

A Comparative Study on the Juvenile Criminal Records Sealing System Between China and the United States

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ABSTRACT

The Illinois Juvenile Court Act, the world's first law that stipulates the sealing system of juvenile criminal records, was born in Illinois in 1899. In 2012, China formally established the juvenile criminal records sealing system, which is quite different from that of the United States in terms of concept, procedure, and content. Judging from the original intention of the legislation and judicial practice of this system in China, there exist mechanization and simplification of the "sealing" characteristics. Meanwhile, learning from the development path of the juvenile criminal records sealing system in the United States, there are always conflicts and coordination between juveniles' privacy rights and information disclosure. In the subsequent improvement and practice of the juvenile criminal records sealing system in China, the balance between the protection of juvenile criminals and the insurance of societal stability should also be better considered.

Keywords: *Criminal Records, Previous convictions, Confidentiality, Expungement*

1. INTRODUCTION

In 2011, Criminal Law (2011 Amendment) exempted juvenile delinquents (those minors sentenced to five years' fix-term imprisonment or less) from the obligation to report previous convictions for minor crimes. In 2012, the Code of Criminal Procedure further stipulated that "For those who have not attained the age of 18 when committing crimes and are sentenced to fixed-term imprisonment of five years or a lighter punishment, the related criminal records shall be sealed for retention" which marked the birth of China's juvenile criminal records sealing system. Although the causes of juvenile delinquency show diversified characteristics, the basic consensus is that external factors play a decisive role. Therefore, the focus of criminal policy should not be the punishment but rather the education and rescue toward juvenile delinquents. It is the responsibility of the government to help minors with criminal records to successfully return to society to live a normal life. China, on one hand, has formally established the juvenile criminal records sealing system, and the United States, on the other hand, has stipulated both the sealing and eliminating system of previous conviction records.

2. DEFINITION AND COMPARISON OF CONCEPTS: THE JUVENILE CRIMINAL RECORDS SYSTEM

2.1. The definition of "juvenile previous conviction records" in China and the United States

2.1.1. China only refers to criminal records

In China, juvenile previous conviction records only refer to criminal records. Article No. 275 of the Code of Criminal Procedure provides that: "For those who have not attained the age of 18 when committing a crime....., the related criminal records shall be sealed for retention". It is worth noting that there was a controversy over the need to seal the minor's relative non-prosecution and conditional non-prosecution criminal records. The reason for this controversy is that, in accordance with the literal meaning of that provision, sealing process is only available for minors who are sentenced to punishment by the court, whereas minors who are relatively or conditionally not prosecuted (they do constitute crimes but have no obligation to go through the judicial trial) since they do not meet the legal definition of "criminal", let alone bear the penalty, they do not meet the requirement to activate the sealing process in China's legal system. However, according to the public, the relative non-prosecution and conditional non-prosecution minors also belong to "ex-convicts" who should have the right to sell their records. Therefore, some scholars proposed that the scope of the sealing should be extended to

non-prosecuted minors to fill the above loopholes [1]. This proposal was finally adopted by the Supreme People's Procuratorate, and the Provisions on Handling Juvenile Criminal Cases issued by the People's Procuratorate in December 2013 made it clear that the people's procuratorate should seal the relevant records immediately after making a decision not to prosecute the juvenile criminal suspect.

2.1.2. The United States contains delinquency records and previous conviction records

In the United States, juvenile conviction records are divided into two parts: the first part refers to the juvenile delinquency records and the second part refers to the juvenile previous conviction records. There is a huge distinction in meaning between them, which leads to difference in content, scope, procedure, and consequences. On one hand, the so-called juvenile delinquency records refer to the relevant records of the juvenile court hearing. As in the United States' discourse system of juvenile crime and justice, even the juveniles are found guilty, the verdicts made on them are not called "guilty verdict", nor would the juvenile be called as "criminal" but as "juvenile delinquents" instead. Therefore, the verdict made by the juvenile court does not even constitute a criminal record to seal. With regard to the juvenile delinquency records, section 5038 (a) of Title 18 of the United States Code (U.S.C) provides that throughout the juvenile delinquency proceeding, the court shall safeguard the records from "disclosure". On the other hand, the juveniles who have been considered as inappropriate to hold hearings on the juvenile court will be treated as adults and be moved to the criminal (adult) court for prosecution, where the previous conviction records of the juvenile involved will be retained. If the criminal (adult) court finds the juvenile guilty, the juvenile's records may become "permanent criminal conviction". Most states have established a system of public disclosure towards juvenile criminal (adult) court records, which are subject to the same public scrutiny as adult criminal records [2].

