

The Current Challenges and Reconstruction of China's Criminal Record Sealing System

Chuping Zhou

*Department of International Law, China Foreign Affairs University, Beijing, China
Cherrybomb_0923@foxmail.com*

Abstract. The current crime record sealing system in China is no longer adequate for the governance of minor crimes. Specifically, the system is limited in its scope of application, paying insufficient attention to adult offenders of minor offences; in terms of the criteria for sealing records, the current system relies solely on the severity of the sentence, neglecting an assessment of the nature of the offence; during implementation, a lack of coordination between relevant functional departments, coupled with inadequate technical capabilities, has resulted limited effectiveness in practice. To address these issues, the scope of the criminal record sealing scheme should be expanded to include eligible adult offenders; dual criteria—sentence length and nature of the offence—should be adopted to determine eligibility, adding the subjective factors into account; and operational coordination between relevant departments, should be strengthened. By these ways, the criminal record sealing system will more effectively facilitate the reintegration of offenders into society and their return to normal life.

Keywords: Minor crimes, Crime record sealing, Collateral consequences

1. Introduction

In July 2024, the Third Plenary Session of the 20th Central Committee of the Communist Party of China passed the "Decision of the Central Committee of the Communist Party of China on Further Comprehensively Deepening Reform and Promoting Chinese-Style Modernization", which proposed to "establish a crime record sealing system for minor crimes". This decision points out a new direction for the governance of minor crimes [1]. Against the backdrop of people's increasingly strong aspiration for a better life, the refinement and humanization of crime governance have become important propositions for the construction of the rule of law in the new era. Currently, the structure of criminal offenses in China shows a significant "double rise and double fall" feature: the crime rate and severe punishment rate of serious violent crimes continue to decline, while the crime rate and light punishment rate of minor crimes steadily increase. The proportion of minor crime cases sentenced to less than three years in prison has reached as high as 83.2% [2]. New types of minor crimes such as dangerous driving and helping information network criminal activities have seen a sharp increase. In the past decade since drunk driving was criminalized, over three million people have been convicted [3]. Minor crimes have become the main target of criminal law regulation.

However, the current crime record-related system has failed to adapt to this structural change. Although the penalties for minor crimes are relatively light, the collateral consequences resulting from the retention of their criminal records are often severe and long-lasting. For instance, China's criminal record reporting system requires individuals who have been criminally punished to truthfully report their criminal history when enlisting in the military or seeking employment, making the criminal record a lifelong "social stigma" for the offender. Even the education and employment rights of their spouses and children are affected, violating the principle of personal responsibility for one's crimes. This not only weakens the rehabilitative effect of criminal penalties but also forces some minor offenders to re-engage in criminal activities due to their inability to reintegrate into society normally. Although the crime record sealing system for minors in China has become increasingly mature, young adults who commit minor crimes are completely excluded from the application of this system.

At present, how to break through the limitations of the existing system and extend the sealing system to young adults who commit minor crimes has become an urgent problem to be solved in the field of crime governance. Regarding the handling of criminal records for young adults who commit minor crimes, existing literature has initially outlined the overall picture of this system by starting from basic issues such as the initiation of crime record sealing, sealing conditions, sealing effects, and the setting of probation periods. However, issues such as the scope of the sealing system's application subjects and whether subjective factors should be included as consideration criteria still need further exploration [4]. Based on this, this article will propose a more complete localized model of crime record sealing after analyzing the existing problems of the system, in order to achieve a balance between social stability and the protection of offenders' rights.

