

Construction of Judicial Rules for the System of Retaining and Maintaining Relatives and the System of Residential Surveillance from the Perspective of Reducing Punishment

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Abstract. China's residential surveillance system does not take into account the need for criminal suspects to support their parents. Specifically, the setting of the residential surveillance system has certain deficiencies in the face of family warmth and indoctrination, the traditional idea of filial piety, and compensation for the victimized family, while the ancient Chinese system of surviving and raising relatives provides three perspectives for improving the residential surveillance system: one is to reform criminals based on the democratization of the judiciary, the other is to inherit the civilization of etiquette based on the Chinese style of rule of law, and the third is to conform to the idea of conforming to the punishment based on the rule of law of human rights, so as to guide the exploration of judicial rules for the construction of the residential surveillance system. Under the premise of fully integrating the idea of surviving and supporting relatives, the possible direction of the judicial rules of the residential surveillance system is: when reviewing a criminal suspect's application for residential surveillance based on the detention system, starting from the theory of social danger and the theology of the victim, the investigation of the number of children, identity relationship, and ability to adopt relatives at the family level of the surviving entity is carried out, and when carrying out residential surveillance, the right to know of community neighbors and the privacy of the adoptive entity should be guaranteed, and when criminal suspects violate the provisions on residential surveillance, their qualifications for retention should be revoked and the punishment for failure to be fulfilled. Apply the idea of retention to the residential surveillance system, so as to promote the revival of China's excellent traditional legal culture and achieve the goal of good law and good governance.

Keywords: Reduce Penalties; Surviving Dependent Relatives; Residential Surveillance.

1. Formulation of Questions

The provisions on residential surveillance in China's Criminal Procedure Law are similar in legislative spirit to China's ancient system of surviving and dependent relatives, but there are still differences between the two for three main reasons: from an ethical point of view, ancient societies under the feudal system attached great importance to clan ethics and emphasized filial piety[1]. From an economic point of view, most of the pension problems under the small-scale peasant economy can only be solved by children, while a considerable number of parents in contemporary times can provide for their own age; from a cultural point of view, Confucianism, as an orthodox ideology, emphasizes "life, do things with courtesy"[2], while the contemporary concept of filial piety exists to believe that serving parents is not a necessary condition for fulfilling filial piety.

Although both the surviving and residential surveillance systems take full account of the rights of some dependents, residential surveillance does not take into account the need for support for the elderly. According to data from the National Bureau of Statistics, by the end of 2022, the elderly population aged 65 and above in mainland China has reached 210 million, with an additional 9.79 million, accounting for 13.5% of the total population. [3]

At present, China's legal system construction is moving towards humanization, and attention should be paid to the interests of criminal suspects, their parents and victims. Shen Chunyao, director of the Legislative Affairs Commission of the Standing Committee of the National People's Congress, said that one of the elements to be considered in the 12th revision and improvement of the Criminal Law

Amendment is to "adhere to the concept of system, the thinking of the rule of law, and accurately grasp the targets and behaviors of punishment". Taking into account the issue of criminal suspects' filial piety, the issue of the suspect's parents' waiting for support, and the issue of compensation for victims, it is necessary to determine whether to impose severe coercive measures on criminal suspects and implement the idea of mercy for punishment. Therefore, this paper will compare the system of surviving and residential surveillance from the perspective of compassionate imprisonment, and try to explore the judicial rules of residential surveillance under the surrogate and foster family system.

2. The Problem of Residential Surveillance System Compared with the Survival of the Dependent Relatives System from the Perspective of Reducing Punishment

Punishment is an excellent legal thought handed down from generation to generation in the Western Zhou Dynasty. The "Mingde Prudent Punishment" in the Western Zhou Dynasty was the earliest idea of "prudent punishment", and the "Three Yous" and "Three Amnesties"[4] represented the idea of "prudent punishment" in the judicial procedural system. In the Tang Dynasty, the idea of mercy was embodied in the idea of forgiving subjective wrongdoing, especially for vulnerable groups, allowing money to atone for their crimes. [5] In the Qing Dynasty, the punishment of disaster victims for negligent crimes was suspended,[6] which embodied humanitarian thinking.

The idea of penal compassion has also made remarkable progress in contemporary China. First of all, one of the basic principles of China's criminal law, the principle of criminalization of crimes is the most prominent embodiment of the idea of compassionate punishment. [7] Second, contemporary China advocates the lightening of sentences[8] to ensure that punishment is not abused. Finally, China's contemporary criminal justice advocates the principle of pursuing humanitarianism as the principle to solve problems not regulated in the application of criminal law[9], which is in line with the core of the idea of compassionate punishment, that is, the humanistic spirit.