2.2. The characteristics of sealing criminal records in China and the United States

2.2.1. China adopts the mode of confidentiality

The sealing mode established in Article 286 of the Criminal Procedure Law of China is a "concealment" mode. Relevant records are kept confidential and concealed by various means, so as to limit information dissemination to a very small range to reduce the possibility of relevant records being disclosed by illegal means. It is worth mentioning that before the promulgation of the above-mentioned article, China's judicial practice has explored the "expungement system of record sealing", but the Criminal Procedure Law did not refer to the judicial practice experience: it only

stipulated the normal sealing process without mentioning the expungement system. Admittedly, above legislation has positive significance for social stability, but for juveniles who look forward to entering the society and who can only rely on unitary sealing process, it is difficult to protect them from illegal disclosure about their record due to the fact that the information is intangible. Once the relevant records are illegally disclosed, irreparable harm will be brought to minors. In addition, it is more likely to "seal mechanically" in judicial practice owing to the legal requirement with little consideration of the social effect that such a system should achieve. Providing helps to pave paths for juveniles should be the core value of such a process rather than simply "keeping records confidential".

2.2.2. The United States adopts the mode of confidentiality and expungement

As mentioned earlier, the juvenile delinquency records in the United States are divided into two parts: the juvenile delinquency records and the juvenile previous conviction records [2]. For the above two kinds of records, the United States adopts the mode of confidentiality and expungement. For the former, the relevant records or procedures would be only temporarily sealed. If the juvenile delinquent is later convicted of another case or charged with a felony, these criminal records may be re-opened to the public [3]. Therefore, records are free from public access, but that does not mean their existences cease. For the latter, an individual's criminal history (especially guilty records) would be removed or destroyed, rendering the information untraceable. At present, most states in the United States have established the juvenile criminal records expungement system. The historical files and arrest records of the juvenile involved should be sealed up or expunged according to relevant laws. Other records like court schedule forms, official court records, etc., need to be sealed or kept in the restricted area [4]. However, in the judicial practice of the United States, the system also ushered in a lot of doubts, leading to its constant modification in the degree of confidentiality and conditions of expungement. For example, in response to the public's query, the federal government and some states have changed their criminal policies from the previous criminal-oriented to crime-oriented, and put more emphasis on the role of punishment. By 2006, 36 states across the United States have required minors convicted of sexual crimes by juvenile courts to be registered as "sex offenders" [2].

3. DIFFERENCES IN CONTENTS AND PROCEDURES OF THE JUVENILE CRIMINAL RECORDS SEALING SYSTEM BETWEEN CHINA AND THE UNITED STATES

3.1. The scope of sealing juvenile criminal records in China and the United States

To be specific, China's criminal records sealing system seal following three parts of information: first, documents related to general litigation such as investigation files, procuratorial files, and trial files that record criminal facts and case handling procedures. Second, non-prosecution case materials: this refers to the relevant case materials of relative non-prosecution and conditional non-prosecution, the premise of the above two types of non-prosecution are to constitute a crime. The third is the information on penalty execution: the penalty is one of the legal consequences of crime, and a comprehensive sealing of criminal records must include the sealing of penalty execution information. United States have a relatively wide scope of criminal records to seal, including not only arrest records, court files, probation records, and other documents related to a case but also records of other authorities involved in the case [5]. Specifically, the scope of the seal may include personal information and criminal history. Some states divide the records of the juvenile involved in a case into two categories and provide different sealing principles. The first category refers to legal records, specifically including the complaint, court motion, court order, and copies of relevant documents, which can be inquired by the public when they fit the qualification. The second category refers to the social history records, including the history of drug abuse, alcohol abuse, psychological and medical assessment reports, academic performance, etc.

