

Study on Mitigating the Collateral Consequences of Crime in the Context of Misdemeanor Governance

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ABSTRACT

In the context of misdemeanor governance, the irrational design flaws of the prior conviction system stand out, and its negative impact is centered on the excessive consequences attached to crime. Based on the record of previous convictions, the system of previous convictions should rationally balance the needs of national governance and the protection of citizens' private interests. In order to alleviate the problem of excessive collateral consequences caused by the rational defects of the system's previous conviction system, it is suggested that they should start from alleviating the collateral consequences, make it clear that the previous conviction system is actually a record of penal facts, and think about how to amend the previous conviction system. The design of the prior conviction system needs to weigh the problem of conflict of interest between national governance and the protection of citizens' rights and interests, clarify the scope of prior convictions that can be watered down and the time conditions under which the prior conviction system can be watered down, and finally need to exempt the obligation of proactive reporting of prior convictions after they have been watered down and delete some of the prior convictions that have no relevance to the penalties.

Keywords: Misdemeanor governance, Prior convictions system, Mitigating attachments, Rule improvement.

1. INTRODUCTION: THE PARADOX OF THE PRIOR CRIMINAL RECORD SYSTEM AND MISDEMEANOR LEGISLATION

China has entered the era of misdemeanors, but the system of prior convictions has had serious consequences attached to crime, which is a problem that needs to be addressed urgently. The system of prior convictions is already in conflict with the principle of misdemeanor legislation, resulting in the consequence that misdemeanors are not actually misdemeanors; it also produces serious criminal collateral consequences, making it more difficult for offenders to reintegrate into society, thus making it more likely that they will go on to commit crimes, and it also produces unfavorable consequences for the offender's close relatives and for the development of the country. In order to realize the well-being of the people and the long-term stability of society, it is necessary to study how to mitigate the consequences of crime and to

propose a system of de-emphasis of previous convictions that is adapted to the situation.

There is a clear trend towards the misdemeanourization of new criminal offences in China's Criminal Law. On the one hand, the Criminal Law has been amended several times since 2011 and clearly reflects the trend towards the misdemeanourization of criminal law legislation, which generally refers in China to offences of less than five years' fixed-term imprisonment or custodial sentence. The 17 crimes added to the Criminal Law Amendment (XI) are basically misdemeanors. On the other hand, with the development of society, the structure of criminal law offenses in China has begun to shift from felonies to misdemeanors. According to Prof. Lu Jianping's statistics, during the period of 2013-2023, the proportion of misdemeanor cases with a declared sentence of less than 3 years' imprisonment is more than 80%, and the rate of felonies is within 20%, with the exception of 2017. [1] The purpose of the prior conviction system

itself is to prevent crime, and has always helped China to control crime and maintain the socialization process in the past decades. However, with the arrival of the era of big data, criminal information that is made public will face the risk of being permanently memorized, which will have a very strong impact on the offender. In 2012, China in the Criminal Procedure Law to add the "juvenile crime sealing system", but with the continuous development of technology in the era of big data, resulting in the leakage of minors' criminal records, minors in higher education, exams, employment is discriminated against, there are many deputies to the National People's Congress put forward proposals. In 2022, China introduced a relatively comprehensive "Implementation Measures on Sealing Criminal Records of Minors" to amend the system of prior convictions of minors.

Minors are not the only ones who suffer from the effects of a previous criminal record; the number of persons convicted of misdemeanors is increasing day by day, and their previous record is perfectly memorized by big data, which will lead them to face a multitude of consequences attached to the crime. The criminal collateral consequences of the previous conviction system have an impact that exceeds the penalty that the perpetrator of the misdemeanor should receive, a result that is clearly contrary to the purpose of the misdemeanor legislation. Criminal collateral consequences refer to the restriction, prohibition or deprivation of specific rights and qualifications of a person with a criminal record or his/her family members, relatives, etc., as stipulated in laws, regulations and rules other than the criminal law.

