

Risk Assessment & Risk Management: A Canadian Criminal Justice Perspective

# 罪犯风险评估与管理： 加拿大刑事司法的视角

杨诚 王平 主编

Risk Assessment & Risk Management:

A Canadian  
Criminal Justice  
Perspective

D074.437

# 罪犯风险评估与管理： 加拿大刑事司法的视角

**Risk Assessment & Risk Management:  
A Canadian Criminal Justice Perspective**

知识产权出版社

## 内容提要

本书介绍了加拿大关于罪犯风险评估与管理的实践经验和研究成果,总结开发和运用四代风险评估手段的经验和教训,这些成功的经验和成熟的理论成果为我国监狱改造罪犯提供科学的范例。

责任编辑:龚卫  
装帧设计:张小力

责任校对:韩秀天  
责任出版:卢运霞

## 图书在版编目(CIP)数据

罪犯风险评估与管理:加拿大刑事司法的视角/杨诚,  
王平主编. —北京:知识产权出版社, 2009. 1

ISBN 978-7-80247-224-2

I. 罪… II. ①杨…②王… III. 犯罪分子—监督改造—  
研究—加拿大 IV. D971.167

中国版本图书馆 CIP 数据核字 (2008) 第 171319 号

## 罪犯风险评估与管理:加拿大刑事司法的视角

ZuiFan FengXian Pinggu yu Guanli :

Jianada Xingshi Sifa De Shijiao

杨 诚 王 平 主编

---

出版发行:知识产权出版社

社 址:北京市海淀区马甸南村 1 号

网 址: <http://www.ipph.cn>

发行电话:010-82000893 82000860 转 8101

责编电话:010-82000887 82000860 转 8120

印 刷:知识产权出版社电子制印中心

开 本:880 mm×1230mm 1/32

版 次:2009 年 1 月第 1 版

字 数:150 千字

邮 编:100088

邮 箱:bjb@cnipr.com

传 真:010-82000893

责编邮箱:gongwei@cnipr.com

经 销:新华书店及相关销售网点

印 张:5.375

印 次:2009 年 1 月第 1 次印刷

定 价:18.00 元

ISBN 978-7-80247-224-2/D·734

---

版权所有 侵权必究

如有印装质量问题,本社负责调换。

## 中加合作研究项目

本书英文原著由加拿大刑法改革和刑事政策国际中心组织加拿大专家编写，由中国政法大学恢复性司法研究中心组织翻译成中文。本书的中文译本由中加合作编辑，并由加拿大国际发展署资助出版。本书各章中表达的观点和见解纯属作者个人意见，不代表国际中心或加拿大政府的任何具有普遍性的官方政策或看法。

### **A Sino-Canadian Joint Research Project**

The original English version of this book was written by Canadian experts organized by the International Centre for Criminal Law Reform and Criminal Justice Policy in Canada and translated into Chinese by the Centre for Restorative Justice in China University of Political Science and Law. The translated book in Chinese was jointly edited by Chinese and Canadian co-editors and published with funding support from the Canadian International Development Agency. The views and opinions expressed in the chapters herein are those of the authors and do not represent any overarching official policy or opinion on the part of either the International Centre or the Canadian government.



## 序 言

从1995年开始，中加两国的法学专家在刑事司法领域中开展了富有成效的合作交流。在两国关系这个新的合作领域中，位于加拿大温哥华的刑法改革与刑事政策国际中心和位于北京的中国政法大学的一批刑事法学研究工作无疑是最早的开拓者。国际中心通过由加拿大国际发展署资助的中国项目，作为加拿大最先与中国法学界和有关部门在刑事司法领域中开展项目合作的机构，在加拿大联邦和省市三级刑事司法及执法机构和多所大学、民间组织及众多学者专家的积极参与和支持下，先后通过与最高人民检察院、中国政法大学刑事法律研究中心、国家检察官学院、最高人民法院、司法部法律援助中心、北京师范大学刑事法律科学研究院（及中国人民大学刑事法律研究中心）、中国政法大学诉讼法研究中心（现为诉讼法学研究院）和中国监狱学会以及北京、上海、广东、四川、广西、福建、新疆等省市自治区有关机构的合作交流，共同努力为中加两国的合作开辟了一个全新的领域，促进了两国有关政府机构和专家在刑事法学和刑事司法领域中的互信互助，取得了影响深远和令人满意的丰富成果。

