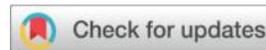


# From Stigmatizing Exclusion to Conditional Reintegration: Rights Protection, Social Risk, and Governance Balance in the Administrative Offense Record Sealing System — A Normative Analysis of Article 136 of the Newly Revised Law on Penalties for Administration of Public Security



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**Abstract.** A structural tension arises between the state's interest in combating unlawful and criminal conduct in pursuit of social justice and the imperative to prevent a single violation from resulting in lifelong exclusion. The Administrative Offense Record Sealing mechanism established under Article 136 of the newly revised *Law on Penalties for Administration of Public Security* stands at the center of this tension. This article argues that the system does not represent a weakening of anti-drug enforcement. Rather, it reflects a shift in governance from a purely punitive model toward a more integrated approach to correction and rehabilitation, and from stigmatizing exclusion to conditional reintegration. In this sense, the reform embodies a deepening commitment to rule-of-law governance. At its core, it seeks to strike a cautious balance between the protection of fundamental rights and the safeguarding of the public interest. Methodologically, this article combines normative analysis, comparative inquiry, and case-based examination. It develops a coherent analytical framework that clarifies the institutional foundations of the system, articulates its rights-protective rationale, and evaluates its potential social risks, thereby offering a multidimensional and nuanced account of this complex reform.

**Keywords:** Administrative Offense Record Sealing; Equal Employment Rights; Rule-of-Law Governance; Social Risk

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## 1. Introduction

In the current employment landscape, many enterprises and companies require applicants to provide a Certificate of No Criminal Record as a restrictive condition for employment. Public authorities, state-owned enterprises, corporations, and public institutions likewise treat such certification as a mandatory standard, such that this single document has effectively become a prerequisite for employment and a gateway to job opportunities. Although these requirements are often justified as promoting the objective of combating unlawful and criminal conduct, they also signal the risk of employment-based discrimination [1]. As a result, such practices may infringe upon the equal employment rights of individuals who have committed administrative offenses. Even after having undergone legal accountability, these individuals may continue to endure social stigmatization and exclusion, thereby extending punitive consequences beyond the formal sanction and unsettling the balance between utilitarian and retributive justifications of punishment [2].

From the perspective of the evolution of the problem, this phenomenon may lead to a series of adverse consequences: restrictions on employment for individuals who have committed administrative offenses, an inability to secure a stable livelihood, the obstruction of pathways back into society, and ultimately the risk of renewed unlawful or criminal conduct. In response, on June 27, 2025, the Standing Committee of the Fourteenth National People's Congress adopted a revised version of *the Law on Penalties for Administration of Public Security* (hereinafter "LPAPS"). This revision represents the first comprehensive amendment to the law in nearly two decades since its implementation in 2006 [3]. It is intended to address the limitations of a purely punitive approach that risks imposing lifelong consequences for a single violation [4], to promote a more integrated model of conditional reintegration, and to reconcile the protection of fundamental rights with the effective governance of public order under the rule-of-law framework.

With respect to research on this issue, existing scholarship has tended to focus on constructing doctrinal frameworks around record sealing and expungement [5], while paying relatively limited attention to comparative perspectives and broader social implications. Other studies have emphasized case-based analysis but have provided less sustained normative examination of the statutory provisions themselves. As a result, the literature has either concentrated on isolated case discussions or on institutional design, without adequately engaging in a systematic analysis of the structural tension embedded within the system.

Guided by the penal theories of prevention and retribution, this article employs an integrated analytical framework combining doctrinal analysis, comparative research, and case study, focuses on the relationship

between the Constitution and sectoral legislation, and advances its argument from a dialectically unified perspective so as to broaden the analytical scope of the study. A Normative Analysis of the Administrative Offense Record Sealing System

### **1.1. The Interface Between Constitutional Law and Sector-Specific Legislation: The Legislative Expression of Equal Employment Rights**

The Constitution, as the fundamental law of the state, stands in a hierarchical relationship with sector-specific legislation, including the *Law on Penalties for Administration of Public Security*, such that the latter derives its authority from the former. As the supreme source of law, the Constitution provides the normative foundation for the enactment of all ordinary legislation, and any law that conflicts with it is invalid. In China, a model of constitutional non-justiciability is adopted. Courts are not permitted to invoke the Constitution as a direct basis for adjudication. Instead, constitutional provisions—such as those concerning the structure of state institutions, their mutual relations, and the fundamental rights and duties of citizens—are implemented and concretized through legislation enacted by the legislature.

