



China Human Rights Lawyers Concern Group
(CHRLCG)

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A number of human rights lawyers (or rights defense lawyers) and legal rights defenders have been subject to severe crackdowns and harassments for defending the rights of forcibly evicted residents, rights defenders, dissident writers and journalists and other underprivileged groups in mainland China. Even some lawyers who are less vocal in criticizing the government but have taken up some cases being considered "highly politically sensitive", which involved defending some famous mainland activists, are consistently under close surveillance.

As to mainland legal practitioners' general views on the violation of human rights in mainland China, our group's Mainland Affairs Secretary Mr. Cheung Yiu-leung, a barrister in Hong Kong who has frequent contacts with mainland legal practitioners, noted that "since the re-opening of the courts in the early 80s, the number of lawyers has been growing by year with dozens of new laws enacted each year. All this in conjunction with the fast economic growth and its integration with the international order means a credible legal system is becoming not only a national goal, but that it is generally felt that it is needed."¹

We believe that only a credible legal system and an independent judiciary can ensure that mainland Chinese lawyers can practice their profession without government intervention. Below, we want to highlight a few problems and threats facing mainland Chinese human rights lawyers and legal rights defenders:

1) Imprisonment of legal rights defenders, house arrest of human rights lawyers and harassment of lawyers and their family members

A number of human rights lawyers and legal rights defenders are either being imprisoned or under 24-hours surveillance. Their families have been subject to suppression as well. Blind "barefoot" lawyer **Chen Guangcheng**, who provided legal assistance to his fellow villagers in Linyi, Shandong province, to expose the local government's forced abortion policy, was sentenced to four years and three months imprisonment in August 2006 on charges of

¹ Cheung Yiu-leung, "Chinese Lawyers' Perception of the Rule of Law: Speech delivered at the CHRLCG seminar on 'China Human Rights Lawyers and Rule of Law' on 28 July 2007", 31 May 2007, <http://www.chrlcg-hk.org/?p=162>

destroying property and organizing a mob to disrupt traffic. According to his family, on 16 June 2007 Chen was severely kicked by six to seven people in prison. His ribs and his legs were injured. He was also pressed on the floor and his head was shaved. Chen's wife **Yuan Weijing** has been under 24-hours surveillance in her home village in Shandong after she was brutally taken back to the village from the Beijing International Airport in August 2007 when she was at the custom checkpoint and about to fly to Manila to receive the Magsaysay Award on behalf of her husband.

Guangdong legal rights defender **Yang Maodong, aka Guo Feixiong**, was sentenced to 5 years' imprisonment in November 2007 on the charge of "illegal business operations" for publishing a book which exposed the corruption of the mayor of Shenyang in northeastern China in 2001. The prosecution produced no concrete evidence on how Guo was involved in publishing the book, except a short introduction written by Guo in the book. Guo complained to his lawyers Hu Xiao and Mo Shaoping, both famous Beijing human rights lawyers, that his reproductive organ was beaten by electrical batons when he was in the detention centre. In 2005, Guo provided legal assistance to villagers of Taishi Village in Panyu, Guangdong Province, in their village election and helped them to expose the corruption of village officials. He was later detained for more than three months and was frequently attacked and harassed by unidentified thugs. Guo's wife **Zhang Qing** has been staging hunger strike every Wednesday since Guo was imprisoned in Meizhou prison in Guangdong. Their daughter should have gone on to secondary school but was not allowed to be enrolled in the school near their home in Guangzhou.

Beijing human rights lawyer **Gao Zhisheng** used to be one of the top ten lawyers in China. But after he sent out three open letters to President Hu Jintao and Premier Wen Jiabao in 2005 demanding the government stop oppressing liberal religious believers, he was sentenced to three years' imprisonment, suspended for five years, in December 2006 on charges of "inciting subversion". His family has been under severe surveillance. His family and his own whereabouts are currently unknown to the public.

Shanghai human rights lawyer **Zheng Enchong** should have resumed his political rights on 5 June 2007, but is still under close surveillance and has been taken away by the Shanghai public security officers for interrogation for more than 20 times after he was released from prison on 5 June 2006. Lawyer Zheng legally represented more than 500 residents of Dongbakuai in Jing'an District in Shanghai to sue Shanghai tycoon Zhou Zhenyi, who was later imprisoned for stock market fraud, and the Jing'an District government for conspiracy to obtain their lands by illegal means in 2003. Later that year, he was sentenced to 3 years' imprisonment for the offence of unlawfully providing secret information to an overseas entity.

Li Heping, a Beijing-based human rights lawyer, was abducted and assaulted by a group of unidentified thugs on 29 September 2007. Lawyer Li was hooded and bundled into a car and taken to an unknown location. He was held in the basement of a building where he was stripped to his underwear. He was beaten with electrical batons and bottles filled with water. He was warned he should leave Beijing or risk further attack. He was then dumped in the woods in a suburb outside Beijing about eight hours later at around 1am on 30 September. Lawyer Li was harassed again a few months later. At 7:20am on 7 March 2008, his car crashed

with a police car which was following him when he drove his seven-year-old son to school near Dongxihuan Road in Beijing. The crash destroyed his car's trunk. Li said there were three people inside the car that ran into his car. He recognized them as the public security officers who had been following him since the arrest of prominent human rights defender Hu Jia on 27 December 2007. He believed the crash was a warning to him but he was not sure about the reason. Luckily, Li said he and his son were not injured except that he felt pain at his waist after the crash.