It can be found that the sealing scope of juvenile criminal records in the United States is far wider than that in China. In the implementation of the system in China, there is no explicit provision in the law expressly provides that part of the social history records shall be sealed. At the same time, there is a risk of indirect leakage of juvenile criminal facts in the process of obtaining the above personal information records. Such as social investigation system, by asking the minors families, neighborhoods, teachers and classmates, etc., to produce a comprehensive social investigation report, thus effectively reflect the individual situation of minors, including family details, social interaction, growth experience, the cause of crime, performance before and after the crime, guardianship and education and other relevant information. This form will undoubtedly make more people become the insiders of the case. For example, the investigation method of visiting will increase the possibility of case information diffusion and leakage. Based on this, the implementation effect of the criminal records sealing system will be greatly reduced, leading to the formal

significance of sealing being greater than the practical significance.

3.2. The initiation procedure of sealing juvenile criminal records in China and the United States

3.2.1. Implementation subject

In China, the sealing of criminal records of minors for misdemeanors (those sentenced to five years' fix-term imprisonment or less) is initiated by the relevant authorities in accordance with their functions and powers. The Criminal Procedure Law has no specific provision on the subject of decision and execution of sealing juvenile criminal records. In practice, most of the decision subjects are courts or procuratorates, while in some places, the decision is made and supervised by specialized agencies (members of which are generally composed of public security organs, courts and procuratorates, judicial administrative organs, Communist Youth League organizations, and other selected personnel). As for the main subject that implements a sealing decision, the scope is much wider, all organs that preserve juvenile crime records should execute the juvenile criminal records sealing decision once receiving one. Here include not only public security organs, national security organs, penalty enforcement organs, and judicial administrative organs, but also the schools, work units, grassroots organizations where minors live, as well as the parties, defenders, and litigation agents of criminal cases who may have juvenile criminal records. These units and individuals all have the obligation to keep the criminal records confidential.

In the United States, juvenile criminal records are not sealed voluntarily by the relevant authorities according to their functions and powers. Instead, the perpetrator needs to personally apply to the court for sealing. The court issues a court order, which is executed by the authorities and units that preserve the above records. Besides, the initiation of the sealing procedure also needs to meet certain formal conditions: on the one hand, it should meet the negative conditions, that is, there are no negative records, there is no subsequent conviction or judgment, there is no pending litigation, and the jurisdiction of the juvenile court has expired. On the other hand, it must meet the positive conditions: the age meets the legal requirements with qualified litigation results, conforms to the types of crimes in accordance with the law, etc. While the court is not necessarily obligated to approve a juvenile's application for closure of juvenile criminal records, the federal law clearly requires that courts hearing juvenile cases have an obligation to inform minors of their rights [6].

In general, the subject of China's juvenile criminal records sealing system is single, the system is implemented legally and ex officio, and has set a maximum penalty of 5 years, while the United States is based on the application, which

gives more opportunities to the minors who have been punished to some extent.

3.2.2. Storage procedure

The Criminal Procedure Law of our country has not provided for the procedure of sealing juvenile criminal records. According to Article 504 of the Criminal Procedure Rules of the People's Procuratorate (for Trial Implementation), the People's Procuratorate shall seal up the juvenile criminal records as it provides that: "The people's procuratorate shall bind up the juvenile criminal records, files, and other relevant materials to be sealed into a volume, keep them in encrypted form and shall not make them public, establish a special archive of criminal records of juvenile and implement a strict custody system." In judicial practice, the people's court and the public security organ should seal up the relevant criminal records according to the above procedures after the effective judgment of the court or the people's procuratorate has made a relatively non-prosecution decision.

