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On the Improvement of China's Community Correction

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Abstract

As a non-imprisonment penalty opposite to imprisonment penalty, communist correction is in line with the requirement of China's socialist construction and international human rights doctrine. The evolution of China's community correction experienced two stages of trial and full establishment. Based on a comparative analysis of the United States community correction system, this article will put forward recommendations for the improvement of China's community correction system from three aspects: legislation, law enforcement and financial guarantee.

Key words: Community correction; US community correction; System improvement

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INTRODUCTION

With the progress of society and the improvement of people's ideological consciousness, the voices for human rights continue to increase, imprisonment punishment in criminal law begins to arouse controversy, and more and more people call for other punishments other than imprisonment to make up for the deficiencies

of imprisonment. As a result, community correction systems come into being. Community correction is the fastest growing area in the theory and practice of punishment enforcement in various countries, and is also the major symbol of the international punishment trend that non-imprisonment begins to replace the dominant imprisonment (Liu, 2003). The United States established community correction system firstly. China's community correction system started late and developed slowly, so learning from the United States' community correction system to improve our community correction is necessary.

Based on the reconsideration of the history of China's community correction, this article will make a comparative analysis to the United States' community correction system, and propose suggestions for improvement from three aspects: legislation, law enforcement and financial guarantee.

1. OVERVIEW OF COMMUNITY CORRECTION

1.1 Concept of Community Correction

Community corrections is a non-imprisonment punishment opposite to imprisonment punishment, which refers to: A non-imprisonment punishment method which places offenders with lighter offenses in communities, where state enforcement authorities, involved organizations or their employees supervise the implementation of their punishment, so as to effectively reform the offenders (Li & Tan, 2012). In our country, community correction is applicable to the offenders sentenced to public surveillance, probation, parole, temporary execution outside prison and deprivation of political rights. According to China's *Criminal Law*, *Code of Criminal Procedure*, *Community Correction Implementation Measures*, *Community Correction Work Provisional Measures of Judicial Administrative Organs*,

etc., community correction system mainly applies to: offender sentenced to public surveillance, offender sentenced to probation, offender sentenced to parole, offender sentenced to execution outside prison, and offender sentenced to deprivation of political rights, and others, all of who will serve sentence in communities.

1.2 History of China's Community Correction

China's community correction work started relatively late, which can be broadly divided into two stages:

The first stage is the trial stage. In 2003, the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of Justice (hereinafter referred to as the "Four Departments") jointly issued a notice to implement community correction experiment, and identified six provinces including Beijing, Shanghai, Tianjin, Jiangsu, Zhejiang and Shandong as the pilot areas to officially raise the curtain of community correction in China. In 2005, the "Four Departments" jointly issued a notice to put twelve provinces and regions including Hebei, Anhui, Heilongjiang, Inner Mongolia Autonomous Region, Hubei, Hunan, Guangdong, Guangxi, Sichuan, Guizhou, Chongqing and Hainan into the scope of the experiment. In 2009, the "Four Departments" jointly issued *Opinion on Carrying out the Experiment of Community Correction Work in China* to launch a nationwide community correction experiment.

The second stage is the establishment stage. In 2011, Article 38, Article 76 and Article 85 of the *Criminal Law Amendment (VIII)* stipulate to apply community correction to the offenders sentenced to public surveillance, probation, parole and temporary execution outside prison, and community correction agencies are responsible for the implementation. In 2012, the "Four Departments" jointly developed *Community Correction Implementation Measures* to provide for various issues of community correction. So far, China's community correction system has been officially established, and the community correction work began to get on the right track.

2. THE UNITED STATES' COMMUNITY CORRECTION SYSTEM

Since the mid-twentieth century, the United Nations enacted a series of rules of criminal justice, such as *Alternative Measures to Imprisonment*, *Prison Population Reduction*, *Alternatives to Imprisonment and Offenders' Social Integration* and *Minimum Standard Rules of the United Nations for Non-Imprisonment*, etc., to promote the measures of non-imprisonment, which made great contribution for the application of community correction in the international punishment system. The United States' community correction legislation is the oldest in the world. Up to now, the United States has had 28 states which passed local laws concerning community

correction, developed *Community Correction Act* and a series of supporting regulations and policies, and established a relatively more improved system of community correction. The US legislation of community correction clarifies that "community correction" is a non-imprisonment punishment aimed to help offenders successfully reform and return to society.

The United States' community correction system has the following characteristics:

Firstly, law enforcement agencies are diverse. In the United States, community correction agencies have many forms. There is state-sponsored agency, local-sponsored agency or even private agency, and most states have established community correction bureaus to take charge of community correction management. In addition, there are a lot of non-governmental community correction organizations, whose services are: Firstly, on the premise of protecting the safety of the community, help the correction targets adapt to the life in the community and offer simple accommodation; secondly, entrust day reporting center to carry out supervision. Offenders can live in their own homes, but need to report their situations to this institution on a daily basis (Liu, 2008).

Secondly, staff are professional. In the United States' community correction agencies, there are professional law enforcement officers including probation officers and parole officers, who design reasonable correction courses and provide normative guidance to ensure the most effective implementation of correction work. In addition, community corrections volunteer team is a highlight of law enforcement of the US community correction. Each year there are about 300,000-500,000 volunteers join community correction, and the United States has many requirements to these volunteers, such as educational background no less than undergraduate, some knowledge of law, and passing tests in culture, psychology, physique, personality and other fields. A high-quality law enforcement team ensures the high quality and high standard of community correction work, and reforms the correction targets as much as possible to help them successfully return to society.

