

The Construction of the Extinguishing System of Criminal Record in the Era of Minor Crimes Legislation: From the Sealing Path Exploration to Return

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Abstract: Regarding the sealing of minor criminal records, China should adopt a progressive approach of "administrative sealing first, followed by criminal record elimination," shifting governance focus from "information control" to "elimination through normative evaluation." The core of institutional development lies in establishing a dedicated chapter on "criminal record elimination or sealing" through legislation, which would confer the legal effect of "deemed non-offender" to remove improper eligibility restrictions and prevent collateral effects. This requires systematic supporting measures, including a unified record management platform, pre-emptive legal standardization, and a social reintegration support network. Only through coordinated governance by legislative, judicial, administrative, and social sectors can criminal record elimination be transformed from legal text into effective practice that facilitates offenders' genuine reintegration into society and achieves modernization of criminal governance.

Keywords: Minor Offense Governance; Criminal Record Erasure; Record Sealing; Social Reintegration

1. Introduction of the Problem

According to the data from the "Blue Book of Rule of Law: China's Rule of Law Development Report (2024)", in 2024, the number of criminals sentenced to less than three years in prison by courts nationwide reached 1.03 million, accounting for 87.41% of the total number of offenders, while the rate of severe sentences of five years or more was only 7.1%, and it continued to decline. This judicial reality of "light sentencing" marks that the main targets of crime governance have shifted from traditional serious crimes to a large number of minor crimes.

However, fundamentally at odds with this trend is the rigid criminal record system that operates with little differentiation, creating multiple practical dilemmas: First, it undermines the judicial principle of "balancing leniency with severity." Lenient sentencing for minor offenses often results in prolonged and widespread deprivation of employment and livelihood rights after punishment completion, creating policy gaps in critical social reintegration processes.^[1] Second, it impedes reintegration and may trigger recidivism. The lifelong "stigma" from criminal records leads to systemic exclusion, particularly in the job market.^[2] Third, it perpetuates the inequity of "penal inversion." For numerous minor offenses like dangerous driving, months of imprisonment are frequently accompanied by permanent loss of professional qualifications. The severity and persistence of these consequences often far exceed the original punishment, undermining the cornerstone of proportionality between crime and punishment.^[3] Therefore, systematically evaluating and reforming the current "one-size-fits-all" criminal record system, while establishing mechanisms for record sealing or erasure to promote social integration, has become an urgent task concerning judicial justice and social stability.

Meanwhile, China's criminal record management system is undergoing a profound systemic transformation. This process began in 2024 when the Third Plenary Session of the 20th CPC Central Committee proposed the top-level design of "establishing a minor offense record sealing system."

Subsequently, the newly revised "Law of the People's Republic of China on Public Security Administration Punishments" enacted in 2025 decided to implement the "public security violation record sealing system" starting January 1, 2026, expanding its scope to all citizens and achieving universal protection coverage. This series of measures clearly established a tiered governance approach of "from partial to universal, from criminal to administrative." It not only addresses real-world social challenges but also provides direct legislative references and practical models for establishing a criminal record erasure system. The pioneering breakthrough in the administrative field has, in fact, created reverse pressure for criminal system reform, making the establishment of a coordinated minor offense record erasure mechanism an urgent and critical legislative task for the next phase.

2. Overview of the Era of Minor Crimes

To judge whether China has entered the era of light crime, we can examine the actual situation of light crime governance, which includes the legislative progress of light crime, the judicial execution and the effectiveness of the governance target.

2.1. The Legislative Situation of Minor Crimes

The analysis of minor offenses primarily focuses on the structure of statutory penalties. Defining the legal standards for minor offenses through the framework of statutory penalties in specific criminal provisions yields the following conclusion. While the general statement about sentencing standards accurately reflects China's judicial practice regarding minor offenses, it creates ambiguity in determining what constitutes a minor offense. This is exemplified by a Chinese case: Zhang was sentenced to three years for theft, whereas Li was given five years in prison for the same crime. At the time, theft was classified as a felony, meaning Li's sentence for theft was a felony, and Li's conviction for theft was also a felony. According to the statutory penalty standard, minor offenses adjudicated by courts cannot be categorized under this definition, which refers to the maximum statutory penalty of three years imprisonment. The conceptual scope of minor offenses is defined by the statutory minimum penalty, encompassing offenses that meet the threshold of the statutory maximum penalty.

