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Penalty Enforcement

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I. Preface

The French classical sociologist Émile Durkheim, in his books, "De la division du travail social and Les Règles de la Méthode Sociologique", pointed out that a certain amount of crime is, in essence, a naturally inevitable and normal social phenomenon and an indispensable element of society. In this conception of society as an integral organism, crime is a challenge to the collective consciousness and values that society has developed. The law and its effects, however, respond to these challenges in order to maintain the stable functioning of society, and through the operation of crime and law, the important result of strengthening the collective consciousness of society is achieved.

It is not difficult to find that recent criminal thinking, with its emphasis on purposive punishment, prevention of recidivism, and social rehabilitation of offenders, has been influenced by the preceding thesis, which emphasizes how to guide the sentenced person back to society after completing execution of the sentence. The social orientation of crime is also different from that expressed in the first year of (the reign of) Duke Ai in Zuo Zhuan, which has a strong connotation of moral condemnation in stating that "the best way to cultivate morality is to promote its continuous growth, and the best way to eliminate disease is to cure it completely and cleanly from the roots". In addition, the study and acceptance of social phenomena is qualitatively preferred, and pluralistic approaches are adopted in execution of punishment to avoid the effects of labeling and the negative effects of institutionalized treatment, thereby making the reintegration process for the sentenced person back into society much more stable.

In order to avoid the negative effects of stigmatization and institutionalized treatment, we need to adjust some basic concepts of the exercise of the national penalty power, which was previously stereotyped as a means to eliminate evil without regard to its costs. Among them, the concept of criminal prosecution has long since faded away from the Retributive Justice perspective, which is solely oriented toward exercise of the national penalty power. Now the focus lies on Restorative Justice, taking into account the defendant's future reintegration into society and the restoration of the victim's relationships and any damages to the social environment. The Ministry of Justice has been working on these issues for the past 20 years,

addressing these core values as evident in the criminal policy between leniency and severity and in the Restraining Incrimination Principle, which is the most important principle in criminal justice policies.

Meanwhile, we must understand the ultimate implementation of the national penalty power. In addition to punishing criminal behavior, it is also responsible for concomitantly correcting any lack of criminal consciousness of the sentenced person. And thus enabling one to adapt back to the general social life patterns, and smoothly return to the society after completing execution of the sentence, thus avoiding recidivism.

From then on, criminal enforcement should enter a more humane era, not only in terms of the execution of punishment merely for punishment's sake, but also in terms of the cost and effectiveness of the execution of punishment, especially in terms of whether the execution of punishment can really meet the requirements of restorative justice. Through the exercise of the national penalty power and the effectiveness of criminal law as a code of conduct, a social environment is created in which people can live and work together in harmonious peace and happiness.

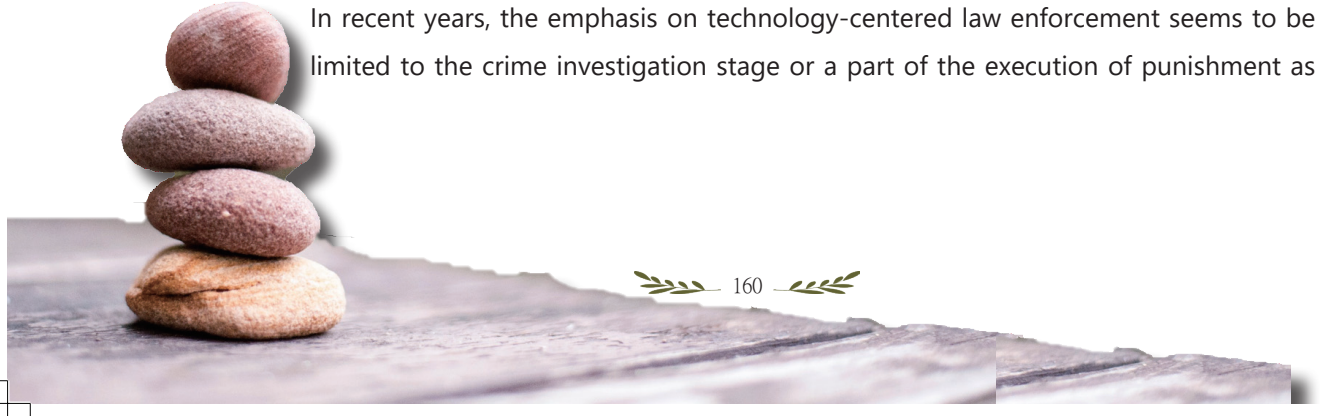
Prosecutorial entities are well aware of such changes in criminal , and often deal with thenforcement with utmost care. Although the execution of punishment is the last stage of criminal proceedings, its importance is verified by the effect of punishment on the sentenced person, which can be considered critical in its nature. In light of the recent evolution of criminal justice policies, it is the direction that should be given more attention in the execution of penalties.