States in the United States have different regulations on the implementation of juvenile criminal records sealing. Taking California as an example, the California Rule states that there are generally four procedures before a juvenile record gets sealed: first, the application procedure, a guardian of a minor or a minor who has reached the age of 18 shall apply for the initiation of the procedure for sealing criminal records by a probation officer. Second, the procedure of investigation and submission of reports. According to the application, the probation department investigates the personal details of minors and finally submits the relevant investigation report to the juvenile court, which decides whether to seal it. Third, third, the hearing procedure, the juvenile court holds a hearing on the sealing of juvenile criminal records. Fourth, the procedure for sealing up. According to the conclusion reached during the hearing, the court decided to seal the juvenile criminal records and all relevant materials according to law [7].

3.2.3. Exceptions

The juvenile criminal records sealing system in China is relatively mechanical, which only takes age and announced term of imprisonment as the sealing conditions. In China, there are no exceptions except for the two conditions of being under the age of 18 at the time of committing a crime and being sentenced to fixed-term imprisonment of not more than five years, as stipulated in Article 286 of the Criminal Procedure Law on sealing juvenile criminal records.

In the United States, by contrast, not all juvenile criminal records can be filed for closure. Each state will generally make relevant exceptions for crimes that have relatively large social harm. These include those who are on probation, those who are currently in criminal (adult) trial, those who have been convicted by a criminal (adult) court, and those

who have been found by a juvenile court to be involved in a misdemeanor of "moral depravity". They are not eligible for criminal records sealing [8].

4. COMPARISON OF SOCIAL EFFECTS OF JUVENILE CRIMINAL RECORDS SEALING SYSTEM BETWEEN CHINA AND UNITED STATES

People with criminal records can be seen as being labeled. According to labeling theory, improper labeling of people will lead to the emergence of secondary deviation. Juveniles are relatively mentally immature, and their self-regulation ability is weaker than that of adults. So those who are labeled as "ex-convict" after committing a crime are bound to be more overwhelmed than adults, and thus more likely to be negatively affected by the label. In addition, those who are labeled with "criminal records" will also cause social exclusion. Such social exclusion has the shadow accompanying characteristics, which are easily found in all aspects of social life, such as employment, education, and participation in political life. The fundamental purpose of the criminal records sealing and expungement system in China or the previous conviction records sealing and expungement system in the United States is to expunge this kind of exclusion and ensure good participation of these juveniles in social life. The two are consistent in effect, but only slightly different in degree. The following is specified in terms of education, employment, and political participation.

4.1. Education Guarantee

A number of laws in China expressly prohibit educational discrimination against minors with criminal records. For example, the Law on the Prevention of Juvenile Delinquency provides in Article 48, and the Law on the Protection of Minors provides in Article 57, respectively, that educational discrimination against minors with criminal records shall not be allowed. Nevertheless, in practice, there is no supporting system to regulate such provisions. The obstacles to the re-education of juvenile delinquents after their return to society have not been alleviated. For example, in practice, in order to achieve the "zero crime rate" target in various evaluations, most schools will take measures to discourage juvenile delinquents in the stage of compulsory education, while for juvenile delinquents in the stage of non-compulsory education, they will be expelled directly. In addition, public security colleges, judicial colleges, military academies (including armed police academies), flight majors and a few foreign language majors specifically require "political trial", which includes whether criminal punishment has been imposed or not. For example, the Central Academy of Judicial Police, a university directly under the Ministry of Justice, clearly stipulates that those who have received criminal punishment

or are suspected of committing crimes cannot pass a political trial [9].