Under China's statutory minimum sentencing standards, minor offenses are defined as crimes punishable by fixed-term imprisonment of up to three years, criminal detention, public surveillance, or fines under the Criminal Law's specific provisions. The legislative framework for minor offenses exhibits four key characteristics: First, the statutory minimum penalty serves as the legal benchmark. Second, purely minor offenses constitute only 99 cases (20.5% of all offenses). Third, non-minor offenses account for 309 cases (64% of minor offenses). Fourth, the Criminal Law's specific provisions list 408 minor offenses. (See table 1: Minor Offenses Legislative Structure in the Criminal Law's Specific Provisions)

Table 1: Types of Legislative Structure for Minor Offenses in the Criminal Law

Minimum penalty	Minor offense (per)		Level I minor offense (per person)		Class II minor offense (per person)		Grade III minor offense (per person)		Amount to
	Offense with the maximum penalty of criminal detention	The maximum statutory penalty is imprisonment of up to one year.	The maximum statutory penalty is imprisonment of up to two years.	The statutory minimum sentence is imprisonment for a term not exceeding two years.	The maximum statutory penalty is imprisonment of up to 3 years.	The statutory minimum sentence is imprisonment for a term not exceeding three years.	The maximum statutory penalty is imprisonment of up to 5 years.	The statutory minimum sentence is imprisonment for a term not exceeding five years.	
Fine	2	2	2	5	24	55	11	12	113
Control	0	1	2	3	25	48	7	19	105
Detention	1	1	7	3	32	80	13	53	190
Amount to	3	4	11	11	81	183	31	84	408

Minor offenses are categorized into four types: (1) Minor offenses, comprising seven specific charges with statutory maximum sentences under one year, accounting for 1% of all offenses in the specific provisions. (2) First-tier minor offenses, including 11 charges with statutory maximum sentences under two years and minimum sentences under two years, plus 11 charges punishable by criminal detention, public surveillance, or fines, totaling 22 charges (5% of all offenses). (3) Second-tier minor offenses, comprising 81 charges with statutory maximum sentences under three years and minimum sentences under three years, plus 183 charges punishable by criminal detention, public surveillance, or fines, totaling 264 charges (55% of all offenses). (4) Third-tier minor offenses, including 31 charges with statutory maximum sentences under five years and minimum sentences under five years, plus 84 charges punishable by criminal detention, public surveillance, or fines, all with minimum sentences under five years. These three tiers collectively account for 115 charges, representing 24% of all offenses in the specific provisions.

2.2. Judicial Status of Minor Crimes

The current state of juvenile delinquency justice can be examined from two main levels: pre-trial handling of juvenile delinquency and the adjudication of juvenile delinquency judgments. (1) According to data from the "China Judgments Online" (January 1, 2012—April 25, 2012) on first-instance criminal judgments by basic-level courts, the proportion of minor criminal suspects in custody or arrested in China is currently relatively high. (2) Among national court judgments, the proportion of non-custodial sentences is extremely limited. Data from the "China Legal Yearbook" shows that from 2011 to 2021, national courts sentenced a total of 11.87 million people for minor crimes, accounting for 81% of the total number of sentenced individuals. However, the proportion of non-custodial sentences in court judgments is very low. From 2011 to 2021, the average proportions of people placed under probation and fined in national courts were 0.38% and 0.82%, respectively, with the non-custodial sentence ratio being only 1.2. (3) The application rate of probation in China is relatively low. According to data from the "China Legal Yearbook," from 2011 to 2021, national courts applied probation to 4.12 million people, accounting for an average proportion of 28% of the total number of sentenced individuals (those on probation). The proportion of individuals without pure juvenile delinquency is relatively high, and the proportion of juvenile offenders in national courts is relatively high. However, the proportion of juvenile offenders sentenced by national courts is very low, the application rate of probation is low, the detention and arrest rates of juvenile delinquency suspects are relatively high, and the crime rate shows a clear upward trend. The proportion of juvenile offenders with prior criminal records is gradually increasing. Therefore, the proportion of penalties for juvenile offenders in Chinese courts is relatively low, and the application rate of probation is low.

2.3. Effectiveness of the Target of the Treatment of Minor Crimes

The effectiveness of the target for handling minor offenses can be measured by two main indicators: crime rate and recidivism rate. First, data from the "China Legal Yearbook" shows that from January to December 2011, the number of minor offenders in China exhibited a significant upward trend. The number of minor offenders sentenced by courts nationwide reached 900,000 in 2011-2012 and increased to 1.45 million by 2021, marking a 161% growth. Second, among defendants convicted of minor offenses, the proportion with prior convictions is relatively high, and this trend is gradually increasing. The main characteristics of minor offense governance in China are as follows: First, the proportion of minor offenses that are not pure (64%) is relatively high, while the proportion of pure minor offenses is relatively low; Second, the proportion of minor offenses sentenced by courts nationwide is relatively high at 81%, but the proportion of non-custodial sentences by Chinese courts is below 0.6, and the application rate of probation is low at 28%; Third, the detention and arrest rates for criminal suspects are both relatively high; Fourth, the crime rate has shown a significant upward trend, and the proportion of minor offenders with prior convictions is gradually increasing. Clearly, the handling of minor offenses in our country has not yet entered the era of good governance.