中国与西方国家在矫正领域最先开展的合作研究项目，是作为“中加刑事司法合作项目”组成部分之一的中加矫正项目。该项目最先由国际中心和中国监狱学会合作实施。1998年，双方组织了中加矫正界之间的第一轮交流考察活动，其中包括由中国监狱学会王飞副会长率领的代表团访问加拿大，考察联邦监狱和国家假释委员会及有关制度。这是中国大陆代表团对加拿大社区矫正机构的第一次实地考察。代表团在访问后向中国司法部和上海市政府提出考察报告，建议在上海设立社区矫正的试点。这项建议后经反复论证



得到采纳，成为导致上海市在三年后率先开展中国大陆第一个社区矫正试验的重要因素之一。1999年10月，加拿大矫正局麦克兰局长率加拿大矫正代表团到上海出席第十九届亚太地区矫正管理者会议，在会后举办大型专题讲座，介绍了包括有条件释放和社区矫正在内的加拿大联邦矫正制度。随后，加拿大国家假释委员会常务副主席科莱特夫人等部分专家出席了中国监狱学会在北京召开的刑释人员重新犯罪与预防研讨会，并且分别就假释在减少重新犯罪中的作用、罪犯通过非监禁处遇回归社会以及“多层次、渐进式的释放制度”等专题宣读了论文。现在，中国的社区矫正已经扩大到了25个省市。

在2000~2007年，双方根据初步交流了解到的情况和资料确定课题，共同编写出版了《中加矫正制度比较研究》一书（法律出版社2001年出版）。此后，时任中国监狱学会主要领导的金鉴会长和王明迪副会长等分别率团访问、考察加拿大矫正机构，科莱特夫人和加拿大矫正局第一副局长等多批加拿大专家也访问了中国的各种监狱和社区矫正机构。双方对监狱管理、假释和社区矫正等议题开展了积极的讨论。在此基础上，双方于2005~2006年度合作编写了《中加社区矫正制度概览》一书（法律出版社2008年出版）。在2006~2007年，为探讨如何避免有条件释放可能对公共安全带来的负面影响，国际中心与中国政法大学恢复性司法研究中心合作，编写一部介绍罪犯风险评估的参考书，介绍加拿大关于罪犯风险评估的实际经验和研究成果。

中加双方之所以选择这一课题，是基于中方改进矫正工作、特别是进一步推进社区矫正试点工作的实际需要。现代矫正制度的根本目的，不是为了惩罚犯罪人，而是为了保障公共安全，保证服刑人安全回归社会、成为守法公民。为实现这一目的，一个公正、有效、文明的矫正制度必须保证科学决策，实行科学管理，采用科学手段。罪犯风险评估是矫正工作科学决策的基础，罪犯风险管理是矫正工作科学管理的核心，而开发应用精确评估和有效控制再犯风险的科学手段正是提高矫正工作公正与效率水平的关键之一。加拿



大在这一领域是国际上公认的比较先进的国家之一。加拿大已经积累了开发和运用四代风险评估的丰富经验，其第四代评估工具的开发尤其受到国际矫正界同行的关注。比如，香港特别行政区的矫正部门近年来就引进了加拿大的经验，开发了自己的评估工具。中国大陆的一些机构在近两年也开始注意到罪犯风险评估的意义，有的翻译了国外的一些研究资料，有的发表了一些译文，还有的积累了一些初步的经验。比如，据北京朝阳区司法局阳光社区矫正中心介绍，该中心近年来也在一些心理学专家的帮助下开展风险评估的工作，这是令人鼓舞、大有前途的发展工作。

我们希望，《罪犯风险评估与管理：加拿大刑事司法的视角》一书的出版，将有助于上述工作的继续深入和发展。本书由国际中心矫正项目主任鲍勃·布朗先生组织加拿大专家，撰写或提供资料形成英文原稿，由中国政法大学恢复性司法研究中心主任王平教授邀请中方译者翻译成中文，经本书两位主编共同努力审阅校对，按照英文原义和中文表达习惯加以必要修改（王平教授的博士生郝方昉、王洁做了细致的校对工作），而后最终成书，由加拿大国际发展署资助出版。撰稿人和编者均系利用业余时间从事这一研究翻译项目的工作。由于时间仓促，资源有限，本书难免还有一些不尽如人意之处，欢迎读者指正。