II. Directions in Penal Enforcement Operations

The directions that should be emphasized in the execution of penalties can be divided into the following:

(I) Implementing technology in penalty enforcement

In recent years, the emphasis on technology-centered law enforcement seems to be limited to the crime investigation stage or a part of the execution of punishment as



seen in the press and media. However, in addition to the use of technology to supplement traditional man power, technological law enforcement, more importantly, is to reasonably save on national resources. In other words, the basic concept behind technological law enforcement is to achieve maximum effect with limited resources. Thus, the essence of technology law enforcement should not be limited to the use of hardware technology products to assist in crime detection or penalty enforcement, but should also be implemented in the actual concept of penalty enforcement itself.

For example, since the adoption of the New Criminal Confiscation System, the lack of penal necessity for the subject matter of enforcement has made it difficult to enforce cases through penal correction that are not beneficial correcting the sentenced party, or to enforce confiscation cases involving only small amounts that are technically difficult to collect. As a result, the number of cases in each prosecutorial entity has increased drastically, resulting in the need to spend untold amounts of manpower and resources to deal with the status quo. Considering the need for rational use of national resources, the Taiwan High Prosecutor's Office adopted resolutions at the 2021 Annual Symposium on Penal Enforcement Operations. The Ministry of Justice proposed to build a "forfeiture case suspension mechanism" into the penalty enforcement system, which is an innovative concept for using computer systems with minimal manpower to effectively manage and enforce the aforementioned forfeiture cases. This will prevent cases from falling into the dilemma of being out of control. Also, the system will help to solve the problem of a backlog of cases in prosecutorial entities.

（II）Strengthening the mechanism for stable reintegration for sentenced persons stably back into society

Although the execution of a sentence is formally the last stage of criminal proceedings, but actually the opposite is true. The purpose of the enforcement of penalties is to ensure the smooth reintegration of the sentenced person back into society and to avoid recidivism. The execution of the sentence is also the stage of rehabilitating the sentenced person into society. In terms of criminological research results, the respective length of a free sentence has different disadvantages, although there are various execution methods such

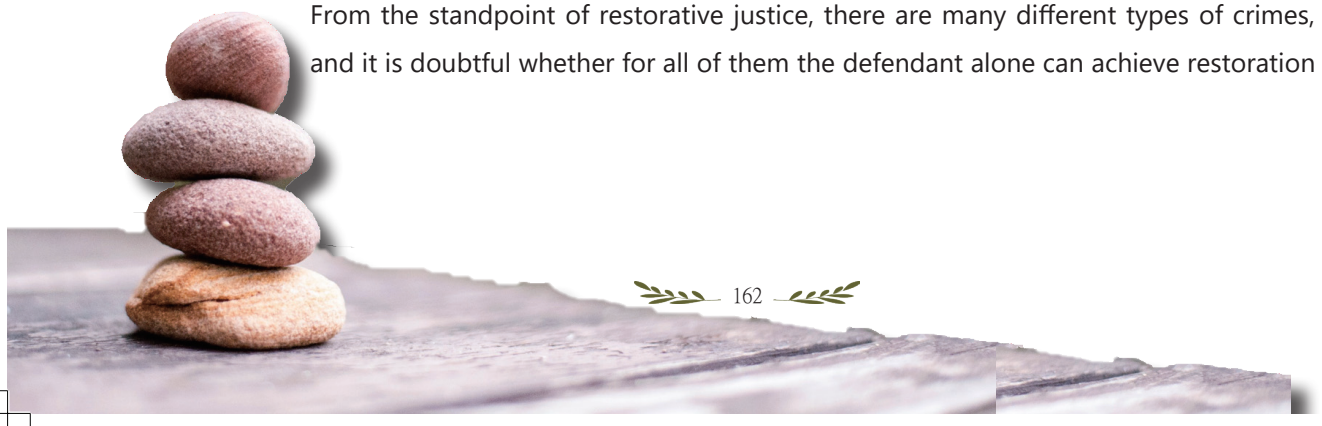
as summary fines, summary community work, or parole, to prevent the sentenced person from going to an institution. However, once institutionalization is necessary, those who have been in institutionalization for a long time will definitely experience a negative impact on their goal of future social reintegration. And after they are reintegrated into society, it will be difficult to avoid social stigma. All of these factors constitute negative factors for the smooth reintegration of sentenced persons back into society.