In the United States, colleges and universities also require students to fill in whether there is a criminal record. It is often stipulated that criminal records need not be filled in when it is sealed or expunged. One of the famous public universities in the United States, University of Massachusetts Amherst, for example, one of the required and optional items of application list is "criminal records or punishment records", but it also provides that there is no need to report if the applicant's delinquency/punishment falls under the following categories: (1) The court has pardoned the delinquency or removed, canceled, sealed, destroyed, deleted, detained the files or otherwise ordered confidentiality. (2) The delinquency is a misdemeanor such as an intemperance, minor brawl, over-speed driving, minor traffic violation or nuisance; (3) Any conviction or misdemeanor committed prior to the date of application 5 years. Unless sentenced to imprisonment after the judgment, or sentenced to another criminal offense within five years. Different from the so-called political trial of admission as we are familiar with, it is worth noting that the United States only requires applicants to report whether they have criminal records or not voluntarily. Moreover, if it is a misdemeanor in the law and there is no sentence is executed, there is no need to report, let alone affect admission. Even if there are criminal records that must be filled in, it will not affect the school's assessment of the applicant's eligibility. Only after passing the preliminary exam will someone at the admissions office check the criminal records provided by the applicant and assess whether it is serious enough to affect admission qualification. Only in rare cases will admissions offices consider an applicant's criminal records to be detrimental to admission. Even so, the school will ask applicants for additional information in order to make a final decision [10].

4.2. Employment Security

As mentioned above, from the perspective of the legal system, the juvenile criminal records sealing system comprehensively guarantees the right to equal employment of juvenile delinquents. However, due to the lack of relevant regulations, there are always some problems such as easy disclosure of relevant information and lack of relief channels, etc. caused by unreasonable sealing mode, unclear sealing procedures. In terms of social concepts, most enterprises are very concerned about the criminal records of the candidates when recruiting employees, and the society also has extensive employment discrimination against the juvenile with criminal records. In terms of public service and social positions, a number of laws stipulate that "persons who have criminal records shall not, within a certain period of time or forever, engage in such occupations as civil servants, certified public accountants, lawyers, prosecutors, judges, teachers, accountants, auctioneers, directors, and supervisors of companies, senior managers and medical practitioners", such as the Law on Public Procurators, the Law on Civil Servants, the Law on

Judges, the Law on Lawyers, the Company Law, the Accounting Law, the Registered Accounting Law, the Law on Medical Practitioners, and the Teachers Law [11]. This undoubtedly makes the sealing of juvenile criminal records less effective.

As for the criminal records of juvenile delinquents in the United States, after a certain period of sealing, would be destroyed in accordance with some conditions. The United States has also established a fairly comprehensive system for the retention, management, and inquiry of relevant records. Take Ohio's rule as an example, only judges, police officers, and prosecutors have the right to access the records of an institution, and no other person or institution has the right to do so. However, from the perspective of social practice, in the United States, criminal records are still a huge obstacle to the employment of relevant personnel. Historically, "felony criminal" has been suffering from social discrimination. For example, when applying for a job, applicants need to state whether he has "felony records", while the employer rarely hires a person with any [12]. But it is worth noting that there are new changes in employment restrictions for people with criminal records in the United States: five states (Hawaii, Kansas, New York, Pennsylvania, and Wisconsin) already have laws that prohibit discrimination against people with criminal records unless the above-mentioned crime is work-related [13].

4.3. Restrictions on political participation

In China, as far as political participation is concerned, in reality, minors with criminal records can hardly serve as student leaders or be rated as "triple-A student", and their participation in public activities in their communities and schools is also very low [14]. When juvenile delinquents come of age, the continued political exclusion is mainly reflected in two aspects: first, compared with those without prior criminal records, such people are extremely difficult to join the Party; Second, such personnel cannot hold positions in state organs. For example, article 6 of the Civil Servant Law of the People's Republic of China stipulates that "those who have been subjected to criminal punishment for their crimes shall not acquire the status of a civil servant", which in effect deprives juvenile delinquents of the opportunity to exercise their political rights by holding posts in state organs [14].

In the United States, almost all criminal offenders are excluded from the civil service, which is similar to the attitude of China's civil service regulations towards those with juvenile criminal records. Rule iv of the Civil Service Act BIS disqualifies applicants: an applicant who has committed a crime shall not be employed [15].