知识产权出版社编辑龚卫女士为本书的出版做了大量的工作，在此表示衷心的感谢。

杨 诚 王 平

2008年7月于北京



## Preface

China's new phase of transition to the rule of law started in 2002, when the 16th National Congress of the Chinese Communist Party announced that comprehensive reforms would be launched to improve the entire justice system, aiming at enhancing the "protection of the rights of citizens and legal persons."<sup>①</sup> This was the first time in the history of the Party that justice reforms were introduced in the General Secretary's Report to the CCP Congress. Subsequently, in 2004, the 10th National People's Congress adopted a resolution to introduce a series of amendments to the Constitution, which for the first time in history officially entrenched "respecting and protecting human rights" as a constitutional principle of the People's Republic.<sup>②</sup> Since then, Chinese reformers have achieved impressive progress in the reforms of the criminal justice system. According to the reformers, the ultimate goal of their reforms is to maintain public safety and enhance social harmony.

The NPC's decision to re-amend the Law of Criminal Proce-

---

① Jiang Zemin, Report to the 16th CCP National Congress, November 18, 2002. [EB/OL]. <http://www.southcn.com/news/ztbd/11b/bg/200211160429.htm>.

② Paragraph 3, Article 33 of the Constitution of PRC, as amended by the National People's Congress on March 14, 2004. [EB/OL]. <http://www.china.com.cn/chinese/PI-c/517236.htm>.





ture, which was systematically amended only a decade ago, has officially opened the door to nationwide discussions on what changes should be made to the Law and the relevant laws and regulations in order to make them and their operation fully compatible with international human rights standards. In the legal circles, the Chinese law reformers have now developed some extremely interesting plans for this legislative reform.

During the past eight years, through the China Program of the Vancouver—based International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), my Canadian colleagues and I have had the pleasure of serving as international supporters working with the Chinese co-editors of this book, Professors Chen Guangzhong and Cheng Weiqiu, and their distinguished colleagues at Centre of Criminal Law and Justice (CCLR) and the Research Center of Procedural Laws (RCPL) in China University of Political Science and Law in Beijing. With strong support from all the Canadian and Chinese experts and organizations working in the field of criminal justice, we have produced a series of publications to support criminal procedural law reforms in China and facilitate the sharing of new ideas and knowledge internationally. This groundbreaking cooperative discourse is generously supported from the Canadian International Development Agency (CIDA) as well as the Chinese and other international donors.

In 1998, Chinese and Canadian experts of the two Centres (ICCLR and CCLJ) jointly produced a book, *United Nations Standards and Chinese System of Criminal Justice*, which was the first ever published Chinese-language systematic overview of the United Nations instruments and issues in implementing these instru-



ments in criminal justice.<sup>①</sup> It has become a classic piece frequently cited in Chinese studies of international standards in criminal justice. In 2000, we published *Compendium of United Nations Documents on Human Rights and Criminal Justice*, now often used by Chinese jurists and practitioners as a sourcebook in the discussion of international instruments of human rights.<sup>②</sup> In April 2002, a major comparative research, *A Study on Issues in Ratifying and Implementing International Covenant on Civil and Political Rights*, was completed.<sup>③</sup> The publication presented the first set of comprehensive Chinese recommendations on the ratification of the ICCPR together with detailed Chinese and Canadian analyses of existing issues in implementing ICCPR standards. In the same year, we also published *Training Manual on International Covenant on Civil and Political Rights — International Standards and Chinese Rules on Fair Trial*.<sup>④</sup> The Manual is now being used in many Chinese law schools and judicial training institutions. In 2004, we published *A Study on Issues of Fair Trial*, which presented four reports of investigative studies in the field and 50 cases that were

---

① Chen Guangzhong, Daniel Prefontaine, Bian Jianlin and Vincent Cheng Yang (eds.), 1998, *United Nations Standards and Chinese System of Criminal Justice*. Beijing: The Law Press.