In contrast, China's current residential surveillance system is deficient in implementing the idea of compassionate punishment. Criminal suspects with retention circumstances could have been family probation and persuaded, but may have to take compulsory measures that restrict their personal freedom, such as arrest. Chinese deeply ingrained notion that "one hundred virtues and filial piety first" has also been attacked in this system. In addition, the detention of suspects has lengthened the waiting time for victims' families to receive compensation.

2.1. Lack of Consideration for Family Warmth and Education

No matter what type of suspect is concerned, punishment is not the ultimate goal, indoctrination to repentance is, and this process does not necessarily have to take place in prison, and the education and probation of family warmth may be more effective than the forced repentance of the pain of the prison, and repentance out of voluntary goodness is more likely to prevent reoffending than confession out of fear of punishment. The long-term separation of criminal suspects from their parents hinders the indoctrination of criminal suspects: from the perspective of emotional impact, criminal suspects cannot turn to wholehearted filial piety to their parents through the retention system with gratitude for their freedom; from the perspective of returning to society, criminal suspects miss the opportunity to strive to change evil and achieve self-change from the good; from the perspective of preventing recidivism, criminal suspects do not receive sufficient warm indoctrination to increase the possibility of criminal suspects committing crimes again. [10]

2.2. Neglect of the Traditional Ideology and Culture of Filial Piety

After more than 3,000 years of development and evolution, filial piety has become the cultural gene of Chinese. The Western Zhou Dynasty gave "filial piety" the meaning of administering parents, the Spring and Autumn Warring States period widely respected the Confucian filial piety idea represented by "those who are filial today, it is said to be able to raise", the Han Dynasty created the era of "ruling the country with filial piety" and selected officials to set up the "Raising Filial Piety" section, Cheng

Zhu Lixue of the Song Dynasty believed that filial piety to parents was a natural righteousness, and the Qing Dynasty required the imposition of cane punishment on those who "abandoned their relatives".[11] Ignoring the deeply rooted tradition of filial piety and serving one's parents makes it impossible to fulfill the filial piety by taking compulsory measures of arrest of children who should and could have fulfilled their filial piety, which is contrary to popular sentiment and undermines harmony. [12]

The distinctive feature of the socialist rule of law system with Chinese characteristics is that it adheres to the combination of governing the country according to law and governing the country with ethics. Although attaching importance to the issue of criminal suspects' fulfillment of filial piety obligations is only a kind of moral education,[13] requiring criminal suspects to fulfill their duty of support, it promotes the rule of law with rule of ethics, promotes the culture of filial piety, arouses widespread recognition, unites the nation, and then promotes the advancement of the construction of the rule of law, which is in line with the arrangement of socialist rule of law construction with Chinese characteristics.

2.3. Inadequate Consideration is Given to Compensation for Affected Families

The victims and their families have already suffered huge losses as a result of the crimes of the suspects, and it is urgent for the suspects' families to make up for this loss. However, criminal suspects are arrested and detained, unable to enter society to engage in labor and obtain income to compensate victims and their families for losses as soon as possible. Moreover, the suspect's parents had already lost their source of pension due to the arrest of their only son or daughter, and if the victim family claimed compensation from the suspect's parents, it would undoubtedly make their living situation worse, so the victim family could not request the suspect's parents to compensate. If a criminal suspect who meets the conditions for retention is allowed residential surveillance, the criminal suspect can obtain economic income within the scope of the prescribed freedom, and alleviate the damage to the victim's family. For example, the edict of the second year of Yongzheng requires that the family be paid a sufficient amount of silver taels at the same time as the remaining dependent relatives[14], which shows that the system of retention and maintenance is used to compensate the victims.

3. The Modern Legal Value of the Retention and Parenting System: An Analysis from a Practical Perspective

In ancient society, the system of retaining and caring for nearly 1,500 years can be described as a legal system that fully implements the idea of compassionate punishment, and compared with the results of hot cases, there is a controversy about the lack of the idea of compassionate punishment, and it is necessary to integrate the retention system into today's legal system.