The criminal collateral consequence refers to the restriction, prohibition or deprivation of the specific rights and qualifications of the criminal ex-convicts or their family members or relatives as stipulated in laws and regulations outside the criminal law. [2] For example, many misdemeanor offenders find it difficult to find work after returning to society. According to statistics, 76.3% of the ex-prisoners in Shanghai, Jiangsu and Anhui encountered considerable difficulties in finding employment. [3] In the context of misdemeanor legislation, the social harm of offenders is reduced, and the penalties they receive are also reduced. However, the offender's record of previous offenses will be recorded by big data and can be checked at any time, which will make him/her have to bear the consequences of previous offenses for the rest of his/her life, and suffer from discrimination in employment, failure of children's political

examination, and lifelong prohibitions of employment, and so on. This is not only contrary to the original intent of the misdemeanor legislation, but will also increase the circle of crime, and even increase the risk of recidivism. According to the statistics of Nanchuan Prison in Chongqing Municipality, among the 402 recidivists from 2015 to 2017, the number of jobless people was 291, accounting for 72.4%. [4]

2. EXCESSIVE CONSEQUENCES ATTACHED TO CRIME: THE IRRATIONALITY OF THE PRIOR CONVICTION SYSTEM

The main reason for the disproportionate consequences attached to crime is the irrationality of the system of previous convictions, i.e. the current system of previous convictions does not fit in the era of big data and the context of misdemeanors. In the past, "it was the norm for prior criminal records to be forgotten and the exception to be remembered". However, in the era of big data, not only will the criminal record data be permanently memorized, but also people only need to operate in their own computers, you can be informed of the public criminal record information, in short, "the criminal record is remembered is the norm, forgotten is the exception". In conjunction with the provisions of the system of previous convictions, the consequences of the crime will not only be directed at the offender himself, but will also affect the offender's family and the interests of the State.

2.1 Difficulties in Social Reintegration and Increased Risk of Recidivism

In the era of big data, most records of previous convictions are easily accessible to the public, and criminal records are difficult to forget, so it is almost impossible for offenders to live in a society free from the collateral consequences of previous convictions. China's Opinions on the Establishment of a Criminal Record System for Offenders and the obligation to report previous convictions as stipulated in Article 100 of the Criminal Law have indeed been effective in preventing crime in the past few decades, but when applied in today's society, they have greatly increased the resistance of misdemeanor offenders to returning to and integrating into society. The current system of previous convictions carries excessive consequences attached to the crime and increases the risk of reoffending by the offender.

On the one hand, the deterrent effect of a harsh prior conviction system, whereby citizens are deterred from committing crimes out of fear of punishment, will hinder the process of rule-of-law society. The original purpose of the prior conviction system is to prevent crime, and the overly harsh prior conviction system is also for the general preventive effect of crime. In most people's minds, they are more fearful of the consequences that come with punishment, because just "having been in prison" means that one may permanently lose one's job, one's social status, and one's opportunity to engage in certain professions in the future, and, in particular, the deterrent effect of punishment is strengthened by the fact that such punishment is also extended to one's children. [5]

On the other hand, in today's society, the system of previous convictions is like permanently labeling an offender as "you are a criminal", which will lead to the offender's eventual reoffending. "Labeling theory suggests that criminals are created by society; the process of creating criminals is a process of labeling, defining, identifying, segregating, describing, emphasizing, and forming consciousness and self-consciousness.[6] For one thing, by being permanently labeled as a criminal, the offender is kept in a state of discrimination and outcast from society. Even very minor offenses often face the effects of prior convictions equal to other felonies. As some scholars have pointed out, even though the public's satisfaction with social security in China has reached 98.4%, the public has a very stereotypical image of criminals, and treats them as a "plague" that they generally stay away from.[7] Such a social phenomenon will lead to the increasing marginalization of offenders, who will always live under the shadow of having committed a crime. In order to survive in the society, but not be accepted by the society, the offender will easily take the path of crime again. Secondly, the permanent criminal label may provide subtle psychological hints to the offender that he or she is born to commit crimes, and so he or she continues to commit crimes. Some scholars have examined samples of organized crime in Henan and Hunan provinces and found that the proportion of prior convictions among triad offenders is about 31.8%, much higher than that of 19.5% for other gang crimes, suggesting that once an offender has been labeled as a "criminal", it may deepen his or her identity and increase the risk of committing another crime.[8]