The Administrative Offense Record Sealing mechanism established under Article 136 of the newly revised *Law on Penalties for Administration of Public Security* is consistent with Article 38 of the Constitution of the People’s Republic of China, which guarantees the protection of personal dignity. By addressing the social problem of employment discrimination faced by individuals with administrative violation records, the provision adopts legislative measures to mitigate the risk of “lifelong consequences” resulting from a single offense. It seeks to give effect to constitutionally protected fundamental rights and to safeguard equal employment rights. In this respect, the reform reinforces the normative authority of the Constitution and reflects an ongoing effort to improve the institutional coherence of the rule-of-law system. More importantly, it provides concrete protection for individuals with administrative violation records as rights-bearing citizens.

### **2.2 An Analysis of the Administrative Offense Record Sealing System: Balancing Legislative Considerations**

According to Article 136 of the newly revised *Law on Penalties for Administration of Public Security* [3]:

*“Records of violations of public security administration shall be sealed and shall not be disclosed or provided to any entity or individual. However, an exception applies where relevant state authorities require access for case-handling purposes or where relevant entities conduct inquiries in accordance with national regulations. Any entity lawfully conducting such inquiries shall maintain the confidentiality of the sealed records.”*

As indicated above, the newly adopted provision applies to records of administrative violations, including but not limited to offenses such as drug use, prostitution, and drunk driving. Among these, the sealing of records relating to drug use has emerged as a focal point of public debate. Following a widely circulated comment posted on November 28 by the official Douyin (TikTok) account of Nantong Culture and Tourism, online discussion intensified and attracted substantial public attention. At a deeper level, this controversy must be understood against the backdrop of China's longstanding "zero tolerance" approach to drug control, which has cultivated strong public resistance to narcotics and a firm normative stance against drug-related offenses. However, while drawing attention to the newly revised law, the online commentary also had the potential to amplify public sentiment and generate heightened media visibility. As a result, public discourse shifted from the question of whether drug-use records should be sealed to broader concerns regarding equality before the law.

Beyond its general provision concerning the sealing of records for minor offenses, the first sentence of the article also incorporates an exception clause, namely: "However, relevant state authorities may access such records where necessary for case-handling purposes, or relevant entities may conduct inquiries in accordance with national regulations." This exception offers a more precise and comprehensive perspective on the operation of the system. The inclusion of this clause indicates that the legislative intent is to safeguard the lawful rights and interests of individuals who have committed administrative violations—particularly their right to equality—rather than to weaken enforcement against drug-related offenses. In social life, the mechanism seeks to prevent individuals from being permanently excluded due to the stigma attached to prior drug-use violations, thereby enabling conditional reintegration into society. At the same time, in the sphere of governance, the sealing mechanism does not obstruct or interfere with the ordinary functioning of state authorities—especially judicial bodies—in carrying out anti-drug enforcement. In this respect, the provision reflects a legislative effort to explore a rule-of-law-oriented path that balances rights protection with institutional restraint. It protects citizens' lawful interests without undermining the broader principles of state governance, achieving a form of measured equilibrium. In doing so, it exemplifies the characteristic approach of combining leniency and strictness within the legal framework.

