

Community Corrections Law  
of the People's Republic of China  
(Expert Proposal)

# 社区矫正法

( 专家建议稿 )

主 编◎ 赵秉志

副主编◎ 吴宗宪 刘志伟

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## 编写说明

2002年8月,根据司法部的要求,我国开始在上海有系统地开展社区矫正试点工作。2003年7月10日,最高人民法院、最高人民检察院、公安部和司法部联合发布了《关于开展社区矫正试点工作的通知》,社区矫正试点工作在全国正式铺开,并分两批确定了18个试点地区。至2008年,全国已有25个省、市、自治区建立了社区矫正部门。2009年10月21日,最高人民法院、最高人民检察院、公安部、司法部联合发布了《关于在全国实行社区矫正工作的意见》,决定在全国范围内试行社区矫正。2011年2月25日,我国第十一届人大常委会第十九次会议通过的《刑法修正案(八)》在3个条文中明确规定“依法实行社区矫正”,将社区矫正上升至立法层面,标志着我国社区矫正制度正式进入了法制化的轨道。2012年3月14日,我国十一届全国人民代表大会第五次会议修订的《刑事诉讼法》对社区矫正的执行工作作了进一步规定。如今,社区矫正已经成为我国刑罚执行过程中与监禁矫正相对应、相配合的重要刑罚执行制度,并在全中国范围内普遍展开,成效显著。根据司法部社区矫正管理局的统计,截止2012年5月底,社区矫正工作已在全国31个省(区、市)和新疆生产建设兵团的340个地(市)、2749个县(市、区)、37552个乡镇(街道)开展,分别占全国地(市、州)、县(市、区)、乡镇(街道)建制数的98%、96%、92%;各地累计接受社区矫正人员1019597人,累计解除矫正566177人,现有社区矫正人员453420人;全国有27个省(区、市)建立社区矫正管理教育服务中心(中途之家),共计486个。尽管社区矫正工作已经在我国开展得如火如荼,并且刑法和刑事诉讼法对此均作了明确规定,但在立法层面上,目前我国社区矫正的具体依据仍主要是2012年2月15日最高人民法院、最高人民检察院、公安部、司法部联合发布的《社区矫正实施办法》,我国亟需制定一部系统、全面的社区矫正专门立法。据悉,我国有关部门正在紧锣密鼓地开展《社区矫正法》的专门立法研究、研拟工作。

北京师范大学刑事法律科学研究院是我国专门从事刑事法学的研究的、中国刑事法学领域首家且目前唯一独立的、实体性的综合学术研究机构,研究实力雄厚。近年来,北京师范大学刑事法律科学研究院十分关注并积极开展了社区矫正制度

的研究工作，先后承担多项国家级、省部级社区矫正研究课题，出版了多部社区矫正研究著作。在中国法学会的支持下，北京师范大学刑事法律科学研究院于2009年10月向我国商务部申请并于2011年初获得“中加关于中国社区矫正的立法发展”项目立项。2011年6月，加拿大刑法改革与刑事政策国际中心被正式确定为该项目的加方合作与承担者。“中加关于中国社区矫正的立法发展”项目旨在为中国政府有关提升人权、法治即善治水平的政策改革议程提供支持，并为中国未来的社区矫正立法框架提供立法和政策选择，并于2011年9月正式启动。在项目研究过程中，根据项目设计和安排，项目组成员先后两次赴加拿大多地就社区矫正制度进行考察，并在广泛征求国内外社区矫正理论与实务专家意见的基础上，数易其稿，拟定了《社区矫正法（专家建议稿）》。该建议稿分总则、社区矫正机构与人员、社区服刑人员、社区矫正程序、监督管理、教育矫正、帮困扶助、考核与奖惩、特殊人群社区矫正、社区矫正的保障与促进、社区矫正监督与法律责任等专章，对我国社区矫正的相关问题作了系统、全面的规定，受到了各方的普遍认可和肯定。