2.2 Labeling of Families and Reproducing the Risk of Guilt by Association

According to the "labeling theory" introduced earlier, the system of prior conviction will not only label the offender as a criminal, but also label the offender's family members as criminal family members. The spirit of criminal responsibility has always been enshrined in criminal law, but it does cause unavoidable harm to the offender's family. Some of the serious collateral consequences of the system of prior convictions are clearly avoidable.

First, part of the criminal record system also causes the offender's family to be harmed by the criminal record, but this harm can be avoided through changes in laws and regulations. In the past, many people have objected to this "guilt-by-association" approach, which is contrary to the spirit of self-responsibility. In this regard, there have been many objections to this "guilt by association" system, and some deputies to the National People's Congress have proposed to cancel the requirement that parents have no criminal record when applying for civil servants, and most of the families of the offenders have expressed their unwillingness to be innocently implicated by their family members' previous convictions. Further, it is clearly irrational that the offender's greatest fear is not of penal punishment, but rather of the criminal attendant consequences of a prior criminal record on the family phenomenon. Because of the characteristics of the big data preservation of the previous record, the consequences of the crime will be accompanied by the offender's family life, especially the previous record of misdemeanor crimes will cause and very dangerous felonies are affected by the same, not only with the spirit of self-responsibility, but also against the principle of appropriateness of the crime and the punishment. Finally, the insistence on self-responsibility is a basic requirement of penal justice.[9] However, the criminal attachments brought about by the previous conviction system are similar to the ancient "guilt by association system", which is contrary to the spirit of the current penalty of self-responsibility, in order to alleviate the above crime attachments to the family members of the criminals caused by the consequences of the crime, need to be based on the characteristics of today's society, the development of a suitable system for the dilution of the previous conviction.

The system of prior convictions not only has criminal collateral consequences for the offender and the offender's family, but also causes losses to

the State and society, bringing criminal collateral consequences to the State and society. With the increasing number of misdemeanors, the current state of crime in China has seen the emergence of many high-haircut misdemeanors, greatly expanding the criminal circle in China, and many of these offenders are elites in various industries. If there is a certain degree of rationality in the consequences attached to the crime for the offender and the offender's family, then the consequences of the loss of highly skilled personnel to the country and society brought about by the harsh prior conviction system are really undeserved. The country to train a talent will have a large amount of money invested in the early stage, if the talent is never hired after a misdemeanor, the initial investment will be "sunk". At present, society shows the trend of misdemeanor, in order to avoid the consequences of crime attached to the loss of the country and society, it is necessary to develop a system to adapt to the de-emphasis of previous convictions.

3. TRANSFORMATION OF THE LOGIC OF THE COLLATERAL CONSEQUENCES OF CRIME: OBJECTIFICATION OF THE FACTUAL RECORD

The consequences attached to the crime itself should be the result of a normative evaluation of the criminal act, recording the crime committed for the purpose of the judicial authorities' management of society; at the same time, in order to prevent crime, a negative evaluation is made of the previous conviction. However, the incidental consequences of crime have begun to become a new growth point in China's criminal law research, and its existence of arbitrarily set up, inconsistent standards, too harsh and other normative deficiencies have attracted the attention of the academic community. [10] The record of previous conviction itself is also a kind of factual record, a record of criminal facts, in order to realize the purpose of crime prevention, but the consequences attached to the crime brought about become a continuation of the punishment for the offender, which is obviously contrary to its original intention. However, the logic of the consequences attached to crime should itself be an expression of "objectification of the factual record", i.e., a normative negative evaluation of the behaviour committed by the offender, making him responsible for his own behaviour; it is not an over-extension of the penalty, abusing the record of the

previous conviction to impose a lifelong punishment on the offender.