Also on 7 March 2008, Beijing human rights lawyer **Teng Biao**, who is a lecturer at the China University of Political Science and Law, was taken away by officers of the Beijing Public Security Bureau, according to his friends. After he was taken away, he was hooded and did not know where he was taken to. His friends said that he was not treated with violence. They asked him questions about some of his articles and the interviews he did with journalists. Teng was released 41 hours later.

Comments and recommendation:

The above are more well-known cases about mainland Chinese human rights lawyers and legal rights defenders being illegally and unreasonably harassed by mainland Chinese authorities. But they are only the tip of the iceberg. We are sure there are many more cases involving less-known human rights legal practitioners. These lawyers were targeted because they took up cases regarded by many fellow legal practitioners as "highly politically sensitive", such as defending political dissidents, rights defenders and Falun Gong practitioners. Falun Gong is banned in China. Indeed, these lawyers are only exercising their professional skills to help people in need. They shouldn't be subjected to any suppression by the authorities. If the Chinese government is truly committed to developing the universally accepted principles and practice of the rule of law, it should stop harassing and attacking these legal rights defenders and human rights lawyers. Only an independent judiciary and a credible legal system can ensure that these abuses won't happen again.

2) Suspension of legal practice license of rights defense lawyers due to arbitrary annual assessment registration process

In late May 2008, media reports said that more than 10 law firms in Beijing encountered difficulties in their annual registration, affecting more than 500 lawyers. Just a few days after a group of affected Beijing lawyers issued an online appeal on 25 May 2008, many of them were suddenly able to pass the registration. Some of them, however, still cannot have their licenses renewed. It is believed that they could not renew registration because they had offered to provide legal assistance to the Defendants of the "Tibet Incident" on 14 March 2008. However, the lawyers did not know exactly why they could not pass the annual registration. Lawyers in other provinces are also currently undergoing the annual renewal registration process and there are different deadlines for the registration in different cities and provinces. According to some sources, some lawyers in Shaanxi, Shandong and Guangdong also have problems in

renewing their practice licenses this year.² After much international pressure, many lawyers have been able to pass the annual registration, but at least a few prominent human rights lawyers remained unable to pass it as of the end of August 2008, including Beijing human rights lawyer **Teng Biao**, who is a lecturer of China University of Political Science and Law, Qingdao human rights lawyer **Li Jianqiang**, Xi'an human rights lawyer **Zhang Jiankang**, Guangzhou human rights lawyers **Tang Jingling** and **Guo Yan**.

Comments and recommendations:

The annual assessment of lawyers' practicing licenses is arbitrarily carried out by the Ministry of Justice and local justice bureau without any lawful reasoning and due process. Lawyers and law firms are under pressure and feel they would not be able to renew their legal practice licenses if they continue to take up "sensitive cases". We believe that the legal profession should be monitored by the legal practitioners themselves, like the lawyers associations in the world, and should be completely free from any government interference.

3) Article 306 of the Criminal Law of the People's Republic of China

Article 306 of the Criminal Law of the People's Republic of China says: "If, in criminal proceedings, a defender or agent ad litem destroys or forges evidence, helps any of the parties destroy or forge evidence, or coerces the witness or entices him into changing his testimony in defiance of the facts or give false testimony, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years." This article has been widely criticized by legal academics and lawyers inside and outside China for being a trap for lawyers. Lawyers can easily be accused of "fabricating" evidence in the course of collecting evidence to support their clients' cases.

Comments and recommendation:

This provision has posed a serious threat to the mainland Chinese lawyers. It is against the spirit of the rule of law and fair trials and should be abolished.

4) Article 37 of the amended Law on Lawyers of the People's Republic of China

The newly amended Law on Lawyers of the People's Republic of China, which came into force on 1 June 2008, provided more legal protection for lawyers in some areas, such as in regard to lawyers' consultation with criminal suspects and defendants, access to and photocopying of case files and documents, but Article 37 of the new law posted a new trap for lawyers. As many mainland legal practitioners pointed out - including three human rights lawyers, Beijing human rights lawyer Teng Biao (who is also a lecturer at China University of Political Science and Law), Beijing human rights lawyer Li Heping and Xi'an human rights lawyer Zhang Jiankang who wrote commentaries on this newly amended law - that Article 37 would pose a serious threat to

² CHRLCG Press Release: Protest Against Mainland Authorities for Delaying Registration of Lawyers' Practice Licenses; Concerns over Implementation of New Lawyers Law Amendments, 30 May 2008, <http://www.chrlcg-hk.org/?p=286>

lawyers, especially criminal lawyers. Article 37 says, "The personal rights of a lawyer in practicing law shall not be infringed upon. The representation or defense opinions presented in court by a lawyer shall not be subject to legal prosecution, however, except speeches compromising the national security, maliciously defaming others or seriously disrupting the court order." The first part of the article is on lawyers' immunity from liability in practicing law is useful, but the last bit on the exception of "speeches compromising the national security" has raised much concern among mainland legal practitioners. It means that lawyers could be subject to prosecution for saying anything deemed to be "damaging national security". "National security" is an ambiguous concept in mainland China. Anybody makes any comments against the government or the Communist Party could be considered "damaging national security", such as famous Beijing activist Hu Jia, who was imprisoned for 3.5 years for writing five articles criticizing the government and conducting interviews with foreign media. As Teng Biao noted, it would affect lawyers' professional practice: "In order to fulfill the duties set out above, lawyers must do their best to collect evidence favourable to their client and rebut the arguments and evidence presented by the other party in the course of the litigation process. In this process of gathering evidence, challenging the other side's evidence and making a case for their client lawyers will inevitably come in conflict with the other side, and possibly even with the official ideology of the State. If a lawyer's performance of his role can be regarded as giving rise to tortuous or criminal liability, this will have tremendously adverse effects on the legal profession."³

Comments and recommendation:

Article 37 of the newly amended PRC Law on Lawyers would pose a serious trap for lawyers when they represent their clients in court. The meaning of "national security" is so vaguely defined that any comments against the Communist Party could be interpreted as "damaging national security". This provision seriously undermines lawyers' professional practice and should be abolished.