本书以“中加关于中国社区矫正的立法发展”项目成果——《社区矫正法（专家建议稿）》为核心，分上、中、下三编。其中，上编是“社区矫正法（专家建议稿）”，包含了社区矫正法（专家建议稿）的中文条文、立法理由和英文条文；中编是“社区矫正法（专家建议稿）相关资料”，包含了“中加关于中国社区矫正的立法发展”项目及执行情况说明、“中加关于中国社区矫正的立法发展”项目组赴加考察报告、中国的社区矫正与《社区矫正法（专家建议稿）》的起草说明以及北师大刑科院举办“《社区矫正法（专家建议稿）》发布与研讨会”的消息；下编是“国际社会社区矫正相关资料”，翻译并整理了联合国、欧盟有关社区矫正的国际和地区公约，以及澳大利亚、德国、法国、芬兰、加拿大、美国、日本、新加坡、英国等国家有关社区矫正的立法条文。总体上看，本书内容全面，资料翔实，对于全面、系统地了解我国社区矫正制度的发展概况和国际社会有关社区矫正制度的立法状况，推动我国社区矫正制度专门立法的发展具有积极的参考借鉴作用。我们也期待本书能为我国社区矫正制度的立法、执行和理论研究的发展贡献力量。

“中加关于中国社区矫正的立法发展”项目及本书的顺利完成，得益于全国人大常委会法工委刑法室、最高人民法院、司法部、商务部国际司、中国法学会等相关单位及其领导的大力支持，受惠于加拿大刑法改革与刑事政策国际中心、加拿大卑诗省律政厅、加拿大卑诗省青少年监管所、加拿大卑诗省公共安全及法务厅、加拿大亚罗特河妇女矫正中心、加拿大约翰·霍华德学会、加拿大安大略省公共安全与矫正服务厅 Blackcreek 缓刑和假释办公室、加拿大“行动出发点”机构、加拿大矫正署太平洋地区社区矫正管理办公室等加方机构及专家热心帮助，加拿大刑法改革与刑事政策国际中心高级顾问暨卑诗省政府前副厅长 Alison

MacPhail 女士、加拿大皇后大学法学院 Allan Manson 教授、加拿大公共安全部矫正研究主任 James Bonta 教授、多伦多大学犯罪学中心 Anthony N. Doob 教授、加拿大西蒙·弗雷泽河谷大学研究生院副院长 Yvon Dandurand 教授以及司法部社区矫正管理局金勇处长和郭健副处长、上海市司法部朱久伟副局长、北京市司法局社区矫正和安置帮教工作处林仲书处长、江苏省司法厅社区矫正管理局李萍局长、浙江省社区矫正工作委员会办公室专职副主任徐祖华先生、湖北省司法厅社区矫正工作办公室许振奇主任、湖南省司法厅社区矫正处孙浩波处长以及其他学界、实务界同仁，或直接参与了项目的调研和研讨，或为项目研究和《社区矫正法（专家建议稿）》的研拟提供了有益建议，在此一并表示诚挚感谢！

最后，衷心感谢中国法制出版社及领导对本书出版的鼎力支持，感谢责任编辑为本书出版付出的辛勤劳动！

北京师范大学刑事法律科学研究院暨法学院院长

中国刑法学研究会会长

赵秉志 教授

2013 年 7 月于北京

## Preface

In August 2002, China started carrying out systematic community corrections pilot projects in Shanghai under the instruction of the Ministry of Justice. On July 10<sup>th</sup>, 2003, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice jointly issued the "Notice on Carrying out Community Corrections Pilot Work". From that time, community corrections pilot work was officially spread nationwide and 18 pilot areas were chosen. Until 2008, more than 25 provinces, municipalities and autonomous regions had founded community corrections institutions. On October 21<sup>st</sup>, 2009, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice jointly issued the "Opinions on the Trial Implementation of Community Corrections in the Whole Country". On February 25<sup>th</sup>, 2011, the nineteenth session of the Eleventh National People's Congress Standing Committee passed the eighth amendment of criminal law, among which three articles explicitly provided "implementing community corrections according to the law" upgrading the issue of community corrections to the legislative level. It reflected the community corrections system in China had officially been on the path of rule of law. On March 14<sup>th</sup>, 2012, the fifth session of the Eleventh National People's Congress amended "criminal procedural law", which had further stipulated the implementing work of community corrections. Right now, community corrections has become an important punishment enforcement system corresponding to imprisonment corrections. It has widely spread in the whole country and made substantial credit. According to the statistics of community corrections administrative bureau of Ministry of Justice, until the end of May 2012, community corrections work had been implemented over 340 cities, 2749 counties, and 37552 towns, which accounted for 98%, 96% and 92% of the total number of that areas individually. The number of community corrections persons adds up to 1019597. The number of persons released from community corrections adds up to 566177. There are 453420 persons who are receiving community corrections right now. Besides, there are 27 provinces (municipalities and autonomous regions) which have