## **2. A Comparative Study of Record Sealing and Expungement**

### **2.1. Conceptual Clarification of Record Sealing**

#### *2.1.1. The Origins of Record Sealing*

Record sealing, also referred to as the sealing of criminal records, can be traced theoretically to labeling theory, which emerged in the United States during the 1950s and 1960s. A leading proponent of this theory,

Edwin Lemert, distinguished between “primary deviance” and “secondary deviance,” [6] arguing that many individuals engage in minor or transient forms of deviant behavior. However, only when such conduct is publicly identified and assigned a negative label does the individual risk entering a stage of “secondary deviance,” characterized by the internalization of a deviant identity and the gradual development of what has been described as a “deviant career.” In other words, once an individual is labeled a “criminal,” the resulting stigma may subject that person to discrimination and social exclusion in everyday interactions, thereby increasing the likelihood of continued offending [7]. The emergence of record sealing mechanisms can be understood as an institutional response to this dynamic: by limiting the public visibility of past violations, the system seeks to remove the stigmatizing label and facilitate social reintegration, thereby preventing individuals from being permanently defined by a single episode of deviance.

Beyond its grounding in labeling theory, record sealing also reflects the principles of individualized punishment and rehabilitative penal philosophy. Consistent with the analytical framework adopted in this article—namely, the distinction between retributivism and utilitarianism—retributive theories of punishment emphasize desert and proportionality, focusing on moral accountability for wrongdoing. By contrast, utilitarian approaches are oriented toward crime prevention, seeking to achieve deterrent and rehabilitative effects through sanction. Record sealing may be understood as an institutional synthesis of these two rationales. On the one hand, individuals who violate the law must receive proportionate punishment. On the other hand, if punishment is to serve an educative or rehabilitative function, its collateral consequences must be limited [8]. By restricting access to criminal or administrative records, the sealing mechanism seeks to prevent the continuing extension of punitive effects beyond the formal sanction, thereby preserving the corrective and preventive aims of punishment.

### *2.1.2. The Development of Record Sealing in China*

Exploration of record sealing in China began in 2003. The People’s Court of Chang’an District in Shijiazhuang, Hebei Province, was among the first to introduce the concept of “criminal record elimination.” Subsequently, various localities—including Guizhou, Shandong, and Shanghai—undertook diverse pilot initiatives, thereby accumulating valuable experience for future nationwide legislation. However, during this early stage, reform efforts did not fully shift toward a sealing-based model but instead focused primarily on regional experiments with expungement. Such approaches, by effectively erasing prior records, risked diminishing the retributive dimension of punishment without achieving a stable balance between retribution and rehabilitation.

Accordingly, after nearly a decade of exploration, the 2012 revision of *the Criminal Procedure Law* formally established, for the first time at the national legislative level, a juvenile criminal record sealing mechanism (Article 275). Through statutory enactment, the sealing framework was first

implemented in the field of juvenile justice. Although the mechanism did not yet possess general applicability, it nevertheless marked the preliminary institutionalization of record sealing in China, representing an important stage in its development and generating substantial experience in judicial practice. Subsequently, after another decade of practical experience, in 2022 the Supreme People’s Court and the Supreme People’s Procuratorate, together with other relevant authorities, jointly issued the *Measures for the Implementation of the Sealing of Juvenile Criminal Records*. This instrument further specified the scope of application, procedural requirements, conditions for access, and mechanisms of accountability, thereby enhancing the operability of the system.

Accordingly, the administrative offense record sealing mechanism introduced in the newly revised *Law on Penalties for Administration of Public Security* is not an unduly radical or misguided legislative measure. Rather, it embodies nearly two decades of judicial practice and exploration—developing from localized initiatives to broader application, from pilot programs to national legislation, and subsequently to more detailed provisions issued by the Supreme People’s Court and the Supreme People’s Procuratorate—constituting a rule-of-law arrangement shaped in light of China’s specific legal and social context.