2. The current model of the criminal record sealing system in China

2.1. The applicable subjects are limited to minor offenders with minor crimes

The current criminal record sealing system in China originated from the judicial practice at the grassroots level for juvenile crimes. In 2003, the Chang'an District People's Court of Shijiazhuang City was the first to introduce the "Implementation Measures for Eliminating Juvenile Criminal Records", and the People's Courts of Xuzhou City and Lichang District in Qingdao City also successively carried out pilot projects for sealing juvenile criminal records or eliminating criminal records, accumulating local experience for the system's standardization [5]. In 2012, Article 275 of the "Criminal Procedure Law of the People's Republic of China" (hereinafter referred to as the "Criminal Procedure Law") first established the criminal record sealing system for juveniles in legislative form, marking the transition of this system from fragmented local pilot projects to unified national norms. In 2018, Article 286 of the Criminal Procedure Law inherited this regulation, and in 2022, the Ministry of Public Security, the Ministry of Justice, the Ministry of State Security, and the Ministry of Justice jointly issued the "Implementation Measures for Sealing Criminal Records of Juveniles", further detailing the scope of sealing, procedures, and responsibilities. Thus, the criminal record sealing system for juveniles has basically matured at the normative level.

Currently, the practice of the criminal record sealing system in China mainly focuses on sealing juvenile criminal records, while there is a significant gap in the application for adults. According to Article 286 of the Criminal Procedure Law, the applicable subjects of criminal record sealing are strictly limited to "natural persons who committed crimes before the age of 18", and they must meet the criminal penalty condition of "being sentenced to imprisonment of less than five years", excluding the application possibilities for adults and serious juvenile offenders. Although Chinese

criminal law has the principle of special protection for juveniles, from the perspective of institutional value, criminal record sealing should not completely exclude adults from application. The behavioral characteristics and re-socialization potential of young adults who committed minor crimes determine that they should be included in the scope of criminal record sealing application. From the perspective of social governance, minor offenders are mostly accidental crimes with lower subjective malignancy, [6] and after criminal punishment and education and reform, their personal danger has significantly decreased, and the possibility of reoffending after returning to society is much lower than that of serious criminals; from the perspective of rights protection, young adult offenders and juvenile offenders also face similar employment discrimination and social exclusion due to criminal record labeling, and their needs for returning to society are roughly the same. Foreign practices have also considered this, such as in the "Federal Central Register Law" of Germany, it is clearly stipulated that the managing agency does not distinguish between minors and adults in the process of sealing criminal records [7]. It can be seen that the standardized sealing of criminal records for young adults is an important path to achieve the balance between social defense and rights protection.

2.2. Lack of precise evaluation of applicable objects

Currently, in China's criminal law, when determining whether a criminal can be subject to criminal record sealing, the "penalty determination" model is adopted, which mainly refers to the severity of the criminal punishment received by the offender. According to Article 100, Paragraph 2 of the Criminal Law, those under the age of 18 and sentenced to a prison term of less than five years can be exempted from the obligation to report their criminal record; Article 286 of the Criminal Procedure Law stipulates that those who were under the age of 18 at the time of committing the crime and were sentenced to a prison term of less than five years should have their criminal records sealed.

The advantage of the "penalty determination" model lies in clear standards and strong operability, avoiding all subjective disputes in the judgment of criminal nature. However, its drawbacks are also very prominent. Taking the prison term as the sole determining criterion ignores key factors such as criminal nature, subjective fault, and social danger, which may lead to conflicts between the application of the criminal record sealing system and social defense needs. First, this model does not distinguish between violent crimes and non-violent crimes. Psychological research results show that violent offenders have a significantly higher level of violent risk and cold-hearted traits than ordinary people, while emotional cognition and empathy are generally lacking. This physiological defect leads to their poor correctional effectiveness and higher reoffending risk. It is necessary to adopt special management methods for them, distinguishing them from non-violent offenders [8]. Second, this model does not distinguish between intentional crimes and negligent crimes. From the perspective of behavioral norms, intentional offenders hope or allow the occurrence of harmful results, and the criminal law's behavioral norms for intentional offenders are to avoid creating such a danger, while negligent offenders have a negative attitude towards the result and do not have a clear subjective cognition before the occurrence of the harmful result. Therefore, the behavioral norms are reflected in the necessary duty of care. From the perspective of dangerous manifestations, the danger of intentional acts is dominant and directional, while the danger created by negligent offenders is arbitrary. There are differences in the degree of harm to legal interests and the difficulty of avoiding it between the two [9]. It is easy to see that criminals with different criminal natures and subjective malignancies have different degrees of harm to legal interests and personal danger when committing crimes, and the reoffending possibility at the time of criminal punishment completion is different. Deciding whether to seal the criminal record based solely on the final determined sentence term may

lead to an inappropriate expansion of the sealing scope and easily trigger public concerns about whether adults they interact with in daily life have criminal records and whether they may reoffend, increasing social distrust.

