

**UCLA**

**UCLA Pacific Basin Law Journal**

**Title**

Prisonization or Socialization? Social Factors Associated with Chinese Administrative Offenses

**Permalink**

<https://escholarship.org/uc/item/2bh518x8>

**Journal**

UCLA Pacific Basin Law Journal, 27(2)

**Author**

Enshen, Li

**Publication Date**

2010

**DOI**

10.5070/P8272022220

**Copyright Information**

Copyright 2010 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

# PRISONIZATION OR SOCIALIZATION? SOCIAL FACTORS ASSOCIATED WITH CHINESE ADMINISTRATIVE OFFENSES

Li Enshen\*

## ABSTRACT

*Since its founding the People's Republic of China has used various forms of administrative detention to rehabilitate administrative offenders, in particular drug users and prostitutes. A number of studies have focused on the undesirability of administrative detention in terms of its questionable legality and rationality. Very few studies, however, focus on its poor effectiveness in preventing re-offending and its contribution to high recidivism rates in China for certain offenses. This article first examines the true nature of the policy of administrative detention by looking at the policy's rationales of punishment, retribution and deterrence. In contrast to administrative detention, education, rehabilitation and correction based on the utilization of social capital have successfully contributed to a reduction in recidivism for administrative offenses. By reviewing the practice of the Chinese community correction program, this article concludes that compared to administrative detention, community correctional schemes that are filled with positive social capital may serve as the ideal substitute to rehabilitate Chinese administrative offenders.*

1. INTRODUCTION .....	214
2. THE ADMINISTRATIVE JUSTICE SYSTEM AND ADMINISTRATIVE DETENTION .....	219
2.1 The Chinese Administrative Justice System ...	219
2.2 A Brief Overview of the Principal Forms of Administrative Detention .....	223
3. THE EFFECT OF ADMINISTRATIVE DETENTION ON REFORMING MINOR OFFENDERS .....	227

---

\* Li Enshen is a SJD candidate at La Trobe University. He would like to thank the staff of Pacific Basin Law Journal for their editorial suggestions and hard work.

3.1	Is Administrative Detention an Educative Instrument? .....	227
3.2	Is the Use of Administrative Detention Effective in Reforming Administrative Offenders? .....	232
3.2.1	Recidivism .....	232
3.2.2	Social Capital .....	233
3.2.3	Social Capital of Administrative Offenses .....	237
3.2.3.1	Social Capital of Drug Relapse .....	237
3.2.3.2	Social Capital of Re-Entry into Prostitution .....	239
3.2.4	Public Order Offense and Public Order Detention .....	242
4.	COMMUNITY CORRECTION .....	246
4.1	A Brief Overview of Community Correction in China .....	246
4.2	Shanghai Community Corrections .....	248
5.	COMMUNITY CORRECTIONS: A GOOD SUBSTITUTE FOR ADMINISTRATIVE DETENTION .....	254
6.	CONCLUSION .....	257

## 1. INTRODUCTION

One of the heavily criticized aspects of Chinese legal practice is the use and abuse of administrative detention. In contrast to the Chinese criminal justice system, where pre-trial detention is designed to serve as a crucial means to ensure the operation of criminal proceedings,<sup>1</sup> administrative detention functions exclusively as punishment. The current hierarchy of the administrative justice system includes four major forms of administrative detention: Public Order Detention (hereinafter POD),<sup>2</sup> Deten-

---

1. Although the use of pre-trial detention (criminal detention and formal arrest) in China has some positive effects on the administration of criminal justice, such as avoiding further offenses by suspects, some have criticized its misuse and the resulting violations of suspects' human rights. For detailed discussions of how pre-trial detention is abused in China and the legal and ethical consequences of such abuse, see CHEN RUIHUA, *WENTI YU ZHUYI ZHILIAN [BETWEEN PROBLEMS AND PRINCIPLES]*, 166-209 (2nd ed., 2008); HUMAN RIGHTS IN CHINA, *EMPTY PROMISES: HUMAN RIGHTS PROTECTIONS AND CHINA'S CRIMINAL PROCEDURE LAW IN PRACTICE* 44-58 (2001), available at [http://www.hrichina.org/fs/view/downloadables/pdf/downloadable-resources/Empty\\_Promises\\_Text.pdf](http://www.hrichina.org/fs/view/downloadables/pdf/downloadable-resources/Empty_Promises_Text.pdf).

2. See *Zhonghua Renmin Gongheguo zhi'an guanli chufa fa [PRC Security Administrative Punishment Law]* (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 28, 2005, effective Mar. 1, 2006), art. 16, <http://www.gov.cn> (P.R.C.) [hereinafter *Sec. Admin. Punishment Law*]. Public Order Detention is the

tion for Education (hereinafter DE),<sup>3</sup> Coercive Drug Rehabilitation (hereinafter CDR)<sup>4</sup> and Reeducation through Labor (hereinafter RTL).<sup>5</sup> In theory, these administrative custodial measures are aimed not at serious criminal offences, but at misdemeanors that are not serious enough to be criminalized. The Chinese administrative justice system principally targets drug use, prostitution and other socially disruptive acts.

Many legal scholars and human rights activists and organizations have recommended that the Chinese authorities eliminate all forms of administrative detention because their legal basis is questionable and they blatantly violate detainees' human rights.<sup>6</sup>

---

most lenient administrative detention prescribed under the PRC Security Administrative Punishment Law, targeting minor offenders, drug addicts and prostitutes. Under Article 16, the maximum detention period is 20 days for a number of the covered offenses.

3. Detention for Education is an administrative detention recognized by three underlying legislative documents aimed at prostitutes and their clients. *See* *Maiyin piaochang renyuan shourong jiaoyu banfa* [Measures for Detention for Education of Prostitutes and Clients of Prostitutes] (promulgated by the State Council, Sept. 4, 1993, effective Sept. 4, 1993), art.9, <http://www.law-lib.com> (P.R.C.); *Guanyu yange zhixing quanguo renda changweihui 'Guanyu yanjin maiyin piaochang de jue ding'* [Notice on Implementing the NCPSC 'Decision on Strictly Prohibiting Prostitution and Using Prostitutes'] (promulgated by the Ministry of Pub. Sec., Nov. 23, 1991, effective Nov. 23, 1991), <http://www.kdgaj.gov.cn> (P.R.C.); *Guanyu yanjin maiyin piaochang de jue ding* [Decision on Strictly Prohibiting Prostitution and Using Prostitutes] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 4, 1991, effective Sept. 4, 1991), art. 5, <http://www.lawinfochina.com> (P.R.C.).

4. Coercive Drug Rehabilitation is the administrative custodial measure deployed to help drug users detoxify during incarceration. Its use is justified by three drug-related normative directives. *See* *Zhonghua renmin gongheguo jin du fa* [PRC Anti-Drug Law] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2007, effective June 1, 2008), art. 33, <http://www.gov.cn> (P.R.C.); *Qiangzhi jiedu banfa* [Measures on Coercive Drug Rehabilitation] (promulgated by the State Council, Jan. 12, 1995, effective Jan. 12, 1995), <http://gkml.liyang.gov.cn> (P.R.C.); *Guanyu jindu de jue ding* [Decision on the Prohibition of Drugs] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 28, 1990, effective Dec. 28, 1990), art. 8, <http://www.china.com.cn> (P.R.C.).

5. Reeducation through Labor (RTL), which offers 1-3 years of incarceration with a possible one-year extension, is the most severe administrative detention in China today. RTL targets socially harmful acts and minor offenses, including drug addiction and prostitution. *See* *Guowuyuan guanyu laodong jiaoyang wenti de jue ding* [Temporary Methods on Reeducation through Labor] (promulgated by the State Council, Jan. 21, 1982, effective Jan. 21, 1982), <http://www.xgsfj.gov.cn> (P.R.C.); *Guanyu gongbu 'Guowuyuan guanyu laodong jiaoyang de buchong jue ding'* [Notice Promulgating the 'Supplementary Regulations of the State Council on Re-education through Labor'] (promulgated by the State Council, Dec. 5, 1979, effective Dec. 5, 1979), art. 3, <http://zfhfrx.shaanxi.gov.cn> (P.R.C.); *Guowuyuan guanyu laodong jiaoyang wenti de jue ding* [Decision of the State Council on the Question of Re-education through Labor] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 3, 1957, effective Aug. 3, 1957), art. 2, <http://ga.chinawuxi.gov.cn> (P.R.C.).

6. *See generally* AMNESTY INTERNATIONAL, CHINA, PUNISHMENT WITHOUT CRIME: ADMINISTRATIVE DETENTION (1991); CHINA HUMAN RIGHTS STRATEGY STUDY GROUP, HUMAN RIGHTS IN CHINA, PROMOTING HUMAN RIGHTS IN CHINA

The violations noted include the arbitrary deprivation of liberty,<sup>7</sup> the use of administrative detention to bypass the procedural requirements of the *Criminal Procedure Law*,<sup>8</sup> and the denial of the right to seek redress from the courts.<sup>9</sup> Many commentators have proposed incorporating minor administrative offenses into the formal criminal justice system.<sup>10</sup> Such incorporation, these commentators argue, would extend the procedural protections set out in the *Criminal Procedure Law* to those violators presently subjected to administrative detention; furthermore, the *Criminal Procedure Law* would provide a legal foundation for depriving convicted offenders of their liberty.<sup>11</sup>

In contrast, Randall Peerenboom, an influential expert on Chinese law, presents a number of reasons for retaining administrative detention, the strongest being that “eliminating administrative detentions and subjecting minor offenders to criminal sanctions will push them into the harsh and decidedly unfriendly penal system, force them to live with hardened criminals, and result in their being forever stigmatized as convicts.”<sup>12</sup> Sarah Bidulph, another academic specializing in Chinese law, echoes this

---

8-11 (2001), available at <http://hrichina.org/public/PDFs/Reports/HRIC-Strategy.pdf>; HUMAN RIGHTS IN CHINA, REEDUCATION THROUGH LABOR (RTL): A SUMMARY OF REGULATORY ISSUES AND CONCERNS 3-5 (2001), available at <http://hrichina.org/public/PDFs/Reports/HRIC-RTL.pdf>; Qu Xuewu, *Baoan chufen he xingfa gaige* [Policing Measures and Chinese Criminal Law Reform], 5 FAXUE YANJIU [CHINESE J. L.] 55, 56-68 (1996); Shen Fujun, *Guanyu feichu laodong jiaoyang zhidu de sikao* [The Thinking of Abolishing Reeducation Through Labor], 7 FAXUE [LEGAL SCI.] 17-19 (1999); Peng Zehu, *Shourong jiaoyu weifaxing yanjiu* [The Study of Illegality of Detention for Education], 11 XINAN MINGZU XUEYUANXUEBAO [J. SW. INST. NAT'Ls] 72, 72-74 (2002).

7. See AMNESTY INTERNATIONAL, *Id.*, at 2-3.

8. LAWYERS COMMITTEE FOR HUMAN RIGHTS, CRIMINAL JUSTICE WITH CHINESE CHARACTERISTICS 69-73 (Lawyers Committee for Human Rights 1993); Veron Mei-Ying Hung, *Improving Human Rights in China, Should Re-education Through Labor Be Abolished?*, 41 COLUM. J. TRANSNAT'L L. 303, 315 (2003).

9. Dong Hao, *Woguo sifa jiguan duochong zhineng gaige zhi sikao* [Thoughts on Reforming the Multiple Responsibilities System of China's Judicial Organs], 4 ZHONGGUO FAXUE [CHINA L. SCI.] 24, 24-26 (1997).

10. Zhang Shaoyan, *Lun laodong jiaoyang lifa de jige jichuxing wenti—jianli woguo qingzui chufa zhidu de lilun chuangxin* (The Basic Issues of Legalising Reeducation through Labor—The Theoretical Innovation of Establishing Minor Punishments in China), 2 FAXUE PINGLUN [MODERN L. SCI.] 23, 23-30 (2003); Zhu Kuizhi, *Yilun laodong jiaoyang zhidu gaige* [The Discussion of Reeducation through Labor Reform], 5 ZHONGGUO SIFA [JUST. CHINA] 27, 27-29 (2005).

11. Zhang, *supra* note 10, at 29.

12. Randall Peerenboom, *Out of the Pan and Into the Fire: Well-Intentioned but Misguided Recommendations to Eliminate All Forms of Administrative Detention in China*, (98) 3 NW. U. L. REV. 993-4 (2004). Apart from the likely harsher penalties the minor offenses may receive under the criminal justice system, the author also extensively analyses the existing legal and philosophic shortcomings of the Chinese criminal justice system and concludes that the criminalization of minor offenses would worsen the situation. *Id.* at 1103-04.

perception, arguing that administrative detention represents the public security force's administrative powers and therefore functions as a "second line of defense."<sup>13</sup> In her book, the regulation and education based on the community organization and mass-line policing are considered the 'first line of defense' serving the prevention of criminality in China. When the "first line of defense" fails, the coercive police powers that serve as the "second line of defense" take over and function as the stiffer measures to prevent criminality. Biddulph maintains that the use of police administrative powers is more formal and effective than the "first line of defense" in preventing bad conduct from further deteriorating into crime.<sup>14</sup> In addition, she observes that security officials have relied heavily on administrative detention during the nationwide "Strike Hard" crime-fighting campaigns launched periodically since the 1980s,<sup>15</sup> and thus have made it adjunct to the enforcement of criminal law.<sup>16</sup> Therefore, Biddulph believes that "the police administrative detention powers in China will continue to form an integral and distinctive part of social order, which facilitates flexibility in dealing with changing problems of social order."<sup>17</sup>

Administrative detention has triggered a broad range of reform proposals. Some legal professionals take the view that administrative detention is in urgent need of a legal foundation. They argue that as most forms of administrative detention are governed either by administrative regulations promulgated by the State Council or by departmental directives, they violate Article 9 of the *Administrative Punishment Law*, which states that "[a]ll deprivations of personal freedom under administrative punishments shall be based on law (falv)."<sup>18</sup> An actual law, passed by the National People's Congress, allowing administra-

---

13. See SARAH BIDDULPH, *LEGAL REFORM AND ADMINISTRATIVE DETENTION POWERS IN CHINA* 120-22 (2007).

14. *Id.*

15. For detailed accounts of Chinese 'HardStrike' policies and practices, see generally HAROLD TANNER, *STRIKE HARD! ANTI-CRIME CAMPAIGNS AND CHINESE CRIMINAL JUSTICE, 1979-1985* (1999); Bin Liang, *Severe Strike Campaign in Transitional China*, 33 *J. CRIM. JUST.* 387, 387-99 (2005); Murray Scot Tanner, *State Coercion and the Balance of Awe: The 1983-1986 "Stern Blows" Anti-Crime Campaign*, 44 *CHINA J.* 93, 93-125 (2000); Susan Trevaskes, *Severe and Swift Justice in China*, 47 *BRIT. J. CRIMINOLOGY* 23, 23-41 (2007); Susan Trevaskes, *Yanda 2001: Form and Strategy in a Chinese Anti-Crime Campaign*, 36 *AUSTL. & N.Z. J. CRIMINOLOGY*, 272, 272-92 (2003).

16. BIDDULPH, *supra* note 13, at 139-48.

17. *Id.* at 25; Sarah Biddulph, *The Production of Legal Norms: A Case Study of Administrative Detention in China*, 20 *UCLA PAC. BASIN L. J.* 217, 276-77 (2003).

18. The PRC Security Administrative Punishment Law requires all deprivations of personal freedom by administrative punishments must be based on law (Falv). See Peerenboom, *supra* note 12, at 1011.

tive detention would legitimize the deprivation of liberty under administrative detention and formalize its implementation.<sup>19</sup> Given that the drafting of a RTL law would be cumbersome and time-consuming, however, some experts suggest that the administrative detention power should simply be transferred from the public security bureaus to the judiciary to increase impartiality and neutrality.<sup>20</sup> More interestingly, a number of Chinese scholars advocate borrowing European Security Defense Punishment (*Bao'an Chufen*) to regulate administrative detention as a whole.<sup>21</sup> By examining the targets of this penal system, they believe that the Chinese minor offenders subjected to administrative detention share characteristics with those in the security defense system and need to be treated under a different system, other than administrative incarceration or criminal sanctions.<sup>22</sup>

The arguments for both the abolition and the retention of administrative detention focus on justification of the practice, but largely overlook its practical effectiveness. Thus, questions remain as to whether administrative detention is the best way to handle socially disruptive behavior. Can a period of detention successfully eradicate drug addiction, eliminate prostitution and correct socially harmful behaviors? More specifically, how effective are POD, DE, CDR and RTL in achieving the purpose of maintaining social security and order? If they are effective, why

---

19. See WANG ZHONGFAN, ZHONGGUO SHEHUI ZHI'AN ZONGHE ZHILI DE LILUN YU SHIJIAN [THEORY AND PRACTICE OF COMPREHENSIVE MANAGEMENT OF PUBLIC ORDER IN CHINA] 280 (1992); Zhang Shaoyan, *Guanyu laodong jiaoyang lifa de jichu wenti sikao* [The Thinking of Basic Issues of Legislating the Reeducation through Labor], 3 FAXUE [LEGAL SCI.] 40, 40-44 (2001); Liu Renwen, *Laodong jiaoyang zhidu jiqi gaige* [Reeducation through Labor System and Its Reform], 4 Xingzheng faxue yanjiu [Administrative L. R.] 17 (2001).