5) Petition to abolish the "Re-education through Labour" (RTL) system

On 7 July 2008, a group of prominent mainland lawyers, legal academics and human rights defenders collected 15,339 signatures of civilians across China demanding the abolition of the "Re-education through labour" (RTL) system.⁴ They pointed out that it was because of the lack of legitimacy of the RTL system, it easily led to administrative abuse of the system. They also argued that the system could not adapt to the new trend of formulating legislations based on rights protection and could not effectively ensure the protection of citizens' rights.

Comments and recommendation:

Our group fully agrees with the comments of the lawyers and legal academics who took part in the petition. We believe that it would be a big step forward to develop the rule of law if China abolishes the RTL system.

³ "Translations: Three Mainland Human Rights Lawyers on the Amended PRC Law on Lawyers, 30 May 2008", <http://www.chrlcg-hk.org/?p=292>

⁴ "Abolish the Re-education through Labour System, Establish a Rule of Law Country – 15,339 Civilians Propose to Enact the 'Illegal Behaviour Rehabilitation Law' (Civilians' Recommended Draft)" (Full text in Chinese): <http://www.chrlcg-hk.org/?p=306>, Originally published by China Human Rights Lawyers Concern Group

Annex

“Abolish the Re-education through Labour System, Establish a Rule of Law Country – 15,339 Civilians Propose to Enact the ‘Illegal Behaviour Rehabilitation Law’ (Civilians’ Recommended Draft)” (Full text in Chinese), Originally published by China Human Rights Lawyers Concern Group (CHRLCG)

<http://www.chrlcg-hk.org/?p=306>

废除劳动教养制度 建设法治国家——15339名中国公民提出违法行为矫治法(公民建议稿)

中国维权律师关注组首发

一、起草背景

最近几年，社会各界强烈呼吁废除现行的劳动教养制度，要求建立符合中国国情的保安处分或违法行为矫治制度，违法行为矫治法(公民建议稿)的起草正是在这种情形下进行的。废除一项旧有制度难，但要建立一套替代制度更难。社会转型时期，违法犯罪现象大量涌现，对于那些“习惯犯”，甚至有一定心理疾病的违法犯罪对象如何进行改造，是我们必须面临的现实难题。

十届全国人大常委会从 2003 年开始着手起草《违法行为矫治法》，甚至将该法列入 2007 年立法计划，《违法行为矫治法》（意见稿）也曾进入常委会讨论议程。但从现在的情况看，这一法律的出台显然并非易事。

二、劳动教养的弊端和违法行为矫治的现状

简单来说，劳动教养的弊端包括：合法性不足，容易导致行政权力滥用，不能适应新时期条件下，以权利保护为本位的立法精神，对公民权利的保护和救济严重不足等。

劳动教养制度虽然在新中国的历史上起了一定的作用，但在依法治国、建设社会主义法治国家的今天，其弊端越来越明显地暴露出来。主要表现在：〈〈劳动教养试行办法〉〉等只笼统地规定检察机关对劳动教养机关的活动实行监督，而对劳动教养的审查批准没有真正的法律监督。名义上，劳动教养的审批权为劳动教养委员会行使，但由于劳动教养委员会不是实体，所以事实上，公安部门既是劳动教养的审批机关、执行机关，同时也是对劳教决定申诉的复查机关和错案的纠正机关。这种缺乏应有的制约和监督的办案制度直接导致了劳动教养审批的随意性，使得现实中许多不够条件的人被错误决定劳教，导致了劳动教养制度缺乏严格的程序和规范。有的地方官员随意将自己不喜欢的人、正当申诉的人、上访维权的人进行劳动教养，而不需经过任何司法程序；有的把属于道德调整或民事纠纷范畴的人送去劳教；有的把法规禁止收容的精神病人、残疾人、严重病患者和怀孕或哺乳未满一年的妇女，以及丧失劳动能力者送去劳教；有的突破劳教对象年龄的限制将未满 16 周岁的人送去劳教；有的将取证困难、证据不足，怕移送起诉后被退查的案件，或办案经费紧张、办案人手有限，畏于追查的案件，或案情复杂根本无法查清的案件，都以劳教代替刑罚了事；有的公安机关对一些在法定羁押期限内无法侦查结案提起刑事诉讼的犯罪嫌疑人，以劳动教养的方式继续关押，使超期羁押合法化；有的混淆劳动教养与治安处罚的界限，把因民事纠纷引起的一般打架斗殴，情节显著轻微的予以劳动教养；有的徇

私枉法，蓄意报复，对不应劳教的予以劳教；有的地方形势一紧就把一批人送去劳教，甚至一律劳教三年；有的地方对违法人员只由办案人员一人进行讯问，或由联防队员盘问，由办案人员事后签名，匆忙将人处以劳教；甚至有的办案单位为完成上级下达的创收指标，或受自身利益的驱动，对卖淫、嫖娼、赌博、吸毒等以高额罚款代替劳教等等。