3.1. Legislative History of the System of Surviving Dependency

The idea of surviving and adopting relatives originated from Mencius's idea of "for the parents of the people, so that the people will be disturbed, and they will be diligent all their lives, and they shall not support their parents, also known as loans to benefit them, so that the old and the young will turn into ravines, and evil will be in the parents of the people." [15] This system was first found in the Northern Wei Dynasty, and the Northern Wei Law and Famous Cases stipulates that "if a criminal dies, if the grandparents or parents are more than 70 years old, there are no adult descendants, and those who have lifeless relatives, they are invited to be punished, and the exile is flogged and retained to support their relatives, and they will eventually follow the flow and are not in the case of forgiveness". By the time the Tang Dynasty was perfected, Tang Law divided this system into capital crimes and exile crimes, which was for "right to retain relatives". [16] The retention system of the Ming Dynasty evolved from the suspension of execution in the previous dynasty to the termination of execution, becoming a "surviving relative" in the true sense. [17] On the basis of inheriting the relevant provisions of the Ming Law, the Qing Dynasty formed a complete process of four steps, including petitioning for retention, investigating and prosecuting retention, emperor's approval, and shackle and

punishment,[18] and at the same time stipulated special cases, such as "Where a bannerman commits crimes such as beheading, hanging, or dispatching, he shall be retained and worshiped as a whole." This system has been implemented for nearly 1500 years, which shows its profound impact on ancient Chinese society.

3.2. Judicial Reflection on the Penal Punishment System from the Perspective of Practice

The judge in the "Yaojiaxin" case held that the victim's family refused the compensation that the pharmacist was willing to pay, so he could not be given a lighter punishment; Yao Jiaxin's personal danger is extremely high and should be severely punished. [19] There may be different views on this. With regard to compensation for victims, influenced by public opinion, the families of the victims refused because they no longer needed compensation; Regarding the dangers of Yaojiaxin, Yaojiaxin has not been warmly indoctrinated, and evaluates it regardless of the possibility of its transformation, which undermines objectivity; Regarding the family situation of the pharmacist, the only son Yaojiaxin needs to support his parents, but this aspect was not considered in the judgment. The improper consideration of the above three aspects and the resolute sentencing of Yao Jiaxin to death did not fully reflect the idea of mercy.

In contrast, in the case of Lee Chang-kyu's rape and murder of a girl and the death of a boy, even if there are mitigating circumstances of "arising from a marriage dispute" and "surrendering himself" that are in line with human feelings,[20] Lee Chang-kyu should be sentenced to death without delay. First, for the fight against crime, Li Changkui's behavior is worse than that of Yao Jiaxin, and he should be sentenced to death. [21] Second, as far as compensation for the victimized family is concerned, Lee Chang-kyu has no sign of seeking to actively compensate the victimized family, and it is difficult to detect his remorse. Third, in terms of maintaining social stability, 97.61% of netizens on a well-known website believed that Li Changkui's methods were extremely cruel and demanded that he be sentenced to death out of consideration for personal safety. [22]

3.3. The Reference Significance of the Survival and Maintenance System

In the Bao Li case in 2020,[23] even though Bao Li and Mu Linhan were in a romantic relationship, Mu Linhan's behavior did not seem to meet the constituent elements of the crime of abuse, but the verdict in this case was the result of a combination of justice and public opinion. From the level of individual citizens, there are many voices from the public who have suggested that the only son Yaojiaxin needs to support his parents and thus be warmly educated, and if the retention system can be applied, it will be a response to the democratization of the judiciary. From the national collective level, the application of the retention system, which is a symbol of Chinese ritual and music civilization, will help enhance China's cultural self-confidence and world status. From the perspective of human rights in the world, the rule of law in human rights is a global trend, and the system of retaining relatives as a system that fully takes into account the human rights of criminal suspects can be used in Japan to promote the rule of law of human rights.

1. The necessity of indoctrination and correction of criminals from the perspective of judicial democratization

The system of surviving and caring for people can teach people filial piety and give criminal suspects the opportunity to reflect on their wrongdoing and its serious consequences. [24] When a criminal suspect who meets the conditions for detention is allowed to return to family life under residential surveillance, and feels the love of his father and mother in the process of supporting and serving his parents, a criminal with a conscience will definitely cherish this life doubly and sincerely repent[25].

