

兩岸假釋制度之比較研究

中文摘要

受刑人假釋出獄，係從機構內（監獄）矯正移轉至機構外（社區）矯正，其關係著矯政體系「危險的轉移」，更關係著社會「治安的良窳」。雖然人道主義、行刑社會化與受刑人基本人權之保障是現代法治國家所共識，亦為執行刑罰的指導原則。但是，和諧社會的穩定，必須兼顧犯罪人、被害人及社會三方面利益的維護。當社區矯正制度之法制與社會客觀環境無法完全契合，勢必衝擊社會和諧。因此，面對急遽變化的社會環境，社區矯正工作應講求其務實可行，而不是倡導犯罪人人道主義或完整復健的高調。社區矯正制度為維護社會穩定的重要關鍵，面對急遽變化的社會，兩岸皆應檢討現行社區矯正相關法規制度，以建構本土化的社區矯正制度。

臺灣地區假釋中付保護管束之社區矯正制度已行之有年，法律制度雖具基礎，但因在法律適用之爭議中，人權論者間有力主保障犯罪人人權，而輕忽社會安全。而政府有關部門或有忙於政治盤算、各自為政，而因應無力，加以少數基層執法人員怠於執行（處分）公務之態度，社會公安怎能令人滿意。因而培養執法人員之專業知識、敬業精神及樂業態度，強化對假釋受刑人之風險管理與危機管理，修法簡化假釋程序並完善法律，以建構完整之司法權與假釋制度，係維護社會治安之重要關鍵。

大陸地區，深知和諧的社會，有賴法律制度的支撐與執政者的態度，假釋之社區矯正制度即為社會和諧穩定的基礎。大陸地區目前猶無社區矯正專法，社區矯正制度起步較晚，有關社區矯正工作，主要依據為最高人民法院、最高人民檢察院、公安部、司法部聯合發布之「關於開展社區矯正試點工作的通知」，其通知係屬規章性質，雖為

權宜措施與政策之宣示，但其為求事權統一，中央令示統合相關部門，全力推動社區矯正工作。目前各試點地區仍在摸索中前進，且限於經濟發展與教育文化較高之東部、中部及西部等地區，而城市及農村之客觀環境、條件不同，對大陸地區整體而言，在深化試點、總結經驗的同時，社區矯正制度的落實，除制定「社區矯正法」，以作為執行社區矯正工作之依據外，仍有待執政當局持續努力與時間的檢驗。

關鍵詞：假釋、保護管束、保安處分、社區矯正、施行區域

Comparative study of parole systems across the Taiwan Strait

Abstract

How well the parole returns to his/her community relates to both the danger transiting from prison to community and the public security. The humanitarianism, socializing penalty and guarantee of the inmates' basic human rights are recognized by the modern society, and also guiding principle for executing penalty. However, a stable and harmonious society, must take care of maintaining benefits of the criminals, the victims and the society at the same time. A community correctional system unable to match the social environment will definitely affect the social harmony. Therefore, facing rapid changing social environment, the community correctional system has to be as practical as it is focusing on criminal humanity and the complete recovery. The community correctional system is the key issue for social stability, facing the rapid changing society, both China and Taiwan should review their regulations carefully in order to establish a localizing community correctional system.

In Taiwan, community-based correctional system for adult probation has been implemented for decades, with legal system. However, discussion still arises on how human rights of prisoners are guaranteed without ignoring social security. People are not so satisfied with the public security partly caused by the government's hesitation to respond or ineffective bureaucracy or some basic personnel performing their jobs with a unprofessional manner. Thus, the key to

maintain public security is assisting the personnel to enhance specialized knowledge, respect for and willing to work, strengthening risk management and crisis management regarding the parolee, and simplifying procedures and constructing a integrated parole system.

China fully realizes the harmonious society depending on the legal system and Authorities' manners. Community-based correctional system for adult probation is the cornerstone for a harmonious and stable society. Unlike Taiwan, China still has no special regulations on community correctional system. The main basis is "A notice for developing the experimental site regarding community correction", jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, Ministry of Public Security and Ministry of Justice. This notice serves as an expedient strategy, but also as a national order for unification and cooperation from the relevant departments. At present these experimental sites, mostly restricted in the economically, educationally and culturally developed areas, are still moving forward. Even though differences exist between city and the suburb, speaking of China as a whole, the authorities have to compile and utilize the experiences of the experimental sites, so that "the law for community-based correctional system for adult probation" will be established and carried out with continual examination.

Key : Parole 、 protection controls 、 measures of safety 、 community-based corrections 、 implementing area