3.1 The Original Intent of the Collateral Consequences of Crime Is at Odds with the Current State of Affairs

The original purpose of the ancillary consequences of crime brought about by the system of prior convictions was to prevent crime. On the one hand, it is a preventive measure following the imposition of penalties, and on the other hand, the record of prior convictions can facilitate the State's formulation of relevant crime prevention and control measures. Criminal law often has a lagging effect, and through the statistics of crime the State needs to formulate relevant policies to maintain social security. For example, criminal law provides for heavier penalties for repeat offenders, and parole is not allowed for repeat offenders. Furthermore, through the statistics on the records of previous convictions, the judicial authorities can grasp the development trend of crime in China and notify to make certain adjustments. It can be seen that China has entered the era of misdemeanors and needs to make corresponding adjustments to the system of previous convictions in order to better adapt to the development of the times. On the other hand, the prior conviction system reduces the risk of recidivism by restricting the rights of offenders. Teaching staff who have committed crimes such as sexual abuse, maltreatment, abduction, violence and injury against minors will be prohibited from working with minors. Since they have committed serious crimes against minors, they are prohibited from working with minors in order to prevent recidivism and to avoid reintroducing the idea of committing a crime.

However, the current system of prior criminal convictions brings with it consequences attached to the crime, which are not in line with the original purpose of the system of prior criminal convictions. The ancillary consequences of the crime will become a continuation of the penalty, constantly and invisibly penalizing the offender. First, the criminal law imposes a permanent obligation on offenders to report prior convictions voluntarily, which will create an obstacle to their employment. As mentioned earlier, an offender who voluntarily reports a prior conviction when seeking employment will not be hired by the organization. Although the system itself is an obligation on the offender, in practice, it is an obstacle for the offender to seek employment. Secondly, many of

the provisions on prior criminal records are similar to "guilt by association", which will affect the interests of children. Public offices require proof of the criminal record of both the offender and his or her parents before the offender can apply for a job; in some provinces, the criminal record of the parents even affects the children's ability to settle in a household. These provisions are obviously on the rights and interests of the family members of the offender's limitations, disguised as the offender's criminal behavior, the continuation of the sentence to punish the offender's family. And in the era of big data, the impact of prior criminal records will be magnified. Offenders will be permanently labeled as "criminals", unable to integrate into society, and constantly marginalized, in effect perpetuating the penal punishment of offenders. Third, the rule of law system continues to improve, the protection of civil rights increased, the former record system will be deprived of rights or restrictions, the offender will be punished and more painful. Therefore, because the current "penal market" is becoming more and more perfect, but the logic of the consequences attached to crime has not been transformed, it will lead to the system of previous convictions becoming a long-term or even life-long punishment system for offenders.

3.2 Collateral Consequences of a Crime as an Objective Representation of the Facts of the Crime

According to the above, the consequences attached to the crime have become the continuation of the penalty, but the record of the previous conviction itself should only be an objective record of the fact of the crime. China's criminal law does not have a clear definition of "previous conviction", but it is generally recognized that the previous conviction is a kind of legal fact or the fact of being declared guilty by the court and sentenced to imprisonment [11], that is, the previous conviction is a normative record of the criminal facts. , i.e., the previous conviction is a normative record of the fact of committing a crime. The existing system of previous conviction will make the "previous record" such as the judicial organs of the "criminal record" of the permanent preservation of the general public perfect memory, so as to produce a permanent crime attached to the consequences of the offender for life. However, the record of previous conviction cannot be only an objective record of criminal facts, for example, the system of previous conviction stipulated in the criminal law itself does not stipulate the punishment of the

offender, but in practice, other systems and social concepts will lead to the system of previous conviction to produce serious crime attached to the consequences. Nowadays, the formulation of the former criminal record system is arbitrary, and most of the former criminal record systems are formulated and implemented by the grass-roots departments, which leads to the misuse of the former criminal record and deviates far from the objectivized description of criminal facts. For example, in some areas, the parents' previous conviction records have caused their children's points for settling down to be affected; previous conviction records irrelevant to the content of their jobs have caused them to lose their chances of obtaining a job because of the obligation to report on the initiative of the previous conviction. Excessive extension of the previous criminal record increases the consequences attached to the crime, thus "labeling" the offender. Therefore, the system of previous convictions should be modified so that it reduces the consequences of the crime and becomes an objective record of the fact that the crime has been committed.