② Cheng Weiqiu, Vincent Cheng Yang and Yang Yuguan (eds.), 2000, *Compendium of United Nations Documents on Human Rights and Criminal Justice*. Beijing: China Legal System Press.

③ Chen Guangzhong, Cheng Weiqiu and Vincent Cheng Yang (eds.), 2002, *A Study on Issues in Ratifying and Implementing International Covenant on Civil and Political Rights*. Beijing: China Legal System Press.

④ Cheng Weiqiu, Vincent Cheng Yang and Yang Yuguan (eds.), 2002, *Training Manual on International Covenant on Civil and Political Rights*. Beijing: China University of Political Science and Law Press.



reviewed during the research, as well as a series of papers authored by Canadian and Chinese colleagues.<sup>①</sup> The publication of *Fairness in the Trial of First Instance* is another achievement in this series of joint publications. Unlike the previous publications, this book offers more detailed analyses and recommendations regarding a selected number of key issues in implementing the standards of fairness in trials of the first instance.

Although there may be different views about fairness in the trial process, it is now being redefined in Chinese legal studies according to the relevant universal human rights standards. Fifteen years ago, universal standard of fairness was still considered as a controversial and sensitive subject matter in Chinese legal studies. A series of historically important events in the past decade demonstrated some fundamental changes in the cultural attitude towards the standards. China signed the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) in 1997 and ratified it in 2001. It signed the *International Covenant on Civil and Political Rights* (ICCPR) in 1998 and has been preparing ratification since. It entered the WTO in 1998.<sup>②</sup> It introduced the constitutional entrenchment of a general human rights principle in 2004, which has justified a full recognition of ICCPR standards applicable to the criminal process. To realize such a recognition and make the standards work in actual operation, there is a need to push forward the legislative reforms, improve the legal institutions, strengthen the

---

① Chen Guangzhong, Cheng Weiqiu and Vincent Cheng Yang (eds.), 2004, *A Study on Issues of Fair Trial*. Beijing: China University of Political Science and Law Press.

② China's entry of the WTO on December 11, 2001 was considered a major push for massive reconstruction in its economic and legal development.



judiciary and the legal profession, develop a new legal culture and enhance the legal training programs.

Like other parts of China's justice system, the correctional system in China is going through important changes. According to the plan of the Ministry of Justice of the Chinese government, in the next few years, a priority on the agenda to reform the system is to expand the new community correctional service throughout the country. This development, which demonstrates a sincere effort to seek for the less restrictive alternatives to incarceration, is facing many difficulties and challenges. Similar to the public in Canada and in any other country in the western world, the public in China are also concerned about the safety issues in the release of inmates from prisons. Since the launch of China's first community corrections pilot project in Shanghai some 5 years ago, those who have been released under parole of other conditions are mostly low risk non-violent offenders. Although as many as 18 provinces have adopted some form of community corrections, the service is only available in a limited way and certainly not applicable to the vast majority of offenders. The introduction of advanced risk assessment techniques will facilitate the continuing expansion of community correctional services and, in a broader sense, assist the safe reintegration of all offenders.

This publication, entitled *Risk Assessment & Risk Management: A Canadian Criminal Justice Perspective*, is the Chinese translation of Canadian chapters that describe the Canadian tools and practice of risk assessment and risk management. Since 1995, with funding support from the Canadian International Development Agency, the Vancouver based International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) has been active in working with its Chinese partners to promote the implementation of international standards through the reforms in criminal justice.



Since 1998, the International Centre and the China Prison Society have implemented many activities to assist the improvement of the correctional systems. In 2006, the Vancouverbased International Centre for Criminal Law Reform and Criminal Justice Policy (IC-CPR) and the Centre for Restorative Justice (CRJ) in China University of Political Science and Law in Beijing decided to examine the best practice in offender risk assessment and management. As a result, the International Centre's Director of Correctional Program, Bob Brown, and his colleagues who are mostly with the Correctional Service of Canada contributed the 13 chapters and the 6 research summaries. These papers and summaries were then translated into Chinese for publication in China in 2008.

The sharing of ideas and experience through comparisons is essential to every major law reform in China. Since the late 1970s, Chinese law reforms have always been receiving the benefit of comparative studies that aim to combine the Chinese intellectual wisdom with advanced foreign experience in developing options that would satisfy the particular needs of the "Chinese situation".