Public opinion is the ultimate basis of judicial legitimacy, and the judiciary should respond effectively, and the current system must be improved to respond effectively, so as to achieve fair justice. [26] The integration of surviving dependents into the system of residential surveillance is an effective response to the public's suggestion that justice should consider the suspect's need to support his or her parents in order to facilitate correction of the suspect. For criminal suspects who meet the requirements for

retention, those who can achieve the purpose of justice through indoctrination will never use severe coercive measures, take into account national law, natural reason, and human feelings, and standardize the exercise of judicial power. Only by conforming to public opinion can judicial reform be steadily promoted. [27]

2. The necessity of inheriting the civilization of etiquette

In the future, China's judicial reform work should revolve around exploring the essence of traditional Chinese legal culture, for three main reasons. First, in terms of adapting the legal system to local conditions, China's modern rule of law learns from the experience of traditional Chinese legal culture, and it is not easy to have problems of disobedience. Second, in terms of enhancing national cultural self-confidence, inheriting traditional Chinese legal culture will help enhance people's cultural and institutional self-confidence. Third, in the aspect of sinicizing Marxism, we should draw on traditional Chinese legal culture to promote the integration of the basic tenets of Marxism with the excellent Chinese culture. Filial piety is a path worth exploring. [28]

As an important part of China's excellent traditional culture, "filial piety" has been integrated into the legal system since the pre-Qin Dynasty, and continued until the late Qing Dynasty. There is a saying in the Xia Dynasty, "The five punishments belong to three thousand, and the sin is greater than unfilial piety." [29] In the Eastern Han Dynasty, the law exempted sons from punishment for murder by humiliation of their father. The Tang Dynasty advocated "one standard of propriety", and even more so filial piety was the criterion of etiquette. [30] China's contemporary rule of law construction is developing in the direction of increasing humanity, and in line with respect for the excellent etiquette civilization that has been passed down for 5,000 years, the system of surviving and dependent relatives has been included in legislative consideration[31], allowing surviving dependents to become one of the eligible conditions for applying for residential surveillance.

3. The necessity of absorbing the idea of punishment

From the ancient chaotic times of heavy punishment to the modern "less killing and careful killing", the formulation of laws has paid more and more attention to the humanitarian spirit. The idea of "prudent punishment" embodied in the system of retaining and supporting relatives has laid an ideological foundation for the "lightening" and "humanization" development of today's penal system, and is of great significance. For persons who meet the conditions for retention, because their own social harm is lower than that of other criminal suspects, and they have the responsibility and obligation to serve their parents, there is no need to completely deprive them of their personal freedom, and allow them to apply the residential surveillance system to support and serve their parents, which is a more legal and reasonable arrangement.

The fourth constitutional amendment enshrined "the state respects and protects human rights" in the constitution, enhancing the sanctity of human rights,[32] clarifying the status of human rights in the law: the law to which the people obey must be based on respecting and protecting human rights. [33] The human rights of every human being are protected by the State, including those of criminal suspects. The law does not have the right to deprive criminal suspects of their lives or restrict their personal freedom by retaining them, and when residential surveillance is more appropriate, it should be allowed, so as to be in line with China's goal of "respecting and protecting human rights throughout all links of legislation, law enforcement, justice, and law-abiding". [34]

4. Establishment of Judicial Rules for Residential Surveillance under the System of Surviving and Dependent Relatives

Drawing on the system of retaining and supporting relatives, which contains the idea of compassionate punishment and humanistic spirit, will help improve China's residential surveillance system. The following describes the possible rules for the application of the system in judicial practice of residential surveillance from three aspects: the conditions for the application of the retained

dependent relatives, the implementation of the retained dependent family system, and the measures that violate the provisions on residential surveillance.

4.1. Review Whether the Application Meets the Requirements

For situations where residential surveillance is applied for reasons for retention, it should first be examined whether the relevant circumstances of the criminal suspect applying meet the applicable conditions for surviving dependent relatives. When reviewing the relevant circumstances of criminal suspects, a comprehensive review shall be conducted from the three perspectives of the criminal suspect's personal and his family, as well as the victim.

1. Requirements at the individual level of the surviving entity

The most basic requirement that the surviving entity should first meet is that he or she is the only child in the family and has parents to support, which naturally means that if the parents are deceased, they do not meet the conditions for retention. If the criminal suspect is an only child or daughter, but has formed another family and given birth to a child, and his child is an adult, he should not be allowed to retain it[35], and the suspect's child may perform the maintenance obligation in place of the criminal suspect. After the above conditions are met, the most important point is that the criminal suspect should also meet the criminal punishment conditions and examine the social danger of the criminal suspect.