2.3. There are deficiencies in the operation of the system

The current criminal record sealing system in China is structured based on the division of responsibilities among the public security, procuratorial, and judicial departments. The public security department serves as the main executing agency; the procuratorate mainly assumes the role of legal supervision, correcting issues such as improper sealing and information leakage; the court has the authority to decide on the sealing and unsealing of criminal records; the judicial administrative department conducts supervision and evaluation for community correction subjects and provides basis for sealing recommendations [10]. This model was intended to achieve standardized management and limited disclosure of criminal records through their collaboration. However, in the digital age, it has exposed problems such as regulatory lapses and insufficient effectiveness.

Firstly, the lack of management control over the query subjects leads to the disorderly dissemination of criminal records. Although the "Work Regulations for Handling Criminal Record Queries by Public Security Organs" established a limited query model, the problem of generalized query subjects remains prominent. On one hand, according to Article 286 of the Criminal Procedure Law, sealed criminal records cannot be provided to any unit or individual, except for judicial authorities due to case handling needs or when relevant units conduct inquiries in accordance with national regulations. The "case handling needs" of judicial authorities are relatively easy to define and manage, but the scope of "relevant units" and "national regulations" is too vague, resulting in some units expanding their query authority under the guise of "employment review" and even using criminal records as a routine recruitment threshold, which violates the legislative intention of limited query. On the other hand, the characteristics of digital technology enable criminal record inquiries to break through the restrictions of official channels. Units, media, and individuals have the opportunity to bypass the official criminal record information database and query the criminal record information of the behaviorist through diversified internet search platforms or private service providers. Currently, there is a lack of effective regulation of non-official query channels. This disorderly dissemination of criminal records caused by the inadequate management of official institutions will render the "limited right of forgetting" intended by the criminal record sealing system a mere illusion.

Secondly, the development of digital technology poses challenges to the effectiveness of criminal record sealing. The persistence and ease of dissemination of digital memory make criminal records difficult to be completely concealed once they are made public. The current system of judicial documents disclosure and criminal record sealing lacks effective connection. The real-name disclosure model of judicial documents does not specially handle the information of the sealing subjects, resulting in the criminal records still being accessible through network search. At the same time, the existing system does not establish mechanisms for information deletion and anonymization on platforms such as search engines and social media. Criminal records will be permanently retained in the online space, resulting in severely limited sealing effectiveness.

3. The necessity of reforming the criminal record sealing system in China

At present, the criminal record sealing system in China has initially demonstrated its positive impact on the re-socialization of minors. However, the relevant rights of adult criminals still lack attention and protection at the institutional level. Moreover, from the perspective of the original intention of establishing the criminal record sealing system, the current model still faces some challenges that need to be overcome. Reforming the system model is precisely the necessary step to realize the value of the criminal record sealing system.

3.1. The excessive consequences of criminal records in China

Under the current criminal record system, the negative impacts of criminal history on criminals are lifelong and severe, and their extent even exceeds the criminal penalties themselves. This is inconsistent with the principle of proportionality and contradicts the principle of restraint in criminal law.

Firstly, criminal records are lifelong, which violates the principle of correspondence between guilt and punishment in criminal law. Criminal penalties are not only tools for punishing criminal acts, but also intended to reform criminals and help them return to normal life [11]. However, the continued existence of criminal records contradicts the short-term nature of minor criminal penalties, letting them permanently fix them in the identity of "criminals", restricting their daily life and social evaluation. Even if their personal danger is low and the possibility of reoffending is low, they still cannot escape the long-term stigmatization brought by the criminal records. This lifelong consequence is unnecessary for those who commit minor crimes and may even have the opposite effect, increasing the risk of reoffending, and deviating from the fundamental purpose of crime governance.

