

Amendments To Criminal Law

刑法修正案最新理解适用

学术顾问 高铭暄

主编 赵秉志

THE LATEST
COMPREHENSION
AND APPLICATION

- 刑法修正案（七）理解适用
- 历次刑法修正案综述



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京师刑事法文库

总序

现代化的国家是法治国家。现代文明进步的社会是法治社会。我国依法治国、建设社会主义法治国家之基本治国方略的确立及其贯彻,对社会的发展进步至关重要。而现代刑事法治则在现代化法治国家中扮演着非常重要的角色。改革开放后的二十多年来,我国的刑事法治已经取得了长足的进步。但是,在新世纪建设社会主义法治国家的进程中,无论是刑事法学理论还是刑事法治实践,都仍需要进一步发展与完善,以更为充分地发挥其应有的作用。

北京师范大学刑事法律科学研究院于 2005 年 8 月建立,系专门从事刑事法学研究的、中国刑事法学领域首家且目前唯一的、独立的实体性综合性学术研究机构。研究院以一批中青年专家学者为中坚,并聘请了包括老一辈著名刑法学家、中央政法机关专家型领导以及重要国际组织领导人在内的国内外知名刑事法专家、学者担任特聘顾问教授、专家委员会委员、兼职教授(研究员)。研究院的设立,旨在建设全国领先并与国际知名刑事法学机构看齐的新型刑事法学术机构,本着刑事法学一体化的精神,逐步全面发展中外刑法学、国际刑法学、区域刑法学、刑事政策学、犯罪学、刑事执行法学、中外刑事诉讼法学、刑事证据学、刑事司法制度等刑事法的诸多学术领域,培养高级刑事法学专门人才,为中国法学研究和高层次人才培养进行新的探索,力争

为中国依法治国、建设社会主义法治国家的伟大事业在刑事法学领域作出更大的贡献。

为达此目标,研究院成立伊始即创办“京师刑事法文库”。研究院的主要成员在中国人民大学刑事法律科学研究中心工作时,亦曾设立“刑事法律科学文库”与“国际刑法研究所文库”,并已颇具规模。为获得更为广阔的学术发展空间与学术交流平台,数位专家学者首批加入北京师范大学创立了全国首家实体性的刑事法律科学研究院。学术事业是薪火相传、继承发展的事业,为使刑事法学术事业得到进一步传承和发扬,北京师范大学刑事法律科学研究院遂在我们设立的原“刑事法律科学文库”与“国际刑法研究所文库”的基础上,重新创办两个系列著作项目,并定名为“京师刑事法文库”和“京师国际刑事法文库”。两个文库是分工不同、相辅相成的姊妹项目,前者以国内刑事法著作为范围,后者以国际刑事法著作为范围。两个文库以百年名校北京师范大学深厚的学术积淀、悠久的历史传统和浓郁的文化氛围为依托,凭借北京师范大学坚实宽广的人文社会科学和自然科学的综合实力,并广泛争取和吸纳中外刑事法学界的 support 与帮助。“京师刑事法文库”的出版领域主要包括国内刑事法律与刑事法学方面(包括刑法、犯罪学、刑事执行法学、刑事诉讼法学、刑事侦查、刑事物证技术等领域)的新意、深度、分量的著作与译作,也会涉及我国港澳台地区刑法暨中国区际刑事法等领域的科研成果,可以是专题研究、综合研究,也可以是论集、有价值的文献资料等形式。同时,为积极关注刑事法治领域重大现实问题,“京师刑事法文库”还将相关专题的著作予以集中,设立若干系列,并聘请著名刑事法学专家担任总主编。文库的作者以研究院专职、兼职研究人员为主,并向其他专家、学者开放。

我们希望通过文库形式能逐步积累学术成果,繁荣、深化和开拓刑事法领域的学术研究,促进国内外刑事法学界的交流合作,不断提升

高我国刑事法理论与实践水平,进而有力地促进国家现代法治之昌盛
和社会的文明进步。

北京师范大学刑事法律科学研究院

院长 赵秉志 教授

谨识于乙酉年初秋

The Criminal Law Library of Beijing Normal University is a specialized library that is mainly responsible for collecting, preserving, and providing services for the teaching and research needs of the College of Criminal Jurisprudence Studies.