founded 486 community corrections administrative and education service center (Half-way house). Although the work of community corrections has been carried out steadily, and criminal law and criminal procedural law have explicitly provided rules, the existing legal basis of community corrections mainly lies in the “Measures for the Implementation of Community Correction”, issued by the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security and the Ministry of Justice. In other words, we need a systematic and comprehensive legislation specifically regulates community corrections. As we know, related institutions are closely working on the legislative process of a special community corrections law.

College for Criminal Law Science of Beijing Normal University ( hereinafter “CCLS”) is the first and also, at present, the only modern, independent, comprehensive academic research body specialized in criminal law science. In recent years, CCLS has paid much attention to community corrections and actively conducted research on this topic. We have constantly chaired and developed many community corrections research projects at national and provincial level. We also published several monograph related to community corrections. With the support of the China Law Society, CCLS applied to the Ministry of Commerce in October 2009 a program named “Sino – Canada Program for the Legislative Development on Community Corrections in China”, which was approved in early 2011. In June 2011, Canadian International Centre for Criminal Law Reform & Criminal Justice Policy was officially appointed as the program cooperator representing the Canadian Side. The Sino – Canada Program aimed at giving support to policy reform agenda regarding the improvement of human rights and rule of law level in China. It also provided legislation and policy choice for China’s future community corrections legislative framework. The program was officially launched in September 2011. Within the process of program research, according to the program design and arrangement, the members of the program went to Canada for field observation of Canada community corrections system. Members have fully considered advice from community corrections experts at home and abroad, carefully revised the draft for many times and eventually drafted the “Community Corrections Act of PRC (Expert Draft)”. This draft was composed of many chapters including general rules, community corrections institutions and staff, community corrections persons, community corrections procedure, supervisory administration, educational corrections, help and assistance, reward and punishment, special group community corrections, safeguard and improvement, supervision and legal liability. It provided systematic and comprehensive rules for community corrections of PRC, and therefore was recognized and affirmed generally.

This book is based on the Sino-Canada program result “Community Corrections



Act of PRC (Expert Draft)” and divided into three parts. The first part is the “Community Corrections Act of PRC (Expert Draft)” including the Chinese provisions, legislative rationale, and English provisions; the second part is related materials of the draft, including the description of the Sino – Canada program and its implementing situation, Report of the field trip to Canada, drafting instructions of the draft and community corrections of PRC, and the news of BNU CCLS held the publish conference; the last part is materials related to community corrections in international community, including the translation of UN and EU community corrections conventions at international and regional level, and the translated articles of the community corrections act in Australia, Germany, France, Finland, Canada, the United States, Japan, Singapore, and the United Kingdom. Overall, this book contains comprehensive contents, detailed materials and therefore has a significant reference value for systematically understanding the developments of community corrections in China and the legislative status of community corrections world – widely. We expect this book can make a great effect for improving the law – making process, implementing of community corrections system in China and encouraging the related theoretical research.

The accomplishment of the Sino – Canada program and this book thanks to the help from the office for criminal law of the legislative affairs commission of the National People’s Congress Standing Committee, the Supreme People’s Court, the Ministry of Justice, International division of the Ministry of Commerce, China Law Society and other relevant organizations and their leaders. We also thank the International Center for Criminal Law Reform and Criminal Justice Policy (Vancouver), the Ministry of Justice of British Columbia (Canada), Youth Custody Centres of British Columbia (Canada), the Ministry of Public Safety and Solicitor General of British Columbia (Canada), Alouette Correctional Centre for Women (Canada), the John Howard Society of Canada, Black-creek Probation and Parole Office of Ministry of Community Safety and Correctional Services of Ontario (Canada), the Canadian “Community Restructing Initiative”, Pacific headquarter of Correctional Service of Canada, and other Canadian institutions. We are grateful to many experts, like Ms. Alison MacPhail, Senior Adviser of International Center for Criminal Law Reform and Criminal Justice Policy (Vancouver) and the former Deputy Director – General of British Columbia Government, Professor Allan Manson from Law School of Queen’s University, and Professor James Bonta, director of Corrections Research of Ministry of Public Safety of Canada, Professor Anthony N. Doob from Center of Criminology in University of Toronto, Professor Yvon Dandurand deputy dean of Graduate School of Simon Fraser University. There are also many Chinese experts made their contribution to our program, such as Mr. Jinyong, department head of Bu-