The current research on mitigating the consequences attached to crime is only aimed at preserving the original intent of the establishment of the system of previous convictions, mitigating the new punishment or the result of the continuation of the penalty caused by the system of previous convictions, even if the record of previous convictions returns to the objectivized record of the fact of committing a crime. The antecedent fading system can restore the rights of offenders after a period of time and reduce the resistance to their return to society, even if the antecedent record is forgotten by the public after a period of time, which not only serves to mitigate the consequences attached to the crime, but also balances the management of the State with the protection of human rights. The previous conviction fading system is in fact the sealing of the relevant provisions of the juvenile criminal record, after adjusting the sealing conditions for different cases, will be applied to all misdemeanor offenders before the target. First of all, the criminal record fading system is to prohibit public access to the criminal record after meeting certain conditions, in order to realize the forgetting of the criminal record in the era of big data. As stipulated in the Implementing Measures on the Sealing of Minors' Criminal Records, the criminal records of misdemeanors committed by minors are sealed, i.e., they are not accessible to the public. In this way, the public will

not have access to the minor's criminal record, and there will be no "criminal labeling" effect, as mentioned above, so that the minor can be given a chance to start over. A similar sealing system can be conditionally adopted for a previous conviction dilution system, giving offenders of minor crimes a chance to start over, thus better realizing crime prevention. Furthermore, the system of fading out previous convictions will not lead to the permanent extinction of previous conviction records, giving full play to the advantages of permanent memory in the era of big data, and in the process of handling cases, when deemed necessary, the relevant previous conviction records can be inquired at any time. Minors' criminal records can be consulted at any time when deemed necessary by the judicial authorities in the course of handling cases. In this way, the judicial organs more minors real criminal record, to its crime appropriate punishment.

4. PRINCIPLE OF MITIGATION OF THE COLLATERAL CONSEQUENCES OF CRIME: BALANCING THE INTERESTS OF BOTH PARTIES AND MAKING THE CRIME FIT THE PUNISHMENT

The foregoing discussion of the serious criminal consequences of the system of prior convictions for a wide range of subjects shows that, in the context of misdemeanor governance, the system of prior convictions has many drawbacks, which can have a very serious impact on public life. At the same time also puts forward the mainstream view of the academic community, "the system of elimination of previous convictions" can not take into account the rights and interests of offenders at the same time, continue to maintain a good state based on the punishment of criminal behavior. Finally, the authors puts forward "the previous conviction dilution system" to improve "the previous conviction elimination system" shortcomings, the following will be specific implementation of the main system design of the previous conviction dilution system.

4.1 Dynamic Balance Between State Management and the Safeguarding of Human Rights

There has always been a conflict of interest between the State's aim of better managing crime and safeguarding the rights and interests of

offenders. On the one hand, from the point of view of the State's governance of crime, the judicial authorities must be as comprehensive as possible in their record of crime. Because the state needs to classify the crime statistics, what kind of crime rate in society, which age group crime rate, etc., the state according to the statistical results, to formulate appropriate strategies to maintain long-term social security. If all the eligible records of previous convictions are deleted, the criminal records of the state will be missing, and the conclusions drawn will not be in line with the current situation of the society. Therefore, previous criminal records are of profound significance to the deployment of national policies and the research of social status, and should not be easily deleted. On the other hand, from the point of view of protecting the rights and interests of offenders, the harsher the conditions for the review of prior criminal records and the wider the range of sealed criminal records, the more favorable it will be to the offenders. This is because the wider the scope of publicized previous conviction data, the more the offender will be discriminated against and the more difficult it will be for him to return to society. For example, if an offender takes the initiative to report his or her previous criminal record when seeking employment, the probability is that the job search will end in failure, so the offender will generally not take the initiative to report his or her previous criminal record when seeking employment.