Thirdly, financial guarantee system is complete. As we all know, the expenses of prison is a troublesome problem to a country, and developed countries have no exception. Thus, establishment and implementation of community correction largely saves the costs of justice. In the United States, because of the widespread implementation of community correction, investment to community correction is relatively large and a sound financial guarantee system has been established. The *Community Corrections Act* of Minnesota also stipulates the financial planning, fund construction and expenses, etc. for community correction, and designs the complete and strict formulas for calculation of the correction financial aid (Cui & Jiang, 2015). This legislation which explicitly lists

calculation methods helps to avoid corruptions during the process of operation, ensure a successive implementation and maximized effectiveness.

3. PROBLEMS AND IMPROVEMENT OF CHINA'S COMMUNITY CORRECTION

China's community correction, since the experiment in 2009, exposed a lot of problems, on which we should make improvements by learning from the US experience.

3.1 We Must Make Up for the Deficiencies of Legislation

On the one hand, China's legislation on community correction is limited to *Criminal Law*, the four provisions of *Code of Criminal Procedure*, and *Community Correction Implementation Measures* jointly issued by the "Four Departments", all of which just make a brief stipulation to the basic matters of community correction, so there is not a uniform standard for all provinces in many areas. The provinces need to develop their own implementation rules, resulting in an inconsistency in legislations and law enforcement standards and leading to social injustice.

On the other hand, the existing *Community Correction Implementation Measures* have many unreasonable points. For example: Article XI stipulates that "the offender shall regularly report to the judicial institute his compliance with law, with supervision and management, participation in learning, community services and social activities." Here the term "regularly" is too vague, tends to be discretionary in practice and easily leads to disordered enforcement. Another example: Provision 4 of Article 14 stipulates that, "for the offender approved with change of residence, the county judicial administrative authority shall, within three working days after the decision is made, transfer the relevant legal documents and files to the county judicial administrative authority of the new residence. The relevant legal documents shall be sent to the county People's Procuratorates and public security authorities of the current residence and new residence. The offender shall, within seven days after receipt of the decision, register in the county judicial administrative authority of the new residence." Here it only stipulates the limitation time for the judicial administrative authorities to transfer documents, but does not stipulate that within how long the judicial administrative authority sends documents to the offender, which becomes an omission of legislation. Another example: Provision 1 Article 30 stipulates that "When the person serving community correction completes his correction, the judicial administrative authority should remove the community correction declaration. The declaration shall be presided by the staff of the judiciary and conducted in public in accordance with due procedures." Here the term "conducted in public

in accordance with due procedures" does not explicitly specify the procedures, only stipulates the participants and declaration issues, which will lead to unfulfillment of public declaration and failure to protect the legitimate interests of the person receiving community correction. We should make specific and detailed provisions in this regard.

3.2 Enforcement System Should Be Improved

China's existing community correction has several problems such as unclear correction authorities, insufficient persons receiving correction and low-quality enforcement officers, etc.. We should also improve the community correction system by learning from the United States' complete enforcement system. According to Article 2 of *Community Correction Implementation Measures*, community correction should be dominated by judicial administrative authorities, shared out and cooperated by people's courts, people's procuratorates and public security authorities. From Ministry of Justice, judiciary departments, judiciary bureaus to judiciary institutes should all establish community correction organs to take charge of community corrections work. Of course, some judiciary departments have already established a community correction bureau. All judiciary administrative departments should establish community correction enforcement organs – correction bureau, correction institute and correction office. The procuratorates should supervise the fulfillment of the departments, carry out inspection at any time to urge the departments to complete their duties.

Secondly, appropriate law enforcement officers should be equipped. Article 8 of *Community Corrections Implementation Measures* stipulates the approach of setting up special groups of community correction should be promoted. In the author's opinion, the correction group at least needs to have the following staff: (a) correction officers specialized in developing personalized correction plan for the offender; (b) staff with legal knowledge, volunteers, social workers, and works from the offender's village, neighborhood or unit shall rationally divide work and jointly carry out daily supervision and education to the offender; (c) teachers responsible for teaching some living skills, legal knowledge, ethics, current affairs policy and other courses; (c) transfer staff responsible for receiving the offender's reports, sorting the files and declaring completion of the correction. The volunteers and community workers, by referring to the United States, should be requested to have a certain level of education, legal knowledge, good psychological quality and physical fitness, and pass some tests.

3.3 Financial Guarantee Should Be in Place

In terms of funding guarantee, due to the insufficient recognition to community correction, funding of community correction tends to be low and is difficult to

be fulfilled. We should learn from the funding guarantee system of the United States. Firstly, the government must not discriminate against community corrections, and should ensure a due share of community correction in financial expenditure. Secondly, the phenomenon that allocated funds are diverted for other purposes often occurs. In order to get rid of such a phenomenon in community correction, we should develop reasonable financial calculation system to protect the rational operation and use of the funds. The United States' *Community Correction Act* has made explicit provisions on the operation and calculation of the funds. We should also make corresponding provisions in law, and require the correction departments to make an announcement on the revenue and expenditure to make them run "under the sun", and ensure them being used effectively under the supervision of the people.

CONCLUSION

As a non-imprisonment punishment opposite to imprisonment punishment, communist correction is in line with the requirement of China's socialist construction and international human rights doctrine. In today's world, the basic trend of punishment is to ease punishment, and community correction represents this trend with its

distinct advantages. It can not only protect the human rights of offenders, save punishment resources, but also can improve punishment order to reduce the drawbacks of imprisonment (Zhang, 2006). Compared with developed countries, China's community correction work started late and is still in its primary stage. We should pay attention to community correction, improve the relevant regulations for community correction, and fully play the advantages of community correction.

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