

## Developments in the Criminal Law in 2021: In the Name of Public Security and Treatment

Yu-Wei Hsieh\*

### Abstract

This article analyzes the major issues and important developments in the content of the legislation and interpretations of the criminal law in 2021. First, in the case of criminal legislation, this article reviews the amendments to the offense of interference with public order, negligent homicide, aggravated sexual assault, and hit-and-run, and makes critical suggestions for each. It can be observed that in recent years, legislators still prefer to respond to public grievances arising from social incidents with punitive legislation, especially in the area of traffic accidents. However, the absence of well-thought-out criminal legislation may lead to more difficulties of application in the future, which is worthy of deep consideration by the legislators. We should consider strengthening the integrity and sophistication of the criminal legislation process in the future. Second, with regard to the court's decision, the Supreme Court, recognizing "right to resist" and "right to avert imminent national hazard", made an important judgment that strongly states social and political protest or symbolic speech which is often accompanied by violence will not be illegal as long as it meets the applicable conditions. The Joint Senate for Criminal Cases of the Supreme Court has effectively served to unify different legal opinions. The Joint Senate indeed plays an important role in resolving of conflicting interpretations. Finally, and most importantly, J.Y. Interpretation No. 799, which is ruling on compulsory treatment for sexual assault crime offenders, puts forward "principle of clear separation" for the first time. This principle also

---

\* Professor of Law, College of Law, National Taiwan University.

E-mail: yuweisha@ntu.edu.tw

appears in J.Y. Interpretation No. 812, which rules that the order of compulsory labor in penal code is unconstitutional. Both interpretations declare ambitious institutional goals and core concepts of criminal treatment, and deserve recognition. However, we should be noticed that the huge gap between ideal and status quo may also be suspected of overriding basic principles of criminal justice. It may be a more serious constitutional issue that deserves our attention when social exclusion and isolation happens in the name of treatment.

**Keywords: J.Y. Interpretation No. 799, principle of clear separation, compulsory treatment, the Joint Senate for Criminal Cases, criminal legislation, negligent homicide, symbolic speech**