In order to achieve a balance between the State's basis for governing crime and the conflict between safeguarding the rights and interests of offenders, in fact, all that is needed is to restrict the public's access to prior criminal records, i.e., to record criminal records in their entirety in the system of the judiciary, and at the same time to appropriately desensitize or grant access to the published content of the crime in question. Through the previous analysis of the Measures for the System of Sealing Criminal Records of Minors, it is not difficult to find that the "sealing" here is actually to prohibit the public from learning about part of the previous criminal record. As long as the public has no access to criminal records, after a certain period of time, criminal records can be removed from the permanent memory of the big data era, forgotten by the public, and the "criminal label" will no longer exist. It is true that "appropriate desensitization or increased access" may infringe on part of the public's right to know, but not all conflicts should prioritize the protection of the public's rights and interests. The main purpose of the criminal record

system is to prevent recidivism, if the implementation of the appropriate desensitization of the content, may increase the likelihood of recidivism, which is obviously contrary to the main purpose; at the same time, partial desensitization only infringes on a very small part of the right to information, and the public can still be informed of the means and effects of our crime control, so the public is infringed on a very small part of their rights and interests, but the legislative purpose of preventing recidivism can be achieved, in line with the principle of proportionality. And assuming that the content of the publication is the same as the content of the judicial authorities for the record, it is difficult to find a balance between the state's crime control and the rights of the offender before. Therefore, the author believes that by appropriately separating the public content of prior criminal records from the content archived by the judiciary, i.e., appropriately different, the rights can be balanced and weighed, thus realizing the original intent of the legislation.

4.2 Differentiation of the System of Prior Convictions for Felonies and Misdemeanors

The system of prior felony dilution needs to make it clear that only prior records of misdemeanors should be sealed by the judiciary on its own initiative when the conditions of the system of prior felony dilution are met.

First of all, part of the desensitized information can still be pieced together to identify the offender, and there is still a possibility of leakage even after the access rights to the records of previous convictions are raised, so it is necessary to seal the records of eligible previous convictions, and prohibit anyone from accessing them by any means, except for cases where the judicial authorities consider it necessary to do so.

Furthermore, the judiciary should adopt a system of periodic active sealing of eligible prior convictions. Offenders are generally not informed of the first time a previous record is made public, and by the time most offenders apply for the deletion of a previous record, it has already been disseminated. At this point then apply for the initial publication of the record of the previous criminal record, there is no longer any significance, has resulted in the corresponding consequences of the crime attached. Therefore, the system of dilution of previous conviction records should follow the principle of "forgetting is the principle,

remembering is the exception", so that when a misdemeanor meets the conditions of the system of dilution of previous convictions, the judicial authorities should periodically review and take the initiative to seal the previous conviction, rather than sealing it only after the person concerned applies for it.

Finally, not all prior criminal records should be sealed by default after a certain period of time, but some prior criminal records for felonies should be made public, regardless of the period of time elapsed, in order to serve as an ongoing warning to the general public and to make it difficult for them to reintegrate into society. On the one hand, since these felonies are often punishable by long prison sentences, life imprisonment, or even the death penalty, and most of them have restrictions on commutation of the sentence, these offenders may not face the possibility of reintegration into the community, and there are no serious consequences attached to the crime as analyzed above. On the other hand, the system of prior convictions is not only intended to reintegrate offenders into society, but is also a non-criminal punishment that is punitive in nature to the offender. The devastation caused by felonies to society is so great that felony offenders are generally required to be permanently removed from society to prevent them from committing further serious crimes against society, so there is no need to reintegrate them into society through a system of de-emphasis of prior convictions.