Criminal Law Library of BNU

Editorial Office: College of Criminal Jurisprudence Studies, Beijing Normal University

Preface

As a specialized library, the Criminal Law Library of Beijing Normal University has been established for nearly ten years. It is a library that is mainly responsible for collecting, preserving, and providing services for the teaching and research needs of the College of Criminal Jurisprudence Studies.

The Criminal Law Library of Beijing Normal University is a specialized library that is mainly responsible for collecting, preserving, and providing services for the teaching and research needs of the College of Criminal Jurisprudence Studies.

A modern country and a modern civilization should be governed by law. The establishment and actualization of the principal guideline of rule by law is crucial for our society to make progress in the efforts of constructing socialism under rule of law. Modern criminal law, playing a very important part in the development of modern society under rule of law, has achieved great progress in the past two decades since 1978 when the reform and opening – up policy was carried out. Whereas, further development and reform for both theory and judicial practice of criminal law are required in the process of building socialist legal democracy, so as to bring it into full play.

The College for Criminal Jurisprudence Studies of Beijing Normal University, founded in August of 2005, is the first and, at present, the only academic research organ in China specializing in criminal jurisprudence that is independent and comprehensive entity. The College is staffed with a group of famous young and middle – aged criminologists as academic nucleus and a group of criminologists and scholars known home and abroad as specially invited consultative professors, member of experts committee, guest research fellows (professors), including those senior professors, leaders with judicial expertise from the central procuratorial,

judicial and public security departments and leaders of some important international academic organizations. The college, aiming at turning into a new national leading academic body which can keep pace with international prestigious organs of criminal jurisprudence, is gradually extending its research fields covering Chinese and foreign criminal jurisprudence, international criminal law, trans-regional criminal law, criminal policy science, criminology, criminal executive law, Chinese and foreign criminal procedure law, criminal evidence law, criminal judiciary and so on following the spirit of integrated criminal science. Meanwhile, the College trains high-level criminal jurisprudence professionals and makes new exploration into research of jurisprudence and cultivation of high-level professional in China. We are trying our best to make a greater contribution in the field of criminal law science to the great cause of building our socialism under rule of law.

Cherishing this hope, the College initiated the Criminal Law Library of BNU as soon as it is founded, with the working experience of Criminal Jurisprudence Library of Renmin University of China (RUC) and International Criminal Jurisprudence Library of RUC which had been established in the Criminal Jurisprudence Research Center of RUC and in a rather large scale before the main staff's transfer to the College. In order to obtain a broader space for academic research, we six scholars transferred from RUC to BNU and founded this first and the only one independent academic entity in our country - College for Criminal Law Science of BNU. Learning is a continuous business, so the College re-establishes two book-series programs named "Criminal Law Library of BNU" and "International Criminal Law Library of BNU" based upon the former two libraries so as to further develop our academic cause. The two

sisterly programs undertake different missions and supplement each other. The domain of the former focuses on domestic criminal jurisprudence literatures and the latter on international criminal jurisprudence literatures. Depending upon the profound academic deposit, centuries – old historical traditions and full – bodied cultural atmosphere of the prestigious Beijing Normal University and with BNU's comprehensive and powerful integrative strength in both fields of humanity social science and nature science, the two libraries will attract and accept the contributions from the field of criminal jurisprudence home and abroad. The publications of Criminal Law Library of BNU cover the creative and profound works and translations on domestic and foreign criminal jurisprudence (criminal law, criminology, criminal execution law, criminal procedure law, criminal investigation and criminal evidence etc.) and those academic and research fruits in the field of extroversive criminal law (including international criminal law, comparative criminal law, foreign criminal law and criminal laws of Hong Kong, Macao and Taiwan). The publications may be of either special topics or general topics or translations of foreign literatures and codifications. Meanwhile, in order to attract active concerns with important realistic issues, publications on the related topics will be collected and affiliated to Criminal Law Library of BNU as new book – series with famous criminal jurisprudence specialists as their chief editor. The authorships of Criminal Law Library of BNU are mainly entitled to full – time and guest research fellows besides other experts and scholars engaged in criminal jurisprudence.