Good governance of minor offenses refers to a consensus-driven practice of exercising authority in this field, characterized by rule of law compliance, strong public participation, equality and inclusiveness, effective response, overall efficacy, and inescapable accountability. The era of good governance for minor offenses must be defined by: a relatively high proportion of purely minor offenses; cases with a higher proportion of non-custodial sentences; a higher rate of suspended sentences; fewer cases of detention; lower detection rates; a low crime rate with a declining trend; and a low rate of serious offenses showing a decreasing trend.

3. The Realistic Obstacles of China's Criminal Record System

China has yet to establish a comprehensive mechanism for expunging adult criminal records involving minor offenses, with relevant laws, regulations, and judicial practices still in the exploratory phase. The system also faces societal resistance, as the expungement mechanism may raise public concerns about social stability, necessitating overcoming such ideological barriers. ^[4]Furthermore, the expungement system requires supporting mechanisms, including criminal record registration and inquiry systems, personnel file management systems, political review systems, and safeguard mechanisms, all of which remain underdeveloped. Finally, eliminating the collateral effects of expunged records is challenging and must be implemented gradually rather than achieved overnight, requiring a balance between combating crime and protecting human rights.

3.1. The pre-trial record system does not distinguish between minor and major crimes, resulting in excessive punishment

According to the theory of proportionality between crime and punishment established by Italian criminal law scholar Cesare Beccaria, there should exist two hierarchical levels: severe crimes warrant severe punishments, minor offenses receive lighter penalties, and balanced severity should be maintained. After serving their sentences, offenders have already fulfilled the criminal liability corresponding to their crimes. The criminal record system, as a follow-up punishment after criminal penalties, should logically follow an effective hierarchy.^[5] However, China's current criminal record system fails to distinguish between minor and major offenses, adopting a "one-size-fits-all" approach that imposes harsher penalties on all crimes. This clearly results in excessive punishment for minor offenders and contradicts the trend of reducing crime severity and the criminal policy of balancing leniency with strictness. While all offenders carry some personal danger, those with minor offenses pose significantly lower risks compared to those with major offenses, and their recidivism risks are also lower. Yet, the "one-size-fits-all" approach penalizes both minor and major offenders without distinguishing between the nature, severity, and type of crimes. Even after completing their sentences, minor offenders still face consequences such as disqualification from public office and may even impact their children's future, leading to extremely severe consequences of criminality. This phenomenon not only violates the principle of proportionality between crime and punishment but also breaches the fundamental rule of personal responsibility for crimes.

In addition, the current criminal record system manifests as a simplistic form of severe punishment, even exhibiting an "inversion" phenomenon in the severity of penalties, which severely restricts the rights and freedoms of offenders with minor offenses. Compared to the short-term punishments they receive, the long-term or even lifelong sanctions imposed by criminal records inflict greater psychological torment on these offenders.

Beyond this, individuals convicted of minor offenses face persistent employment challenges. Under current laws, those with criminal records are barred from 22 professions including judicial roles and civil service positions. Their visa applications for overseas travel and business licenses are also restricted. For offenders who have briefly left society, reintegration proves exceptionally difficult. Even with genuine remorse, they encounter systemic discrimination—both overt and covert—that erodes their fundamental sense of belonging and self-worth. Constant exposure to prejudice and unfair treatment fuels their identification with criminal identity, breeding resentment toward society and public perception, thereby impeding their reintegration process.

3.2. The relationship between safety governance and rights protection is tense

In contemporary judicial practice, while authorities grant leniency to offenders under the law, the rights and qualifications they retain after serving their sentences often become lifelong burdens. Notably, criminal record sanctions may even "spread to collateral damage" by implicating immediate family members. This creates a ripple effect where the offender's liability extends to their relatives, frequently subjecting them to varying degrees of rights restriction—a phenomenon known as "collateral damage." Consequently, when offenders realize their crimes, they often prioritize concerns about their children's futures over seeking legal punishment. Crucially, the very principle of "personal responsibility" is somewhat circumvented by such sanctions, which explains their formidable deterrent power. This paradox of "leniency without leniency" and its ripple effects risks creating tension between criminal law's role in safety governance and the protection of individual rights.