Secondly, the relevant criminal record system imposes overly severe punishments on criminals, which is inconsistent with their social harm degree. Professional fields with public attributes, such as lawyers, police, judges, and prosecutors, prohibit access for criminals. More and more employers also set "no criminal record" as a basic requirement for job seekers, causing criminals to encounter lifelong qualification restrictions in core social activities such as work and interpersonal relationships. In terms of life, those with criminal records are subject to restrictions in various aspects such as household registration and residence permit applications, adoption of children, and obtaining financial assistance [12]. Many college students, driven by ignorance and the desire to earn quick money, provide their bank card information to fraud gangs, ultimately constituting the "aiding in information network crime activities crime", affecting their military enlistment, civil service recruitment, and overseas travel, and ruining their future [13]. Moreover, this restriction also has an improper "ripple effect". In some regions, restrictions are imposed on the spouses, children, and even parents of the convicted individuals in aspects such as education, public recruitment, and civil service examinations, violating the principle of liability for fault [14]. For example, Huang was celebrating his child's success in the examination and had a dinner with friends. Later, due to drunk driving, not only did he himself receive a sentence, but his children's civil service recruitment, military (police) school admission, and party membership applications would also be restricted, and their future was greatly hindered [15]. This situation of minor criminals being trapped for a lifetime by a single criminal experience is worthy of reflection and correction.

3.2. The current system is unable to achieve the limited effect of forgetting

On a deeper level, the predicament of China's current criminal record sealing system lies in the fact that the right to be forgotten for criminals is not effectively guaranteed when they return to society. The right to be forgotten is an extension of personal rights and refers to the right of criminals to request that their criminal facts be "forgotten" after the completion of their sentences, so as to reintegrate into society with a complete personality [16]. People are the end rather than the means, [17] therefore, the purpose of criminal punishment is to make criminals reform themselves, [18] and getting rid of the constraints of criminal records is a prerequisite for them to resume normal life. However, the current system runs counter to this in the following two aspects.

First, the existing sealing system and the query mode have an inherent conflict. The "Regulations on the Work of Handling Criminal Record Queries by Public Security Organs" issued by the Ministry of Public Security in 2021 only covers minors who have been sentenced to less than five years of imprisonment. This means that the criminal records of all adult criminals and minors who have committed serious crimes are in a legal sense in a "semi-public" state, the public can still easily obtain these records. Faced with a large number of unsealed records, the limited query system has greatly diluted the protection effect of the right to be forgotten for criminals.

Second, the significant development of digital technology makes the realization of the right to be forgotten even more difficult [19]. In this era, as Professor Jacobs pointed out, the advent of the Internet era has made criminal history information easier to be collected and disseminated, while it is more difficult to be controlled [20]. Especially the comprehensive online public disclosure of judicial documents has promoted judicial transparency, but it has also made criminal records once uploaded to the Internet to be separated from the physical control of the archive system and collected by various commercial platforms, forming permanent digital traces. Even if the records were legally sealed by the judicial authorities in the background, their initial dissemination on the Internet is difficult to be completely removed. Employers, business partners, and even ordinary members of the public can easily obtain this information through search engines, resulting in discrimination and exclusion of criminals in all aspects of employment, business transactions, social interactions, etc.

3.3. The current system is unable to ensure the re-socialization of criminals

The label theory reveals that when an individual is officially labeled as a "criminal", this label may surpass other social roles and become the main self-identity and the identity by which society recognizes them [21]. Based on this, the existing system has a significant negative impact on criminals at the psychological level.