关于劳动教养的存废，理论界和实务界争论已久，目前较为普遍的看法是通过立新法，建立一套比较符合中国实际的教养制度，其中讨论较多的是违法行为矫治和保安处分，最后，违法行为矫治制度被全国人大常委会接受。

三、关于本法的矫治对象

本法规定的矫治措施主要针对两种违法犯罪嫌疑人：对多次违反《治安管理处罚法》屡教不改，或者实施了犯罪行为不需要追究刑事责任，但放归社会又具有现实危害性的人。

四、关于违法行为矫治的原则

违法行为矫治涉及到公民的人身权利，实施违法行为矫治必须遵循一定的原则，把对公民的损害限制到最小范围。本建议稿对违法行为矫治应当遵循的基本原则作出了规定：“第六条（法定原则）设定违法行为强制矫治必须依照本法规定。本法没有明确规定能够进行违法行为矫治的行为，不得对公民决定强制矫治。实施违法行为强制矫治必须有法律、法规依据，并在法定职权范围内依照本法规定的程序实施。第七条（适当原则）设定和实施违法行为强制矫治应当依照法定条件，兼顾公共利益和当事人的合法权益，正确适用法律、法规，选择适当的强制矫治方式，以达到矫治和预防的目的为限度。第八条（不得滥用）违法行为强制矫治措施不得滥用。实施其他行政管理措施不能达到行政管理的目的时，才可以依法实施强制矫治措施。第九条（分权制衡原则）对公民的违法行为采取强制矫治，必须由公安机关提出申请，由人民法院审查决定。第十条（充分救济）公民对因强制矫治措施造成损害的，有权要求国家赔偿。”

对公权力机关侵犯公民合法权益的防范方面，本建议稿从多个方面对公权力进行了限制，力求让权力在法律规定的范围内行使。如1、权力法定：设定、决定、执行违法行为矫治措施均须有法律依据，将违法行为矫治司法化；2、分权制约：设定、决定、执行的分权，公安机关、法院、司法行政部门分别承担调查取证、决定、执行的职能；3、转变司法行政部门职能：矫治学校的设置和运行，社区矫正场所的设立；4、充分救济原则 5、责任追究制度（国家赔偿等）

五、关于违法行为矫治的种类

规范违法行为矫治措施的种类是违法行为矫治法较难处理的问题之一。现行法律、法规、规章规定的违法行为矫治的种类较多，如收容教育，劳动教养，社区矫正，强制戒毒，强制治疗等。

经反复考虑，建议稿将违法行为矫治措施分为四类，即（一）强制矫治；（二）强制治疗；（三）社区矫正；（四）强制戒毒。其中，因强制戒毒及强制治疗的专业性，建议稿未作细致规定。

六、人权保障和维护社会治安兼顾

建议稿对矫治对象宪法权利的保护做了特别规定，规定了当事人的辩护权、申辩权、上诉权、申请回避权、获得国家赔偿权等各项权利。同时建议稿还从维护社会正常秩序的角度出发，规定了违法行为矫治决定的简易程序。

七、矫治学校和社区矫正场所的设立

设立矫治学校是从转变政府职能，探索社会特殊组织在维护社会治安、纠正违法犯罪人的越轨行为等方面考虑的，是执法人性化，改造社会化，矫治专业化的体现。广义的社区矫正指由社区矫正组织依法对法院和其他矫正机关裁判为非监禁刑及监禁刑替代措施的罪犯予以在社区中行刑与矫正活动的总称。建议稿所指的社区矫正则是违法行为矫治措施的一种，不包括依照刑法判处徒刑缓刑或管制刑的人的社区矫正活动。

八、关于法律责任

违法行为矫治法应当强化对权力机关及其工作人员的法律监督，一是明确规定对司法机关实施违法行为矫治，建立内部和外部的监督机制；二是要有对违法实施矫治措施的确切具体的法律责任，建议稿中对行政机关工作人员及法院审判人员的违法行为均规定了比较严格、具体的法律责任；三是对违反上位法律的行政法规和规章的处理做出了明确规定。

九、相关法律法规

《行政处罚法》 《治安管理处罚法》 《劳动教养试行规定》
《卖淫嫖娼人员收容教育办法》 《劳动教养管理工作执法细则》
《劳动教养管理工作若干制度》 《行政强制法》（意见稿）
《刑事诉讼法》 《监狱法》 《中华人民共和国禁毒法》
《传染病防治法》 《突发公共卫生事件应急条例》

建议稿在起草和修改过程中，得到了众多法学专家、律师、法律工作者、媒体人的批评指点，这里要特别提到的有刘仁文、胡星斗、张星水、张祖桦、孙国栋、曹志、邓太清、仲大军、秋风、刘澎、竹立家、赵国君、成晓霞、陈小平、王俊秀、杜兆勇、张耀杰、许志永、冯文博、光远等等，恕难一一列举。他们为《违法行为矫治法》（公民建议稿）的最后定稿提出了重要的意见和建议，在此谨致谢意！

违法行为矫治法（公民建议稿）

第一章：总则

第一条（立法目的）为了保护公民的人身自由权利，防止国家机关滥用职权，矫治本法规定的违法及轻微刑事犯罪行为，预防和减少犯罪，根据宪法，制定本法。

第二条（调整对象）本法规范的违法或犯罪行为主要指以下四类：

- （一）多次违反治安处罚法的违法行为；
- （二）有犯罪证据但犯罪情节轻微可以免于刑事处分或者不起诉的轻微犯罪行为；
- （三）现行《刑法》第十七条规定的免于追究刑事责任、且应受收容教养的未成年人犯罪行为；
- （四）按照现行法律应予矫治的其他行为。

