standardization, and have no way of knowing the background of the system or law, the disputes in the formulation and the effect after implementation. Redundant punishment outside the law will have the function of criminal identification: criminals are hostile to society and society rejects criminals, which is not conducive to the smooth return of criminals to society. Due to the excessive principles of the Criminal Law Amendment (VIII) and the revised Criminal Procedure Law and the limitations of its legislation, lower-level normative documents are still used to guide crime and penalty issues in the arrangement of community correction system. In practice, many judicial staff with good professional quality and strong professional ability are easy to be transferred and promoted due to work reasons, which eventually leads to large mobility of judicial staff, and it is difficult to ensure the development of community correction law enforcement team to specialization and professionalism [6]. The legislative proposal authority should put forward the bill after studying and discussing the “social correction system” and comprehensively analyzing China's national conditions. The central state organs should step by step in the legislative process.

3.2 Democratic Principle

Legislative activities to express people's will must follow democratic principles, which is the basic requirement and concrete embodiment of democratic politics. In modern society, national activities such as legislation, administration and justice are a process of unification of democracy and centralization. However, there are great differences among the three powers in nature and operation rules. Legislative power advocates democracy, administrative power pursues efficiency, and judicial power upholds justice. The legal professional qualification certificate will be included in the recruitment qualification of community correction officers to ensure the professionalism of law enforcement personnel. Secondly, a professional team of social workers should be established. There should be a normal funding system and reliable funding for work. In this way, we can ensure the smooth progress of community correction and reflect the seriousness and authority of community correction. As a part of the country's “good governance”, its good effect depends on the breadth and depth of social forces' participation. “[7] Therefore, legislation should be geared to the needs of the grassroots and society, so that public participation and supervision of the legislative process become the most basic subjects of legislation. The main body of legislation is diversified, and the central and local authorities, power organs and government organs should have a reasonable division of legislative authority and supervision system. Not only can the current system or law be discussed, but also the possible regulations in the future can be studied and analyzed. Therefore, the knowledge about community correction is more inclusive and flexible.

3.3 Scientific Principle

Legislation following scientific principles is conducive to improving the quality of legislation and producing good laws, respecting the laws of legislation, overcoming subjective arbitrariness and blindness in legislation, avoiding or reducing errors and mistakes in legislation, reducing costs and improving legislative benefits. Through the collection of Internet related comments for observation. Although the history of the development of the Internet is not long, it has become an increasingly interdependent channel of communication and information acquisition. Some controversial issues can be put on hold for the time being, not included in the amendment of the

criminal law, and there is no need to spend time and delay in solving some difficult problems. Adhering to seeking truth from facts means that community correction legislation should conform to the law of social and legislative development, national conditions and people's feelings, be appropriate and reasonable, adjust measures to local conditions and adapt to the times. We should not only consider the legislative requirements put forward by objective reality, but also consider whether the legislative conditions are mature. We should not blindly pursue the legislative progress and make the legislation comprehensive. Special state organs, with the assistance of relevant social organizations, non-governmental organizations and social volunteers, correct their criminal psychology and behavior within the time limit determined by the judgment, ruling or decision, and promote their smooth return to society. Because the most urgent and important legal issues can be solved through the amendment of criminal law, which can greatly promote the smooth progress of community correction.

4. Several Issues Need to Be Clarified in Community Correction Legislation

4.1 Scope of Application of Community Correction

At present, the scope of application of community correction is “five categories” of criminals who have been sentenced to public surveillance, have been granted suspended sentences, have been temporarily released from prison (specifically, women who have serious diseases requiring medical parole, are pregnant or nursing their babies, cannot provide for themselves, and are not harmful to the society if temporarily released from prison), have been sentenced to parole, and have been deprived of political rights and are serving their sentences in society. Following certain principles in legislation will help legislators to understand and grasp legislation from a certain ideological and theoretical height, engage in legislative activities from the perspective of combining theory with practice, and enable legislation to develop in a direction beneficial to the ruling or legislators under the guidance of selected ideological and theoretical guidance. Compared with the Criminal Procedure Law, the Criminal Law has a closer relationship with community correction. In order to further promote and develop community correction work, the Criminal Law must be amended, and the amendment of the Criminal Law may be one of the best ways to amend the current Criminal Law. Community correction is a non-institutional way to deal with freedom penalty, which means the severity of penalty will be reduced compared with imprisonment. As the subject of law enforcement, the public security organ is no longer the specific undertaker of the daily supervision and management of community correction objects, but it is still the responsible unit for the target management and assessment of the “five objects” supervision and management. The scope of application of community correction is five kinds of criminals stipulated in China's Criminal Law, including control, probation, parole, temporary execution outside prison, deprivation of political rights and serving sentences in society [8].

