



Analysis of Enticement Detection using Information Technology [†]

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Abstract: Since its emergence, enticement detection using information technology, as a special means of investigation, has been widely used in judicial practice to combat crime due to its inherent advantages of initiative and efficiency. With the development of social economy and the improvement of science and technology, enticement detection has been especially applied in new crime cases with high concealment and strong technology in recent years, and it plays a role that is incomparable to the traditional passive investigation method. However, in the practice of enticement detection, it is easy to “go beyond the boundary”, which leads to its abuse. This not only fails to achieve the purpose of using the means to fight crime effectively, but also causes the negative effect of damaging our country’s judicial credibility and violating the citizens’ personality rights. Therefore, it is necessary to standardize enticement detection in the relevant legislation and put its legalization on the agenda earlier to guarantee entity justice and procedural justice in its implementation.

Keywords: enticement detection; technical detection; detection ethics

1. Overview of Enticement Detection using Information Technology

1.1. The Concept of Enticement Detection

It is generally believed that the implementers of enticement detection should not only include the detection agency and its staff, but also other personnel who are authorized or hired by the agency. The author believes that the meaning of enticement detection is a special means of detection in which the detection agency and its detectives set up opportunities or conditions to simulate the implementation of a certain crime based on the clues they have mastered so as to induce others to commit a criminal offence and arrest them when the crime is being committed or has already occurred.

1.2. The Difference between Enticement Detection and Technical Detection Using Information Technology

Both enticement detection and technical detection have confidentiality and are classified as secret investigation means. But there are differences between them in the effectiveness of detection. First, the two are different in terms of the behavior characteristics. Technical detection focuses more on technology, in which high-tech technologies such as modern data and information are usually used. The manifestation of technical investigation is that detectives find suspects and collect criminal clues by means of telephone monitoring, surveillance video, secret recording, and the use of machines. However, enticement detection focuses more on deception and inducement, in which investigators usually approach the investigated by covering investigators’ true identity and purpose, set bait to entice them into committing a crime, and then capture them on the spot and collect criminal evidence. Second, the rights infringed upon by the two methods are different. The collection of information by means of technical detection usually involves the privacy of the investigated, so the object of its intervention is the privacy of citizens. In contrast, enticement detection is when investigators use the public power to lure the investigated into the investigation procedure that was set in advance, and the object of its interference is



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the citizens' right to practice self-discipline. Finally, the means used by the two methods are different. Both of them show "secret" in their means, but the emphasis of "secret" is different. The secrecy of technical detection lies in taking a "back to back" approach to monitor the information, objects, places, and activities of the investigated. This type of action is the process of observing criminal behavior through secret observation by the investigators or authorized individuals without the knowledge of the investigated. The secrecy of enticement detection lies in the fact that the investigator or the authorized person engages in "face to face" contact with the investigated by concealing their true identity and purpose in order to carry out investigation activities.

2. Values of Enticement Detection

2.1. Advantages of Enticement Detection

From the above, we can see that compared with traditional passive detection, enticement detection has incomparable advantages in cases, especially for some cases with high concealment and a great risk of social harm. The advantages of enticement detection are as follows:

- First, enticement detection has the characteristic of having complementarities. The enticement detection method can effectively supplement the defect that the traditional detection method cannot overcome. For example, in the cases of "No Obvious Victims", traditional detection often cannot play a role in detection. Such cases are usually those that infringe the interests of our country or disturb the social order without a specific victim, or where the opponent of the crime does not feel victimized. Therefore, it creates a situation in which no one can disclose the facts of their crimes to the detection authorities, or it is difficult for the detection authorities to collect evidence due to the high concealment of the crime, although they know the facts of the crime. In the cases of enticement detection, the investigative actions are carried out before such crimes are committed. It can be seen that authorities can take advantage of enticed investigations to monitor the criminal behavior of the enticed and to control the criminal behavior so that it develops in a direction that is conducive to the detection of cases.
- Second, the enticement detection method has the characteristic of high efficiency. The enticement investigation method has shown extremely high efficiency due to its proactive investigation process, especially in combination with information technology. Investigating authorities carry out enticement detection activities before the implementation of the crime, so the suspect can be caught in the moment of the crime, which is faster and more effective for the detection of cases.
- Third, the enticement detection method has the characteristic of deterrence. The proactive and covert characteristics of the enticement detection method have a huge deterrent effect in combating new types of criminal cases such as "No Obvious Victims" crimes; for drug, firearm, and ammunition crimes; as well as for organized crimes; terrorist activities; and other major crime cases. Only by actively adopting the enticement detection method to timely "intercept" criminal behavior and deter criminals can we ultimately achieve the goals of maintaining national security and stabilizing social order.

2.2. Disadvantages of Enticement Detection

The disadvantages of enticement detection are as follows:

- First, the use of the enticement detection method will violate the citizens' personality rights. The personnel who carry out the enticement detection method conceal their real identity to entice citizens into the investigation procedure that was set in advance by the public power, which will inevitably seriously violate the personality rights of citizens.
- Second, the use of enticement detection may bring judicial ethics into question. If encouragement detection is used improperly without any restrictions, it will easily

lead to a crisis of trust for our organizations and to judicial moral questioning from the public.