20. Wu Chen, *Wanshan laodong jiaoyang shiyong chengxu gouxiang* [The Idea of Perfecting Application System of Reeducation through Labor], 12 FANZUI YU GAIZAO YANJIU [CRIME AND CORRECTION STUDY] 37, 37-8 (2000); Chen Xinliang, *Laodong jiaoyang zhi quanli guishu fenxi* [An Analysis of Classification of Power of Reeducation through Labor], 5 FAXUE [LEGAL SCI.] 20, 22 (2002).

21. Security Defense refers to a special measure used by the authorities in many countries of Western Europe (e.g., Germany, France, Switzerland) to rehabilitate, reform and treat minor offenders based on the theories of preventing crime and preserving social order. For a historical development of Security Defense System in Europe, see ZHANG MINGKAI, WAIGUO XINGFA GANGYAO [THE SUMMARY OF FOREIGN CRIMINAL LAW] 445-48 (1999). For the detailed proposals for the introduction of Security Defense System, see Wang Danlin, *Shilun Jianli bing Wanshan Juyou Zhongguo Tese de Bao'an Chufen Zhidu* [Tentative Discussion of Establishing and Perfecting Security Defence Punishment with Chinese Particularities], 5 XIANDAI FAXUE [MODERN L. SCI.] 109, 109-11 (1996); Fang Qingxia, *Goujian woguo wanzheng de bao'an chufen zhidu de shexiang* [How to Perfect Chinese Security Measure System], 20 HEBEI FAXUE [HEBEI L. SCI.] 13, 13-17 (2002); Chen Kang, *Woguo bao'an chufen lifahua de genju* [The Basis of Legislation of Security Defence Punishment in China], 5 HEBEI FAXUE [HEBEI L. SCI.] 91, 93 (2004).

22. Fang, *supra* note 21, at 17; Chen, *supra* note 21, at 97.

do the recidivism rates tell a different story? More importantly, what are the real factors that lead to offenders' misconduct? And how can these factors be used to change the behaviors and attitudes of administrative offenders?

This article first conceptualizes the true nature and goals of Chinese administrative detention by looking mainly at incarceration imposed on prostitutes and drug-addicts. Next, it highlights administrative offenders' social and psychological characteristics in an attempt to examine the effectiveness of administrative detention in changing behavior. After analyzing offenders' attributes and recidivism, the paper concludes that the current system of administrative detention does not effectively prevent misconduct. Rather, incarceration alienates administrative offenders from society, community and family, thereby hampering the social forces that may help them suspend their harmful behavior. Furthermore, the article demonstrates that education, rehabilitation and persuasion are the most effective methods for reducing recidivism. Whereas administrative detention represents a punishment-oriented rhetoric, a community-based correctional system would provide more educative and rehabilitative functions more likely to prevent offending behavior. Thus, the article recommends that the Chinese government replace administrative detention with a community-based correctional system.

## 2. THE ADMINISTRATIVE JUSTICE SYSTEM AND ADMINISTRATIVE DETENTION

### 2.1 THE CHINESE ADMINISTRATIVE JUSTICE SYSTEM

The Chinese administrative justice system has developed alongside the Chinese criminal justice system<sup>23</sup> since the Republic's founding. Unlike the criminal justice system, which targets criminality, the administrative justice system targets offenses that are not serious enough to warrant prosecution and criminal sanction. Those who commit deviant acts are handled by the administrative apparatus through administrative procedures and sanctioned by administrative regulations. The administrative justice system is therefore the regulatory framework with which

---

23. For detailed discussions of the development and practice of Chinese criminal justice system, see generally, JEROME ALAN COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA: 1949-1963: AN INTRODUCTION* (Harvard University Press, 1968); SHAO-CHUAN LENG & HUNGDAH CHUI, *CRIMINAL JUSTICE IN POST-MAO CHINA: ANALYSIS AND DOCUMENTS* (State University of New York Press, Albany, 1985); STANLEY LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO 138-73* (Stanford University Press, 1999); CHEN JIANFU, *CHINESE LAW: CONTEXT AND TRANSFORMATION* 299-322 (Martinus Nijhoff Publishers, 2008); Daniel C. Turack, *The New Chinese Criminal Justice System*, 49 *CARDOZO J. INT'L & COMP. L.* 49-72 (1999).



Chinese authorities, and public security officials in particular, deal with transgressions in order to maintain public order and social and political stability.

This system has several distinctive features. First and foremost, the Chinese administrative justice system handles minor offenses. The Chinese legal system has long divided criminality into two interrelated categories: “serious crime” and “minor crime.”<sup>24</sup> Article 37 of the *Criminal Law* distinguishes the two by stating that if the circumstances of a person’s crime are minor and do not require criminal punishment, the person may be exempted from criminal sanctions, but nevertheless may be subjected to administrative sanctions by the relevant department.<sup>25</sup> In accordance with this prescription, the “circumstances” (*qingjie*) of criminality serve as the decisive factor determining the nature of the offense, though many legal experts debate the definition of “circumstances” due to the statute’s loosely-worded and broad provisions.<sup>26</sup> When the Chinese authorities deem the circumstances of a person’s act to be minor, they will likely apply administrative, rather than criminal, sanctions to the person. As such, those considered to disturb public order and harm social stability, such as prostitutes and drug abusers, comprise the primary targets of the administrative justice system.

Second, the procedures of the Chinese administrative justice system are simple, yet non-transparent. Unlike the criminal justice system, where the criminal proceedings consist of pre-trial

---

24. Chen Xinliang, *Zuowei fazui goucheng yaojian de zuiliang yaosu—lizuyu zhongguo xingfa de tantao* [The Factor of Criminal Quantity in the Constituents of Criminality—the Discussion Based on the Chinese Criminal Law], 3 HUANGQIU FALV PINGLUN [GLOBAL L. REV.] 275, 276 (2003); Feng Jiangju, *Xingzheng weifa yu fazui de jixian* [The Borderline between Administrative Offence and Crime—Discussion on the Vague Distinction between Administrative and Criminal power], 1 XINGZHENG FAXUE YANJIU [ADMIN. L. REV.] 63, 64 (2009).

25. Article 37 of the Chinese Criminal Law says: ‘Where the circumstances of a person’s crime are minor and do not require sentencing for punishment, an exemption from criminal sanctions may be granted him, but he may, according to the different circumstances of each case, be reprimanded or ordered to make a statement of repentance or formal apology or make compensation for losses, or be subjected to administrative sanctions by the competent department.’ *Zhonghua renmin gongheguo xingfa* [Criminal Law] (promulgated by the Nat’l People’s Cong., July 1, 1979, effective July 1, 1979), Art. 37, <http://www.lexiscn.com/law/law-chinese-1-13366.html> (P.R.C).

26. See Shizhou Wang, *The Judicial Explanation of Chinese Criminal Law*, 43 AM. J. COMP. L. 569, 575 (1995) (arguing that the circumstances of criminality in particular refers to ‘the subjective blameworthiness of a particular actor’ or the ‘external social and political effects of a crime’). See also Edward J. Epstein & Simon Hing-Yan Wong, *The Concept of ‘Dangerousness’ in the People’s Republic of China and Its Impact on the Treatment of Prisoners*, 36 BRIT. J. CRIMINOLOGY 472, 473 (1996) (demonstrating that the factor of ‘dangerousness,’ especially the ‘dangerousness to society’ is an explicit component of liability under the Criminal Law and liability for administrative punishment).

and court trial processes involving the public security bureau, the procuratorate, the court, the suspect, and his or her lawyer, the administrative justice system only concerns two parties—the public security bureau and the offender. For example, the *Public Order Administrative Punishment Law* explicitly provides that the public security organs are responsible for punishing minor offenders who disturb social order, undermine social security, infringe upon citizen's rights of property and person, and hinder societal management.<sup>27</sup> Indeed, the public security organs alone bear responsibility for the imposition and subsequent regulation of Detention for Education, Coercive Drug Rehabilitation, and Reeducation through Labor.<sup>28</sup> In other words, public security bureaus exercise their administrative power to detain without any systematic procedural checks.<sup>29</sup> This system effectively blocks offenders' access to other legal institutions and lawyers, while also denying them a proper legal procedure to challenge and restrain the police's administrative detention power.

Third, the administrative justice system reflects the PRC's underlying philosophies of education, rehabilitation and reform. These theoretical foundations can be traced back to the 1950s, when Mao Zedong's speech "*On the Correct Handling of Contradictions among the People*" established the policy of resolving non-antagonistic contradictions.<sup>30</sup> The non-antagonistic contradiction was introduced by the Soviet philosophers in the 1930s, representing a type of struggle in the form of internal conflict among the people.<sup>31</sup> Compared to antagonistic contradiction where Maoist theory holds that the differences between the working class and the bourgeoisie are so great that there is no way to reach a compromise between these two classes, Mao regarded non-antagonistic contradictions as a non-fundamental issue, given that they take place among the people and can be solved through criticism, education, and the use of coercive ad-

---

27. PRC Security Administrative Punishment Law, *supra* note 2, at art.2.

28. Measures on Coercive Drug Rehabilitation, *supra* note 4, at art.3; PRC Anti-Drug Law, *supra* note 4, art. 40; Measures for Detention for Education of Prostitutes and Clients of Prostitutes, *supra* note 3, at art.3; Temporary Methods on Reeducation through Labor, *supra* note 5, at art.4.

29. Li Changcheng, *Xingzheng juliu—bei fazhi yiwang de jiaoluo* (*Administrative Detention—Ignored by Rule of Law*), 3 XINGZHENG FAXUE YANJIU [ADMIN. L. REV.] 64, 66-67 (2006).

30. This speech was made on February 27, 1957 by Chairman Mao Zedong with reference to the discussion of handling contradictions between ourselves and enemies. For a detailed analysis of this speech, see Michael Schoenhals, *Original Contradictions—On the Unrevised Text of Mao Zedong's 'On the Correct Handling of Contradictions among the People'*, 16 AUSTL. J. CHINESE AFFAIRS 99, 99-112 (1986).

31. For a detailed discussion, see generally Thomas Weston, *The Concept of Non-Antagonistic Contradiction in Soviet Philosophy*, 72 SCI. & SOC'Y 427 (2008).

ministrative measures.<sup>32</sup> In his speech, Mao advocated the use of administrative measures for the day-to-day management of people in non-antagonistic contradictions; in contrast, he advocated the exercise of dictatorship against the bourgeoisie.<sup>33</sup> The first RTL document, issued in 1957, sought through thought education in labor centers to re-socialize the “bad elements,” from social order disturbers to self-supportive persons.<sup>34</sup> At the same time, RTL also targeted some special “social illnesses,” such as prostitution and drug use.<sup>35</sup> Targeted government crackdowns resulted in the detention of prostitutes and drug users for education and rehabilitation.<sup>36</sup>

With the booming of the “socialist market economy” envisioned by Deng Xiaoping in the 1980s, moral transgressions that were once in decline, resurged.<sup>37</sup> In response, the government initiated a number of “Hard Strike” campaigns in the 1980s and 1990s against particular categories of social disturbers. Although the authorities administered the “Hard Strike” campaigns in a retributive manner, the corresponding regulations expressed the PRC’s belief in education and rehabilitation. For instance, the *Measures for Detention to Educate Prostitutes and Clients of Prostitutes* and the *Measures on Coercive Drug Rehabilitation* clearly view the use of DE and CDR as educative, rehabilitative and persuasive.<sup>38</sup> Similarly, the *Temporary Measures on Reedu-*

---

32. BIDDULPH, *supra* note 13, at 69; Dean G. Rojek, *Social Control in the People’s Republic of China*, 14 CRIM. JUST. REV. 141, 145 (1989); Victor N. Shaw, *Productive Labor and Thought Reform in Chinese Corrections: A Historical and Comparative Analysis*, 78 PRISON J. 186, 188 (1998).

33. See Jerome Alan Cohen, *Reflections on the Criminal Process in China*, 68 J. CRIM. L. & CRIMINOLOGY 323, 329-31 (1977); BIDDULPH, *supra* note 13, at 69.

34. See The Decision of the State Council on the Question of Re-education through Labor, *supra* note 5. The Decision of the State Council Regarding the Question of Reeducation through Labor was issued by the State Council on Aug. 3, 1957.

35. See GAIL HERSCHATTER, DANGEROUS PLEASURES: PROSTITUTION AND MODERNITY IN TWENTIETH-CENTURY SHANGHAI 305 (1997).

36. For example, as of 1950s in Beijing and Shanghai, the local governments frequently carried out sudden strikes of coordinated action to arrest prostitutes and close brothels. See RUAN FANGFU, SEX IN CHINA: STUDIES IN SEXOLOGY IN CHINESE CULTURE 75 (1991).

37. It is believed that prostitution and drug problems were basically eradicated by the early 1960s by using strict control measures. See Allen F. Anderson & Vincent E. Gil, *Prostitution and Public Policy in the People’s Republic of China: An Analysis of the Rehabilitative Ideal*, 4 INT’L CRIM. JUST. REV. 23, 28-29 (1994); Lin Lu, Yuxia Fang & Xi Wang, *Drug Abuse in China: Past, Present and Future*, 28 CELL MOLECULAR NEUROBIOLOGY 479, 480 (2008); Hong Lu & Bin Liang, *Legal Responses to Trafficking in Narcotics and Other Narcotic Offenses in China*, 18 INT’L CRIM. JUST. REV. 212, 214 (2008).

38. Article 2 of the Measures for Detention for Education of Prostitutes and Clients of Prostitutes says: ‘. . .the guidelines of detention for education are educative, rehabilitative and rescuing.’ Measures for Detention for Education of Prostitutes and Clients of Prostitutes, *supra* note 3. Section 2 of the Measures on Coercive

*cation through Labor* highlight the same operating guideline, emphasizing education and reform over punishment and deterrence.<sup>39</sup>

## 2.2 A BRIEF OVERVIEW OF THE PRINCIPAL FORMS OF ADMINISTRATIVE DETENTION

The Chinese administrative justice system is built upon a variety of administrative measures. As articulated in administrative regulations, the three most frequent means of punishing administrative offenders are warnings, fines and administrative detention. Of these three penalties, administrative detention is the harshest and most controversial.<sup>40</sup>

Historically, the Chinese government has long depended on coercive administrative measures to preserve social order and stability. During the mass campaigns under Mao,<sup>41</sup> for example, the government made wide use of “control” (*guan zhi*) to restrict the liberties of societal “bad elements,” such as bandits, gangsters, drug addicts and prostitutes.<sup>42</sup> Under the authority of the *Directive on Suppression of Counter-revolutionary Activities*,<sup>43</sup>

---

Drug Rehabilitation states ‘Coercive drug rehabilitation. . . is the administrative measure compulsorily executing medical and psychological treatment and conducting legal and moral education to alienate drug users from drug addiction.’ Measures on Coercive Drug Rehabilitation, *supra* note 4, at §2.

39. Article 3 of the Temporary Measures on Reeducation through Labor articulates: ‘For those who are detained under Reeducation through labor, the guides of education, rescue and rehabilitation should be carried out, educational reclamation should be first, productive labor should be second. . . .’ Temporary Methods on Reeducation through Labor, *supra* note 5, at art.3.

40. In the current Chinese administrative justice system, the POD, DE, CDR and RTL all entail either short or lengthy detention, whereas the other non-custodial administrative penalties, like fines and warnings are only imposed on minor offenders who lightly undermine social order under the PRC Security Administrative Punishment Law. See PRC Security Administrative Punishment Law, *supra* note 2, at art.9.