Obviously, deprivation of political rights does not belong to the category of freedom penalty. If deprivation of political rights is included in community correction, it means that more restrictions are imposed on the freedom of those stripped of rights than the court's judgment. The total amount of penalty increases and totally deviates from the idea of leniency advocated by community correction and the principle of modesty of modern criminal law. It should also be said that the practice of community correction is just beginning, not rich in experience, and not mature in theory, both nationally and locally. Therefore, it is still too early to sum up and construct national basic experience. Following certain principles in legislation will help legislators grasp the legislation from the overall situation, embody some important wills of legislators in a centralized, prominent and emphasized way, and operate the whole legislation as a chess set to prevent the influence of legislation seeking private interests or local protectionism on legislative activities. If it is necessary to carry out other punishments, such as deprivation of political rights, how can the prison authorities explain the issuance of the “notice of release from prison”. This not only reflects the particularity of the subjects deprived of political rights in terms of punishment, but also reflects the current situation that community correction institutions and the measures they have formulated lack the necessary

legal and regulatory support. With the further implementation of the criminal policy of tempering justice with mercy in our country and the comprehensive trial of community correction, the proportion of community correction will continue to expand, and the number of community prisoners will also increase considerably.

4.2 Executive Organ of Community Correction

The current implementation mechanism of community correction is essentially a co-management mechanism composed of public, procuratorial, legal and administrative departments. After several years of community correction pilot practice, the drawbacks of this mechanism have initially appeared, such as the dispute between “law enforcement subject” and “work subject”, especially the discordance in connection and coordination has affected the seriousness and efficiency of penalty execution. The ideal national community correction legislation should be the result of sublimation of community correction experience in all parts of the country, the result of continuous refinement of national community correction experience, and the result of gradual generation based on the development of local regulations, departmental regulations and even administrative regulations. In the historical process of ruling the country by law and building a socialist country ruled by law, the legislation of community correction law should also follow this principle, which is the primary standard in the legislation of community correction law. However, at present, the community correction system in our country lacks strong legal support and lacks laws. It also has many conflicts with the current legislative law, and even has no laws to abide by and oversteps the authority to legislate. Article 135 of the constitution stipulates: “the people's courts, the people's procuratorates and the public security organs shall be responsible for the division of responsibilities, cooperate with each other and restrict each other to ensure the accurate and effective implementation of the law.” Neither the amendment of the criminal procedure law nor the amendment of the criminal law can solve a large number of legal problems in the community correction work. Only by formulating a special community correction law can these problems be better solved.

In fact, investigation, prosecution, trial and execution are four interrelated and relatively independent stages and links in the criminal justice system. Each stage has its own central task and judicial procedures to ensure the completion of this task. However, they are also an indispensable organic component of the criminal justice system and jointly realize the national power of punishment and the purpose of punishment. Therefore, to promote community correction in China, we should first understand the development of community correction in the leading countries and learn from their experiences. In particular, community correction is a kind of comprehensive punishment execution activity. It is far from enough to rely solely on the revision of criminal law and criminal procedure law. It also involves the allocation and division of power, the relationship between administrative power and judicial power, judicial system, legislative power and other issues. The concept, scope of application and procedures of community correction legislation are vague and abstract, and can only be carried out if the legislative activities are correctly understood, which is helpful to “realize the dual value of community correction in terms of discipline and education” [9]. Among them, the power of execution is the main component of the power of punishment, and is the final and key link in criminal proceedings. It transforms the standard form created by the legislature and the declaration form used by the examination and approval authority into the actual form of execution, and is also the last link to realize the power of punishment of the state. Only by enacting the Criminal Execution Law can we thoroughly solve such major problems as the low standard of criminal execution legislation, the imperfect criminal justice system, and the inability to fully realize the basic principle of “mutual cooperation and mutual restriction” in the criminal justice process.