5. SPECIFIC MEASURES FOR MITIGATING THE COLLATERAL CONSEQUENCES OF CRIME: CLARIFYING RELEVANT INSTITUTIONAL DESIGN

Admittedly, the academic community for the elimination of the previous criminal system is very intense discussion, but the current law has not yet provided a clear prototype of the previous criminal system. And China already has for juvenile delinquency sealing system of perfect system design, the mechanism of the system is also more close to the design of the system of forensic fade system idea, thus can see the system of forensic fade system will be more than the system of forensic deletion more suitable for China's national conditions, might as well in the forensic fade system, improve the design of the system of forensic, the following will be put forward on the

system of forensic fade system of part of system to improve the idea.

5.1 Clarification of the Duration of the Dilution of the System of Prior Convictions

The system of de-escalation, which applies to all misdemeanour offenders, needs to be of a limited duration, similar to the probationary period for probation and parole; after all, the system of de-escalation provides assistance for the smooth return of the offender to society, and the need to ensure that the returning offender is not physically dangerous. Moreover, all people should bear the consequences of their own behavior, because of their own previous criminal behavior, the offender should bear the consequences of its accompanying, so it should be allowed to dilute the record of previous convictions after a certain period of time.

The de-escalation system has the attribute of punishment, and the amount of punishment should correspond to the danger of the crime. Therefore, when setting up the test period of the system, it should be based on the social danger of the misdemeanor committed, the attitude of pleading guilty and admitting punishment after committing the crime, and the size of the subjective intention of the crime, and so on, and stipulate a different period of time. The author believes that the following provisions can be made: in principle, according to the principle of appropriateness of crime and punishment, the social dangerousness of the crime tops the test period of the de-escalation of the criminal record. Social danger is small, set a shorter test period; relatively large harm, set a longer test period. In exceptional cases, where the crime committed is more socially dangerous, the test period may be shortened where appropriate on the basis of the offender's good attitude in admitting guilt and actively repenting and making up for the loss; in the case of misdemeanors occurring with high frequency in society, the test period should be appropriately lengthened. Conditional shortening of the test period can promote active repentance on the part of the offender to make up for the harm caused to others by the crime, better defuse conflicts and maintain a climate of social stability; appropriate extension of the test period realizes a better general preventive effect of the crime.

5.2 Exemptions from the Proactive Reporting Obligations of the Former Criminal Justice System

Chinese criminal law provides for a very vague obligation to report previous convictions, which increases the consequences attached to the crime; therefore, under the system of dilution of previous convictions, it should be stipulated that after the previous convictions have been diluted, i.e., when the public is restricted from learning of the previous convictions, the obligation to report the previous convictions should no longer be present. Because the Standing Committee of the National People's Congress has established the principle of "whoever is in charge is responsible", that is, once a unit employee commits a crime, in addition to the victim and his or her close family members and the perpetrator's close family members, it is the employing unit that bears the brunt of the impact of the crime.[12] Therefore, employers often need to know about the previous convictions of their employees, but if the person concerned has already met the conditions of the system of elimination of previous convictions, it should be recognized that the person concerned has already received the completion of rehabilitation and should be given equal employment opportunities.

When an offender's prior convictions are diluted and he or she is still required to fulfill the obligation to report them, the system of dilution of prior convictions loses its significance. When an offender is released at the end of his or her sentence, legally it means that the offender is released because he or she is not socially dangerous and does not have the risk of reoffending. The criminal record of the offenders who satisfy the system of dilution of previous convictions will be diluted, but also because they have accepted the punishment appropriate to the crime, and passed the test, that does not have a personal danger, and only permitted to dilute their previous convictions. These offenders, therefore, should be exempted from the obligation to report their previous convictions in order to better integrate them into society. As in the case of minors who have been sentenced to less than five years' imprisonment, they may be exempted from the obligation to report their previous convictions. The crimes for which this provision stipulates that they may be exempted from the obligation to report their previous convictions are, in fact, the criminal records of minors that have been sealed. So the minor's previous record, under certain conditions is no active reporting obligation, since the previous

record fading system of juvenile crime sealing system extension, also should be exempted from the previous record fading offender's previous record reporting obligation.