Through these programs of libraries, we seek to help to accumulate academic fruits, to exploit and deepen and thrive the academic researches on criminal jurisprudence, to facilitate exchanges and co – operations

between domestic and foreign colleagues engaged in criminal jurisprudence and to gradually improve our theoretical and practical expertise of criminal law so as to accelerate the prosperity of our country under rule of law and the progress of social civilization.

Prof. Zhao Bing – zhi

Dean of College for Criminal Law Science

Beijing Normal University

Autumn of 2005

As the Dean of the College for Criminal Law Science at Beijing Normal University, I am very pleased to welcome you to our school. We are a well-known university in China, and our College for Criminal Law Science is one of the best in the country. We have a long history and a rich tradition, and we are committed to providing high-quality education and research in the field of criminal law. Our faculty members are highly qualified and experienced, and they are dedicated to their work. We offer a variety of courses and programs, including undergraduate and graduate degrees, as well as research opportunities. We also have a strong emphasis on practical training and real-world experience, which is essential for success in the legal profession. We are always looking for ways to improve our programs and services, and we are committed to providing the best possible education and support to our students. We hope that you will find our school to be a welcoming and supportive environment, and that you will have a successful and fulfilling academic experience here. Thank you for considering our school, and we look forward to meeting you soon.

前　　言

2009年2月28日,第十一届全国人大常委会第七次会议通过了《中华人民共和国刑法修正案(七)》(以下简称“《刑法修正案(七)》”)。这是我国刑法典自1999年12月25日第一次颁布修正案以来全国人大常委会对刑法典的第七次修正,也是我国刑法顺应社会发展实践需要而进行的一次重大立法活动。该修正案在我国刑法已有规定的基础上进一步严密了我国打击破坏社会主义市场经济秩序犯罪的法网,加强了对公民人身权利的保护,扩大了对妨害社会管理秩序犯罪和危害国家利益犯罪的惩治范围,突破了我国受贿犯罪的主体限制而规定了利用影响力受贿罪,规范并调整了对巨额财产来源不明罪的惩治力度,具有重大的现实和理论意义。因而,《刑法修正案(七)》一经公布,即在司法实务界、刑法理论界和社会公众中引起了广泛关注。相信不久以后,我国将掀起学习《刑法修正案(七)》的热潮。

作为专门从事刑事法学研究的、我国刑事法学领域首家且目前唯一的具有独立性、实体性、综合性的学术研究机构,北京师范大学法律科学研究院(以下简称“北师大刑科院”)历来十分关注我国刑事法领域的立法活动,积极参与有关立法的研拟工作。在此次《刑法修正案(七)》的立法过程中,北师大刑科院名誉院长高铭暄教授、院长赵秉志教授曾多次应邀参与国家立法工作机关有关的立法研拟工作,与此同时,北师大刑科院还曾受全国人大常委会法工委委托专门组织本院多位教师召开“关于对《中华人民共和国刑法修正案(七)(草案)》征求意见专题研讨会”,并向全国人大常委会法工委提交了根据研讨会的

讨论、研究整理的《关于〈中华人民共和国刑法修正案(七)(草案)〉的讨论意见》。在《刑法修正案(七)》通过以后,北师大刑科院在全国率先组织、开展了《刑法修正案(七)》的系列研讨活动,于2009年3月3日和3月5日分别邀请全国人大常委会法工委郎胜副主任及法工委刑法室雷建斌处长就《刑法修正案(七)》的相关问题举行专题讲座,并组织本院师生召开“关于《中华人民共和国刑法修正案(七)》专题研讨会”,对《刑法修正案(七)》的修法背景及修法内容等相关问题展开全面深入的了解与研究。