## **2.2. Record Sealing and Expungement: The Fundamental Distinction Between Retention and Erasure**

Record sealing and expungement *share* certain similarities at the level of underlying principles, in that both provide individuals who have committed offenses with a conditional opportunity for social reintegration. Nevertheless, the two differ in fundamental and significant respects (see Table 1). Record sealing, as provided under Article 136 of the newly revised law, operates by restricting access to criminal or administrative records by specified entities. It constitutes a procedural restriction on disclosure and, pursuant to the exception clause, does not interfere with the ordinary functioning of judicial authorities. For example, the juvenile criminal record sealing mechanism established under Article 286 of the *Criminal Procedure Law* represents a prior legislative application of this model within the field of criminal justice. Its essential purpose is to protect the lawful rights and interests of juvenile offenders and to facilitate their successful reintegration into society.

By contrast, expungement entails the complete removal of the obligation to disclose prior convictions or violations, that is, the full erasure of criminal or administrative records, amounting to substantive elimination. At present, this model remains a subject of academic debate in China and has not been formally recognized through legislation.

In sum, the newly adopted provision establishes a system of administrative offense record sealing rather than expungement. The relevant violation records continue to exist and are not eliminated. The mechanism is intended to provide offenders with an opportunity for rehabilitation, rather than to restore them to a legally innocent status. The adoption of record sealing reflects not only legislative exploration but also a posture of judicial restraint. It demonstrates a balance between the enforcement of public order laws and the facilitation of social reintegration.

**Table 1 : Comparative Dimensions of Record Sealing and Expungement**

Dimension	Record Sealing	Expungement
Core Rationale	Restriction of access; providing an opportunity for rehabilitation	Complete erasure; restoration to a legally innocent status
Legal Nature	Procedural restriction	Substantive elimination
Legal Consequences	Exemption from the obligation to report prior convictions	Complete exemption from the obligation to report prior convictions
	Certificate of no criminal record may generally be issued	Certificate of no criminal record must be issued
	Records continue to exist	Records are deemed not to exist
Degree of Rights Restoration	Partial restoration	Full or near-complete restoration
Reversibility	Sealing may be lifted	Irreversible
Comparative Practice	Common in certain U.S. states and in the early stage of China's current system	Adopted in civil law jurisdictions such as Germany, Japan, and France

### 2.3. The Feasibility of Applying Record Sealing to Administrative Offenses

The application of record sealing in the newly revised *Law on Penalties for Administration of Public Security* does not mark the first appearance of this mechanism within China's legal system. As early as the 2012 revision of *the Criminal Procedure Law*, a record sealing mechanism had already been introduced. Specifically, Article 286 of *the Criminal Procedure Law* established a juvenile criminal record sealing system. The juvenile record sealing system applies to a specifically defined group of individuals. By contrast, the administrative offense record sealing system is not limited to a predefined category of persons. However, the object of sealing concerns administrative violations rather than criminal offenses. In other words, compared with the juvenile record sealing system, the administrative offense sealing mechanism differs in both its scope of application and the nature of the conduct subject to sealing. It expands the range of eligible individuals, while narrowing the social harmfulness of the conduct subject to sealing.

The feasibility of applying record sealing to administrative offenses is primarily reflected in the following two considerations.

#### 2.3.1. The Feasibility of Expanding the Scope of Application

The administrative offense record sealing system extends its application to an indeterminate class of persons, namely all individuals who commit the administrative violations specified in the provision, and based on a reasonable inference from the legislative intent underlying the amendment—namely, that the purpose of the system is to give effect to the constitutional guarantee of equality and to enable individuals who have committed administrative violations to achieve conditional reintegration into society—the category of persons to whom the provision applies fully coincides with the group contemplated by the legislative purpose, and the expansion of the scope of application is therefore feasible.

### 2.3.2. The Feasibility of Narrowing the Object of Sealing

Under the administrative offense record sealing system, the object of sealing is limited to the administrative violations specified in the provision, and compared with criminal offenses, such violations involve a lower degree of social harm; therefore, based on a fortiori reasoning, it may reasonably be inferred that narrowing the object of sealing is feasible.