4. The Path of Building the System of Erasing the Record of Minor Crimes in China

To systematically address the governance demands of the era of minor offenses, it is imperative to establish a pre-trial record expungement system that is grounded in national conditions and logically coherent. The construction of this system should adhere to systematic thinking, encompassing four pillars: legislation, theory, efficacy, and supporting measures, thereby facilitating the modern transformation of criminal governance from "punitive management" to "reintegration governance."

4.1. Clarification of the Applicability of Criminal Record Sealing

First, the conditions for expunging criminal records must meet two criteria: Formal conditions

(primarily temporal requirements). Internationally, it is widely recognized that criminal records require a certain period to be legally extinguished, with the prevailing practice being that heavier penalties correspond to longer probation periods. Drawing from the Japanese Penal Code and domestic scholarly perspectives, China's probationary period for minor offenses could be segmented as follows: For individuals solely fined or convicted, the period should be six months after the completion of punishment; for those sentenced to probation, control measures, criminal detention, or imprisonment of three years or less, the period should be one year after the completion of punishment. To provide special protection for minors, the probationary period for them should be uniformly set at one year, automatically expunged upon expiration without additional application or ruling.^[6] The second criterion is substantive, focusing on whether the offender has complied with laws and regulations during the probation period and demonstrated remorse. Given the varying standards for determining minor offenses across countries, China should adopt the substantive condition of no new offenses committed during probation. Typically, expungement requires offenders to maintain good conduct within a specified period. This article proposes using the absence of intentional crimes during probation as the standard for good conduct. If an offender commits a new crime during the probation period, whether intentional or negligent, the calculation period is interrupted. Upon completion of the subsequent punishment, the probation period is extended. For repeat offenders, courts will determine whether the record is expunged upon the expiration of the probation period. For minors, the expungement system could be extended beyond the offenses specified in Article 17 of the Criminal Law of the People's Republic of China.

Secondly, the legal framework should establish both standard and special procedures. The standard procedure applies to offenders sentenced to probation, community control, criminal detention, or imprisonment of up to three years. Upon completion of the probation period, full execution of the sentence, or pardon, the criminal record is automatically cleared after a one-year probationary period. Post-termination, the offender may apply to the court, which will review their conduct and demonstrated remorse during the probation period. If the offender complies with laws, shows no new offenses, and maintains good behavior, the court may rule to erase the criminal record. The special procedure applies to offenders of minor crimes, with a six-month probationary period. If the offender demonstrates sincere remorse, shows no new offenses, and maintains good behavior during this period, the criminal record will be automatically cleared upon expiration, without requiring complex application procedures. These two procedures aim to protect offenders' legal rights while upholding social fairness and justice, thereby facilitating their smoother reintegration into society.

Thirdly, regarding the scope and impact of criminal record expungement, the collateral effects of prior convictions are extensive, including employment restrictions and educational limitations, which require targeted measures to mitigate these adverse consequences. While expungement can achieve either "sealing" or "cancellation" of criminal records, the latter may provoke victim backlash. Therefore, it is recommended to expand the "sealing" system's coverage and enhance management protocols to prevent data breaches. The scope of expungement should encompass high-risk minor offenses and juvenile delinquency records. A dedicated database should be established to manage expunged individuals' files, marked with "expunged" labels to restrict access. Restrictions on specific professions should be gradually relaxed rather than abruptly lifted to avoid destabilizing society. For juvenile offenders, restrictions on working in high-risk industries should be completely removed, with corresponding incentives and support provided. The impact of expungement on third-degree relatives should be addressed, though differentiated approaches are necessary.

4.2. Establishing a phased and hierarchical advancement strategy

The establishment of a criminal record expungement system constitutes a systemic endeavor crucial to social equity and human rights protection. Its implementation requires a prudent, phased approach rather than an overnight solution. This necessity arises from two fundamental dimensions: the inherent complexity of institutional reform involving legal coordination, interagency collaboration, and societal mindset transformation; and the inherent demands of the criminal justice system that necessitate maintaining dynamic equilibrium among crime prevention, social defense, and rehabilitation protection. Premature adoption of blanket expungement policies may trigger public safety concerns and judicial practice chaos. Therefore, adopting a phased, prioritized, and adaptable implementation strategy demonstrates respect for the rule of law's solemnity while ensuring the system's long-term viability. Through progressive exploration, we can accumulate management expertise, build social consensus, mitigate reform risks, and ultimately establish a solid foundation for the system's maturation and refinement.