In the current system, prosecutorial entities are limited to the execution of the sentence by the prosecutors under the sentencing of the judge, and after the sentenced person is admitted to the prison, he or she is then legally under the control of the correctional agency and undergoes correctional treatment. After a prisoner is paroled, the probation officer of the prosecutorial entity takes over the protection and control of the prisoner until the expiration of the parole period. This process is not problematic in terms of the legal system and resources. However, it is not enough to merely observe progress to the goal of smooth reintegration of the sentenced person into society. The Taiwan High Prosecutor's Office (THPO) and the prosecutorial entities at all levels integrate efforts with the Taiwan After-Care Association (TACA), a consortium, and other private sectors to address the negative factors of institutionalization and social stigma by providing social rehabilitation services to inmates at the end of their stay in institutions, seamlessly interfacing individual encounter plans that dovetail into supervised release. This works to assist them in solving multiple problems such as employment and housing after parole or completion of sentence, so they can more readily readjust to society and avoid recidivism.

（III）Integrating resources to strengthen protection for crime victims

Although crime is essentially a social phenomenon, in crimes against personal interests, there are inevitably victims whose personal rights have been violated as a result of the crime. How the state can help victims of such crime to recover or repair their damages is a necessary means to realize justice as implied by the state's exercise of penal power.

From the standpoint of restorative justice, there are many different types of crimes, and it is doubtful whether for all of them the defendant alone can achieve restoration



and compensation to repair the victim's pain and suffering, and thus achieve the effects required by restorative justice. Hence, Article 1 of the Crime Victim Protection Act provides: This Act is enacted for the purposes of protecting the family members of deceased victims of criminal acts and the victims of sexual assault. This Act is enacted for the purposes of protecting the family members of deceased victims, seriously injured victims of criminal acts and victims of sexual assault crimes, safeguarding the This Act is enacted for the purposes of protecting the family members of deceased victims, seriously injured victims of criminal acts and victims of sexual assault crimes, safeguarding the rights and interests of the people as a whole, and enhancing the security of society. In other words, it is not difficult to find that when a defendant causes irreparable or irreversible legal infringements, and considering the defendant may find compensation of the victim to be challenging, as required by the demands of Restorative Justice, it then becomes imperative for state intervention, such as through establishing TACA.

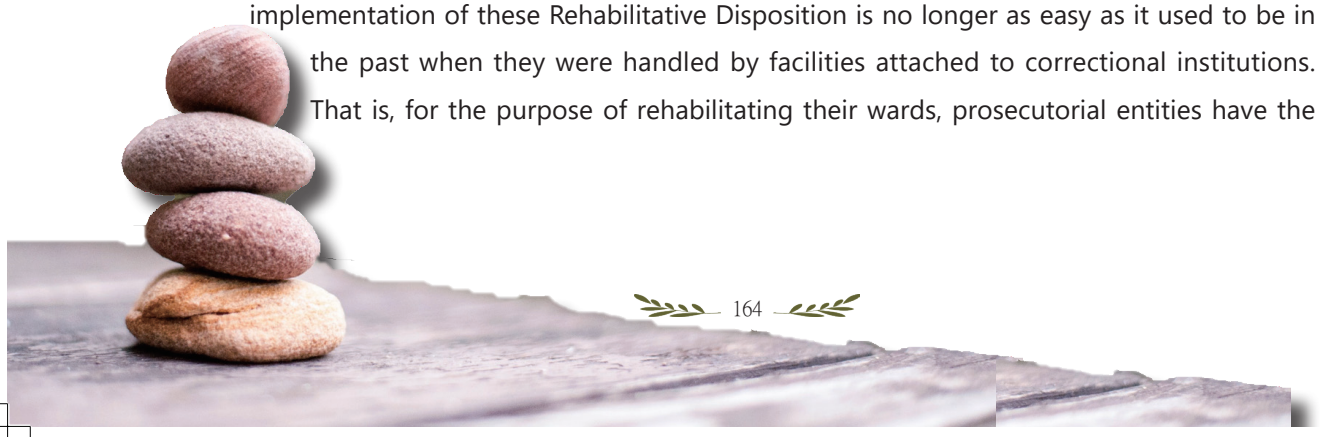
The prosecutorial entities are the executive body of the state's penal power, and the prosecutor is the representative of the public interest. How to integrate and effectively utilize the resources of TACA to restore or compensate crime victims back to their pre-victimization state, interposes questions not only of the spirit of restorative justice, which has been unveiled in recent years, but is also an important topic that must be studied in the future execution of penalties. That is, the purpose of criminal enforcement today is also to restore the social environment in which both defendants and victims can co-exist. Therefore, in the penalty execution process, how can the sentenced person prove their remorse by their own efforts, and how can they make up for the damage done to the victim, or how can they restore the damaged social environment and create a factual imperative for permitting their future return to society? During the period of restriction of personal freedom, the defendant's commitment to repairing the social environment in which the crime victim was victimized shall also be considered as a factor in their progressive treatment. All of these can be used as directions for criminal enforcement to achieve the purposes of crime victim protection.