In his book, *The Long March, The Untold Story*, Harrison E. Salisbury wrote this about the Long March of the Red Army in the 1930s: "No event in this century has so captured the world's imagination and so profoundly affected its future."<sup>①</sup> Building the rule of law is the long march in China today and for the next decade. The progress that we have witnessed in China will bring about many profound changes that will benefit over one billion people.

The world cannot afford not to support China in her effort to promote human rights and the rule of law. Several international do-

---

<sup>①</sup> Harrison E. Salisbury, 1985, *The Long March, The Untold Story*. New York: Harper & Row, Publishers, Inc. at p. 1.



nors, including the Canadian International Development Agency, the Ford Foundation, the United Nations Development Program, the European Union, and some western governments, have given their support by working with international and Chinese experts in this field. For example, in the last ten years, with CIDA's support, through ICCLR's China Program, my Canadian colleagues and I have completed the China-Canada Human Rights Covenants Project, the Criminal Justice Cooperation Project and the China Legal Aid Legislative Development Project. <sup>①</sup>In 2004, based on the results of these pilot projects, CIDA and its Chinese counterpart decided to launch two bilateral projects: the China-Canada Procuratorate Reform Project, which is now effectively implemented by an ICCLR-Salasam consortium with the Supreme People's Procuratorate of China; and the China-Canada Legal Aid and Community Service Project, which is progressing well through the work of the Canadian Bar Association, IBM Canada with the Legal Aid Centre of the Ministry of Justice of China. These and other technical assistance projects have produced significant results in assisting the on-going reforms in China.

It is also our hope that our work will help to improve mutual understanding and the friendly cooperation in the field of law and justice between Canada and China, the two great nations in the world.

Vincent Cheng Yang

---

<sup>①</sup> Over the past 10 years, this author has had the pleasure of observing these developments, being the Canadian director of the first three CIDA China law reform projects listed here, and being able to participate in several other sino-foreign legal initiatives, including the United Nations OHCHR—China Initiative on Human Rights, the UNDP legal aid project, and the Asia Development Bank legal aid project.



## 摘 要

位于加拿大温哥华的刑法改革与刑事政策国际中心（简称“国际中心”，The International Centre for Criminal Law Reform and Criminal Justice Policy）是联合国附属机构，是由位于世界各地的十几个研究所组成的联合国刑事司法机构网络的成员之一，是一个独立的、非牟利性的区域性机构，致力于通过国际合作促进刑事法制的发展。国际中心从事政策分析、技术援助、信息交换和研究交流等活动，在国际合作中奉行人权和刑事司法国际标准，遵守加拿大的有关外交政策，并以联合国犯罪预防与刑事司法计划规定的优先事项为指导。

国际中心自 1995 年开始，在加拿大国际发展署（CIDA）资助下开展了一系列对华合作项目。这些项目涉及刑事司法改革与合作的各个领域，其中包括与中国监狱学会合作开展的矫正制度的研究和矫正专家交流。从 2003 年开始，在加拿大国际发展署资助下，国际中心实施了被称为“在刑事司法中贯彻国际标准”的对华合作项目，其中的三个子项目之一是矫正项目，其着重于社区矫正和风险评估这两个课题。在加拿大，这一子项目的实施以国际中心矫正项目的支持为基础，由国际中心中国项目主任杨诚（Vincent Cheng Yang）博士和矫正项目主任鲍勃·布朗（R. E. Bob Brown）共同负责，并得到加拿大矫正局（CSC）、国家假释委员会以及其他各省矫正机构、加拿大公共安全及紧急应变部矫正局（Corrections Directorate, Public Safety Emergency Preparedness Canada）组织的大力支持。《罪犯风险评估与管理：加拿大刑事司法的视角》一书是国际中心与中国政法大学恢复性司法研究中心在 2006 年签订的合作协议所规定的一项成果，也是上述子项目的最