The essence of punishment is not only to punish existing crimes, but also to prevent future crimes. Its ultimate goal should be to reform criminals through education and rehabilitation, enabling them to reintegrate into society [22]. However, when criminals complete their sentences and are full of hope to restart their lives, they are confronted with a high wall built by criminal records, such as widespread restrictions on employment based on criminal records in various fields, [23] and ubiquitous social discrimination. This continuous social exclusion and negation will cause them to live in a state of anxiety, fear, inferiority, and tension for a long time. If that continues, they may internalize the negative social evaluation and form a corresponding negative self-identity, thereby actively or passively continuing to commit criminal acts. Some criminals resort to taking risks again precisely because they cannot survive due to employment discrimination caused by criminal records [24].

In conclusion, the realization of the fundamental goal of punishment should focus on re-establishing the system of sealing criminal records. By effectively promoting the sealing of criminal records, breaking the lifelong curse of criminal labels, and opening up the path for the re-socialization of minors and young offenders, it can prevent crimes at the root and maintain social harmony [25].

4. The reconstruction path of China's criminal record sealing system

Based on the aforementioned challenges, it is necessary to reshape the model of China's criminal record sealing system in order to truly realize its institutional value, effectively respond to social needs, and promote the modernization of China's legal system. Specifically, this will be carried out from the following three dimensions:

4.1. Including minor adult offenders within the applicable subject category

The key to expanding the subject category is to clearly define the criteria for minor adult offenders, that is, to determine a reasonable demarcation point for the criminal penalties of minor crimes. The selection of this standard should take into account the continuity of the legal system and the needs of crime governance. Based on the opinions of the academic community and judicial practice, setting the three-year prison term as the demarcation point between minor and serious crimes is the optimal choice. Firstly, from the perspective of legislative tradition, the provisions in Article 67 of the Criminal Law regarding leniency for self-reporting and the setting of relevant sentencing norms all implicitly imply the use of the three-year prison term as the logical demarcation point for the distinction between the severity of criminal penalties. This demarcation point has become a consensus in criminal law theory and practice [26]. Secondly, from the perspective of institutional reform costs, the sealing of juvenile criminal records adopts the three-year standard, and setting the standard at three years for adults will also facilitate institutional connection and has strong operability, with low legislative costs. Thirdly, from the perspective of judicial reality, the proportion of minor crime cases sentenced to less than three years of imprisonment in China has been continuously increasing, and corresponding institutional adjustments are needed to adapt to this trend.

Compared with the five-year prison term demarcation point, the three-year prison term standard can more reasonably distinguish the social harmfulness of minor and serious crimes and the subjective malignancy of the offender, avoiding the expansion of the sealing scope due to a too large gap in the prison term; compared with the five-year prison term demarcation point based on the international definition in the United Nations Convention against Cybercrime, it is rooted in China's local legislation and judicial practice, does not need to break the logical framework of the existing criminal law system, and can effectively avoid legal application chaos. Using the three-year as the demarcation point can cover the majority of minor crime groups under the sealing system, fully exerting the core function of the system in promoting the re-socialization of criminals.

4.2. Adding the nature of the crime as an objective evaluation criterion

In response to the deficiency of the existing system in not evaluating the subjective factors of the criminal, it is necessary to restructure the model for determining the scope of applicable subjects from a single determination of the prison term to a "mixed crime-penalty" model. That is, based on the standard of a prison term of less than three years, while taking into account the crime nature,

subjective fault, and risk of recidivism, and excluding the application of sealing for specific types of crimes, to achieve the organic combination of the prison term standard and the crime nature standard.

From the perspective of the prison term standard, based on a prison term of less than three years, the vast majority of minor crimes with less social harm and lower subjective malignancy are included in the sealing scope, which is in line with the basic requirements of light crime governance; from the perspective of the crime nature standard, for crimes endangering national security, terrorist activities, crimes of black society organizations, intentional homicide, rape, robbery, etc., serious violent crimes, drug crimes, sexual crimes, etc., regardless of whether the declared sentence is less than three years in prison, they are excluded from the applicable scope of the sealing system. Such crimes either infringe upon national legal interests or social public interests, or have a high risk of reoffending. If they are subject to criminal record sealing, it is very likely to trigger public concerns about social security. For example, in occupations closely related to minors, such as education and juvenile protection industries, there are natural entry restrictions for perpetrators of sexual crimes and violent crimes. The "mixed crime-penalty" model, by excluding such crimes from the sealing application, can effectively connect with the occupational prohibition system, ensuring the safe operation of special industries.