5. REFERENCE AND IMPROVEMENT: SUGGESTIONS ON THE JUVENILE CRIMINAL RECORDS SEALING SYSTEM IN CHINA

Through the previous comparative study, it is found that there are obvious differences between China and the United States in the concept, content, and procedures of this system. Compared with China, the United States is better in the system construction and social practice of juvenile criminal records sealing. It can be used for reference according to the actual situation in the process of China's future juvenile criminal records sealing system development and improvement. Of course, the juvenile criminal records sealing and expungement system in the United States and the values behind it are also constantly facing social doubts and challenges. Therefore, as China's juvenile criminal records sealing system is in the period of "initial growth", in addition to the construction and improvement of the system itself, we should also pay attention to the revision of the values behind the system, and seek the balance between the social public interests and the protection of minors' rights and interests.

5.1. Seek the Balance Between Juvenile Protection and Social Protection

Throughout the development process of the juvenile criminal records sealing system in the United States, it has been vacillating between juvenile protection and social protection and has been constantly revising itself by confronting the doubts and challenges. At the beginning of this system's establishment, the focus was the expungement of juvenile criminal records, but now, many states have introduced sex offender registration law, this change shows that the criminal policy-oriented by crime is gradually replacing the policy-oriented situation for juvenile delinquents. However, this sealing system in China has just been running, although the punishment of fewer than 5 years' imprisonment has been defined as the condition for sealing, in terms of substantive effect, this isolated standard is still difficult to balance the juvenile protection and social protection. Therefore, in the subsequent development, the balance between the juvenile protection and public interest maintenance should be taken as the principle for further improvement.

5.2. Grant Relevant Subject the Application Right to Initiate the Sealing Procedure

In the United States, police records are not voluntarily expunged along with juvenile criminal records. Lawyers would then have to demand that all records of the juvenile involved in the case to be sealed tirelessly, a task that in practice would be impossible because many families cannot afford the high fees. To a certain extent, China's automatic

sealing system avoids such problems. However, due to the lag of initiating the sealing procedure by the court and procuratorate relying on their authority (only after receiving the court's judgment or the Procuratorate's decision on non-prosecution will the system start). It is very likely that the information about juvenile delinquents will be exposed to the public before the judgment or non-prosecution decision is made, causing irreparable harm to minors. Therefore, on the basis of retaining the original seal up system, we should grant the juvenile delinquents the right to independently apply for initiating the criminal records sealing procedure on their own to better protect their rights and interests.

5.3. Expand the Scope of Sealing Content

The five-year term of imprisonment stipulated in the Criminal Procedure Law is clearly too strict. Since the purpose of this sealing system is to expunge the social exclusion of the juvenile involved in crime and to help the juvenile to return to society and successfully enter school and employment. Then, when setting the scope, we should not deviate from the original intention of the system, or even set unfair conditions. It is unfair to set the saving scope relying solely on the provision of "sentenced to fixed-term imprisonment of five years or a lighter punishment" when all juvenile have strong desire to return to the society. The juvenile who does not fall within this scope will be labeled as "criminal" forever, and they will never be able to return to society in a real sense and start over. This goes against the original intention of the system and greatly reduce the effect that this system intend to achieve.

5.4. Introduce the Juvenile Criminal Records Expungement System

Compared with the sealing of criminal records, the expungement of criminal records has been shown to be superior [16]. Weng' an District of Guizhou Province has carried out a beneficial attempt to expunge the juvenile misdemeanor records and achieved relatively ideal results [17]. Combined with this practical experience and the status quo of the juvenile justice system in China, the juvenile criminal records expungement system in the United States can be introduced on the basis of the existing juvenile criminal records sealing system. To be specific, the eliminating system in China can be applied to the court by procuratorial organs, social organizations, guardians, and close relatives of minors, and be expunged through legal procedures on the basis of strict application conditions. After being expunged, juvenile criminal records will be regarded as non-existent. In the future social life, as a completely normal citizen, the juvenile will enjoy his rights and fulfill his obligations according to law [18].

6. CONCLUSION

Since both physiological and social factors can influence juvenile criminals, helping them return to society can be a complex project to do. As simply sealing up criminal records can hardly protect juveniles, only when our sealing system is connected with correction and rehabilitation can juveniles have successful resocialization without threatening upon public security. How to balance the interests of juvenile delinquents and social interests effectively and reasonably is still a difficult problem that legislators need to overcome in the future.

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