

# Study on the Development Process and Enlightenment of the Sentencing Reform between China and the United States

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**Abstract:** Justice of sentencing is an important manifestation of judicial justice in the criminal field, and it is the basic guarantee for safeguarding the dignity of the law, social fairness and justice, and the legitimate rights and interests of citizens. At the same time of achieving many positive results, China's standardized reform of sentencing faces the problems of lack of full-time leading institutions, strict rules on sentencing and the discretion of judges. More than 80 years of sentencing reform practice in the United States has experienced a shift from the rehabilitation function to the penalty function of justice, and witnessed the "Federal Sentencing Guidelines" the mandatory downgrade and sentencing rulings have been under the guise of unconstitutional doubts and effective limits. The judge's discretion has been reduced and the sentencing balance has been promoted. Reasonable study and reference to the development experience of the US sentencing reform is of great benefit to comprehensively deepening the standardized reform of sentencing in the criminal justice field in China.

## 1. Introduction

Sentencing refers to the judicial organs determining whether to impose penalties on the offender, determine what appropriate penalties are imposed, and decide whether to immediately execute the criminal trial activities on the basis of finding out the facts of the crime and determining the nature of the crime. Sentencing deviation or sentencing imbalance stems from the improper exercise of judges' discretion and the opaqueness of sentencing procedures, which may lead to different penalties in class cases, derogation of judicial authority, and induce social contradictions. In order to promote the balance of sentencing, China's criminal justice field has carried out a standardized reform of sentencing from the bottom up, from the point to the face, from the shallow to the deep, from the outside to the inside. Under the active exploration of the local court and the unified leadership of the central government, it has been effective. Established a relatively scientific method of sentencing, unified the standard of sentencing, standardized the discretion of judges, effectively limited the deviation of sentencing, and gradually formed a relatively independent sentencing procedure. However, due to the lack of full-time reform of the leading institutions and the relationship between sentencing regulations and the discretion of judges, there are still many deviations from the expected situation in China's sentencing reform. In contrast, the sentencing reform in the United States for more than 80 years has experienced the "success" of the sentencing results and the "failure" of the unconstitutional questioning. The rich experience is worthy of reasonable reference in the field of criminal justice in China.

## 2. The Development Process of American Sentencing Reform

The development process of the US sentencing reform can be condensed into three main stages: the pre-sentencing guide period, the mandatory sentencing guide period, and the reference sentencing guide period. In the 1930s, during the pre-sentencing guidelines, the US criminal sentencing field showed the characteristics of rehabilitation centering and individualization of punishment. That is to

say, when the judge decides the penalty, he must consider all the personal circumstances such as the crimes controlled by the defendant and the character and habits of the perpetrator. This transition from punishment to rehabilitation gives judges and their broad discretion to make individualized penalties that facilitate the return of offenders to society. However, this sentencing model exacerbates the unpredictability of sentencing results, and the surge in crime rates also leads to negative social assessments.

In order to reduce the unfounded sentencing bias, many criminal jurists have called for the consistency and certainty of the results of penalties through sentencing reform and the introduction of binding normative documents. The US Congress passed the Sentencing Act in 1984 and created the US Sentencing Committee, composed of the judiciary and bipartisan legal experts, to formulate, promulgate and periodically revise the Federal Sentencing Guidelines with mandatory applicable effects. The types of criminal records and the level of crime hazard are respectively created in the horizontal and vertical axis. The two-dimensional prison sentence scale is used to limit the discretionary power of the judges and improve the consistency and rationality of the sentencing results.

However, the mandatory sentencing guidelines exposed their mechanized, formatted structural flaws, and many of the sentencing decisions represented in the *Apprendi v. New Jersey*, the *Blakely v. Washington*, and the *United States V. Booker* were in violation of the US Constitution. The amendment was questioned by unconstitutionality. In the end, the Federal Supreme Court downgraded the mandatory attributes of the Federal Sentencing Guidelines to reference in 2005. In the current reference sentencing guidelines period, the US sentencing reform is developing in the direction of "expanding judges' discretion and simplifying sentencing regulations", which is expressed as "the balance and compromise between pure intuition drive and rule arbitrariness". In summary, the reference sentencing guide frees judges from the rigid scope of sentencing, gives judges moderate discretion, and promotes sentencing justice and sentencing equilibrium.

### **3. The Development Process and Existing Defects of China's Sentencing Standardization Reform**

China's standardized reform of sentencing has also experienced the development process of "bottom-up exploration" and "top-down promotion", which is manifested in the three stages of the theoretical exploration of the local courts, the piloting of the central unified investigation, and the full implementation of standardized reforms. Since 2002, during the academic exploration period of the local courts, the basic courts represented by Shanghai Xuhui Court, Shandong Zichuan Court and Jiangsu Jiangyan Court have created sentencing defenses for innovative sentencing methods, improved sentencing efficiency and reduced sentencing. Institutional, intelligent digital sentencing assistance system and local sentencing guidance norms provide rich practical experience for subsequent sentencing reform at the national level.