41. For comprehensive discussions of Chinese mass mobilization and political campaigns during the period of 1949-1965, see generally, Lowell Dittmer, *Mass Line and “Mass Criticism” in China: An Analysis of the Fall of Liu Shao-Ch’i*, 13 ASIAN SURV. 772, 772-92 (1973); Govind S. Kelkar, *The Chinese Experience of Political Campaigns and Mass Mobilization*, 7 SOC. SCI. 45, 45-63 (1978); H. Arthur Steiner, *Current “Mass Line” Tactics in Communist China*, 45 AM. POL. SCI. REV. 422, 422-36 (1951).

42. Shaw, *supra* note 32, at 192. The instrumental nature of control is debatable. See MICHEL DUTTON, *POLICING CHINESE POLITICS: A HISTORY 167-8* (2005) (arguing that control was employed as an administrative custodial measure before the enactment of the Criminal Procedure Law in 1979). *But see* COHEN, *supra* note 23, at 21 (recognizing control as a criminal sanction in the pre-reform criminal justice system).

43. The Directive on Suppression of Counter-revolutionary Activities was issued on 18 March, 1950 by the Chinese Community Party. Zhong gong zhong yang guanyu zhenya fange ming huodong de zhishi [The Directive on Suppression of Counter-revolutionary Activities] (promulgated by the Chinese Communist Party

the public security organs exercised *guanzhi* over offenders by subjecting them to supervised mass labor.<sup>44</sup> The public security organs used *guanzhi* to penalize those who had committed minor crimes and had expressed a willingness to repent.<sup>45</sup> Even prior to 1979, when the Criminal Procedure Law officially created a category of criminal sanctions under *guanzhi*, it played an important role in punishing and regulating minor disturbers of social order.

The government has extensively deployed RTL since its inception.<sup>46</sup> The *Decision of the State Council Regarding the Question of Reeducation through Labor*, passed in 1957, subjected anti-revolutionary, anti-Party, and anti-socialist elements whose crimes are not sufficiently serious to warrant criminal sanction to RTL.<sup>47</sup> Two later regulations, the *Directive on Suppression of Counter-revolutionary Activities* (1979) and the *Temporary Measures on Reeducation through Labor* (1982), formulated RTL's actual practice and ideological basis. These two regulations clarified RTL's allowed range of detention, its guidelines, and the offenses for which it could be used. Philosophically, RTL is a coercive administrative measure under which the accused may be incarcerated for up to three years initially, with a possible extension of one more year. The applicable scope of RTL is fairly broad, but its main targets are still those acts that are not sufficiently serious to warrant criminal sanction.<sup>48</sup>

---

Mar. 18, 1950, effective Mar. 18, 1950), [http://news.xinhuanet.com/ziliao/2004-12/14/content\\_2332798.htm](http://news.xinhuanet.com/ziliao/2004-12/14/content_2332798.htm) (P.R.C).

44. See COHEN, *supra* note 23, at 21.

45. BIDDULPH, *supra* note 13, at 65.

46. The first document concerning the RTL was issued by the State Council in 1957. For a historical review of China's RTL, see Fu Hualing, *Reeducation through Labor in Historical Perspective*, 184 CHINA Q. 811, 811-30 (2005).

47. The Decision of the State Council on the Question of Re-education through Labor, *supra* note 5, at art.1(2)

48. In accordance with Article 10 of the Temporary Measures on Reeducation through Labor 1982, targets include: 1. counter-revolutionary and anti-Party, anti-Socialist elements whose crimes are not sufficiently serious to warrant criminal sanction; 2. those who form groups to commit murder, armed robbery, rape, arson and other gang crimes, whose crimes are not sufficiently serious to warrant criminal sanction; 3. those who commit unlawful or criminal acts of hooliganism, prostitution, theft, fraud, etc., who do no reform after repeated education, whose crimes are not sufficiently serious to warrant criminal sanction; 4. those who disrupt social order by inciting the masses to create disturbance and fights, pick quarrels and cause a disturbance, stir up trouble, whose crimes are not sufficiently serious to warrant criminal sanction; 5. those who have a work unit, but who, for a long time, refuse to labor or who disrupt labor discipline, ceaselessly cause trouble without cause, disrupt the order of production, work, study and teaching or living or obstruct official business, whose crimes are not sufficiently serious to warrant criminal sanction; and 6. those who instigate others to commit unlawful and criminal acts, but whose offenses are not sufficiently serious to warrant a criminal sanction. See BIDDULPH, *supra* note 13, at 197.

If RTL is a catch-all administrative measure targeting all kinds of deviants, detention for education and coercive drug rehabilitation are specifically designed to handle prostitution and drug addicts respectively. The *Measure for Detention to Educate Prostitutes and Clients of Prostitutes* provides that under detention for education, prostitutes and their clients may be detained between six months and two years.<sup>49</sup> While in custody, prostitutes are tested for sexually transmitted diseases and can be required to perform labor.<sup>50</sup> Similarly, authorities use coercive drug rehabilitation, implemented in treatment centers, to help drug addicts overcome their addiction through a combination of medical and psychological treatment, and education in law and morals.<sup>51</sup> Authorities may detain drug addicts for up to two years if they refuse treatment or fail to detoxify.<sup>52</sup> The compulsory treatment also may require the detained drug addict to work, since productive labor is considered contributory to detoxification.<sup>53</sup>

Despite the lengthy detentions imposed on prostitutes and drug abusers, under the *Public Order Administrative Punishment Law* the Chinese administrative justice system prescribes a relatively short custodial period for those who disturb public order, infringe upon the personal rights of other citizens, or cause harm to public or private property when such offenses are not serious enough to warrant criminal prosecution.<sup>54</sup> In theory, this administrative punishment law shares some of the same targeted offenders as RTL, but public order detention only mandates five to fifteen days of incarceration, with no more than twenty days for multiple offences, whereas RTL places people in custody for at least one year.<sup>55</sup>

On paper, detained offenders (whether prostitutes, drug abusers or public order violators) have two possible avenues of redress. First, the *Chinese Administrative Reconsideration Law*

---

49. Measures for Detention for Education of Prostitutes and Clients of Prostitutes, *supra* note 4, at art.9.

50. *Id.* at arts.10, 13.

51. See PRC Anti-Drug Law, *supra* note 4, at art. 43; Peerenboom, *supra* note 12, at 1002.

52. Zhonghua Renmin Gongheguo jin du fa [The Anti-Drug Law] (promulgated by the Standing Comm. Nat'l Peoples's Cong., Dec. 29, 2007, effective June 1, 2008), art. 43 (P.R.C.) [hereinafter Chinese Anti-Drug Law]; Peerenboom, *supra* note 12, at 1002.

53. Zhang Renan, Gao Yucai & Zhou Xintong, *Lai zi kun ming shi qian zhi jie du suo de bao gao* [Report from Kunming Coercive Drug Rehabilitation], 22 RENMIN GONG'AN [PEOPLE'S POLICE] 8, 9 (1996).

54. Zhonghua Renmin Gongheguo zhi an guan li chu fa fa [The Public Order Administrative Punishment Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 28, 2005, effective Mar. 1, 2006) (P.R.C.); CPL-1996 art.37.

55. The Public Order Administrative Punishment Law, art. 16.

stipulates that the detainee may apply for administrative reconsideration from public security organs at a higher level.<sup>56</sup> Second, if the applicant is not satisfied with the reconsideration decision, he or she may bring an administrative action, in accordance with the *Administrative Litigation Law*, against the public security organs for their detention decision.<sup>57</sup> When a detainee files such an administrative lawsuit, the court will hold a hearing to examine the legality of the administrative detention, but generally it will not stay the detention while the case is pending.<sup>58</sup>

In theory, these two channels arm administrative detainees with the ability to challenge the authority of the public security bureau, but in practice, the redress is largely ineffective. First, applying for reconsideration and filing an administrative lawsuit are both post-detention remedies. Any result does not affect the detention decision before the fact; even a favorable outcome for the detainee would probably come too late to correct the authorities' error or misconduct.<sup>59</sup> Second, given that law enforcement organs, and especially public security bureaus, have influence over administrative reconsideration and judicial litigation, the efficacy of these measures in vindicating administrative detainees is highly questionable.<sup>60</sup> In fact, on most occasions, the offenders' reconsideration applications are denied, or courts rule against them in their administrative actions, citing unreasonable non-legal considerations.<sup>61</sup> Without effective channels for administrative detainees to challenge their detention, the use of administrative detention is arbitrary and unjust, as it infringes upon the detainee's basic right to liberty.

Although the practice of administrative detention in China, from the legal and institutional points of view, is far from perfect, this article does not seek to demonstrate how administrative detention is ineffective due to its legal deficiencies. Instead, this article seeks to examine the actual impact of administrative detention on detainees' behavior after they are released. By

---

56. *Id.* at art. 5.

57. *Zhonghua Renmin Gongheguo xing zheng fu yi fa* [The Administrative Reconsideration Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 29, 1999, effective Oct. 1, 1999), art. 6(1) (P.R.C.).

58. *Zhonghua Renmin Gongheguo xing zheng su song fa* [The Administrative Litigation Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 4, 1989, effective Oct. 1, 1990), arts. 11(1)-(2).

59. CHEN, *supra* note 1, at 451.

60. *Id.*

61. For example, the courts are very often pressured by the public security organs with the same level and Party members to adjudicate in the interest of the law enforcement agencies. See Ye Haojia, *Zhongguo xing zheng ju liu ren shen zi you bao hu de cheng xu xing wen ti* [The Procedural Issues of Protecting Offenders' Rights of Liberty Under Administrative Detentions in China], 2 SHEKE ZHONGHUI [SOC. SCI. REV.] 99-100 (2009).

looking at administrative detention in practice this article uncovers their true purposes, which turn out to be rather different than the official rationales. The true purposes of administrative detention explain the high recidivism rates of administrative offenders. Developing effective solutions to these high recidivism rates will require a deeper understanding of offenders' behavioral and attitudinal attributes than provided by traditional analyses of the administrative detention system.

### 3. THE EFFECTIVENESS OF ADMINISTRATIVE DETENTION IN REFORMING MINOR OFFENDERS

#### 3.1. IS ADMINISTRATIVE DETENTION AN EDUCATIVE INSTRUMENT?

The Chinese government tends to utilize administrative tools as the "second line of defense" in crime prevention and the reintegration of offenders into society.<sup>62</sup> The administrative detention system requires that detainees receive moral and legal education, conduct productive labor and learn vocational skills to facilitate their reentry into society.<sup>63</sup> Despite these stated objectives, the Chinese administrative detention seldom serves an educative and corrective purpose. Rather, the government employs administrative detentions largely as punitive instruments for maintaining social order.<sup>64</sup>

The "Hard Strike" campaigns introduced the use of administrative detention as a punitive measure. These campaigns were nationwide, anti-crime crackdowns, launched intermittently beginning in the early 1980s to stop crime waves by severely and swiftly punishing serious criminals.<sup>65</sup> Although these campaigns were supposed to be carried out within the criminal law regime, in practice the government used a broad range of administrative detentions as adjuncts to criminal sanctions. The government launched the "1983 Hard Strike" campaign in order to deal a "stern-blow" to the "wreckers" and criminal elements.<sup>66</sup> In addition to imprisoning criminal offenders, authorities sentenced more than 300,000 people to RTL during that campaign, in part

---

62. ZHI'AN GUAN LI CHU FA TIAO LI JIAO CHENG [TEACHING MATERIALS ON THE SECURITY ADMINISTRATIVE PUNISHMENT REGULATIONS] 3 (Pingshan Zhu ed., 1991); ZHONGGUO XIAN JIE DUAN FAN ZUI WEN TI YAN JIU [THE STUDY OF CRIME PROBLEMS IN CHINA'S NEW ERA] 239 (Lei Yu ed., 1993).

63. Shaw, *supra* note 32, at 194-95.

64. BIDDULPH, *supra* note 13, at 139.

65. Bin, *supra* note 15, at 391; Fan Fenglin, *Lun Yanda Zhengce (The Study of 'Strike Hard' Policy)*, 4 GONG'AN YANJIU [POLICYING STUDIES] 66, 66-7 (2003).

66. Murray Scot Tanner, *supra* note 15, at 96-97.



because the prisons were already overcrowded.<sup>67</sup> The “1989 Hard Strike” campaign involved more specific targets, characterized as the “Six Evils.”<sup>68</sup> Yet the narrowing of target offenses did not reduce the widespread use of RTL; authorities sentenced 169,000 people to RTL and more than 680,000 prisoners to reform through labor camps.<sup>69</sup> At the same time, the government established hundreds of detention for education centers and coercive drug rehabilitation centers nationwide to detain prostitutes and drug addicts.<sup>70</sup> The trend continued in ensuing crackdowns. Over the course of the 1996 and 2001 “Hard Strike” campaigns, the government sentenced nearly half a million people to administrative detention under criminal accusations and charges.<sup>71</sup>

There is mounting evidence that administrative detention played an essential role in the implementation of the “Hard Strike” campaigns in contemporary China. The government viewed administrative detentions not as alternatives to criminal sanctions, but as supplementary punitive measures serving the doctrines of crime control and punishment. Although the government’s use of “Hard Strike” campaigns merits serious discussion around their lack of legitimacy and procedural deficiencies,<sup>72</sup> their effectiveness in deterring crime makes it un-

---

67. Feng Luo, *Lao dong jiao yang shen pi gong zuo de hui gu yu si kao [Retrospect and Thoughts on Investigation and Approval of Reeducation Through Labor]*, 5 GONG’AN YAN JIU [POLICYING STUDIES] 33, 33-7 (1992).

68. The “Six Evils” encompass prostitution, gambling, manufacture and sale of pornography, growing, transport and sale of drugs, kidnapping and selling women and using feudal superstition to deceive and harm the people. See Notice on Coordinating with the Public Security Organs to Carry out Work to Eliminate the “Six Evils” (Sup. People’s Ct. (P.R.C.), Nov. 13, 1989).

69. Murray Scot Tanner, *Organization and Politics in China’s Post-Mao Law-Making System*, in DOMESTIC LAW REFORMS IN POST-MAO CHINA 275-6 (Pitman B. Potter ed., 1994).

70. ZHI LI MAI YIN PIAO CHANG DUI CE [COUNTERMEASURES FOR THE CONTROL OF PROSTITUTION AND USE OF PROSTITUTES] 267 (Xinsheng Mou ed. 1996); Xuanlue Liu & Cheng Yuan, *Dui you Zhongguo te se de jing du gon guo de tan suo yu si kao [Exploration and Reflection on the Work of Drug Prohibition with Chinese Characteristics]*, in LUN ZHONGGUO TE SE DE GONG’AN [DISCUSSION OF PUBLIC SECURITY WITH CHINESE CHARACTERISTICS] 30, 35 (Damin Kang ed., 1997).

71. LAW YEARBOOK EDITORIAL COMMITTEE (ed.), LAW YEARBOOK OF CHINA 202 (1997). In 1996, the total number of detained prostitutes under detention for education was 418,000.

72. Some legal practitioners point out that the rationale of swiftness contradicts the legal procedural requirements set forth in the Chinese Criminal Procedure Law. See XINJIU QU, XING SHI ZHENG CE DE QUAN LI FEN XI [ANALYSIS ON THE POWER OF CRIMINAL POLICY] 268-9 (2002). Other experts are more concerned the suspects’ legal and human rights are unable to be protected in the campaigns, because the objectives of speedy and severe punishment of the ‘Hard Strike’ policy outweighs all other procedural considerations. See Chen Xinliang, *Yan da li bi zhi yi [Discussion of “Hard Strike” Campaigns’ Pros and Cons]*, 5 HE NAN SHI IN GUAN LI GAN BU XUE YUAN XUE BAO [J. HENAN ADMIN. INST. POL. & L.] 120, 122 (2004).

likely that the government will abandon them. Hence, given that the Chinese government continues to rely upon administrative detention as an aide to carry out the administration of criminal justice, it is likely to continue using administrative detentions as auxiliary criminal sanctions, serving the functions of punishment, retribution and deterrence. More worrisome, the irregularity and unpredictability in the legal practice in contemporary China indicate that authorities are, in effect, unwilling or unable to clarify the distinction between a criminal justice system and an administrative law regime.