为了全面阐释《刑法修正案(七)》的立法背景,正确理解适用《刑法修正案(七)》,同时也系统总结我国历次刑法修正的经验及《刑法修正案》(一至六)的相关研究成果,北师大刑科院专门组织人员编写了这本《刑法修正案最新理解适用》。全书言语简洁而精炼,全面而深刻地解读了《刑法修正案(七)》,详尽而准确地介绍了《刑法修正案》(一至六)的相关研究成果。这不仅有利于我们全面理解和适用《刑法修正案(七)》,也有利于我们全面了解刑法修正案的发展历程、立法内容和研究状况。当然,由于时间紧迫,本书在写作的过程中还存在一些不尽如人意之处。对此,我们将在以后将有关研究进一步深入。

《刑法修正案最新理解适用》一书共分三编。上编是“《刑法修正案(七)》的理解与适用”,共计十六个专题,分别对《刑法修正案(七)》的宏观问题、罪名确定和相关条文涉及的具体犯罪进行解读。其中,有关具体犯罪的专题大体分“立法背景”(或“修法背景”)、“内涵解读”和“司法适用”三个方面展开。它主要根据我国立法机关关于修正案草案的有关说明,充分结合我院开展的一系列研讨活动内容和相关刑法理论,对《刑法修正案(七)》的相关内容予以了详细阐释,对于我们深入理解《刑法修正案(七)》相关规定的内容和司法适用将起到积极的帮助作用。下编为“《刑法修正案》(一至六)研究综述”,共计七个专题。该编在研究《刑法修正案》(一至六)共性问题的基础上,对

《刑法修正案》(一至六)的相关研究进行了综述。附编是“相关资料选汇”,分两部分:一是“《刑法修正案(七)》暨相关资料选汇”,不仅收录了《刑法修正案(七)》,而且还全面收录了《刑法修正案(七)》的相关草案及说明;二是“《刑法修正案》(一至六)暨相关资料选汇”,收录《刑法修正案》(一至六)和相关草案及说明。该编对于我们全面了解《刑法修正案》(一至七)的立法背景及立法过程等内容具有积极意义。

本书由高铭暄(北师大刑科院名誉院长、特聘教授、博士生导师,中国法学会刑法学研究会名誉会长)担任学术顾问,由赵秉志(北师大刑科院暨法学院院长、教授、法学博士、博士生导师,中国法学会刑法学研究会会长)担任主编,袁彬(北师大刑科院讲师,法学博士)和黄晓亮(北师大刑科院讲师,法学博士)担任副主编,并由李山河(北师大刑科院讲师,法学博士)、张磊(北师大刑科院讲师,法学博士)、徐光华(北师大刑科院博士后研究人员,江西财经大学法学院讲师,法学博士)、彭新林(北师大刑科院博士研究生)、张道许(北师大刑科院博士研究生,河南工业大学法学院讲师)、李运才(北师大刑科院博士研究生)、王燕玲(北师大刑科院博士研究生)、钱小平(北师大刑科院博士研究生)和郭晓红(北师大刑科院博士研究生,江西财经大学法学院讲师)共同参与撰写。全书具体分工如下:

第一、八专题,赵秉志;

第二专题,高铭暄、赵秉志、黄晓亮、袁彬;

第三、十专题,张道许;

第四专题,李运才;

第五专题,王燕玲;

第六专题,袁彬;

第七、十六专题,钱小平;

第九、十五专题,李山河;

第十一、十七专题，黄晓亮；

第十二、十三专题，张磊；

第十四专题，彭新林；

第十八至二十三专题，徐光华、郭晓红。

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北京师范大学刑事法律科学研究院院长

中国法学会刑法学研究会会长

赵秉志教授谨识

己丑年初春于北京

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