第三条（概念解释）本法所称违法行为强制矫治，是国家为了预防和减少犯罪，维护社会

公共安全和公共秩序，对多次违反《治安管理处罚法》屡教不改，或者实施了犯罪行为不需要追究刑事责任，但放归社会又具有现实危害性的人，通过限制其一定期限的人身自由，对其进行的矫治、教育、改造的强制性教育措施。

对精神病人的强制治疗不适用本法。

对吸毒人员的强制戒毒遵照《禁毒法》执行，《禁毒法》没有规定的，参照本法有关规定执行。

第四条（行为界定）本法所称多次违反治安管理处罚法的行为，是指两年内有三次以上违法活动且均受到过治安管理处罚的行为。

第五条（适用范围）违法行为矫治的设定和实施适用本法。

第六条（法定原则）设定违法行为矫治措施必须依照本法规定。本法没有明确规定可以采取矫治措施的行为，不得对公民决定进行行为矫治。

实施违法行为矫治必须有法律、法规依据，并在法定职权范围内依照本法规定的程序实施。

第七条（适当原则）设定和实施违法行为矫治措施应当依照法定条件，兼顾公共利益和当事人的合法权益，正确适用法律、法规，选择适当的强制矫治方式，以达到矫治和预防的目的为限度。

实施其他行政处罚措施不能达到教育惩戒的目的时，才可以依法实施违法行为矫治措施。

第八条（不得滥用）违法行为矫治措施不得滥用。

第九条（分权制衡原则）对公民的违法行为采取矫治措施，必须由公安机关提出申请，由人民法院审查决定。

第十条（充分救济）公民因国家机关违法实施矫治措施造成损害的，有权要求国家赔偿。

第二章：强制矫治的种类及适用

第十一条（强制矫治的种类）对违法犯罪行为人的强制矫治种类包括：

（一）强制矫治

强制矫治是指在半封闭的矫治学校内，通过思想道德教育、心理辅导、技能培训、适当劳动等方式对本法规定的违法犯罪行为人进行矫治的一种措施。

（二）强制治疗

已经决定进行强制矫治的卖淫嫖娼人员，须强制进行身体检查，发现有需要强制治疗的性病的，必须对其进行强制治疗，具体办法由卫生行政主管部门会同司法行政主管部门制定，报国务院批准实施。

（三）社区矫正

社区矫正是指依靠社区资源，把被决定进行违法行为矫治的人留在社区，对其进行监督、管理、教育、矫治的制度，是一种非处罚性教养措施。

对决定进行强制矫治的人进行社区矫正不致发生社会危险的，可以实行社区矫正；或者正在进行强制矫治的人表现良好，确有悔改表现的，可以变更为社区矫正。

第十二条（矫治的期限）强制矫治的期限为三个月以上十八个月以下，同时有多个违法或者轻微犯罪行为的，合并执行强制矫治的期限不超过两年。

社区矫正的期限为六个月以上三年以下。强制矫治变更为社区矫正的，社区矫正的期限为强制矫治期限减去已经在矫治学校执行的期限。

矫治日期自违法行为矫治决定书生效之日起计算。

第十三条（不同矫治种类的适用对象）强制矫治一般适用于实施了妨害公共安全、侵犯公民人身权利等人身危险性较大的暴力型违法或犯罪行为，以及妨害社会管理秩序等社会危

害性较大的违法或犯罪行为；

社区矫正一般适用于破坏社会主义市场经济秩序经济类、侵犯财产类等违法或犯罪行为。

被判处拘役、管制或有期徒刑缓刑的人，可以参照适用本法规定的社区矫正措施。

第十四条（共同违法或犯罪的教养决定）对于共同违法或犯罪的行为人，应该根据他们在违法犯罪活动中所起的作用分别决定对其进行行为矫治。

教唆、胁迫、诱骗他人违反治安管理或者进行犯罪活动的，按照其教唆、胁迫、诱骗的行为处罚。

第十五条（从轻或不予送教）已满十四周岁不满十八周岁的人多次违反治安管理或者具有轻微刑事犯罪的，从轻或者减轻处罚；不满十四周岁的人犯罪但不应承担刑事责任的，可以对其进行行为矫治，但应有独立的教养场所，一般可安排在工读学校进行。

第十六条 盲人或者又聋又哑的人具有法定矫治情节，可以酌情缩短强制矫治的期限。

第十七条（法定减轻情节）违法犯罪嫌疑人有下列情形之一的，应当缩短矫治期限或者不采取强制矫治措施：

- （一）情节特别轻微的；
- （二）主动消除或者减轻违法后果，并取得被侵害人谅解的；
- （三）出于他人胁迫或者诱骗的；
- （四）主动投案，向公安机关如实陈述自己的违法或犯罪行为的；
- （五）有立功表现的。