Specifically, the practical path of "administrative before criminal, minor offenses before exploration" can be followed to steadily advance. In the first stage, every effort should be made to ensure that the illegal record sealing system stipulated in the revised "Law of the People's Republic of China on Public Security Administration Punishments" in 2026 can be effectively implemented. This step is crucial because it does not involve criminal activities, resulting in relatively low social resistance, yet it can accumulate valuable operational experience in information management, procedural operations, privacy protection, and rights restoration, providing a management paradigm and technical preparation for extended exploration in the criminal field. In the second stage, pilot programs can be cautiously initiated in the criminal field, prioritizing the establishment of a criminal record erasure mechanism for typical minor offenses with relatively low social harm, minor criminal circumstances, and low recidivism risk, such as dangerous driving, minor theft, and fraud, where the maximum penalty is less than three years. Selecting such offenses for pilot testing helps to examine the actual effects of substantive conditions, review procedures, and supporting supervision measures while controlling social risks. Once relevant judicial practices gradually mature, supporting mechanisms become more refined, and public acceptance increases, the scope of application for criminal record erasure can be gradually expanded to other types of crimes based on empirical evaluation. Through this step-by-step, steadily expanding approach, a comprehensive, scientifically standardized, differentiated, and hierarchically structured criminal record erasure system with Chinese characteristics can ultimately be established.

4.3. Improving Supporting Measures

The primary objective is to restore rights and implement record management. The erasure of criminal records must create a legal fiction of "deemed non-offense." This entails, in principle, lifting all statutory occupational prohibitions and qualification restrictions arising from such records, while preventing their "collateral impact" on close relatives like children. To achieve this, a unified, secure, and controllable national criminal record management system must be established. Records of erred offenses should undergo strict technical sealing and permission isolation to ensure they cannot be accessed by the general public, thereby technically guaranteeing the effectiveness of record erasure.

Secondly, it is essential to eliminate institutional operational barriers. While establishing new systems, a systematic review of the existing legal framework is required. The numerous provisions in relevant laws and regulations that impose "lifetime bans" without distinguishing between the nature of crimes and their circumstances should be revised. These restrictions must be strictly tied to the specific nature of the offense and the unique demands of the position, ensuring precise and proportionate limitations. This will remove pre-existing legal obstacles to restoring equal rights after the elimination of criminal records.

We must further establish a supportive ecosystem to foster social integration. This entails: enacting laws that explicitly prohibit employment discrimination against individuals with legally cleared criminal records; coordinating government and community resources to deliver comprehensive services—including vocational training, psychological counseling, family relationship support, and transitional employment assistance—to those in need. Only by eliminating social discrimination and creating inclusive pathways can the criminal record clearance system evolve from a theoretical right into a tangible force for social harmony and stability.

5. Conclusion and Outlook

Against the backdrop of China's criminal justice system entering the "era of minor offenses" and the imminent implementation of the criminal record sealing system in 2026, establishing a systematic framework for expunging minor offense records has become a pivotal issue that combines historical inevitability with urgent practical needs in advancing the modernization of China's criminal governance system and capabilities. This necessity stems from the profound contradiction between the rigid pre-trial record system and the "balanced leniency and severity" criminal policy, as well as the demands for offender reintegration into society.

First, institutional development should follow a clear, step-by-step reform approach: "administrative sealing first, followed by progressive criminal elimination." Building on the universal practice of record sealing established by the 2026 Public Security Administration Punishment Law of the People's Republic of China, through judicial exploration and legislative preparation, the governance logic should gradually shift from the "information control" level of administrative violations to the

"normative evaluation and elimination" level of minor criminal offenses. This will ultimately achieve a qualitative transformation—from "isolating records" to "eliminating criminal records," and from "social exclusion" to "restoring rights."

Second, the core legal objective of the system is to completely dismantle the lifelong negative stigma associated with criminal "labels". This requires not only the procedural "sealing" or "cancellation" of records, but also substantive legal provisions that explicitly recognize the legal effect of "deemed non-offender" status upon the elimination of prior convictions. Such measures systematically remove unjustified eligibility restrictions, prevent collateral punishment, and provide offenders with a genuine and comprehensive pathway for legal and social rehabilitation.

Third, the success of the system hinges on the systematic synergy among legislative, judicial, administrative, and social forces. This is not merely a revision of the Criminal Law of the People's Republic of China, but a complex social project requiring synchronized efforts in legal standardization, unified information platform development, professional judicial adjudication, and the establishment of anti-discrimination social policies and assistance networks. Only through the organic integration of these subsystems can the criminal record elimination system evolve from legal text into an effective governance practice that promotes social integration and elevates the level of rule of law civilization.

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