In addition to the Chinese government's intermittent use of administrative detention as an auxiliary to criminal imprisonment, administrative detention is also similar to criminal imprisonment in nature. Administrative detention often involves mandatory labor, which, in theory, causes the detainee to reflect on his ideological outlook and personal faults, and thereby leads to repentance and reform.<sup>73</sup> This view of penal labor resembles the rhetoric of the "Reform through Labor" system (*laogai*), once a central component of China's prison system.<sup>74</sup>

"Reform through Labor" is a system of prison farms that the Chinese government has used to reform criminals.<sup>75</sup> The rationale behind "Reform through Labor" is that, through manual labor, offenders "can gradually establish a sense of self-reliance through work, learn necessary skills to become productive citizens after leaving prison, and forsake the selfish, parasitic habit of reaping without sowing."<sup>76</sup> The government's two guiding principles of the "Reform through Labor" prison system are: (1) The goal is not only to punish criminals, but also to reform them into new, socialist citizens; and (2) prisoners must be forced to

---

73. It should be noted that among four frequently used forms of administrative detention, the short-term public order detention does not entail any labor work, which can be considered a purely punitive administrative measure imposed on minor offenders.

74. For comprehensive accounts of the ideology and practice of "reform through labor" in the Chinese prison system, see generally HONGDA HARRY WU, *LAOGAI—THE CHINESE GULAG* (Westview Press 1992); HONGDA HARRY WU, *TROUBLEMAKER: ONE MAN'S CRUSADE AGAINST CHINA'S CRUELTY* (Crown 1996); JAMES D. SEYMOUR & RICHARD ANDERSON, *NEW GHOSTS, OLD GHOSTS: PRISON AND LABOR REFORM CAMPS IN CHINA* (M.E. Sharpe ed., 1998).

75. Jonathan M. Cowen, *One Nation's "Gulag" Is Another Nation's "Factory Within a Fence": Prison-Labor in the People's Republic of China and the United States of America*, 12 *UCLA PAC. BASIN L.J.* 190, 195 (1993).

76. Ronald J. Troyer, Chinese Thinking about Crime and Social Control, in *SOCIAL CONTROL IN THE PEOPLE'S REPUBLIC OF CHINA* 45 (Ronald J. Troyer, et al. eds., 1989); Jun Xu, *Mao Zedong li lun zhong de lao dong gai zao [On Mao Zedong's Theory of Offender Reform Through Manual Labor]*, in *LAO DONG GAI ZAO XUE: CAI KAO ZI LIAO [REFERENCE MATERIALS ON THE SCIENCE OF REFORM THROUGH LABOR]* 9-10 (Ming Shao & Min Zhou eds., 1990).

labor in order to safeguard the socialist system.<sup>77</sup> In order to fulfill these two principles, prisoners in Reform through Labor camps are required to plant, harvest, engineer, manufacture and process products for sale in the domestic and international market.<sup>78</sup> Hundreds of reform through labor camps have been known to exist, spanning China's territory from the highly industrialized prison factories of the eastern coastal cities to the isolated, fenceless farms of the West.<sup>79</sup>

Although the Chinese government has characterized "Reform through Labor" as being correction-oriented, many legal researchers have questioned whether it is truly reformative. Harry Wu, for example, has argued that "Reform through Labor" is used merely for political purposes, namely protecting the dictatorship of the Communist Party by punishing and suppressing criminals.<sup>80</sup> According to Wu, authorities treat prisoners as enemies of the state, and therefore require them to work more than eight hours a day under harsh and even inhumane conditions. Those prisoners who fail to accomplish their workload or to progress in their educational reform may be subject to beatings, incommunicado detention or prolonged periods of solitary confinement.<sup>81</sup> These harsh practices reveal that "Reform through Labor" functions in a punitive and retributive manner, overriding the program's ostensible educative and rehabilitative functions.

In practice, administrative detention in China is almost identical to imprisonment within the criminal justice system.<sup>82</sup> Authorities implement RTL, ED and CDR in a disciplinary manner, applying stringent rules to restrict the freedom of minor offenders.<sup>83</sup> The personnel responsible for the day-to-day operations of

---

77. Melissa Pearson Frugé, *The Laogai and Violations of International Human Rights Law: A Mandate for the Laogai Character*, 38 SANTA CLARA L. REV. 473, 480 (1997).

78. THE LAOGAI RESEARCH FOUNDATION, LAOGAI HANDBOOK 13 (2008), available at <http://www.laogai.it/wp-content/uploads/2009/06/laogai-handbook.pdf>; Cowen, *supra* note 75, at 214-7; WU, *supra* note 74, at 3. China also emphasizes financial objectives as a motivation for the practice of forced labor. This norm finds its support from certain governmental documents. For example, in the State Council White Paper on Criminal Reform in China (1991), the Chinese government stressed that 'profit from (prison-labor) is mainly use for improving the prisoners' living conditions, upgrading their common living areas and facilities and maintaining production.

79. THE LAOGAI RESEARCH FOUNDATION, *Id.* at 4.

80. WU, *supra* note at 74, at 64.

81. Frugé, *supra* note 77, at 482.

82. CHEN, *supra* note 1, at 460.

83. Jinbing Jiang, *Lao jiao guan li mo shi gai ge de shi jin yu si kao* [Practice and Thinking of Management Model Reform of Reeducation through Labor], 2 ZHONGGUO SI FA [JUST. CHINA] 35, 35 (2006); Bing Sun & Youshan Wang, *Qian ta shou rong jiao yu suo guan li jiao yu gong zuo* [Preliminary Study of Educative and Man-

administrative detention facilities largely adopt the same governing methods as the personnel in formal Chinese prisons, regardless of the significant difference between administrative detainees and criminal convicts.<sup>84</sup>

Moreover, in keeping with the Chinese government's imprisonment policies, administrative detention assigns compulsory labor to detainees in an attempt to rehabilitate them. This is merely an imitation of practices under the "Reform through Labor" system. Thus, one Chinese legal expert characterizes administrative detention, and RTL in particular, as a "quasi-Reform through Labor" because both its ideals and actual practices resemble those of "Reform through Labor."<sup>85</sup> ED and CDR, however, also include a penal labor component similar to that of the "Reform through Labor" system. As previously discussed, authorities regularly require prostitutes and drug addicts detained under ED and CDR to undertake a certain amount of productive labor every day, in addition to receiving psychological counseling and legal and moral education.<sup>86</sup> Authorities schedule and organize the work in a semi-military fashion in order to quickly rebuild offenders' sense of discipline and help them shed their immoral habits.<sup>87</sup> Although the government represents DE and CDR as seeking to use forced labor to foster a love for work and overcome bad habits such as laziness and hedonism, no empirically-supported relationship exists between the compulsory work and any actual correctional effects. Instead, coerced productive labor communicates to administrative offenders merely that their violations are punishable.<sup>88</sup> Thus, to the extent that administrative detention is similar to "Reform through Labor"

---

*agement Work in Detention for Education*], 4 WU HAN GONG'AN AN BU XUE YUAN XUE BAO [J. WUHAN PUB. SECURITY CADRE'S C.] 23, 23 (2002); Renqian Xie, *Qian zhi jie du guan li ti zhi tan tao* [*Exploring Management Mechanism of Coerive Drug Rehabilitation*], 15 ZHONGGUO YAO WU YI LAI ZA ZHI [CHINESE J. DRUG DEPENDENCE] 67, 67-8 (2006).

84. Lirong Wang, *Lao dong jiao yang zhi xing yu guan li de ruo gan wen ti* [*Few Questions About Administering and Managing Reeducation Through Labor*], 6 FA XUE [LAW SCI. MONTHLY] 22, 24 (2001).

85. Zou Keyuan, *The "Re-education Through Labor" System in China's Legal Reform*, 12 CRIM. L. F. 459, 461 (2001).

86. YU ZHOU & YULONG PENG, JIAN SUO GUAN LI YE WU QUAN SHU [OPERATIONAL BOOK OF CUSTODIAL MEASURES MANAGEMENT] Ch. 5 (2005).

87. *Information Office of the State Council, Criminal Reform in China*, 35 BEIJING REV., Aug. 17, 1992 (Magazine), at 10; Zhangshen Hao & Zhengguo Li, *Shou rong jiao yu gong zuo chu tan* [*Preliminary Exploration of Detention for Education Management*], 5 HE NAN GONG'AN GAO DENG ZHU AN KE XUE YUAN XUE BAO [J. HENAN PUB. SECURITY ACADEMY] 22, 24 (1998).

88. Vincent E. Gil & Allen F. Anderson, *State-Sanctioned Aggression and the Control of Prostitution in the People's Republic of China: A Review*, 3 AGGRESSION & VIOLENT BEHAV. 129, 137 (1998).

and the latter is largely punitive, it is doubtful that administrative detentions can yield significant reformation.

In summary, the punitive nature of administrative custodial measures blurs the distinction between criminal imprisonment and administrative detention; these two kinds of incarceration seem to share the same values. If a serious crime is imprisonable because it satisfies public demands for vengeance and punishment,<sup>89</sup> however, there is inadequate justification for using administrative detention to punish minor offenders. Moreover, if long-term imprisonment is not likely to positively impact prisoners' subsequent behavior,<sup>90</sup> it seems that administrative detention also would be ineffective in correcting the behavior of administrative offenders. The ensuing discussion of administrative offenses and the factors that affect recidivism supports this conclusion.

### 3.2 IS ADMINISTRATIVE DETENTION EFFECTIVE IN REFORMING ADMINISTRATIVE OFFENDERS?

#### 3.2.1 *Recidivism*

Significant research has been conducted on recidivism rates of minor offenses both inside and outside China. These studies focus most of their attention on the recidivism of prostitutes and drug addicts. Prostitution has always had a very high recidivism rate in China. Estimates based on statistical surveys from the 1990s place prostitute recidivism following release from ED or RTL between 50 to 60 percent nationwide.<sup>91</sup> According to one study, "a large number of prostitutes, once completing their compulsory education at reformatories, go straight back to the game."<sup>92</sup> Likewise, the recidivism of drug addicts is troubling. One recent report revealed that an estimated 60 to 95 percent of

---

89. RICHARD L. LIPPKE, *RETHINKING IMPRISONMENT* 12 (2007). The author believes that legal punishment has two major purposes, which are crime reduction and retributive aims.

90. Dorothy H. Bracey, "Like a Doctor to a Patient, Like a Parent to a Child" — *Corrections in the People's Republic of China*, 68 *PRISON J.* 24, 28 (1988); B. H. Hobler, *Correctional Education in the People's Republic of China*, 40 *J. CORRECTIONAL EDUC.* 64, 67 (1989).

91. Vincent E. Gil, Marco Wang, Allen F. Anderson & Guao Matthew Lin, *Plum Blossoms and Pheasants: Prostitutes, Prostitution, and Social Control Measures in Contemporary China*, 38 *INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 319, 331 (1994). It is noted that the latest recidivism rates of prostitution are lacking due to the secrecy and fluidity of prostitutes in China.

92. Allen F. Anderson & Vincent E. Gil, *China's Modernization and the Decline of Communitarianism: The Control of Sex Crimes and Implications for the Fate of Informal Social Control*, 14 *J. CONTEMP. CRIM. JUST.* 248, 255 (1998).

detoxicated patients in China relapse within one year.<sup>93</sup> As recidivists undergo compulsory detoxification treatment in a coercive drug rehabilitation center or a re-education through labor camp,<sup>94</sup> it appears that types of detention have been ineffective in eradicating drug addiction.

To date, no detailed statistical study has been conducted concerning the recidivism rate of public order offenders.<sup>95</sup> This administrative offense has largely been ignored because, as the lightest administrative detention, authorities detain large numbers of people pursuant to public order regulations every day. These large numbers have posed difficulty to legal scholars seeking to perform a broad study of those detained under public order detention or their behavior following release. As discussed *infra*, however, there are some experts who believe that public order detention is unlikely to achieve any rehabilitation of offenders' attitudes and behavior. They believe that, on the contrary, public order detention will interfere with offenders' personal ties with family and society, and thereby generate an unfavorable impact on their reentry into society.<sup>96</sup>

### 3.2.2 *Social Capital*

The ineffectiveness of administrative detention on rehabilitating offenders is disappointing. Not only is the retributive and penal nature of administrative detention ineffective in reforming behavior, but the alienation of offenders from society and family likely reduces offenders' chances of becoming law-abiding citizens. It is worth asking whether social and familial factors correlate with high recidivism rates. More precisely, if offenders' re-offending can be proven to be subject to certain social factors, then correctional measures based on social resources may be a feasible alternative to the current administrative justice system.

The recidivism of criminal offenders is affected by variables ranging from personal characteristics to cultural and social conditions.<sup>97</sup> Among these factors, social capital is one of the most

---

93. Lu Lin & Wang Xi, *Drug Addiction in China*, 1141 ANNALS N.Y. ACAD. SCI. 304, 311 (2008).

94. *Id.*

95. Public order offenses refer to unlawful acts that undermine social order and stability with little harms to society, such as gang-fighting, willfully damaging, destroying any public or private property.

96. Renwen Liu, *Detention Centre, the Place Law Should Not Forget*, JIANCHA RIBAO [PROCURATORATE DAILY] 2, 20 Nov. 2002; Zhanjun Wang & Jin Ma, *Zhi'an ju liu shi yong tan xi (Exploration of Public Order Detention Application)*, 3 TIE LU JING GUAN GAO DING ZHUAN KE XUE YUAN XUE BAO [J. RAILWAY POLICE C.] 43-5 (2004).

97. There are numerous articles and books concerning criminals' recidivism and its causes. See generally GEORGE K. BROWN, RECIDIVISM: A SOCIAL-LEGAL SUR-

important theoretical concepts in recidivist literature. Social capital is defined as resources existing in social structures and relationships that facilitate social action.<sup>98</sup> Western criminologists first applied this theory to analyze the re-offending of individuals released from prison. Their analytical models present two levels of social capital: the resources that exist in interpersonal relationships and the social resources that exist in a community.<sup>99</sup> According to this categorization, signs of a high level of social capital include mentoring, job networking, marriage and mutual support in the community, which are all associated with self-reliant economic development without need for government interference.<sup>100</sup>

Of these indicators, ties with offenders' families, community support and employment are the most effective factors in preventing recidivism.<sup>101</sup> Fueled by studies based largely on Western experiences, Chinese law specialists have conducted analogous studies of recidivism variables in the context of Chinese criminology. Their conclusions are consistent with Western findings. One empirical survey indicates that Chinese informal means of social control are significant in contributing to low rates of recidivism.<sup>102</sup> These informal tools, such as community-based

---

VEY OF ITS DEFINITION, INCIDENCE AND TREATMENT IN THE UNITED STATES (1947); PETER SCHMIDT & ANN DRYDEN WITTE, *PREDICTING RECIDIVISM USING SURVIVAL MODELS* (1988); EDWARD ZAMBLE & VERNON L. QUINSEY, *THE CRIMINAL RECIDIVISM PROCESS* (2001); Howard Kitchener, Annesley K. Schmidt & Daniel Glaser, *How Persistent is Post-Prison Success?*, 41 *FED. PROBATION* 9, (1977); James S. Coleman, *Social Capital in the Creation of Human Capital*, 48 *AM. J. SOC. REV.* 95 (1988); Paul Gendreau, Tracy Little & Claire Goggin, *A Meta-Analysis of the Predictors of Adult Offender Recidivism: What Works!*, 34 *CRIMINOLOGY* 575 (1996); Pamela K. Lattimore, Christy A. Visher & Richard L. Linster, *Predicting Rearrest for Violence Among Serious Youthful Offenders*, 32 *J. RES. CRIME & DELINQ.* 54 (1995); Wagdy Loza, *Predicting Violent and Nonviolent Recidivism of Incarcerated Male Offenders*, 8 *AGGRESSION & VIOLENT BEHAV.* 175 (2002).

98. JAMES S. COLEMAN, *FOUNDATIONS OF SOCIAL THEORY* 301-2 (Belknap Press 1994); Glenn C. Loury, *A Dynamic Theory of Racial Income Difference, in WOMEN, MINORITIES AND EMPLOYMENT DISCRIMINATION* 160 (Phyllis A. Wallace & Annette M. LaMond eds., 1977); Mark H. Smith, Lionel J. Beaulieu & Ann Seraphine, *Social Capital, Place of Residence, and College Attendance*, 60 *RURAL SOC.* 363, 366 (1995).

99. COLEMAN, *supra* note 98, at 306; John H. Laub & Robert J. Sampson, *Turning Points in The Life Course: Why Change Matters to the Study of Crime*, 31 *CRIMINOLOGY* 301, 311 (1993).