- Third, using the enticement detection method has the possibility of attracting crime, which violates the principle of criminal responsibility and punishment in China's criminal law. The investigation agency plays the role of the "instigator" in the enticement detection of criminal inducements, which goes against the original intention of cracking down on the crime. In addition, investigative authorities may lead the crime in the direction of felonization in order to achieve their purpose, which clearly violates the principle of criminal responsibility and punishment under China's criminal law.

3. The Reality of Enticement Detection Use in China

China has not established a legal system related to enticement detection from the point of view of the system. The investigation authorities themselves have made some regulations on enticement detection, including the relevant usage regulations made by the Ministry of Public Security in the "Notice on the Full Use of Various Technical Means in the Investigation of Crime Solving". However, these rules have not been publicly disclosed, but only served as guidance in the implementation of investigation. The Supreme People's Court issued the "Minutes of the Symposium on the Trial of Drug Crime Cases by Some Courts in China" in 2008, reaching the following consensus on the legality of using inducement to investigate crimes in the trial of toxic drug crime cases: "The use of special circumstances to solve cases is an effective means to combat drug crimes [1]". To a certain extent, all of these regulations put forward some guiding opinions on the judicial practice of enticement detection, but they are inefficient, incomplete, and unsystematic, easily leading to the difficulty of establishing a legitimate legal basis for investigating major and complex special criminal cases, and ultimately affecting the effectiveness of combating crime. If the investigation agency forcibly breaks through the existing legal regulations, they will easily be criticized for the abuse of investigative powers, which will reduce the public credibility of our organizations.

4. Regulations on Enticement Detection in China

Based on China's national conditions and judicial practice and the theoretical experience of other countries, it is suggested to construct legal regulations on enticement detection based on the factors below.

4.1. Those That Are Suitable for Enticement Detection

The author believes that the applicability of enticement detection should be limited in regard to the two aspects outlined below.

4.1.1. Positive Conditions for Those That Are Suitable for Enticement Detection

The authorities should have sufficient reasons or reasonable grounds to prove that a person is committing a criminal act or is about to commit a criminal act before it can be investigated by means of enticement detection. Considering the "sufficient reasons and reasonable grounds" is the judgment standard that is generally agreed upon by reasonable people with respect to the criminal tendency and criminal intent of the suspect. The limitation on this condition should be that "only when there is a certain degree of credible intelligence information or circumstantial evidence that the investigated has a significant propensity to commit a crime, and that he or she is committing, has committed a crime or even has the possibility of continuing to commit a crime in the future, can he or she be investigated by enticement detection".

4.1.2. Negative Conditions for Those That Are Suitable for Enticement Detection

Firstly, enticement detection cannot be used on minors, mental patients, and the blind, deaf, and mute. Both minors and mental patients with limited criminal responsibility are different from those with complete criminal responsibility because they have relatively poor

self-control and are likely to be induced to commit criminal acts. The blind, deaf, and mute who have limited expressive or information-receptive abilities due to their physiological limitations lack the ability to discern the nature and consequences of the tempting behavior. Secondly, enticement detection is not allowed to be carried out on the person who only has a criminal tendency or criminal intention but has not committed criminal preparatory actions. In China's criminal law, there are provisions on excluding subjective crime. For individuals who only hold criminal intent or criminal tendencies but have not actually taken any preparatory actions, they are deemed as "ideological offenders" without causing social harm. Therefore, the punishment does not apply to them.

4.2. Preconditions for the Application of Enticement Detection

The enticement detection method can only be used under the following two conditions: Firstly, when there is sufficient evidence to show that the criminal act is occurring or is about to occur. Secondly, the traditional response-based detection method must be exhausted.

4.3. Implementation Methods and Behavioral Limits of Enticement Detection

Certain regulations of enticement detection should be made on implementation methods and behavioral limits based on the following two aspects: Firstly, investigation agencies cannot use methods that attempt to arouse the criminal intent of others by carrying out enticement detection activities—using the "criminal intent inducement" that is widely denied by both theoretical and practical circles. Secondly, the implementation of detection is not allowed to cause any damage to citizens. We need to pay attention to the fact that the damage caused to citizens by crimes may be irreversible and cannot be compensated for. Therefore, it is necessary to prohibit the act of enticement detection that poses a threat to citizens.

4.4. Procedural Regulation of Enticement Detection

It is necessary to be cautious about the high risk that is inherent in enticement detection. It is necessary to establish a unified approval procedure before deciding to use the enticement detection method, which must be exercised by a legally authorized authority. Article 256 of the "Regulations on the Procedure for Handling Criminal Cases by Public Security Organs" issued by the Ministry of Public Security in 2012 stipulates the following: "A report shall be submitted for the adoption of technical detection if required. The report shall be approved by the person in charge of the public security organ at or above the level of a city with a district, and a decision on the adoption of technical detection shall be made [2]". Accordingly, the author holds that we should refer to the approval process of technical investigation and submit an application for the use of enticement detection to the higher-level public security organs for unified approval under the current legal system in China.

5. Conclusions

Improving the construction of a basic legal system is an inevitable requirement for establishing a socialist country under the rule of law. Through this study, the author believes that the enticement detection method has been widely used in the practice of judicial investigation. The process of enticement detection being legalized should be accelerated as soon as possible after its legal status has been confirmed through legislation in the Criminal Procedure Law so that the investigation method can be standardized and institutionalized in order to serve the national justice and the lives of citizens, and to achieve a balance between the fight against crime and the protection of human rights.

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