第三章：违法行为矫治措施的决定程序

第十八条（适用条件）对违法行为矫治的决定适用简易程序，由公安机关提出申请，人民法院决定，人民法院可指派一名审判员独任审判。

对于需要做出专门鉴定或其它专业性较强的案件，人民法院可以委托专门机构进行司法鉴定。

对于案情复杂、可能决定采取强制矫治且矫治期限可能为十八个月以上的疑难复杂案件，人民法院可以组成合议庭审理。合议庭由审判员三人或审判员与人民陪审员三人组成。

违法行为矫治措施的决定实行两审终审制。

第十九条（法庭调查、辩护、质证程序）适用简易程序审理的，在法庭宣读违法行为矫治申请书之后，经审判人员许可，公安机关或其代理人 and 被申请人及其辩护人可互相辩论。

第二十条（公安机关的调查程序）

申请对违法犯罪嫌疑人进行行为矫治的，公安机关应当收集证据，查明事实，讯问当事人和证人，做到证据充分确凿。

第二十一条 在调查取证过程中，当事人有权进行陈述和申辩。公安机关必须充分听取当事人的意见，对当事人提出的事实、理由和证据，应当进行审核；当事人提出的事实、理由或者证据成立的，行政机关应当采纳。

第二十二条（委托辩护人）违法犯罪嫌疑人自第一次被传唤或讯问之日起，有权委托辩护人，辩护人可以提出辩护意见，代为控告、申诉等。

第二十三条（期限）公安机关应当在立案之日起 15 日内调查完毕，并区分不同情况分别予以撤销案件、申请法院批准矫治措施等方式结案。

对事实不清、证据不足予以撤案处理的，如违法行为人或犯罪嫌疑人尚被行政拘留或刑事拘留，应立即解除强制措施。

第二十四条（矫治决定的审查申请）在事实已经查清、证据收集充分、合法之后，公安机

关应当在五日内填写违法行为矫治申请书，并连同案卷材料和证据等材料一同移送人民法院。

第二十五条 (受理) 人民法院接到公安机关提请做出矫治决定的申请，应当在五日内作出是否受理的裁定，并通知公安机关，对不予受理的裁定，公安机关不服的，可以向上一级人民法院提起上诉。

第二十六条 (审理方式) 人民法院对公安机关提请做出矫治决定的申请，应当就公安机关据以提出申请的事实、理由和依据进行审查。

第二十七条 (人民法院的审查程序：期限、合议庭) 人民法院应当自受理申请的 3 日内指定审判员审理，并在 20 日内做出是否批准强制矫治申请的决定。

适用合议庭审理的违法行为矫治决定案件，由审判员三人或由审判员和人民陪审员共三人组成合议庭。合议庭的规则可参照《刑事诉讼法》执行。

第二十八条 (庭审程序：公开进行) 人民法院公开审理违法行为矫治的决定案件。但涉及国家机密、个人隐私的除外。

第二十九条 (庭审程序：申请回避) 审判员、人民陪审员及其它相关人员的回避参照《刑事诉讼法》有关规定执行。

第三十条 (庭审程序：调查、质证) 人民法院应当开庭审理矫治决定案件，公安机关作为申请人出庭支持申请，违法犯罪嫌疑人作为被申请人。

人民法院应当根据本法及相关法律法规的有关规定，充分听取双方意见，在查清事实的基础上，依法做出准予矫治或者不予批准的决定。

第三十一条 (辩护程序)

人民法院应当在收到违法行为矫治申请书之日起三日内，将申请书副本发送给被申请人。

申请人或其辩护人应当在收到申请书副本 5 日内提出辩护意见。

第三十二条 (证据) 公安机关提供的证据经法庭审查属实，才能作为做出决定的根据。证据的取得必须合法，公安机关采用刑讯逼供或者其它非法手段获取的证据，不得作为做出矫治决定的依据。

第三十三条 (证据) 人民法院决定是否对被申请人采取矫治措施，应以公安机关取得的既有证据为依据，不得自行补充证据。

第三十四条 (被申请人提出证据) 被申请人有权提交对自己有利的证据，人民法院不得拒绝。

第三十五条 (合议、决定)

决定程序经过法庭调查、双方质证之后，合议庭经过合议，做出是否批准公安机关的矫治申请的决定。

对于事实不清，法律没有明确规定，或者公安机关存在程序违法情形的，人民法院应当不予批准违法行为矫治申请。

违法行为矫治措施的决定以决定书的形式作出，并在作出决定的三日内将决定文书送达公安机关和被申请人。

第三十六条 (矫治决定书) 违法行为矫治决定书应当载明下列事项：

- (一) 当事人姓名或者名称、地址；
- (二) 违法事实和对其进行行为矫治的依据；
- (三) 对违法行为采取矫治的方式和期限；
- (四) 告知被申请人提起上诉的途径和期限；
- (五) 人民法院的名称和日期。

第三十七条（上诉及申请复核）

被申请人对人民法院决定不服的，应当在 10 日内，通过一审法院向上一级人民法院提出上诉，上级人民法院应当在收到上诉状之日起 15 日内，作出最终决定。

公安机关对人民法院的决定不服的，应当在收到决定通知书 5 日内向上一级人民法院提起复核，上级人民法院应当在收到复核申请之日起 15 日内提出复核，并根据不同情况，将案件发回重新审查，或者提审案件。