100. FRANCIS FUKUYAMA, *TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROPERTY* 350 (1995).

101. Laub & Sampson, *supra* note 99, at 301-26; John H. Laub, Daniel S. Nagin & Robert J. Sampson, *Trajectories of Change in Criminal Offending: Good Marriages and the Desistance Process*, 63 *AM. SOC. REV.* 225 (1998).

102. Xiaogang Deng, Lening Zhang & Ann Cordilia, *Social Control and Recidivism in China*, 14 *J. CONTEMP. CRIM. JUST.* 281, 291-2 (1998). The study employed four predictors to examine the effectiveness of informal social control approach in preventing recidivism. These four predictors are previous offenses, the rehabilitation

rehabilitation programs (*bangjiao*) and Mediation (*tiaojie*), rely heavily on community resources to carry out educational and correctional programs, and tend to resolve conflicts before they enter the formal legal system.<sup>103</sup> Within the structure of these informal mechanisms, job arrangements and legal education programs in particular are the most salient forms of social capital, providing offenders with the social support they need to return to conventional life and be reintegrated into the community.<sup>104</sup>

Social capital's positive contribution toward preventing recidivism in China can be seen in the *bangjiao* program. *Bangjiao* is aimed at assisting and guiding offenders by accepting them back into the community and providing them with various services.<sup>105</sup> This strategy encompasses a wide range of schemes that cover almost every prominent aspect of social capital. In particular, legal education and job provision are fundamental components of *bangjiao*. The community, in conjunction with the offender's parents, relatives, friends and neighbors, are responsible for legally educating the offender, including teaching them how to become law-abiding citizens, raising their legal consciousness and strengthening their awareness of respecting laws and regulations.<sup>106</sup> The *bangjiao* system, then, attempts to use familial and community support to prevent offenders from becoming alienated from society and thus more likely to reoffend.<sup>107</sup> At the same time, the system also arranges employment for offenders following their release from correctional facilities.<sup>108</sup> This approach is grounded in the widespread Chinese belief that unemployment is a major contributor to crime and recidivism. Western research has also found that stable employment reduces the risk of recidivism.<sup>109</sup>

Social capital is also a distinguishing characteristic of emerging community correction programs in China, which have seen

---

rating before release and employment status after release and whether offenders needed a community-based rehabilitation program (*Bangjiao*).

103. For detailed discussions of China's informal crime control practices, see Lening Zhang, *Crime Prevention in a Communitarian Society: Bang-Jiao and Tiao-Jie in the People's Republic of China*, 13 JUST. Q. 199 (1996); Shanhe Jiang & Eric G. Lambert, *Views of Formal and Informal Crime Control and Their Correlates in China*, 19 INT'L CRIM. JUST. REV. 5 (2009).

104. Jianhong Liu, *Social Capital and Covariates of Reoffending Risk in the Chinese Context*, 9 INT'L CRIM. JUST. REV. 39, 51 (1999).

105. Mok B, *Community Care for Delinquent Youth: The Chinese Approach of Rehabilitating the Youth Offenders*, 2 J. OFFENDER COUNSELING, SERVICES & REHABILITATION 5, 6 (1990).

106. Zhang, *supra* note 103, at 208.

107. Liu, *supra* note 104, at 52.

108. Jianhong Liu, *Predicting Recidivism in a Communitarian Society: China*, 49 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 392, 397 (2005).

109. Laub & Sampson, *supra* note 99, at 311.



relative success. These programs have their roots in a Western-style legal mechanism that serves the socialization of certain types of minor criminals.<sup>110</sup> Contemporary community correction is a criminal justice program that keeps offenders in their communities while penalizing them; neighborhoods, therefore, supervise and service the offenders that reside in them.<sup>111</sup> The goals of community correction programs are usually rehabilitation, punishment and reparation, though they can vary depending on jurisdiction.<sup>112</sup> China's community correction programs draw on similar programs in Common Law countries, but also incorporate Chinese social and cultural features.<sup>113</sup> By community-based educational and correctional methods, these programs make up a form of criminal punishment outside of China's prison system.<sup>114</sup>

Since the initiation of community correction programs in China in 2003, authorities have adopted a variety of community correctional practices. For example, the fundamental framework of Shanghai's community corrections consists of five major tasks: daily regulation (*richang guanli*), education and study (*jiaoyu xuexi*), psychological correction (*xingli jiaozheng*), community service (*gongyi laodong*) and solving difficulties (*bangkun jienan*).<sup>115</sup> These five tasks are designed to rehabilitate offenders by employing a soft educational approach. By incorporating a variety of correctional methods that draw on social capital, Shanghai's community-based program has been surprisingly effective in reducing recidivism.<sup>116</sup>

---

110. On 10 July, 2003, the Chinese Supreme Court, the Chinese Supreme Procuratorate, the Department of Justice, and the Department of Public Security jointly issued the Notice on Implementing Experimental Work of Community Correction. In this directive, only five types of criminals are circled in the scope of community correction, which are those who are sentenced to public surveillance (*guanzhi*), those who are under probation, those who are permitted to serve sentences outside prison (*jianwai zhixing*), those who are granted parole and those who are deprived political rights and serve sentences in society.

111. Donald G. Evans, *Defining Community Corrections*, 58 CORRECTION TODAY 124, 124-5 (1996).

112. Robert J. Harris & T. Wing Lo, *Community Service: Its Use in Criminal Justice*, 46 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 427, 427-8 (2002). For example, community corrections in common law countries is characterized as an intermediate criminal sanction, while some civil law countries use it as an alternative to short-term incarcerative sentence.

113. DAN WEILI, SHEQU JIAOZHENG: LILUN JICHU YU ZHIDU GOUJIAN [COMMUNITY CORRECTION: ITS THEORETICAL BASIS AND INSTITUTIONAL CONSTRUCTION] 17-8 (2007).

114. SHUN'AN WANG, SHE QU JIAO ZHENG YAN JIU [THE STUDY OF COMMUNITY CORRECTIONS] 92-94 (2008).

115. SHANGHAI COMMUNITY CORRECTION OFFICE, HANDBOOK OF SHANGHAI COMMUNITY CORRECTIONAL WORK 23-29 (2007).

116. In 2008, the recidivism rate of offenders who are subject to community corrections in Shanghai was 0.73%. See SHANGHAI JUSTICE BUREAU, JIAN CHI XING FA

In fighting recidivism, previous offenders benefit not only from their relationships with family and community members, but also from the community resources available to them. If increased social capital can lower the risk of recidivism among convicted criminals, it seems likely that a similar approach would also be effective in combating recidivism among administrative offenders. Some sample surveys conducted in China support this hypothesis, suggesting that social capital is a key covariate for reducing recidivism among administrative offenders, and that it is more effective than administrative detention in doing so.

### 3.2.3 *Social Capital and Administrative Offenses*

#### 3.2.3.1 Social Capital and Drug Relapse

Drug addicts have always been one of the most salient targets of administrative detention. The Chinese government has claimed that drug users are harmful to social order and stability,<sup>117</sup> and recent studies on drug relapse rates in China from the 1970s onward suggest that these rates are too high to be ignored.<sup>118</sup>

Researchers agree there are a variety of factors that contribute to drug relapse, including genetic, psychobiological, socio-cultural, and environmental elements. Perhaps most commonly acknowledged are the psycho-biological impacts of drug use on addiction and relapse. In addition to the chemical impact of drug use, many psychiatrists assert that “drugs yield and reinforce effect on pleasure pathways within the brain.”<sup>119</sup> The use of illicit drugs affects the brain’s dopamine system, providing an emotional impetus for continued use.<sup>120</sup> Thus, drug users typically

---

ZHI XING, CU JIN SHE HUI HE XIE—SHANGHAI SHE QU JIAO ZHENG SHI DIAN GONG ZUO DE SHI JIAN HE TI HUI [INSISTING IMPLEMENTATION OF PUNISHMENT, ADVANCING SOCIAL HARMONY—PRACTICES AND EXPERIENCES OF SHANGHAI COMMUNITY CORRECTIONAL EXPERIMENTAL WORK] (SHARING MATERIALS OF CHINESE COMMUNITY CORRECTION DEVELOPMENT CONFERENCE) 10.

117. Since 1978, China has launched a series of campaigns against drug use and passed numerous laws and regulations regarding drug-related offences. For a detailed discussion, see Lu & Liang, *supra* note 37, at 212-26.

118. See Guoqiang Chen, Hongbo Zhen, Guangyuan Huang, Wenjia Du, Qiqin Wen, Yun Lin & Mujin Su, *Hai luo yin yi lai zhe 338 li fu xi diao cha [Research of Relapse of 338 Heroin Dependents]*, 2 ZHONGGUO YAO WU YI LAI XING TONG BAO [CHINESE BULL. DRUG DEPENDENCE] 52, 52-55 (1992); Chao Li & Furong Mao, *120 Li xi du lao jiao san nian hou fuxi de diao cha [Investigation on 120 Drug Addicts Relapse after Three-Year Re-education through Labor Sentence]*, 1 ZHONGGUO YAO WU YI LAI ZA ZHI [CHINESE JOURNAL OF DRUG DEPENDENCE] 43-4 (1999).

119. William J. McBride, James M. Murphy & Satoshi Ikemoto, *Localization of Brain Reinforcement Mechanisms: Intracranial Self-Administration and Intracranial Place-Conditioning Studies*, 101 BEHAV. BRAIN RES. 129, 134 (1999).

120. N.D. Volkow, *Relationship between Subjective Effects of Cocaine and Dopamine Transporter Occupancy*, 386 NATURE 827, 827-30 (1997).

experience significant physical and psychological suffering during and after the detoxification period.

Psycho-biological difficulties, however, do not fully explain the phenomenon of drug relapse. Though physical and psychological factors are certainly important, many experts believe that the lack of access to social capital during administrative detention plays an equally crucial role in drug relapse. Numerous clinical studies support this viewpoint, identifying the lack of three major sources of social capital as a significant contributor to relapse.

First, the inadequacy of social and familial attention and care increases the risk of recidivism in drug offenders.<sup>121</sup> Contemporary Chinese society widely perceives drug addiction as a criminal misdemeanor rather than a disease.<sup>122</sup> Thus, the public views drug abuse as an unethical behavior that contradicts social values and morality. As a result, rehabilitated drug addicts generally face great hostility from the community, and even from their own families, when they return to conventional life.<sup>123</sup> According to studies, society's emotional disregard toward drug addicts likely contributes to mental depression and anxiety, a lack of confidence, and a pessimistic attitude in detoxified drug users. The response of the community, therefore, may contribute to pushing them back into drug abuse, which provides them with a temporary mental escape from their troubles.<sup>124</sup>

Second, there is reason to believe that unemployment and a lack of education also increase the risk of relapse among drug addicts. There is significant evidence showing that the vast majority of surveyed drug relapsers remain jobless for long periods of time after their release from coercive drug rehabilitation or re-

---

121. Wang Xiaohong, *Yufang jieduzhe fuxi de xinli zhiliao* [Psychotherapy for Preventing Relapse in Drug Rehabilitants], 48 ZHONGGUO LINCHUANG KANGFU [CHINESE J. CLINICAL REHABILITATION] 139 (2005).

122. Qing Boyi, *Jiedu Xianxiang Zhonghen Tan* [Extensive Discussion of Detoxification Situation], 8 ZHONGGUO YAOWU YILAI XING ZAZHI [CHINESE J. DRUG DEPENDENCE] 82 (1999).

123. Yang Jimei, Zheng Lijun & Liu Li, *Xiduzhe shehui zhichi xitong diaocha fenx* [Investigation on and Analysis of Social Support System of Drug Users], 3 ZHONGGUO YAOWU YILAI XING ZAZHI [CHINESE J. DRUG DEPENDENCE] 217, 217-220 (2008).

124. Wang Yaohua, Luoming & Chen Tingjin, *Hailuoyin yilai zhe renga fenxi* [Analysis on Personality Characteristics of Heroin Addicts], 2 ZHONGGUO YAOWU LANYONG FANGZHI ZAZHI [CHINESE J. OF DRUG ABUSE PREVENTION & TREATMENT] 14 (1998); Zhang Zhenyu, Tang Jian & Die Wenxiu, *Tutong tedian de jiedu laojiao fuxi renyuan renga tezhen fenxi* [Analysis on Personality Characteristics of Different Features of Rehabilitated Drug Re-Abusers after Reeducation through Labor], 5 ZHONGGUO YAOWU LANYONG FANGZHI ZAZHI [CHINESE J. DRUG ABUSE PREVENTION & TREATMENT] 11 (2002).

education through labor.<sup>125</sup> Lengthy unemployment following detention can make life vacuous, boring, and lonely for those who have undergone detoxification, and can discourage them from starting a new life. Such discouragement, in turn, can exacerbate temptations to reuse drugs in the pursuit of ecstasy and excitement in their lives.<sup>126</sup>

Third, educational backgrounds may also contribute to the likelihood of relapse among drug addicts. Multiple studies show that more than three-quarters of drug recidivists have only an elementary or middle school education.<sup>127</sup> Most of them, moreover, are laborers with low wages. Prior to their detention in compulsory rehabilitation, this majority of drug addicts are unlikely to have received any legal or scientific education regarding the risks of drug use, or any guidance on how to avoid possible drug interactions. Moreover, despite education regarding these issues during rehabilitation, the relative lack of financial resources among many drug addicts may limit their ability to continue participating in detoxification programs after release. Ideally, drug addicts would prefer to spend their very little money on drugs instead of on detoxification programs. In addition to their resistant attitude towards coercive drug rehabilitation due to this tool's poor effectiveness, the low level of addicts' educational background makes them continuously ignore the gravity of abusing drugs.

### 3.2.3.2 Social Capital and Re-Entry into Prostitution

Along with the epidemic of drug abuse, the prevalent practice of prostitution constitutes another social concern in contemporary China. Though the Chinese government eradicated prostitution in the 1950s, it resurged in the 1980s and has continued to proliferate in throughout China today.<sup>128</sup> Just as with drug addiction, the Chinese government treats "selling sex" (*maiying*) as a socially aberrant behavior, for which it prescribes detention for education and RTL.

---

125. ZHANG, ET AL., *supra* note 124, at 10; Sun Buqin, Ye Yugao & Qin Lingjun, 615 *Li hailuoyin yilaizhe fuxi yuanyin diaocha yu fenxi* [An Analysis of Relapse Factors of 615 Heroin Addicts], 3 ZONGGUO YAOWU YILAI XING ZAZHI [CHINESE J. DRUG DEPENDENCE] 215 (2001).

126. Wang Zhenbao, *Fuxi wenti de shehuixue fenxi* (Sociological Analysis of Relapse), 8 SHEHUI [SOC'Y] 42, 44 (2003).

127. ZHANG, ET AL., *supra* note 125, at 10; Liu Wei, Jie Jihua & Guo Benyu, 104 *Li Hailuoyin yilaizhe fuxi yuanyin diaocha* [Analysis on Reasons of 104 Heroin Dependents Relapse], 4 LINCHUANG XINSHEN JIBING ZAZHAI [J. CLINICAL PSYCHOSOMATIC DISEASE] 278 (2004).

128. Elaine Jeffreys, *Governing Buyers of Sex in the People's Republic of China*, 35 ECON. & SOC'Y 571, 575 (2006).

These punitive tactics, however, have never effectively deterred prostitution. Although there is a dearth of statistical research regarding recidivism of prostitution in present-day China, most legal experts and socialists concede that the pervasiveness of sexual services in China today is a tremendous problem, given particular social and economic factors.<sup>129</sup> It is believed that employment, financial hardship, and monetary stimulus have long been the top three reasons for engaging in prostitution.<sup>130</sup>

According to a recent study, prostitution now represents an alternative employment opportunity for women in contemporary China in a way that it did not during the Mao Zedong era.<sup>131</sup> This phenomenon emerged as a result of Deng Xiaoping's economic reform policy in the 1980s. On the one hand, economic reform triggered the emancipation of women; on the other hand, it widened the inequality in employment opportunities for men and women.

The emancipation of women is considered to represent the social equality between men and women, displayed in particular in the ability of women to "do anything."<sup>132</sup> This factor focuses on the opportunities that women have. Accordingly, some claim that the liberated role of women offers them an opportunity to emerge from the domestic sphere and pursue economic gains in the public arena. Where this is the primary lens through which prostitution is viewed, the illegality of the practice becomes secondary to the economic opportunity it affords many women in China,<sup>133</sup> and contributes to reentry into the profession among some who had previously left.