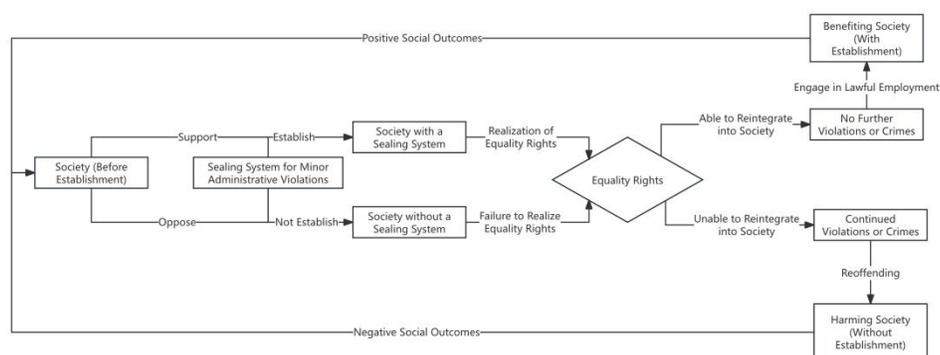
In sum, by evaluating the administrative offense record sealing system in comparison with the juvenile criminal record sealing system from the perspectives of scope of application and object of sealing (see Table 2), it may be concluded that the administrative offense sealing system is feasible.

**Table 2 : Comparative Framework of Juvenile Criminal Record Sealing and Administrative Offense Record Sealing**

Institutional Type	Juvenile Criminal Record Sealing	Administrative Offense Record Sealing
Scope of Application	Specifically defined group (individuals under 18 at the time of the offense)	Indeterminate class (all persons subject to administrative penalties)
Object of Sealing	Criminal offenses punishable by fixed-term imprisonment of not more than five years	Minor administrative violations (such as warnings and small fines)

### 3. An Analysis of Social Benefits and Social Risks

In examining the social benefits and risks associated with the administrative offense record sealing system, this article adopts a qualitative analytical approach. The administrative offense sealing system is treated as the key variable in the analysis. The analysis seeks to compare the potential trajectories of social development under two scenarios—one in which the administrative offense sealing system is established and one in which it is not—in order to assess the social benefits and risks associated with its adoption.



**Figure 1. The Mechanism of the Administrative Offense Record Sealing System**

### **3.1. The Social Benefits of Record Sealing**

#### *3.1.1. The Social Benefits of Record Sealing*

The establishment of the administrative offense record sealing system (referred to in Figure 1 as the “sealing system for minor violations”) generates social effects as illustrated in the upper section of Figure 1 and produces positive social benefits. First, within the institutional framework of China’s system of people’s congresses, the decision whether to establish the system derives from the people, represented in the figure as “Society (Before Establishment).” Second, if “Society (Before Establishment)” supports the creation of the system, this signifies that the right to equality of those subject to the sealing mechanism is realized, thereby providing minor offenders with adequate protection of their equality rights as citizens and enabling their reintegration into society. Third, once such individuals have reintegrated into society, the inclusive social environment enables them to regain the equality rights attributable to citizens, while the educational and corrective functions of administrative sanctions exert both internal normative constraints and external social discipline. Finally, it may be inferred with a high degree of probability that such individuals will maintain respect for the law, seek to avoid further violations, and refrain from engaging in criminal conduct. Accordingly, the overall effect on society is positive.

#### *3.1.2. The Negative Social Effects of Record Sealing*

Conversely, if “Society (Before Establishment)” declines to establish the administrative offense sealing system, although it does not formally deprive minor offenders of their civil rights, the socially embedded exclusion toward individuals labeled as offenders may result in a de facto impairment of rights that is no less severe than formal, institutionalized deprivation [9]. At present, amid structural economic transformation from a phase of rapid growth to one of high-quality development, a certain degree of unemployment has become unavoidable in society. Under prevailing employment conditions, coupled with the stigmatizing effect of the “offender” label, minor offenders—despite having borne the consequences of their conduct and undergone legal sanction and correction—may nonetheless be unable to achieve successful reintegration due to social exclusion. Prolonged unemployment may render this group a potential risk factor for social stability, and the combination of subsistence pressures and hostility arising from social exclusion may lead them to deviate from the rule-of-law framework, resulting in continued violations or even engagement in criminal conduct, thereby generating negative social consequences.