近一项成果。今后，国际中心期待与包括中国监狱学会、中国政法大学恢复性司法研究中心在内的中方伙伴机构继续发展双方的合作关系。

本书原先的英文本各章节由国际中心矫正项目主任鲍勃·布朗先生组织加拿大专家撰写或提供。原文由中国政法大学恢复性司法研究中心组织翻译成中文。时任澳门科技大学法学院副院长、国际中心中国项目主任的杨诚教授和中国政法大学恢复性司法研究中心主任、中国监狱学会副秘书长王平教授分别审阅了译文，并由杨诚教授对全书译文逐句做了校对更正以提高其准确性。为使中文本更加适合中国读者，两位主编还对包括导言和各章在内的全书译文做了必要调整。加拿大国际发展署向国际中心中国项目提供了项目资金，国际中心因而得以向中国政法大学恢复性司法研究中心提供资助，在北京出版了本书的中文本。

国际中心衷心感谢加拿大国际发展署对国际中心中国项目的慷慨资助和加拿大矫正局的大力支持，也衷心感谢本书的16名撰稿人，并感谢加拿大公共安全及紧急应变部矫正署同意本书第十四章使用其六份研究资料的摘要。

国际中心中国项目主任和矫正项目主任特借此机会感谢中国政法大学恢复性司法研究中心，特别是感谢研究中心主任王平教授在本项目的最后阶段同意加入合作，否则这个项目将不可能按期完成。在此，也感谢中方译者的努力工作。对于国际中心其他同事对中加矫正项目合作活动的支持和帮助，包括中心董事会主席彼得·伯恩教授（Peter Burns）、中心主席丹尼尔·普瑞方廷（Daniel Préfontaine）、执行董事凯瑟琳·麦克唐纳（Kathleen Macdonald），以及中国项目协调员廖铂嘉（Pak Ka Liu）和杨玉立（Yuli Yang）、财务主管珍妮特·贝塔（Janet Bayda）和行政助理罗斯玛丽·纽曼（Rosemary Newman）等人的协助，亦一并致谢。

本书共有14章。以下为各章的内容简介。

## **第一章 罪犯风险评估：加拿大发展状况概述**

本章由加拿大公共安全及紧急应变部矫正署的罗伯特·科米尔





博士 (Dr. Robert Cormier) 撰写。本文追溯了过去 30 年来罪犯风险评估工作在加拿大的发展。由提出“我们为什么要评估风险”的问题开始,本章描述了各种预测方法,区分了临床法与精算法的不同,介绍了数代风险评估手段及其基础理论的演进,归纳出矫正干预原则,最后回顾了加拿大的工作教训。

## 第二章 置于监狱人口管理框架内的个人化的风险和需求评估

本章由劳伦斯·莫蒂克博士 (Dr. Larry Motiuk) 撰写,他来自加拿大矫正局的罪犯回归方案工作组 (Offender Reintegration and Programs)。本文说明加拿大矫正局尽量不使用单一的方法来决定是否释放罪犯而是采用更加全面的方法来收集和整合风险信息。本章着重讲述了以下内容:个人化风险和需求评估;矫正方案发展——静态和动态因素评估;最初的警戒分类——监禁评定量表;罪犯收押评估;补充性风险评估——心理学评估;并简要阐述了监狱人口管理的相关问题。

## 第三章 通过有效的矫正回归来管理风险

本章由弗兰克·科托尼博士 (Dr. Franca Cortoni) 撰写,她来自加拿大矫正局的研究机构。基于矫正改造的目标是为了控制和降低再犯的风险,本章探讨了这样一个问题:什么是有效的矫正方案?本章强调进行研究的重要性,概览了形式评估、效益评估的内容和相关成果。本章还讲述了加拿大矫正局进行矫正干预的几个重要内容,包括:物品滥用干预方案;反社会态度和反社会同伙;家庭暴力干预方案;愤怒和其他情感控制方案;暴力预防方案;以及针对性罪犯的干预方案。对罪犯执行矫正方案时,最新的风险和需求评估也会纳入个案计划中。

## 第四章 风险评估的性别特点:评估女性罪犯

本章由加拿大矫正局女犯研究所 (Women Offender Research, Correctional Service of Canada) 的凯利·布兰切特博士 (Dr. Kelley Blanchette) 撰写。她指出,对罪犯分类与对罪犯行为控制和管理有着密不可分的联系,因为罪犯分类决定着罪犯在整个服刑期间可以获得的特许权利和资源。然而,司法实践中使用的