第三十八条（上诉案件的审理） 人民法院对上诉案件，认为事实清楚的，可以实行书面审理。

第三十九条（申诉） 被申请人对生效的法院决定仍然不服的，可以向原审人民法院或上级人民法院提出申诉，但矫治措施不停止执行。

第四十条（当事人自认） 对于当事人自认的案件，人民法院应当在决定矫治方式和矫治期限时酌情考虑。

第四十一条（检察院的监督） 检察院对公安机关和法院申请或决定违法行为矫治的行为依法进行监督。

人民法院审理违法行为矫治案件时，应当通知人民检察院，人民检察院认为有必要的，可以派员出庭监督审理过程。

第四章：违法行为矫治措施的执行

第一节：执行机关及实施程序

第四十二条（执行主管机关） 违法行为矫治的执行机关为各级司法行政机关，司法部统筹管理全国的违法行为矫治的执行事宜，制定矫治学校设立规定，制定矫治学校规章制度，制定社区矫正场所设立办法等。

第四十三条（执行程序） 矫治决定生效后，公安机关应立即将被矫治人，连同违法行为矫治决定书，被矫治人员的案卷副本，及其它相关资料送交同级司法行政主管部门。司法行政主管部门应当立即为被矫治人员办理进入矫治学校或社区矫正场所的相关手续。

第二节：执行场所

第四十四条 违法行为矫治场所包括以下两种：

（一）矫治学校

矫治学校是由司法行政部门主管的，对矫治对象进行行为矫治的场所，矫治学校实行半封闭式管理，以教育人、感化人、改造人为基本宗旨，是特殊事业单位。

矫治学校为行为矫治场所，矫治手段通常为法律、道德教育，技能培训，适当劳动，心理辅导等。任何单位或个人不得利用矫治学校作为惩罚违法犯罪行为人的场所。

（二）社区矫正场所

社区矫正场所不需特别批准设立，现有的城市小区、居民区、农村的村庄等，均可作为社区矫正场所，实行开放式管理。

第四十五条（矫治场所的经费负担） 矫治学校及社区矫正场所所需经费，列入地方财政预算，基本建设，列入地方基建计划；劳动生产，列入地方计划，接受有关生产部门指导。

第四十六条（矫治学校的审批设立） 市级以上司法行政机关可申请设置矫治学校，由市级司法行政机关申请，报省、自治区、直辖市人民政府批准设立。

矫治学校的设置、撤销，须报司法部备案。

第四十七条（矫治学校的管理原则） 矫治学校应当依法管理，建立、健全各项管理制度，

严禁打骂、体罚或者以其他方式侮辱矫治对象。

矫治对象在矫治学校中称为学员。

矫治对象应当遵守矫治学校的各项管理制度，服从管理。

第四十八条（教育改造方式）对矫治学校的学员应当进行法律教育和道德教育，并组织他们参加生产劳动，学习生产技能，增强劳动观念。

学员参加生产劳动所获得的劳动收入，用于改善他们的生活和矫治学校的建设。对参加生产劳动的学员，应当按照规定支付一定的劳动报酬。

矫治学校应当实行文明管理，组织学员开展有益的文化体育活动。

第四十九条（区分管理）对参加行为矫治的人员，应当按照性别、年龄、案情性质等不同情况，分别编队，区分管理。

第五十条（权利保护）除法律另有规定，或者由于客观原因无法实现外，矫治对象的政治权利不受限制，矫治学校应当创造条件保障矫治对象的选举权、言论自由权、宗教信仰自由权等权利。

由于客观原因无法实现是指因矫治对象的行为限制，而无法行使被选举权等政治权利的情形。

第五十一条（费用承担）被矫治对象在矫治学校参加矫治期间的生活费用由国家财政负担。

第五十二条（请假）矫治学校应当允许矫治对象的家属、亲戚、朋友探访。

矫治对象在进行行为矫治期间，遇有子女出生、家属患严重疾病、死亡以及其他正当理由需要请假的，由其家属或者其所在单位担保并交纳保证金后，经学校负责人批准，可以离校，离校期限一般不超过七日。

保证金收取办法由司法部规定。

第五十三条（其它合法权益）矫治对象在矫治学校患重病或者有其它紧急情况的，可以转为社区矫正或校外执行。

第五十四条（社区矫正的实施）社区矫正由具有矫治资格的社区矫正组织负责具体执行，具体办法由国务院司法行政主管部门制定。

配备有相关人员、设施等条件的事业单位、社会非营利组织及其它社会团体，经司法行政主管部门批准后，可以作为社会矫正组织。

第五十五条（社区矫正）社区矫正组织应定期组织培训、心理治理等课程和活动，及时了解矫治对象的情况，积极帮助他们早日回归社会。

第五十六条（社区矫正）社区矫正组织的运营经费由主管司法行政机关负担，社区矫正组织也可按照法律规定向社会募集资金。

第五十七条（延长期限）对拒绝接受教育或者不服从管理的矫治对象，可以给予警告或者延长收容矫治期限。需要延长矫治期限的，由矫治学校提出意见，经主管的司法行政部门审查同意，报原决定对其实行行为矫治的人民法院批准。

延长期限的，实际执行的矫治期限最长不得超过三年。

吸毒成瘾人员经过强制戒毒措施后，仍然难以戒除毒瘾的，其矫治期限由执行机关提出，由原做出生效决定的人民法院批准后，可以延长，延长期限视戒毒效果由人民法院决定。

第五十八条（矫治措施的提前解除）对于矫治效果良好的行为人，经其本人申请，执行单位审查，原审人民法院同意后，可以提前解除矫治措施。但是，提前解除矫治措施的，实际执行的期限不得少于原决定矫治期限的二分之一。