At the beginning of 2006, the Supreme People's Court of China set up a research group to gather research strength in the reform experience of the grassroots courts. In July 2008, four intermediate courts and eight grassroots courts were opened as pilot courts for the first batch of standardized reforms. After a period of piloting, the sentencing reforms of the pilot courts have achieved remarkable results, and the judges' normative sentencing thinking has been effectively established, which has significantly improved the efficiency of sentencing and saved judicial resources.

In July 2010, several arguments and amendments to the "Sentencing Guidance for People's Courts <for trial implementation >" and the "Sentencing Procedures Guidance <for trial implementation>" were officially promulgated, and the reform of sentencing standardization was officially implemented throughout China. Since then, the innovation and exploration of the local court has been developed and developed in the scientific research of the Supreme Court. After several years of standardized reform of sentencing, it has officially entered the stage of full implementation. The two documents are rich in content and clear in hierarchy. They not only contain principles such as sentencing guidelines, basic methods, and application of common sentencing circumstances, but also

refine the scope of sentencing for 15 common crimes, the starting point of sentencing, and the benchmark penalty. On the 4th and 1st of 2017, the Supreme People's Court further expanded the scope of sentencing standardization, issued the "Sentencing Guidance on Common Crimes II<for trial implementation>", and launched the second batch of new charges on the court from May 1 of the same year.

Although China's standardized reform of sentencing has achieved good results, the current Chinese criminal sentencing system still has some shortcomings. For example, there is still a lack of a full-time institution for the reform of sentencing, and the empirical arguments on sentencing rules and specific plots need to be strengthened, plus sentencing. The incomplete reform of the procedures has greatly reduced the effectiveness of the reform of the standardized sentencing. In view of this, on the basis of clarifying the obstacles and difficulties faced by China's standardized reform of sentencing, combined with the successful experience of the US quantitative reform, we can carry out feasibility study.

#### **4. The Inspiration of American Volume Reform on China's Quantitative Reform**

First of all, the sentencing reform experience in the United States proves that the Sentencing Reform Commission plays an important role in the criminal justice field, especially the sentencing system, as a full-time department that governs the development of sentencing reforms, formulates perfect sentencing regulations, guides sentencing practices, and conducts empirical data analysis and research. . In view of this, China can draw on the establishment of a full-time leading department of sentencing standardization reform with independence and professionalism, such as setting up a full-time institution within the Supreme Court to be responsible for the specific affairs of sentencing reform, and coordinating sentencing practice and sentencing reform at all levels of courts across the country. Sentencing pilot work. In addition, setting up a full-time quantitative reform leadership organization will help integrate the scientific research forces to carry out the institutionalization and normalization empirical research of sentencing regulation, sentencing procedures and sentencing models, and it will also be beneficial to the establishment of sentencing assistance systems.

Secondly, the mandatory downgrade experience of the US Sentencing Guidelines shows that it is extremely important to properly coordinate the relationship between sentencing regulations and the discretion of judges. In the process of China's promotion of sentencing standardization reform, it still relies mainly on the guidance and restraint of scientific and effective sentencing rules, so as to avoid the discretionary discretion of judges brought about by the differences in the level of regional economic and cultural development and the differences in the overall quality of judges. Therefore, it is necessary to modify and improve the application of common sentencing circumstances and the sentencing norms of sin, and add the applicable conflict provisions of the " Sentencing Guidance on Common Crimes " on the type of plot and the modality of the stipulations. In particular, it is necessary to clarify the applicable rank of the rules of the opposite offset to avoid The ambiguity of the judge in the handling of specific cases.

Finally, the US criminal justice system has always adhered to procedural justice and is worth learning from. Procedural regulation is an important way to restrict judicial discretion and achieve justice. It is necessary to speed up the construction of a multi-level and confrontational sentencing procedure system, clearly establish the criminal adjudication logic of the judge "sentence after sentencing first", and classify the sentencing procedure. In addition, the evidence-proving links of public prosecutors, private prosecutors, defendants and their defenders should be strengthened, the victim's statement and sentencing opinions should be emphasized, the procedural system of sentencing standardization reform should be improved, and the unity of substantive justice and procedural justice should be promoted.

In summary, the best way to achieve the standardization of sentencing in the modern context is to combine the actual needs of judicial practice and optimize the integration of positive and negative thinking in the process of sentencing. China's standardized reform of sentencing has experienced more than ten years of hard exploration, effectively reducing the deviation of sentencing and

promoting the justice of sentencing and the balance of sentencing. In order to further improve the effectiveness of the reform, we should reasonably learn from the favorable experience of the US sentencing reform, base on local resources and judicial practice, carry out comparative research in a targeted manner, constantly improve the construction of the sentencing system, and promote the substantive justice of sentencing.

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