5.3 Recognition of the Relevance of the Prior Criminal Record System to Criminal Conduct

The penalty imposed on an offender is necessarily related to his or her criminal conduct, and the ancillary consequences of crime brought about by a prior conviction system are also a form of punishment for the offender. If the punishment is not related to the nature of the crime, it may lead to the abuse of the system of previous convictions and increase the risk of recidivism, so the system of previous convictions which has no relevance should be deleted. Some scholars have also indicated that it is necessary to carry out occupational classification management, that is, according to the special nature of different occupations, appropriately restricting offenders from engaging in specific occupations for a specific period of time after their reintegration into the society, so as to minimize or remove the unnecessary qualification restrictions on the offenders.[13] The author believes that there are some problems with the restriction of employment qualifications arising from the system of prior convictions, and that it is indeed necessary to make corresponding modifications to employment qualifications in order to improve the system of dilution of prior convictions.

First, some of the provisions of the previous convictions system will implicate the close relatives of the perpetrators, and the law should delete this provision. At the time of conscription, those whose immediate blood relatives have been sentenced to death or are serving a sentence will not pass the political examination and will not be allowed to apply for the People's Police. Whether the applicant has helped or participated in the crime of a blood relative, the applicant is prohibited from applying across the board, and there is a risk of "guilt by association". When reporting for the civil service, students are also asked to show the criminal record of their parents. Although there is no direct statement that criminal behavior of the parents will affect their children's civil service recruitment, generally children of parents with criminal records will not pass the political examination, and ultimately will not be admitted. What's more, some scholars have found that the presence of criminal records of parents will also have the practice of

deducting the points of children's settlement and schooling.[14] The consequences of criminal attachments brought about by these previous convictions will lead to the close relatives of the offenders being directly or indirectly labeled as "criminals", which will have a series of effects brought about by the criminal labeling and increase the risk of reoffending. Therefore, these "guilt-by-association" systems, in which "one person commits a crime and the whole family suffers", violate the legislative principles and spirit of a society governed by the rule of law, and should be revised or deleted in a timely manner.

Secondly, the prohibition of employment under the Partial Prior Conviction System has no correlation with its criminal acts, i.e., the crime committed does not have an adverse effect on the prohibition of employment. On the one hand, some scholars believe that the blanket exclusion of people with prior convictions is to maintain the professional image of public officials. For example, China's civil service recruitment, join the party in the army, teacher recruitment, will not ask the recruiter is intentional or negligent crime, all will not be hired. However, it is not reasonable to disqualify some citizens for the sake of their professional image, just like adding the requirements of long legs, double eyelids, and good looks to the recruitment requirements, because the professional image itself is not directly related to personal ability. As Bodenheimer has exemplified, statutes denying left-handed people the right to hold public office should not be given effect unless the society is convinced that there is a causal relationship between left-handedness and professional incompetence.[15] Setting a level playing field for every applicant in the unit recruitment examination can also better select talents for the unit. On the other hand, only the avoidance of ex-convicts in the recruitment examination for public officials will increase the career halo effect for public officials from the side. However, behind the "professional halo" is the strict maintenance of morality and ethics as well as the industry's reputation.[16] However, in fact, public officials and non-public officials are of equal status, and public officials do not have the so-called halo, so the system of previous convictions should be revised.

6. CONCLUSION

In the era of misdemeanours, the system of previous convictions must change in order to adapt

to the trend of misdemeanourization and to realize the original purpose of the system of previous convictions. As the criminal circle continues to expand, the call for "reinstatement" will continue to grow, and academics should prepare for this in advance. Offenders return to society is still a road of suffering, people should be responsible for their own behavior, but the crime and punishment to make the best effect of punishment, rather than excessive punishment. China's criminal record system is a "double-edged sword", indeed on China's crime control, maintenance of social security play a very good role, so that China has become one of the world's most secure countries; but now there is indeed the phenomenon of over-punishment of offenders, increase the correctional and prevention of re-offense of the offenders of the difficulty. Moreover, as the overall cultural level of the people continues to rise and the construction of rule-of-law State continues to improve, the people will pay more attention to safeguarding their rights, and legislation should be balanced to deal with the conflict between national governance and the safeguarding of human rights.

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