Deng's economic reforms also triggered mass rural-to-urban migration and business privatization that combined to indirectly contribute to a rise in prostitution. Urbanization has been one of the most significant effects of Deng's economic reforms. In the

---

129. ELAINE JEFFREYS, CHINA, SEX AND PROSTITUTION 179-81 (RoutledgeCurzon 2004); Zhu Xudong, *Gaige kaifang yilai maiyin piaochang wenti yanjiu zhongshu* (Summary of Prostitution Situation after Economic Reform and Openness), 4 GONG'AN YANJIU [POLICING STUD.] 92, 96 (2001).

130. Zhu, *supra* note 130, at 93-4; Xin Ren, *Prostitution and Economic Modernization in China*, 5 VIOLENCE AGAINST WOMEN 1411, 1424 (1999); Xiao Yi, *Maiyin piaochang de shehui yuanyin he kongzhi* (Social Reasons and Control of Prostitution), 5 DANGDAI FAXUE [CONTEMP. L. REV.] 70-1 (1999).

131. Wang Gang & Wang Yuanxin, *Lun maiyin piaochang xianzhuang he duice* (Current Situation and Resolution of Prostitution), 53 GANSU ZHENGFA CHENGREN JIAOYU XUEYUAN XUEBAO [J. OF ADULT EDUC. OF GANSU POL. SCI. & L. INST.] 98, 98 (2004).

132. Mark T. Berger, *Yellow Mythologies: The East Asian Miracle and Post-Cold War Capitalism*, 4 POSITIONS: E. ASIAN CULTURES CRITIQUE 90, 97 (1996).

133. Allen F. Anderson & Vincent E. Gil, *Prostitution and Public Policy in the People's Republic of China: An Analysis of the Rehabilitative Ideal*, 4 INT'L CRIM. JUST. REV. 23 (1994).

1980s, millions of agricultural laborers, and rural women in particular, migrated into the city and the urban labor market. Most of these women were between fifteen and forty years old.<sup>134</sup> Their efforts to find jobs in the city were dampened by occupational discrimination favoring men over women. Men seemingly fit more job criteria, and even when women could find urban jobs, they were not paid as much as men were paid for the same work. Moreover, when China's largely state-owned economy underwent massive privatization in the 1990s, many urban women lost their jobs as well. The simultaneous urban-to-rural migration and privatization of China's economy resulted in large-scale unemployment among urban women and decreased employment opportunities for rural migrant women. Consequently, some unemployed women decided to enter prostitution in order to maintain their living standards.<sup>135</sup>

Not all female prostitutes entered into prostitution so willingly, however, nor did all do so in order to maintain a preferred standard of living. Financial hardship is a social capital variable that raises the likelihood of a woman's initial entry into prostitution as well as her subsequent recidivism. Since the beginning of China's economic reform and opening up, the income gap between the rich and the poor has steadily widened. In contemporary China, a small group of elites controls most of China's wealth, while a large number of its citizens, especially those living in rural areas, still live in poverty and hunger.<sup>136</sup> Comprehensive surveys of the financial data of women working in prostitution indicate that more than 50 percent of prostitutes in China either suffer from economic difficulties individually, or come from very poor families.<sup>137</sup> Without other opportunities for employment, prostitution has become the only means available to many of these women for supporting themselves or their families.

Thus, many Chinese women enter prostitution for purposes of economic and individual survival. Some of these women, however, may later choose to remain in the profession to support a

---

134. 135 Govind Kelkar & Wang Yuxian, *Farmers, Women and Economic Reform in China*, 29 CRITICAL ASIAN STUD. 71, 75 (1997).

135. Ren, *supra* note 131, at 1426; Zhao Jun, guanyu woguo muqian changji wenti de tiaocha baogao (Research Report of Current Prostitution Problems in China), 1 ZHONGGUO QINGNIAN YANJIU [CHINA YOUTH STUDY] 6 (2001).

136. For a comprehensive insight of income distribution and disparity during the period of Chinese economic reform, see Azizur Rahman Khan, Keith Griffin & Carl Riskin, *Income Distribution in Urban China During the Period of Economic Reform and Globalization*, 89 AM. ECON. REV. 296-300 (1999).

137. Zhao, *supra* note 136; Huang Yinyin & Pan Suiming, *Zhongguo dongbei diqu liaodongli shichangzhong de nvxing xing gongzuo zhe* (*The Female Sex Workers in the Labor Market Field in Three Cities of Northeast China*), 3 SHEHUIXUE YANJIU [SOC. RES.] 51, 58-61 (2003).

particular lifestyle. Working prostitutes may maintain a lifestyle of relative abundance; for instance, they can spend money on finer clothes, and on better makeup and self-care products.<sup>138</sup> This emphasis on materialism among prostitutes may spring in part from their lack of education or high illiteracy rates. The percentage of illiteracy among prostitutes is far below the national average;<sup>139</sup> most have completed only middle school or dropped out of school in their adolescence. According to Chinese philosophy, the lack of a thorough education may contribute to moral corruption, a decline in values, and a lack of ambition to lead a productive life. If these traditional Chinese beliefs have any validity, these elements can be considered to be salient motivators of prostitution.<sup>140</sup>

Meanwhile, due to Deng Xiaoping's "open door" policy of the 1980s, Western values of individualism and materialism have gradually overtaken the traditional Chinese cultural value of collectivism.<sup>141</sup> Booming economic growth has contributed to a rise in pleasure-oriented and economically-driven behaviors among the Chinese;<sup>142</sup> for many, making money has become a top priority in life, since "to be rich is glorious."<sup>143</sup> Not surprisingly, when they have a choice, neither detained prostitutes nor recidivists have exhibited frugality. Money can offer them various forms of entertainment, such as dancing and parties, as well as material comforts to ensure them an individualistic, high-consumption lifestyle.<sup>144</sup>

### 3.2.4 *Public Order Offenses and Public Order Detention*

In addition to drug addicts and prostitutes, the *Public Order Administrative Punishment Law* also targets public order offenders as a third category of administrative offenders. The author is not aware of any previous studies on the recidivism of public order offenses, nor on the background variables affecting them.

---

138. Gil, Wang, Anderson & Lin, *supra* note 91, at 328.

139. *Improvement of Women's Human Rights Condition in China*, RENMIN RIBAO HAIWAI BAN [PEOPLE'S DAILY OVERSEAS EDITION], NOV. 2, 1998, at 4.

140. See Anderson & Gil, *supra* note 37, at 28.

141. Generally speaking, collectivism is a value system that puts the group's welfare over individual interests. See Shanhe Jiang, Eric Lambert & Jin Wang, *Correlates of Formal and Informal Social/Crime Control in China: An Exploratory Study*, 35 J. CRIM. JUST. 261, 268 (2007).

142. JEFFREYS, *supra* note 130, at 98-9.

143. Dean G. Rojek, *Chinese Social Control: From Shaming and Reintegration to "Getting Rich Is Glorious"*, CRIME AND SOCIAL CONTROL IN A CHANGING CHINA 93-9 (Jianhong Liu, Lening Zhang & Steven F. Messner eds., 2001); ORVILLE SCHELL, DISCOS AND DEMOCRACY: CHINA IN THE THROES OF REFORM 38 (1988).

144. Yuan Hui, *Dui maiyin xianxiang de tanxi yu sikao (Exploration and Thinking of Prostitution)*, 9 FAZHUI YU SHEHUI [LEGAL SYS. & SOC'Y] 226, 226 (2007); JEFFREYS, *supra* note 130.

Although the recidivism risk is unknown, it seems highly doubtful that public order detention is long enough to make any significant positive impact on reforming detainees' behavioral patterns. Instead, it is more likely that short-term incarceration reduces detainees' reliance upon social capital, thereby decreasing their chances of reintegration into society after release.

Public order detention is unlikely to prevent recidivism of public order offenses first because public order detention is a form of short-term incarceration within a larger incarceration system that prioritizes punishment over rehabilitation. Public order detention generally lasts between 5 days and 20 days.<sup>145</sup> Although critics of short-term incarceration in general have pointed out a number of its deficiencies, they most frequently express that short-term incarceration is too transient to accomplish educational or correctional functions.<sup>146</sup> Moreover, in detention systems dominated by the rhetoric of penalization and deterrence,<sup>147</sup> re-socialization of offenders through education is seen as a secondary purpose of incarceration, if not in conflict with punishment and deterrence.<sup>148</sup> Chinese public order detention is just such a system; it subjects offenders to short-term incarceration and places more weight on punishment than on education and rehabilitation.

In particular, while some argue that public order detention allows offenders to receive moral education in normative ethics and legal education regarding the unlawfulness of their misconduct,<sup>149</sup> the Chinese government's emphasis on penal labor within the system compromises the potential impact of these practices. The *Provisional Management Rules of Public Order Detention Houses* (1990) explicitly states that public order detention houses may organize work for offenders, and that the revenue from their work can be used to pay for the offenders'

145. Art. 16, the Public Order Administrative Punishment Law.

146. Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders, London, U.K., Aug. 8-20, 1960, *Short-Term Imprisonment*, ¶¶ 238-40; ZHANG GANMEI, XINGSHI ZHENGCE [CRIMINAL POLICY] 273-6 (1979); TODD R. CLEAR, GEORGE F. COLE & MICHAEL D. REISIG, *AMERICAN CORRECTIONS* 165 (8th ed., 2008).

147. Prisonization is referred to as an inmate prison system in favor of functions of punishment, retribution and deterrence. See Ronald L. Akers, Norman S. Hayner & Werner Gruninger, *Prisonization in Five Countries: Type of Prison and Inmate Characteristics*, 14(4) *CRIMINOLOGY* 526, 528 (2006).

148. Charles W. Thomas, *Prisonization or Resocialization?: A Study of External Factors Associated with the Impact of Imprisonment*, 10 *J. RES. IN CRIME & DELINQ.* 13, 14 (1973).

149. Guo Guanghua, *Zhi'an juliusuo: jianguan gongzuo xin liangdian, guanjiao jiehe nuan renxin* [Public Order Detention House: New Highlights of Incarcerative Management, Combination of Regulation and Education Warms Heart], 3 *RENMIN GONG'AN* [PEOPLE'S POLICE] 15 (2003).



essential living and study expenses.<sup>150</sup> As a result of this policy and the financial need of most public order detention centers, authorities often have offenders perform productive labor. Such a practice, however, effectively prevents detainees in the public order detention system from having a correctional or rehabilitative experience, as most of their time is spent on work that, in the Chinese penal system, is aimed at the functions of punishment and deterrence.<sup>151</sup>

Second, in addition to the lack of correctional education, short-term incarceration creates a permissive environment for the development of an inmate subculture that supports the development of aggressive, manipulative, and antisocial behavior. It is well-documented that those who are first-time or minor offenders are most vulnerable to being negatively impacted.<sup>152</sup> The inmate subculture can influence detainees by strengthening their criminal minds, reinforcing psychological criminal tendencies, and teaching them new criminal skills.<sup>153</sup> While the inmate subculture influence will not necessarily lead to the recidivism, it surely increases the inclination of offenders to further commit crime upon release.

Chinese public order detention centers, unfortunately, are notorious seedbeds of inmate culture. Although public order detention centers are not prisons, which hold convicted criminal offenders, officials frequently use these detention houses to accommodate all types of administrative offenders. In many centers, particularly those in remote and economically underdeveloped areas, officials incarcerate drug users, prostitutes and public order offenders together in the same cellblocks.<sup>154</sup> In part, this is because local financial budgets sometimes cannot support separate detention premises for specific offenders.<sup>155</sup> More fundamentally, however, it results from the Chinese government's

---

150. The Trial Management Rule of Public Order Detention House, art.12.

151. Liu Wujun, *Guanzhu juliusuo he kanshousuo de fenli (Pay Attention to the Separation of Public Order Detention House and Watchhouse)*, GONGREN RIBAO [WORKER DAILY], Apr. 9, 2007.

152. James Garofalo & Richard D. Clark, *The Inmate Subculture in Jails*, 12 CRIM. JUST. & BEHAV. 415, 430 (1985); M. Grapendaal, *The Inmate Subculture in Dutch Prisons*, 30 BRIT. J. CRIMINOLOGY 341, 351 (1990).

153. Thomas Weigend, *Sentencing and Punishment in Germany*, SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 193 (Michael Tonry and Richard S. Frase eds. 2001).

154. Liu Renwen, *Kanshousuo he juliusuo, fazhi bu yin yiwang de difang (Public Order Detention Centers and Watchhouse: Places the Rule of Law Should Not Ignore)*, ZHONGGUO JIANCHAN RIBAO [CHINESE PROCURATORATES' DAILY], Nov. 20, 2002.

155. Tian Minquan, *Fang xiangfen & ma zhongmin, kanshousuo de Liuda kunjin yu chulu (Six Dilemmas and Resolution of Watchhouse)*, 3 HENAN GONG'AN XUEKAN [HENAN PUB. SECURITY ACAD.] 13 (1998).

policy of treating all types of administrative offenders similarly for the ease of regulation. As a result, the detainees in public order detention houses expose one another to a strong and varied inmate culture. Many drug addicts and re-abusers, for instance, admit that their initial curiosity toward using drugs or their drug relapse was encouraged or incited by other detainees in the mixed public order detention centers lockups.<sup>156</sup> Detainees are able to freely share their drug use experiences, and exchange advice on where to find drug resources. Some of them even remain in close contact with each other after release. This connection provides them a solid social network of drug use, which, to a great extent, invalidates authorities' efforts to eradicate drug addiction.

Third, and more problematically, short-term incarceration disrupts offenders' ties to their families and to society.<sup>157</sup> Compulsory confinement, therefore, has damaging effects on offenders' post-incarceration social and economic lives. For example, as a result of their detention, offenders may lose their jobs and receive disparagement from those in their communities. Moreover, detention significantly impacts a detainee's family life; the incarceration of a married individual increases the possibility that the marriage will fail, and children of incarcerated individuals frequently struggle with hostility, shame, and irresponsibility.<sup>158</sup>

In contrast to the deleterious effects of public order detention, most individuals sentenced to public order detention are first-time or minor offenders; they break the law largely due largely to impulsive behavior, or to unexpected and sporadic circumstances.<sup>159</sup> Statistics show that most of them express shame and remorse for their unlawful conduct and long for social forgiveness and acceptance.<sup>160</sup> Many of them are concerned that their detention records may lead to social discrimination and moral judgment from others, which will hinder their reintegration into society and their ability to live as normal citizens.

Moreover, akin to other forms of administrative detention, public security officials administer public order detention in a relatively isolating manner. Public security organs have sole responsibility for the regulation of offenders' daily studies and

---

156. Li Shuangqi, *Fujianshen xidu renyuan xidu yuanyi diaocha baogao—jiyu dui 240 min xiduzhe de quanmian diaoyan [Research Report of Causes of Drug Use in Fujian Province—Based on Comprehensive Research of 240 Drug Users]*, 1 *ZHONGGUO XINGSHIFA [CHINESE CRIM. SCI.]* 108-11 (2004).

157. Weigend, *supra* note 153.

158. Joan Petersilia, *When Prisoners Return to Communities: Political, Economic and Social Consequences* 65 *FED. PROBATION* 5 (2001).

159. *Id.*

160. Susanne Karstedt, *Emotions and Criminal Justice*, 6 *THEORETICAL CRIMINOLOGY* 300 (2002).

lives. Such delegation of authority excludes involvement by community institutions and organizations, and minimizes offenders' ability to interact with their families and legal representatives. For example, officials strictly control the frequency and duration of family visits, and the law prohibits lawyer visits entirely.<sup>161</sup> Such isolation alienates offenders from society and family and contributes to social and ethical stigma.

In contrast, when detainees are allowed significant engagement with community resources, they are kept within the community, thus facilitating their reintegration into society once they are released. In comparison with short-term incarceration, then, community-based educational programs are better able to meet offenders' individual needs and prevent their most common social integration problems, which in turn strengthen their confidence and ability to face social challenges upon release.