4.3 Reward and Punishment Measures for Community Correction

The difficulty of rewards and punishments in community correction and the lack of compulsory measures are one of the main problems perplexing the current pilot work. In today's globalization and informatization, it is difficult for post-developing countries to evade the achievements of

developed countries in the above fields, including knowledge achievements, in their economic, social and legal development. At present, the administrative rules and regulations concerning community correction, including the “Measures for the Implementation of Community Correction” jointly issued by the Supreme Court, the Supreme Procuratorate, the Ministry of Public Security and the Ministry of Justice on January 10, 2012, are challenged by the principle of absolute reservation of national legislative power. Whether social correction personnel should eliminate or hide their bad records after receiving education and guidance; Another example is whether there is any violence in law enforcement or other malfeasance in the management and supervision of social security personnel. Therefore, community correction legislation should clearly stipulate the principles, types, assessment, conditions, procedures and procedures for rewards and punishments of correction objects, especially those involving judicial rewards and punishments. Although there are similarities between the system or law of community correction and the knowledge of community correction, the interpretation of the system or law of community correction can form the knowledge of community correction, and the knowledge of community correction can be condensed into the system or law of community correction, but they are more different. The issue of community correction involves the execution of penalty and should fall within the scope of absolute reservation in national legislation. However, the current normative documents on community correction are all lower than the law and cannot touch the issue of crime and penalty. Otherwise, it violates the basic principles of the Legislative Law.

The author suggests amending the current relevant legal provisions on “reducing the original sentence can reduce the test period” and establishing incentives such as shortening the correction period or the test period. At the same time, corrective organizations are given the power to take short-term measures to restrict freedom, such as confinement and introspection. It is inconceivable to carry out community correction in a society where people do not know the concept of “community correction”. However, the dissemination of community correction knowledge cannot be separated from the manufacture of community correction knowledge. The knowledge of “manufacturing” community correction in China cannot but explore its source and cannot leave the knowledge comparison and current situation analysis between the international community. It is a kind of lenient execution mode outside prison, and the quality of community correction personnel is not high, so it is easy to leak, bend the law to enforce the law, and change the purpose of community correction. It has become an excuse to evade the execution of prison. Therefore, it is necessary to ensure the openness and strictness of its procedures, and perfect a series of procedures such as application, reception, management and dissolution of community correction. According to the actual performance and personal risk assessment results of the correction object, the classification management can be divided into three levels: wide management, general management and strict management. Different treatment will be given to the correction object in terms of freedom of activities, public welfare work, centralized education, and application conditions for shortening the correction period or test period. Therefore, these problems need to be solved through legislation, otherwise, it will seriously restrict the smooth progress of community correction work, and some of these problems can be solved through amendments to the criminal law.

4.4 Personal Risk Assessment of Community Prisoners

Putting criminals in the community to serve their sentences undoubtedly increases the risk factors of the community and reduces the safety factor of the community residents. The designer of the implementation plan of community correction is not only a practitioner of community correction, but also a theorist of community correction. He should not only be familiar with the modern community correction system, but also understand the development history of community correction in the international community. The system of comprehensive investigation and analysis of the rectified personnel by community correction personnel. It is suggested that this kind of investigation task should be investigated by law firms and defense lawyers employed by the community correction object to be applied. Non-custodial penalty enforcement activities that correct their criminal psychology and bad behavior and promote their smooth return to society

within the time limit determined by the judgment, ruling or decision. The nature of community correction work includes not only penalty execution but also correction, educational assistance and other work. Such work does not require the intervention of the police but also the participation of social forces, especially professionals. From the perspective of balanced development of the criminal law system and promotion of the reform and perfection of the criminal law, amendments to the criminal law on community correction should also be formulated. The crime is relatively minor, the social harm is not serious, and the subjective harm is relatively minor. After supervision and reform, the expression of true repentance focuses on the past and the reality, while the personal danger does not focus on the future. It is a specific indicator of “no further harm to the society” and needs to be evaluated by scientific and systematic methods.

5. Conclusion

Whether community correction can be integrated into Chinese society, become a way to help criminals return to society, become a deterrent to crime, and become a method of penalty execution to realize penalty justice depends not only on the utilitarian needs of the country, but also on the “judgment” of the public on community correction. It is not easy to form a systematic “top-down” social correction legislative system, which requires the central government to persevere, the public to offer advice and suggestions, social personnel to discipline and educate, and social correction targets to understand prison reform. Therefore, we believe that in the community correction legislation, the rewards and punishments of the community correction objects, especially the principles, types, assessment, conditions, handling and examination and approval of the judicial rewards and punishments, should be regulated accordingly and should be broken through. In a word, the principle of community correction legislation is not only the guideline to guide the legislation of community correction law, but also the concentrated embodiment of the spirit and content of community correction legislation, and legislators should attach great importance to it.

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