第五十九条（解除矫治）对矫治期满的人员，应当按期解除矫治措施，发给解除矫治证

明书，并通知其家属或者所在单位领回。

第六十条（矫治对象死亡）矫治对象在矫治期间死亡的，应当由司法行政机关组织法医或者指定医生作出死亡鉴定，经同级人民检察院检验，报上一级司法行政机关和人民检察院备案，并填写死亡通知书，通知矫治对象家属、所在单位和户口所在地公安派出所；家属不予认领的，由司法行政机关拍照后处理。

第六十一条 强制戒毒场所及强制戒毒办法依照《中华人民共和国禁毒法》有关规定办理。

第五章：执法监督 and 法律责任

第六十二条 行政法规、地方性法规设定的强制矫治方式或变相限制公民人身自由的措施无效，由全国人民代表大会常务委员会予以撤销。部门规章设定的该类措施无效，由国务院予以撤销。

地方政府规章设定的该类措施无效，由国务院或者由省、自治区、直辖市的人民代表大会常务委员会予以撤销。

第六十三条 公安机关、人民法院、司法行政机关对公民实施违法行为矫治措施时，有下列情形之一的，由上一级机关或者有关部门责令改正，对直接负责的主管人员和其他直接责任人员依法给予记过、降职等处分；情节严重的，依法给予开除处分：

（一）没有法律、法规依据的；

（二）违反法定程序随意实施强制矫治措施限制公民人身自由的。

第六十四条 公安机关及其工作人员违反本法规定，使用或者损毁查封、扣押的财物，给当事人造成损失的，依法给予赔偿，对直接负责的主管人员和其他直接责任人员依法给予降职或者开除的行政处分。

第六十五条 公安机关、人民法院、司法行政机关违法实施强制矫治措施，给公民人身或者财产造成损害的，应依法给予赔偿，对直接负责的主管人员和其他直接责任人员依法给予降职或者开除处分。

第六十六条（检举控告）公安机关滥用职权，利用强制矫治措施对上访人、检举控告人打击报复的，对直接负责的主管人员和其他直接责任人员依法给予降职或者开除的行政处分。

第六十七条（刑事责任）公安机关、人民法院、司法行政机关的办案人员存在滥用职权、玩忽职守、受贿等行为，侵犯公民宪法权利，情节严重构成犯罪的，依法追究刑事责任。

第六章：附则

第六十八条（生效日期）本法自颁布之日起一年后生效。

第六十九条（旧法的废除）《关于劳动教养问题的决定》，《劳动教养试行条例》，《关于劳动教养问题的补充规定》，《卖淫嫖娼人员收容教育办法》同时废止。本法公布以前的其它法规规章，其规定与本法不符的，应当自本法公布之日起，依照本法的规定予以清理。

郑恩宠，滕彪、李柏光、黎雄兵，张星水、王光泽、王俊秀、张鉴康，范亚峰、杜兆勇、潘嘉伟，王光良、曹志、吴成莲、付希秋，付升，马育忠，马晓明，郑保和，张明选，邓太清，张辉，王强，张树斌，高盅锁，王思聪，肖春，贾向红，韩海岗，陈宝剑，樊风仪，李法海，范洁，邢峰，邱绍明，邱三发，王军龙，张自立，俞翠萍，果占林，焦新文，王德生，李静。高崇义，李通，王钥，陈义新，纪力勇，林宪峰，邓明芳，郑仕朝，赵树恒，张艳红，胡开，徐振东，李建华，刘员，杨博，李萍，赵治海，菲清原，高洁，刘斌，

王彭,史小青 ,李拉弟,袁俊貌, 田杰,胡玉勇, 周文洁,陈 浩, 郭小凤 ,常胜,刘亚权,温存强,杨权,哈不力江·卡德尔,柯福寿,刘伟城,胡生,张守春,李德民,龙永生,阿力木江·吐尔逊,李新华,辛全利,钱新江,迫丽拜尔·阿不列孜,陆川,衡建萍,奴尔提别克,辛培元,阿尔肯江·阿力木,库尔班江·尼亚孜,阿力木江·买买提,海力古力·比拉洪,乌马尔江·买买提,邵世省,李明同,木哈海·木沙,杜新伟,阿不都克里木·吐尔逊,阿不都热合曼,赛力哈孜·卡德尔,吾不力哈斯木·依明,黄继平,阿力不江·阿布力米提,徐未美,周琳,赵 明 高,吐尼克巴依·散斯巴依,王向阳,迪里夏提·吐尔逊,努尔买买提·木沙林,尙新光,阿扎提,阿力木江·哈斯木,努尔买买提·吐尔逊,庞雷,于凤兰,卡哈尔阿不力孜,依力下提·克力木,张庆明,柯冬晨,王世忠,赵富明,买买提江依明,别克保松,帕尔哈提·曼提尼亚孜,艾力马洪·艾再木,郭子福,艾依夏木·艾再孜,茹先古力·马合苏提,巴克·艾热克西,艾尼瓦尔江·阿不拉海提,郭志明,杨金柱,努尔哈孜·比哈孜,吐尔洪·阿依甫,吐尔逊江·热吉甫,扎克尔江,阿力米拉·乌休尔,马健福,尔皮拉提·提拉巴日她,马依努尔·阿不都热依木,杨建平,张梅,祖里皮亚·艾买提,郭其君,刘玉珍,苏里坦·马木提,张俊,郝淑萍,徐志强,陈宏云,艾尼瓦尔·依沙木丁,艾山,比里克孜·买买提依敏,李威力,彭金荣,热合曼·麦麦提,程鹏凯,苏永红,孙华……(因篇幅所限,其他联署名字略去)

2008年7月7日