#### 4. COMMUNITY CORRECTION

##### 4.1 A BRIEF OVERVIEW OF COMMUNITY CORRECTION IN CHINA

The ineffectiveness of administrative detention and its negative impact on detainees calls for serious consideration of "community correction" programs as a favorable substitute. Although the context of community correction is punishment-based,<sup>162</sup> the main tenet of this approach is to rehabilitate and reintegrate minor and moderate criminal offenders into society through community-based programs.<sup>163</sup> In countries with more developed justice systems, officials have long relied upon community correction as either an independent intermediate penalty, or an alternative sanction to short-term incarceration in the criminal justice system.<sup>164</sup> In many Western jurisdictions, for instance, commu-

---

161. Zhu Zhongyi & Xu Shuping, *Lun zhi'an juliu zhong lvshi de jieru* [The Involvement of Lawyers in Public Order Detention], 1(7) ZHONG GUO LVSHI HE FAXUEJIA [J. CHINA LAW. & JURISTS] 72 (2005).

162. John H. Hylton, *Rhetoric and Reality: A Critical Appraisal of Community Correctional Programs*, 28(3) CRIM. & DELINQ. 342 (1982).

163. ROBERT D. HANSER, *COMMUNITY CORRECTIONS* 16 (Sage Publications 2009).

164. For detailed discussions of community corrections in different legal systems, see T. Wing Lo & Robert J. Harris, *Community Service Orders in Hong Kong, England, and Wales: Twins or Cousins*, 48(3) INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 373-88 (2004); Robert J. Harris & T. Wing Lo, *Community Service: Its Use in Criminal Justice*, 46 INT'L J. OFFENDER THERAPY COMP. CRIMINOLOGY 427-41 (2002); E. C. Spaans, *Community Service in the Netherlands: Its Effects on Recidivism and Net-Widening*, 8 INT'L CRIM. JUST. REV. 1-13 (1998); Gail A. Caputo, *Why Not Community Service* 10 INT'L CRIM. JUST. REV. 503-17(1999); Mark Israel & John Dawes, *Something from Nothing: Shifting Credibility in Community Correctional Programs in Australia*, 2(1) CRIMINOLOGY & CRIM. JUST. 5-25 (2002).

nity correction programs offer alternatives to incarceration for offenders at various stages of criminal justice proceedings. These programs vary depending on different attributes of offenders under probation, parole orders, and bail supervision, including community service orders, fines, curfews and electronic monitoring.<sup>165</sup>

China's use of community correction emerged in 2003 with the issuance of the *Notice on Implementing Experimental Work of Community Corrections* by the State Council. This directive set forth the theoretical basis of community correction, its goals, and its legal obligations. In 2004, the Ministry of Justice issued the *Provisional Measures of Judicial and Administrative Organs in Administering Community Correction Work* in an attempt to standardize and institutionalize the implementation of community corrections in the context of the Chinese system.<sup>166</sup>

Analogous to their Western counterparts, Chinese community correction programs are designed for criminal offenders whose crimes are minor and have caused only minimal social harm, as well as those who have repented after incarceration and have expressed no further intention to harm society.<sup>167</sup> At present, then, only five types of offenders qualify for community correction programs in China: (1) those sentenced to public surveillance; (2) those under probation; (3) those permitted to serve their sentences outside prison; (4) those granted parole; and (5) those permitted to serve their sentences outside prison and who are also deprived of their political rights.

Although community correction may be perceived as a Western import, Chinese officials introduced this approach into the existing penal system law to build a "Chinese socialist democracy and legal system."<sup>168</sup> Thus, community correction programs are implemented in a way that is mostly conventional in a traditionally Chinese context.<sup>169</sup> In an attempt to remain consistent with their foreign counterparts, the Chinese government has decided to require community treatment for probationers, parolees, and those sentenced to control (*guanzhi*) and permitted to temporarily serve their sentences outside prison (*jianwai zhixing*).<sup>170</sup>

---

165. PAUL F. CROMWELL, LEANNE FIFTAL ALAID AND RONALD V. DEL CARMEN, *COMMUNITY-BASED CORRECTIONS* 139-52 (Thomson Wadsworth 6th ed., 2005).

166. WANG, *supra* note 114, at 88.

167. THE NOTICE ON IMPLEMENTING EXPERIMENTAL WORK OF COMMUNITY CORRECTIONS (2003), preface.

168. *Id.*, at art.1.

169. Liu Qiang, *Zhongwai sheiqu jiaozheng zhi qubie yu sikao [Differences of Community Corrections between China and Foreign Countries and Its Thinking]*, 4 *ZHONGGUO SIFA (JUST. CHINA)* 58 (2004).

170. Control was arguably deployed as a criminal justice measure for mass supervision by local communities, schools and work units. Art. 214 of the CPL 1996 stipu-

Yet, in lieu of borrowing Western measures, the Chinese community correctional system has developed a series of conventional programs that manifest the ideologies of rehabilitation and education underpinning China's informal social control system.

The Chinese government first experimented with community correction in six modern cities and provinces in 2003.<sup>171</sup> The tentative use in these regions was intended to explore and advance a socialist community correction model commensurate with the Chinese legal system.<sup>172</sup> Among these six prefectures, Shanghai, as the most cosmopolitan and open-minded mainland city in China, was seen as the ideal candidate to meet the expectation. Indeed, Shanghai has developed a set of laudable educational programs extremely suitable for community-based corrections, and it has also acquired valuable experience in how to maximize the power of social capital in rehabilitating offenders. Shanghai's success demonstrates that placing minor criminal offenders under community treatment is not at all dangerous, but is instead beneficial for correctional effectiveness as well as for long-term social stability.

Although on paper, the scope of application of community corrections focuses only on specified criminals, community-based activities are thought to be more suitable to administrative offenders. This hypothesis could be tested by analyzing the operating characteristics of Shanghai community correctional programs, and by observing the behavioral and attitudinal change of corrected offenders.

#### 4.2 SHANGHAI COMMUNITY CORRECTIONS

Shanghai's community corrections system has distinctive institutional and enforcement characteristics. The Shanghai Community Correction Office uses a three-level implementation structure incorporating district justice bureaus, community service professionals, and voluntary social workers.<sup>173</sup> Unlike correctional programs in other cities, where a governmental judicial-administrative institution is in charge of the practice, a Commu-

---

lates that "A criminal sentenced to fixed-term imprisonment or criminal detention, under either of the following conditions, may be permitted to temporarily serve his sentence outside prison: (1) If the criminal is seriously ill and needs to be released on parole for medical treatment; or (2) If the criminal is pregnant or is breast-feeding her own baby."

171. The Notice on Implementing Experimental Work of Community Corrections set up six tentative areas nationwide for the practice of community corrections, which are Beijing, Shanghai, Tianjin, Jiansu, Zhejiang and Shandong.

172. Wu Yuhua, *Shequ jiaozheng gongzuo chutan* [*Preliminary Exploration of Community Corrections*], 5 FAXUE ZAZHI [L. SCI. MAG.] 19 (2003).

173. SHANGHAI COMMUNITY CORRECTION OFFICE, HANDBOOK OF SHANGHAI COMMUNITY CORRECTIONAL WORK 1-7 (2007).

nity-Based Service Station (*shequ fuwu zongzhan*), in collaboration with voluntary social workers, carries out Shanghai's community correction programs.<sup>174</sup> The community service station, which is financed by the government, is a semi-commercial center with a large number of well-trained social workers who offer their professional and specialized services for community correction programs.<sup>175</sup>

The Office also recruits hundreds of community volunteers to collaborate with professional social workers and to play a significant role in assisting offenders. Volunteers team up with offenders in their daily activities and take notes for systematic assessment of offenders' thoughts and behavior.<sup>176</sup> Volunteer social workers also help offenders to recognize their social responsibilities and solve their personal problems, such as study and employment challenges.<sup>177</sup> Notably, the Shanghai authorities maximize the number of social forces in the community who participate in remolding offenders, while minimizing the involvement of law enforcement organs. This is likely because genuine community environment makes offenders feel less nervous and fearful, thereby lessening confrontations with community correction providers.

The educational program makes up another highlight of Shanghai's community correction programs. The educational program has five essential components: (1) daily regulation; (2) education and study; (3) psychological correction; (4) community service; and (5) resolution of obstacles. Except for daily regulation, which serves general administrative purposes, the other educational components are designed to make considerable use of community resources in an effort to increase the offenders' social capital.

First, education and study focuses on reforming offenders' incorrect and immoral thoughts. Officials administer this pro-

---

174. 'Xinhang Community Service Station' was established in 2003, signaling that Shanghai is the first city in China bringing professionalism and commercialism into the practice of community corrections. See Zhu Jiuwei, *Weile hexie—Wo suo jingli de Shanghai shequ jiaozheng shidian gongzuo* [For Harmony—Experimental Work of Shanghai Community Corrections I Experienced] Unpublished Report 6 (2008).

175. WANG, *supra* note 114, at 110-1.

176. Shanghai was the first to start a pre-trial personality attributes reporting system covering minor criminals. This system allows judges to subject offenders to community corrections if investigation reports suggest that offenders are more suitable for a community treatment than an incarcerative sentence. See Sun Yongjun & Lu Min, *Shanghai shequ jiaozheng renge tezheng baogao zhidu de shijian yu fansi* [Practices and Thinking of Personality Attributes Report System in Shanghai Community Corrections], Unpublished Research Paper (2008).

177. ZHANG CHUANWEI, WOGUO SHEQU JIAOZHENG ZHIDU DE QUXIANG [THE TENDENCY OF COMMUNITY CORRECTIONAL SYSTEM IN CHINA] 81 (2006).

gram by using both collective and individualized education methods. Offenders receive legal and moral education in the form of group seminars, speeches, consultation, discussions, and family visits.<sup>178</sup> Those viewed as posing high risks to the community in light of unfavorable character evaluations, also receive individualized education. Individualized education uses an offender's personal behavioral patterns to personalize the correctional measures used for his distinctive personality features.<sup>179</sup>

In particular, outsiders have praised the educational components of psychological correction, community service, and resolution of obstacles in Shanghai's community correction programs.<sup>180</sup> Psychological correction seeks to improve the offender's physical and mental well-being, and thereby remove offenders' psychological hurdles to reintegrating into society.<sup>181</sup> Professional psychological consultants and therapists operate this program, organizing consultations and crisis intervention therapies in the community, and communicating with offenders personally in order to understand their psychological development.<sup>182</sup>

Community service seeks to correct offenders' behavior through physical engagement with the community. Practices in some developed countries arguably serve as inspiration for this educational component.<sup>183</sup> Analogous to Western practices, for instance, Shanghai community service requires offenders to carry out light to moderate unpaid work under compensatory

---

178. Liu Qiang, *Shanghai shequ jiaozheng de fazheng he pingjia* [Development and Appraisal of Shanghai Community Corrections], 17(6) SHANGHAI ZHENGFA XUEYUAN XUEBAO (L. J. SHANGHAI ADMIN. CADRE INST, POL. & L.) 68 (2002).

179. SHANGHAI COMMUNITY CORRECTION OFFICE, *supra* note 171, at 31-2.

180. Zhu Jiuwei, *Bowo shidai tezheng, chuangxin gongzuo linian—Zai xin de qidianshang tuidong Shanghai shequ jiaozheng gongzuo jiankang fazhan* [Grasping Era Characteristics, Innovating Working Rationale—Improving Healthy Development of Shanghai Community Correction Work on the New Beginning] in SHEQU JIAOZHENG SHIDIAN GONGZUO HUIBIAN CAILIAO (LIU) [MATERIAL COMPLIANCE OF COMMUNITY CORRECTIONAL EXPERIMENTAL WORK (VI)] (Grassroots Work Office of the Justice Bureau ed., 2006).

181. Zhu Jiuwei, *Shanghaishi shequ jiaozheng shidian gongzuo qingkuang* [Summary of Shanghai Community Correction Experimental Work] in SHEQU JIAOZHENG SHIDIAN GONGZUO HUIBIAN CAILIAO (QI) [MATERIAL COMPLIANCE OF COMMUNITY CORRECTIONAL EXPERIMENTAL WORK (VII)] 20 (Grassroots Work Office of the Justice Bureau ed., 2006).

182. SHANGHAI COMMUNITY CORRECTION OFFICE, *supra* note 173, at 33-4.

183. Community service order is one of the most popular community correctional options in western countries. It requires offenders to carry out community work for a specific number of hours under restrictions on their time and liberty. For a detailed insight of community service order and its effects on society, offenders and criminal justice system, see DOUGLAS CORRY MCDONALD, *PUNISHMENT WITHOUT WALLS: COMMUNITY SERVICES SENTENCES IN NEW YORK* (Rutgers University Press, 1986).

community service schemes.<sup>184</sup> In theory, these schemes are treated as the means to fulfilling sentencing goals. In practice, however, community service is more akin to a vehicle through which offenders can realize the harm they have brought upon society, and through which they can compensate the community for their previous offenses.

If psychological correction and community service have educative purposes, resolution of obstacles (or solving offenders' personal difficulties) represents an objective of caring. In order to ensure that offenders are able to successfully return to conventional life, the community correctional program seeks to provide them with a comfortable environment to which to return. This component's efforts are wide-ranging, and include helping offenders to learn occupational skills, arranging employment opportunities, encouraging the participation of family members in correctional activities, and contacting governmental or committee organs to resolve special problems related to offenders' schooling or housing.<sup>185</sup> These attempts help community-corrected offenders quickly readjust to normal social life, thereby reducing their risk of recidivism.

In addition to clearly delineating the program's educational approach into five components, the Shanghai Community Correction Office has created a flowchart to institutionalize and formalize the actual practices.

The flowchart shows that the Shanghai community correctional scheme is divided into three interrelated phases: the receiving stage, the correction stage, and the closing stage. This structure allows government and community actors to implement the correctional schemes in a democratic manner at each stage. At the receiving stage, for example, if the court requests pre-probation or parole advice, the public security organs must provide legal opinions and community institutions and organizations must also present their views to promote community benefits and safety.<sup>186</sup> During the correctional stage, public security officials, community correction personnel, social workers, volunteers, and offenders and their families must all attend meetings to evaluate

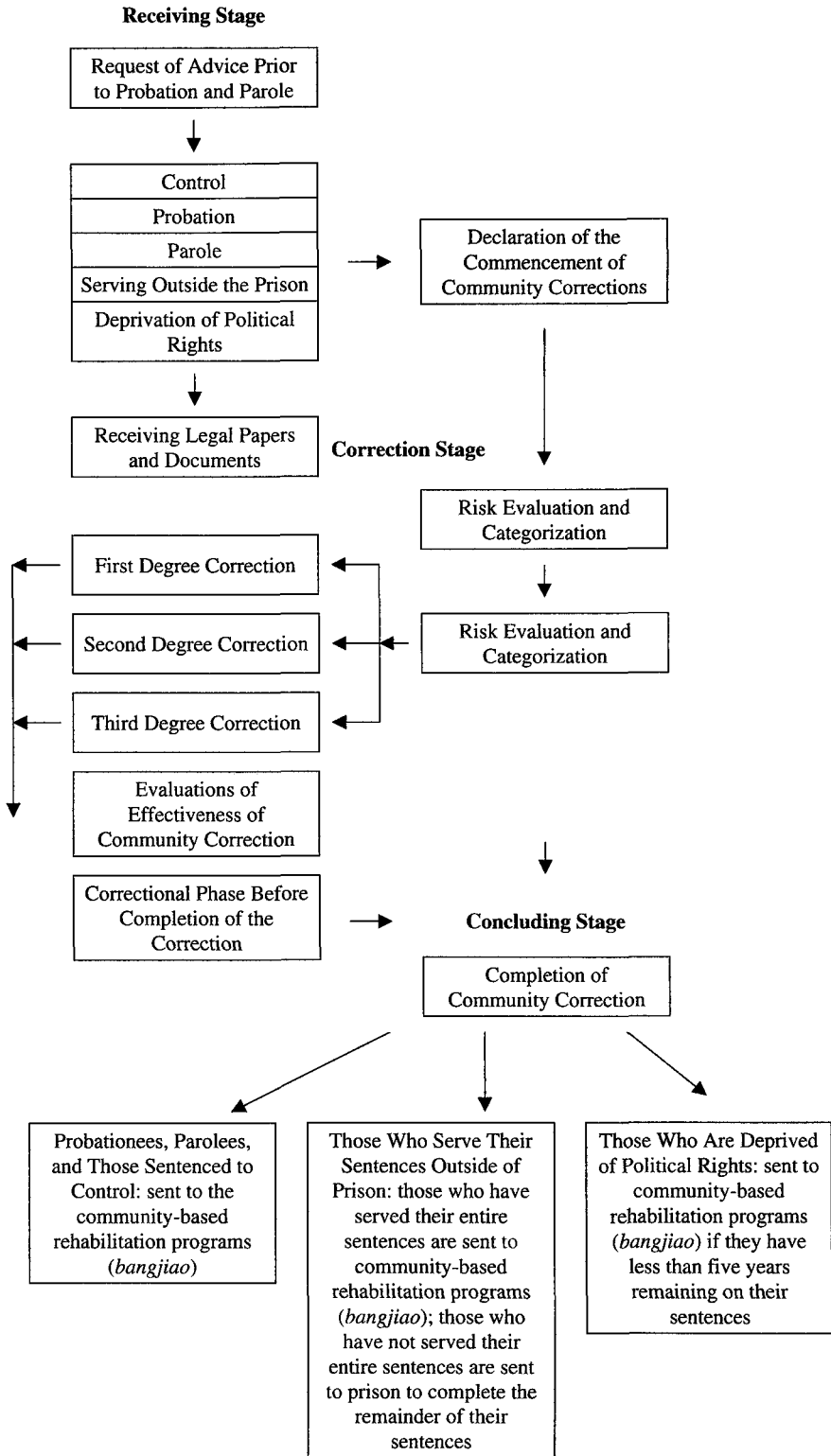
---

184. In the regulatory community service, it is mandatory for every offender to conduct community work, while compensatory community service necessitates victims' or victim families' consent and offenders' proactive engagement. See SHANGHAI COMMUNITY CORRECTION OFFICE, *supra* note 173, at 35-7.