In the review, three aspects should be examined. First, personal danger. This level of investigation mainly includes the suspect's natural situation, performance before and after the crime, and subjective malignancy. Second, social harm. Determine the social harm of criminal suspects based on the extent of their criminal circumstances, the reasonableness of their conduct, and whether they infringe on legal interests. Comprehensively consider the methods, means, time, and place of criminal suspects' conduct, as well as the perpetrator's motives, objectives, consistent performance, and so forth, to evaluate their social harmfulness, and then provide a basis for whether to apply retention and care. [36] Third, the controllability of litigation. To assess the controllability of a lawsuit, it is necessary to examine: whether the criminal suspect has obstructed the criminal proceedings, the severity of the punishment to be imposed, and whether the victim's forgiveness has been obtained. After comprehensively examining the above three aspects, the application of those with greater social harm shall be refused and approved.

2. Surviving requirements at the household level

In order to give full play to the indoctrination ability of the retention system, it is not advisable to set the applicable conditions too strictly. In terms of sentencing discretion, because residential surveillance is only a transitional stage before trial, the application of the system of retaining and supporting relatives will not directly affect the final conviction and sentencing of criminal suspects, so the requirements for the subject of dependent relatives need not be so strict. In terms of maintenance, there was no such social security in ancient times, and raising children and preventing old age became the most basic means of security, while the contemporary pension system is relatively perfect,[37] parents often do not need much material support from criminal suspects, but more need the spiritual comfort given by the only son or daughter. [38] In terms of policies and regulations, meeting the spiritual needs of the elderly and improving their happiness are the policy requirements for the development of China's old-age services,[39] in order to achieve this goal, it is necessary to emphasize the responsibility and obligation of children in solving old-age problems,[40] bringing eligible suspects back into their families and adoptive parents is consistent with current policy. Therefore, there are no need to make too many material requirements for the surviving entity's ability to foster relatives, and the application of retention and maintenance may be allowed if the surviving entity can give spiritual comfort to the adoptive entity and the adoptive entity hopes that the criminal suspect will return to the family.

3. Sentencing analysis from the perspective of victim theology

When judging whether a criminal suspect has the conditions for retention, it is extremely necessary to start from the perspective of victim theology. On the one hand, for the comprehensive protection of victims, the degree of damage suffered by the victim in a criminal case is used as the basis for convicting and sentencing the perpetrator, and determining whether the criminal suspect can be retained by the degree of damage is conducive to achieving post-remedy for the victim's family to the greatest extent. [41] On the other hand, in terms of treating the perpetrator fairly, the criminal law punishes the criminal suspect because it violates the legal interests that the victim should protect, [42] when the victim commits a misconduct and the necessity of legal protection is lost, it is objective and fair to prudently deal with the issue of the criminal suspect's retention rather than just based on the outcome. [43]

In the contemporary residential surveillance system, the application of the system of surviving and dependent relatives should also consider whether the victim is the only child or daughter in the family, and the victim's parents are old and dependent. If the victim is also an only child in the family and temporarily or permanently loses the ability to support his parents due to the criminal act of the criminal suspect, the criminal suspect shall not be allowed to be approved for retention. However, if the victim is at risk of self-recruitment in a criminal case, his objection to allowing the criminal suspect to remain in custody shall be rejected. [44]

4.2. Enforcement of Residential Surveillance under Retainerability

The application of the residential surveillance system to criminal suspects who meet the requirements for retention is an embodiment of the protection of their human rights, but the protection of the human rights of community neighbors and foster relatives is equally important, so when carrying out residential surveillance, attention should be paid to safeguarding the personal and property rights of community neighbors and the personal dignity of dependent relatives.

1. Protect the right to know of neighbors in the community

According to article 66 [45] of the Criminal Procedure Law, the use of residential surveillance is a considerable violation of the personal freedom of a criminal suspect and is intended to limit the crime, so it should be avoided to violate the rights of others, especially the rights of neighbors in the community. After all, a criminal suspect is a criminal suspect, he is still personally dangerous, there is a possibility of reoffending, and protecting the neighbor's right to know about the danger is essentially protecting his personal rights and property rights. [46] After all, criminal suspects who are allowed to be placed under residential surveillance because they meet the conditions for surviving dependent relatives are personally dangerous, and enforcement personnel should ensure that the suspect's neighbors are aware of the suspect's residential surveillance, and at the same time inform the neighbors of the crimes committed by the criminal suspect, so that the neighbors can take preventive measures. At the same time, the installation of surveillance facilities for monitoring criminal suspects is bound to violate the privacy rights of neighbors, and enforcement personnel should fulfill their obligation to notify in a timely manner.