At the same time, incorporating subjective fault into the consideration of crime nature, differentiating between negligent crimes and intentional crimes: for negligent crimes, as long as they meet the prison term standard and there are no other exclusion circumstances, they are directly subject to the sealing system, because the perpetrator of negligent crimes holds a negative attitude towards the harmful result and has no intention to violate the law, the personal danger is significantly lower than that of intentional crimes; for intentional crimes, in addition to meeting the prison term standard, it is also necessary to review their criminal circumstances, attitude of repentance and confession, etc., and comprehensively judge their risk of recidivism, and then decide whether to apply the sealing system.

The construction of the "mixed crime-penalty" model can effectively complement the deficiencies of the "penalty determination" model, ensuring that the application of the sealing system is adapted to the social harm of the crime and the personal danger of the offender, and achieving a balance of the value of the criminal record sealing system.

4.3. Enhancing management and technical capabilities to improve operational effectiveness

In response to the poor sealing effect of the existing model in practice, the criminal record sealing system needs to establish a multi-departmentally efficient collaboration and online/offline comprehensive control operation model to ensure the standardized sealing of criminal records and the substantive realization of the right to be forgotten.

First, standardize the query subjects and procedures. Through legislation to limit the scope of query subjects, clearly stipulating that only judicial authorities due to case handling needs and specific occupations due to legal professional prohibition requirements can query criminal records. For unit queries, the query unit is required to provide legal basis and written application, which can be provided after being reviewed by the public security authorities, and the query results can only be used for specific purposes, and are prohibited from being used or disseminated without authorization. For non-official query channels in the Internet era, the information technology department can jointly establish a network information governance collaborative mechanism with the public security authorities, requiring search engines, social media, etc. to take measures such as deletion or shielding of sealed criminal record information, and providing an information deletion

application channel for criminals. In addition, the legal liability for illegal query and dissemination of criminal records should be clearly defined, and for the illegal acts of units and individuals, a gradient punishment including administrative sanctions, civil compensation and criminal responsibility should be set, forming an effective legal deterrent.

Second, strengthen technical support and institutional connection. A mechanism for anonymizing criminal records should be established, anonymizing the judgment documents corresponding to the sealed criminal records, deleting identifiable personal information, ensuring that they can only be used for legal query purposes and cannot be used to identify specific individuals. In addition, a unified national criminal record sealing information management platform should be established to realize real-time sharing of information among various departments and full traceability, through technical means to standardize query rights and operation procedures, and automatically record information such as the query subject, query purpose, and usage, providing data support for supervision.

5. Conclusion

Although the criminal record sealing system in China has become relatively mature in the field of minors, when the era of minor crimes arrives, the current system's shortcomings in aspects such as the selection of applicable subjects, the assessment of criminal objects, and the operation mechanism have become increasingly prominent. It is difficult to effectively guarantee the rights of criminals to re-socialization, deviating from the original intention of the system. Therefore, reshaping the criminal record sealing system has become an inevitable requirement for the development of China's criminal justice. After years of exploration, the system for sealing criminal records of minors has accumulated rich legislative and practical experience. Research in the criminal justice field on the governance of minor crimes also provides support for the expansion of the system. The development of digital technology has provided technical guarantees for the standardized management and effective sealing of criminal records, making the improvement of the system feasible in reality. In the future, by reshaping the evaluation and operation models, the criminal record sealing system in China will be more scientific and standardized, clearing obstacles for minor criminals to return to society and restart their lives. At the same time, it will reasonably concern the psychological needs of the general public and promote further progress in legal construction and social governance.

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