185. Lai Xiansen, *Guanyan xiangji xingshi zhengce shiye xia zhong de Shanghai shequ jiaozheng gongzuo huigu he pingjia [Retrospective Review and Appraisal of Shanghai Community Correctional Work from the Perspective of Criminal Policy of Combining Leniency with Harshness]* 4 ZHONGGUO SIFA [JUST. CHINA] 66 (2008).

186. SHANGHAI COMMUNITY CORRECTION OFFICE, *supra* note 173, at 11-2.





the effectiveness of community corrections on the offender, and each party's opinion receives equal weight.<sup>187</sup>

Shanghai's community correctional practice is a normative framework that has potential for use on a nationwide scale.<sup>188</sup> Shanghai's system clearly delineates each participant's role, enabling government officials, community correction personnel, and social workers to comprehend and carry out their responsibilities in community correctional work. As a result, there is an increase in work efficiency, as well as more effective handling of any problems arising from the collaboration between different contributors. Another benefit of the structure and wide community involvement in Shanghai's community correctional program is the institutionalization of checks on the public security officials who dominate the Chinese administrative justice system.

A formalized operational mechanism increases the practicality and adaptability of community corrections in the Chinese community. The feasibility of this new approach in the context of Chinese culture has impressed authorities as well as legal practitioners.<sup>189</sup> Its effectiveness appears to be more surprising than expected, particularly in its prevention of recidivism. Despite variations in the practice of community corrections from region to region, community corrections seem to have been consistent in reducing recidivism rates. One national survey showed the recidivism rate among offenders who received community corrections in 2005 to be around one percent.<sup>190</sup> Some Shanghai empirical studies mirror this finding; according to one research dossier about the effects of community corrections, only 203 out of 22,538 offenders were found to have reoffended. According to these numbers, Shanghai's recidivism rate was a mere 0.37 per-

---

187. SHANGHAI COMMUNITY CORRECTION OFFICE, *Shanghai shequ jiaozheng: Zai xingfa zhixing zhong zhangxian renwen guanhuai* [Shanghai Community Correction: Humanitarian Care in Penalty Administration], Unpublished Report 3 (2006).

188. DAN, *supra* note 113, at 163.

189. Wang Jue, *Woguo Shequ Jiaozheng Gongzuo Gaishu* [Summary of Community Correctional Experimental Work in China], 10 FALV SHIYONG [LEGAL APPLICATION] 2-3 (2005); Zhang Enyou & Liu Henzhi, *Kaizhan zhongguo tese shequ jiaozheng gongzuo de sikao* [The Thinking of Developing the Community Correctional Work Based on Chinese Particularities], 20(1) ZHONGGUO JIANYU ZAZHI (J. CHINESE PRISON) 125-9 (2005); Sun Hui, *Zuifan de Jianyu jiaozheng yu shequ jiaozheng moshi bijiao—Yi Shanghaishi wei li* [The Comparison between Prison Correction and Community Correction of Criminals— The Example of Shanghai], 4 J. NANJING NORMAL U. 25-30 (2007).

190. Li Bing, *Zhongguo Shequ Jiaozheng Shidian Gongzuo Gaishu* [Summary of Community Correctional Experimental Work in China], SHEQU JIAZHNG—2006 BEIJING GUOJI LUNTAN [COMMUNITY CORRECTION—2006 BEIJING INTERNATIONAL FORUM] 4 (Beijing Justice Bureau ed., 2006).

cent, even lower than the national average.<sup>191</sup> Based on these numbers, it is clear that community correction has proven, in many ways, to be a more credible and effective sentencing option than administrative detention and its relative, Reform through Labor.

Despite strong statistical support for the advantages of community correction, it is perhaps the testimonies of offenders who have gone through such programs that is most persuasive. In an interview of offenders who received community corrections in 2008, 95.7 percent of offenders claimed that their families' love and their communities' genuine concern enabled them to regain their self-confidence, and thereby encouraged them to reintegrate into society.<sup>192</sup> Meanwhile, 97.8 percent of offenders believe that community correctional programs, especially the community service component, provided them with a valuable opportunity to self-reflect, as well as to make up for the harm they caused their victims and broader society.<sup>193</sup>

## 5. COMMUNITY CORRECTION: A GOOD SUBSTITUTE FOR ADMINISTRATIVE DETENTION

In contrast to the objectives of punishment, retribution, and deterrence in imposing penalties of incarceration, community correction favors rehabilitation, education, and correction. Its role, functions, and activities incorporate community resources and social forces, and therefore encourage offenders to adopt more positive attitudes and behaviors. Evidence shows that the increase of social capital is significantly more effective than incarceration in rehabilitating offenders. This conclusion raises questions as to how to incorporate the use of such programs into in the Chinese penal system. After all, if community correction more effectively rehabilitates minor criminals, it could likewise be a more appropriate sentencing option for all Chinese administrative offenses, regardless of type.

Although Chinese community correction has a short history, it appears thus far to be a good replacement for administrative detention. Many major Chinese cities have started to realize the importance of utilizing as many community resources as available to remold offenders. The Shanghai operating pattern, as dis-

---

191. SHANGHAI JUSTICE BUREAU, *Jianchi xingfa zhixing, cuijin shehui hexie—Shanghai shequ jiaozheng shidian gongzuo de shijian he tihui* [Insisting Punishment Implementation, Advancing Social Harmony—Practice and Experience of Shanghai Community Corrections Experimental Work], ZHONGGUO SHEQU JIAOZHENG FAZHAN HUIYI JIAOLIU CAILIAO [SHARING MATERIALS OF CHINESE COMMUNITY CORRECTION DEVELOPMENT CONFERENCE] 11 (2006).

192. SHANGHAI COMMUNITY CORRECTION OFFICE, *supra* note 187, at 5.

193. SHANGHAI COMMUNITY CORRECTION OFFICE, *supra* note 187, at 6.

cussed above, is likely to serve as a strong model of a community-based educational program that effectively rehabilitates administrative offenders and reintegrates them into society.

Above all, the education and study in Shanghai community correctional schemes are able to provide specialized education to administrative offenders. As discussed *supra*, a high rate of illiteracy exists among Chinese administrative offenders. The lack of systemic legal and moral education has always been one of the major causes of transgressions, as it can result in the mental vulnerability of less-educated people to various socially unethical temptations. In contrast to the rigid methods used in administrative detention, the education and study program contains an individualized component that utilizes analysis of each offender's pre-correction personality attributes.<sup>194</sup> As such, administrative offenders, and drug addicts and prostitutes in particular, are likely to receive different education according to their distinctive behavioral characteristics. Thus, the likelihood of negative cross-influence arising from inmate culture will be considerably lower. At the same time, each offender will be able to identify and make the most of the social capital available to him or her, further improving the chance of successful rehabilitation.

Psychological correction is another integral part of correction that administrative detention has largely overlooked, especially with regards to criminals such as drug offenders and prostitutes. Behaviors such as drug abuse and prostitution are psychologically persistent, in comparison to crimes like burglary, for example. Thus, it is particularly important to overcome offenders' mental obstacles to behavioral and attitude reform. An effective psychological treatment may assist drug users in developing healthy behaviors by eliminating their dependence on illicit drugs. For prostitutes, psychological correction may aid them in learning how to properly cope with social discrimination and hostility that they may face upon reentering society. Similarly, a mental-health recovery-oriented approach may provide prostitutes with heightened self-esteem and self-respect, enabling them to more courageously re-enter society. The Shanghai community correction program addresses each of these psychological and mental health needs in its "Psychological Health Education—Psychological Consultation—Psychological Theory" program.<sup>195</sup>

---

194. The Provisional Measure of Carrying out Individualized Education of Offenders in Community Corrections, part 3. This directive (No.5) was issued in 2005 by the Shanghai Community Correction Office to regulate specialized education in community corrections.

195. The Provisional Measure of Carrying out Psychological Correction of Offenders in the Community, part 4. This directive (No.5) was issued in 2005 by the

The rehabilitative element of community correction programs exists not only in their psychological treatment, but also in their community service requirements. The community service used by the Shanghai community corrections programs reflects a physical form of correction, yet it is administered quite differently from the forced labor used in administrative detention. Although this form of community service contains a punitive component, its emphasis is on helping offenders realize their past wrongdoing and social responsibility by having them conduct altruistic acts in the community.<sup>196</sup> Typical assignments consist of light and moderate work such as working at a local library, assisting the elderly in a nursing home, and cleaning public facilities. These community-based service projects are more appropriate than heavy labor for rehabilitating drug abusers and prostitutes for several reasons. First, community service causes the recipients in the community to value the good intentions of the offenders, and motivates their forgiveness and understanding toward the offenders. This response from the community, in turn, encourages administrative offenders to participate more proactively in the community correction program to build a more accepting environment to return to after their release.

The most valuable component of Shanghai's community correction program, however, is the resolution of obstacles. By incorporating this component into its correction program, Shanghai extends the focus of its effectiveness beyond the program itself and into the post-correction life of offenders. As discussed *supra*, a scarcity of job opportunities has always been one of the most significant factors contributing to drug relapse and prostitute recidivism. Shanghai's program, however, includes a series of initiatives designed to remove obstacles to securing post-correction employment.

First, it offers vocational skill courses to help offenders build up the ability to support themselves. This feature is important, but it is how Shanghai's program goes beyond such courses that sets it apart from administrative detention, which also offers detainees limited occupational training.

On top of vocational training, the Shanghai program draws upon various social networks in the community to organize an

---

Shanghai Community Correction Office to regulate offenders' psychological correction in community corrections.

196. The Provisional Measure of Carrying out Community Services of Offenders in the Shanghai Community, art. 2. This directive (No. 12) was issued in 2003 by the Shanghai Community Correction Office in an attempt to formulate the administration of offenders' community service in community corrections.

annual job fair for its program participants.<sup>197</sup> Not only do these job recruiting fairs inform offenders of job vacancies in the community, but because these vacancies are built on community relationships, they are also likely to be more stable and affirming to offenders than jobs they might find in the larger market.

Finally, the Shanghai community has also established a comprehensive residential center, the “Xinhang Posthouse” (*Xinhang Yizhan*), to temporarily accommodate so-called “no job, no residence, no home” individuals, or those who have trouble finding jobs after completing their correctional program.<sup>198</sup> The idea behind this transition home is to provide offenders who are unemployed with a buffering period, during which they can look for a job and adopt pro-social behaviors, which, in turn, will contribute to a more stable reentry.

Thus, it is clear that the resolution of obstacles program provides corrected administrative offenders with significant assistance in acquiring post-correction employment. The program recognizes that cultivating independence and self-sufficiency in offenders is the best way to reduce the risk of recidivism and avoid potential social unrest. Moreover, by drawing upon the social capital of familial relationships, the program is able to use the acceptance of family members to eliminate offenders’ potential sense of inferiority and stigma, and reintegrate them into their post-correction community.

## 6. CONCLUSION

The use of community correction programs to treat administrative offenders realizes the educative, rehabilitative, and reformative goals of the administrative justice system. Although the Chinese administrative justice system is said to function as the justice system’s “second line of defense” behind the formal criminal justice system, the shared retributive and deterrent values of the two systems compromises the corrective function of the administrative justice system. Thus, statistics have shown that punishment-oriented administrative detention does not truly reform behavior, nor does it reduce the high recidivism rates among administrative offenders.

By examining variables that influence reoffending, however, there is strong support for the idea that social capital plays a significant role in achieving successful correction of administrative

---

197. SHANGHAI JUSTICE BUREAU, *Jinyibu fahui shequ jiaozheng gongzuo—Zai hexie jianshe zong zuoyong de lixing sikao* [Further Developing Community Correctional Work—Rational Thinking in the Construction of Harmonious Society], Unpublished Report 8 (2008).

198. SHANGHAI COMMUNITY CORRECTION OFFICE, *supra* note 187, at 11.

offenders. Community correction programs have allowed administrative offenders to access social resources through individual relationships, familial ties, community institutions and organizations, and other individuals in the community. By leaning heavily upon social capital, community correction programs offer an impressive alternative to administrative detention in the rehabilitation and reintegration of administrative offenders. Despite the fact that the Chinese legal community currently views community correction as a punitive measure, these programs, and most notably those in Shanghai, have shown remarkable success in achieving educative and rehabilitative goals.

As community correction is still relatively new to the Chinese penal system, however, it is worth noting that the system still has a long way to go before it will mature into a consistent and well-regulated system. Legally, for example, community correction lacks a legitimate basis in the law and a standardized operating model, since the Chinese government has not yet passed any legislation to incorporate it into the penal system or set forth relevant guidelines.<sup>199</sup>

Moreover, many legal scholars are skeptical about leaving the responsibility for correctional programs to local communities. They argue that most community correction facilities face a serious shortage of professional personnel and experienced social workers.<sup>200</sup> As noted, community correction in China was originally created to replace incarceration by placing under community treatment minor criminals or criminals who had served most of sentences. The overwhelming majority of these individuals either had only committed petty offenses or were no longer considered a danger to the society upon completion of their correctional education in prison. Administrative offenders, however, are different in nature. Even drug addicts and prostitutes who are sent to the community correction are likely to continue “posing a threat” to society by corrupting community values or contributing to the spread of HIV and other STDs. In order to respond to these risks, correction providers will need to carry out their responsibilities in a way that considers both individual offenders and larger society. Although the current Chinese com-

---

199. Wang Shun'an, *Shequ jiaozheng de Lifa Jianyi [Legislative Suggestions for Community Corrections]*, 2 *ZHONGGUO SIFA (JUST. CHINA)* 55 (2005); Wu Qiangjun, *Shequ jiaozheng lifa de jidian jianyi [Few Suggestions for Legislating Community Corrections]*, 11 *ZHONGGUO SIFA (JUST. CHINA)* 74 (2005).

200. Liu Qiang, *Shequ jiaozheng de dingwei ji shequ jiaozheng gongzuozhe de jiben suzhi yaoqiu [The Position of Community Corrections and Basic Requirements of Community Correction Workers]*, 18 *FAZHI LUNCONG [RULE L. F.]* 5-8 (2003); Kang Shuhua, *Shequ jiaozheng de lishi, xianzhuang he zhongda yiyi [The History, Current Situation and Great Theoretical Values of Community Corrections]*, 5 *FAOXUE ZAZHI (L. SCI. MAG.)* 23 (2003); Zhang, *supra* note 189, at 118.

munity capacity seems too weak at present to effectively address and maintain the balance between the safe correction of drug addicts and prostitutes, and the maintenance of security in the community, the China's legal culture of a strong reliance on the community resources in the implementation of law enables community correction to be a potentially ideal instrument for the handling of minor offenders. Over time China has developed a social control policy based on rigorous neighborhood organization strategies. The Chinese community has long possessed the ability to make use of different social resources to meet the requirements of different social control strategies, such as *Bangjiao*. Although a comprehensive community correction that deals specifically with administrative offenders may take a long period of time to be completely shaped, it is rather likely that in the context of the promotion of rule of law in contemporary China, community correction will be gradually considered as a proper alternative to administrative detention due to its better effectiveness on the reduction of recidivism and offenders' reintegration into society.