2. Protect the privacy of foster entities

Residential surveillance at the place of residence may infringe upon the legitimate rights and interests of the suspect's parents. Although the Constitution protects citizens' right to privacy,[47] certain concessions are made in the face of resolving criminal cases, allowing lawful searches[48] and surveillance of communications[49]. Because in some cases, the sentenced person may have the risk of re-offending, so this provision is to protect the public safety of the society, and individuals need to make a reasonable degree of tolerance before maintaining the public interest of social order and stability, which means that although one of the purposes of applying coercive measures such as residential surveillance to criminal suspects who are subject to detention is to restrict crimes, this cannot completely sacrifice the privacy of the suspect's parents, and restrict the use of the three surveillance methods stipulated in the procedural law.

4.3. Violation of Regulations to Revoke the Status of Retainerability

The purpose of applying retention is to implement the humanistic spirit rather than to indulge criminal acts, so criminal suspects who violate the special provisions of the detention system shall promptly revoke their qualifications for retention and take other compulsory measures such as arrest and detention in accordance with the provisions of the Criminal Procedure Law.

1. Circumstances in which the status of retention is revoked

As a legal system that is implemented with filial piety, whether filial piety is fulfilled should naturally be used as a criterion to measure whether or not you can continue to be eligible for dependency. In the process of monitoring criminal suspects, enforcement personnel under residential surveillance should also pay attention to whether the criminal suspects have engaged in unfilial behavior. Regarding the standard of unfilial piety, reference can be made to the standard of criminalization of the ancient crime of unfilial piety for the situation of not providing for parents and not serving well[50]. The ancients said: "There are three filial pieties: 'Great filial piety honors relatives, followed by humiliation, and can be raised under it.'" [51] Criminal suspects should, first, fulfill their duty of support, especially when their parents are sick, and secondly, they must fully respect their parents. In addition, according to article 79 of the Criminal Procedure Law, when residential surveillance has passed for six months, the suspect's eligibility to remain in custody shall be automatically revoked. [52]

2. Re-execution of the outstanding sentence

The legislation of the ancient system of family care was intended to be based on the legal consideration of family affection rather than the indulgence of the offender,[53]in contemporary application, it should not become a legal loophole that criminal suspects can exploit, and it must be implemented when the enforcement of more severe compulsory measures should be resumed. Therefore, when a criminal suspect's retention status is revoked, the execution of residential surveillance should be stopped, and other compulsory measures should be taken, which may be handled by referring to the provisions on compulsory measures for other criminal suspects with circumstances similar to the criminal suspect's criminal conduct. Of course, if a criminal suspect authorized to remain in custody violates the provisions of article 77 of the Criminal Procedure Law on his or her obligations, in which the procuratorate makes a decision on residential surveillance, the procuratorate notifies the public security organ to arrest,[54] and if the public security organ makes a decision on residential surveillance, the public security organ requests the procuratorate for arrest. [55] If the party concerned raises an objection to the suspect's execution of residential surveillance, the objection should also be reviewed.

5. Epilogue

As a part of China's excellent traditional legal system, the system of surviving and supporting relatives has nearly 1,500 years of vitality, and it still has important reference significance for the construction of socialist rule of law with Chinese characteristics. From the perspective of the people, the lenient treatment of criminal suspects who meet the conditions for retention and residential surveillance is required by public opinion, which corresponds to the democratization of justice, one of the goals of China's rule of law construction. From the perspective of the country, the system of retaining and supporting relatives, as a valuable spiritual wealth, is conducive to building a rule of law in China with traditional Chinese wisdom. From a global perspective, the introduction of a retention system that contains the idea of compassionate punishment matches the trend of the rule of law in human rights in the world. Therefore, the system of retention can naturally be used in contemporary China, and it is most appropriate to integrate it into the system of residential surveillance. In practice, the theory of social danger and victim theology shall be used to evaluate whether criminal suspects are suitable for custody, review the number of children, identity relationships, and ability to support relatives from the level of the surviving entity's family, and follow the content of the current Criminal

Procedure Law for criminal suspects who are subject to residential surveillance under detention. However, the residential surveillance system itself is also a system that is being improved, and the introduction of the system of retained and dependent relatives may cause some unforeseen problems, which need to be constantly corrected in judicial practice, and even with the acceleration of the pace of humanization of China's judicial reform, if the application of the system of retained and dependent relatives has achieved relatively good results, this system may also be applicable to the discretion of punishment for death row prisoners. If the system of retention can be introduced into the construction of contemporary rule of law, it will be a revival of China's excellent traditional legal culture. Of course, the retention system is only a subtle point, and improving and inheriting more of the excellent legal system of ancient China is bound to promote our country to a new realm of good law and good governance.

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