reau of Community Corrections Administration of the Ministry of Justice; Mr. Zhu Jiwei , deputy director general of Shanghai Bureau of Justice; Mr. Lin Zhongshu, department head of Community Corrections and Resettlement Work Division in Beijing Bureau of Justice; Ms. Li Ping , Head of Community Corrections Department of Jiangsu Bureau of Justice; Mr. Xu Zhuhua, deputy office head of Zhejiang Community Corrections Work Committee; Mr. Xu Zhenqi, head of Hubei Community Corrections Work Office in Hubei Bureau of Justice; Mr. Sun Haobo, head of Community Corrections Department in Hunan Bureau of Justice. For those friends from academic and practical areas, either participated in the program research and discussion, or provided valuable advice to the program and the experts' draft, we sincerely appreciate your efforts.

Last but not least, we sincerely thank China Legal Publishing House and the editor's endeavor for supporting this book's publication.

*Zhao Bingzhi*

*Dean of the College for Criminal Law Science and*

*Law School of Beijing Normal University*

*President of China Criminal Law Society*

*July 2013, in Beijing*

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16. Singapore Probation of Offenders Act / <i>Translated by YIN Bo, Proofread by ZHOU Zhenjie</i> .....	(445)
17. UK the Rehabilitation of Offenders Act 1974 / <i>Translated by YIN Bo, Proof- read by ZHOU Zhenjie</i> .....	(452)

上编

# 社区矫正法（专家建议稿）





# 社区矫正法（专家建议稿）条文和立法理由<sup>\*</sup>

## 第一章 总 则

### 第0101条 立法目的和依据

为了准确执行有关刑罚，有效地监督管理、教育矫正和帮困扶助社区服刑人员，促使社区服刑人员遵纪守法和顺利适应社会，根据宪法、立法法以及社区矫正工作的经验和实际情况，制定本法。

#### 【立法理由】

##### 1. 关于立法目的

通过多方面的研究，人们对于社区矫正的性质，已经达成基本的共识，即社区矫正是非监禁刑执行制度。这一共识在最高人民法院、最高人民检察院、公安

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\* 撰稿分工（按撰写章节先后顺序）：吴宗宪（北京师范大学刑事法律科学研究院教授、博士生导师、犯罪与矫正研究所所长、社区矫正研究中心主任，法学博士，中国犯罪学学会副会长、中国青少年犯罪研究会副会长）撰写第一章、第五章、第八章、第十三章，阴建峰（北京师范大学刑事法律科学研究院分党委副书记、院长助理、中国刑法研究所副所长、教授、博士生导师，法学博士，中国刑法学研究会副秘书长）、左坚卫（北京师范大学法学院刑法学教研中心主任、刑事法律科学研究院犯罪与矫正研究所副所长、教授、博士生导师，法学博士，中国立法学研究会理事）撰写第二章，袁彬（北京师范大学刑事法律科学研究院中国刑法研究所副所长、副教授，法学博士，中国刑法学研究会副秘书长）撰写第三章、第七章，郭雅婷（北京师范大学刑事法律科学研究院办公室主任，法学博士）撰写第三章，杨雄（北京师范大学刑事法律科学研究院信息中心主任、副教授，法学博士）撰写第四章，雷小政（北京师范大学刑事法律科学研究院副教授，法学博士）撰写第六章、第九章，刘志伟（北京师范大学刑事法律科学研究院副院长、教授、博士生导师，法学博士，中国刑法学研究会秘书长）撰写第十章，赵秉志（北京师范大学刑事法律科学研究院暨法学院院长、教授、博士生导师，法学博士，中国刑法学研究会会长，国际刑法学协会副主席暨中国分会主席）、周振杰（北京师范大学刑事法律科学研究院副教授，法学博士，国际刑法学协会中国分会副秘书长）撰写第十一章、第十二章。