Whether in terms of positive or negative social effects, the foregoing analysis involves both individual-level factors relating to offenders and external social influences. The factors shaping offenders’ conduct include respect for the law and the reformatory influence of social goodwill, whereas the broader external impact is determined by society as a whole, namely the collective body of citizens. Offenders’ individual factors constitute a secondary variable, as their conduct is shaped and constrained by external conditions. By contrast, social factors function as the primary variable and play a decisive and structural role in the overall mechanism.

### **3.2. The Social Risks of Record Sealing and Corresponding Responses**

Among the objects of sealing under the administrative offense record sealing system, drug use has attracted the greatest attention and has been widely discussed and disseminated across social media platforms. Drug use differs from drug smuggling, trafficking, transportation, or manufacturing; the former constitutes an administrative violation

governed by the Law on Penalties for Administration of Public Security and involves a relatively lower degree of social harm, whereas the latter constitute criminal offenses regulated by the Criminal Law, characterized by greater culpability and higher social harm. However, given the highly addictive nature of narcotic substances, whether compulsory drug rehabilitation measures can effectively assist drug users in overcoming addiction has a significant bearing on their capacity for social reintegration. Drug use differs from other conduct included within the objects of sealing, such as drunk driving or prostitution; the latter more often stem from a subjective disregard for legal norms, whereas drug use is more substantially influenced by the objective addictive properties of narcotics.

Under the establishment of the sealing system, given that individuals with a history of drug use possess a significantly lower tolerance threshold for narcotics than those who have never used drugs, uncertainty remains as to whether they can successfully achieve social reintegration following compulsory rehabilitation; this reflects a tension between the dual safeguards of legal coercion and social support, on the one hand, and the persistent nature of addiction, on the other, thereby necessitating the concurrent development and implementation of a comprehensive rehabilitative framework. The prevention and management of addiction risk should not cease upon the completion of compulsory rehabilitation measures but should instead involve the establishment of multi-channel and multi-dimensional corrective mechanisms at the societal level, thereby creating a supportive environment conducive to successful reintegration.

## **4. Conclusion**

The establishment of the administrative offense record sealing system constitutes an important indicator of the modernization of China's governance capacity and carries significant practical implications for the development of a socialist rule-of-law state with Chinese characteristics. The system represents a significant institutional effort in China's ongoing exploration of mechanisms for offender reintegration. Historically, Chinese political philosophy has emphasized moral governance and advocated a governance approach that integrates morality and law. While valuing governance through law, it has also underscored the educative and normative functions of morality. As classical thought suggests, the ultimate objective of governance lies not merely in coercive enforcement but in moral persuasion; effective moral education enables individuals to move beyond reliance on legal sanction as a means and to embrace normative cultivation as the end. Human beings are ends in themselves, not merely means. The function of law lies in requiring offenders to bear responsibility for their conduct and guiding them back into the legal order, rather than imposing punishment for its own sake; its ultimate aim is to enable their successful reintegration into society following correction. Accordingly, this article maintains that the establishment of the administrative offense record sealing system represents progress in China's rule of law, as it gives concrete expression to the constitutional guarantee of equality through ordinary legislation, reflecting the legislative concretization model of fundamental rights protection under China's constitutional framework. Nevertheless, legislative language is inherently limited, and statutory drafting may inevitably contain normative gaps or institutional deficiencies. In post-enactment judicial practice, the effectiveness of the system should be tested through experience and refined in accordance with empirical realities, with further improvement achieved through legislative interpretation by the Standing Committee of the National People's Congress and judicial interpretation by the Supreme People's Court and the Supreme People's

Procuratorate, thereby laying a solid foundation for continued advancement of the rule of law. At the same time, state institutions, social organizations, and civil society actors should collaborate in constructing a comprehensive rehabilitative framework, shifting the focus of justice from punishment alone toward crime prevention, thereby continuously enhancing the level of rule of law and achieving a more advanced stage of legal development.

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