（IV）Strengthening and Control of Secure Punishments

Interpretation No. 799 of Judicial Yuan pointed out that there should be a distinction between penalties and mandatory treatments. Therefore, on January 27, 2022, the Legislative Yuan passed the amendments to the Criminal Code, the Rehabilitative Disposition Execution Act, and the Code of Criminal Procedure, adding two major systems governing "Detention of Accused" and "Disposition of Custody". The maximum period of probation is 5 years, and provisions for extension of the period of probation have been added. Disposition of Custody includes appropriate treatment measures such as admission to judicial mental health wards or hospitals, mental rehabilitation institutions, and welfare institutions for the physically and mentally disabled, in order to establish a complete social protection mechanism for the mentally disabled or mentally defective criminal suspects. From these series of changes, we can already foresee that for the future, the enforcement procedures for secure punishment restricting personal freedom will become a more serious issue for society.

Rehabilitative Disposition are different from penalties in nature, as they are not imposed on the basis of criminal liability, but are necessary for the protection of other members of society and the recipient's own personal safety. In the past, the secure premises for Rehabilitative measures restricting personal freedom were often attached to correctional facilities. As a result, the line between these Rehabilitative Disposition and penalties has become blurred over time. They thus lost their original meaning, resulting in the recipients being frequently treated by such institutions and losing any opportunity for meaningful treatment and social rehabilitation. The positive purpose of these Rehabilitative measures is thus difficult to achieve, with the resources already invested inevitably wasted, and there is even the heightened possibility of double jeopardy with repetitive penalties for one crime.

The aforementioned Interpretation and amendments to the law reveal that the implementation of these Rehabilitative Disposition is no longer as easy as it used to be in the past when they were handled by facilities attached to correctional institutions. That is, for the purpose of rehabilitating their wards, prosecutorial entities have the



task of finding suitable premises for active medical treatment. Moreover, prosecutorial entities have the advantage of being located all over the nation, so they can benefit from horizontal contacts, and regularly exchange opinions on finding suitable medical clinics for the treatment of the sanctioned wards, and regularly visit their medical clinics. The use of the resources of private organizations such as TACA will certainly become another important task for prosecutorial entities in their enforcement of penalties.

III. Conclusions

The realization of the national penalty power to impose penalties represents efficacy of the public resources invested by the state. From investigation to enforcement, from institutions to social rehabilitation, each of these resources is provided by the members of society, that is, all the citizenry. Therefore, it is the mission of prosecutorial entities to ensure effective use of resources to achieve the above-mentioned objectives. And how prosecutorial entities may accomplish these purposes during penalty execution, is among the most important of our imperatives, and can rightly be considered our most important and unshirkable task.

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Loot Storage Management

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I. Preface

The Code of Criminal Procedure, Article 133, paragraph 1, provides that an item which can be used as evidence, or that is subject to confiscation, may be seized. The meaning of this provision is easy to understand, but criminal proceedings are fluid in both the investigative and trial stages, and with the advancement of the investigative and trial process, an item which can be used as evidence, or that is subject to confiscation, may be seized. The scope of evidence or items subject to confiscation is not always the same. It may become necessary to obtain evidence due to necessity arising in the litigation process or as subjective judicial requirements form, or when the seized property is already in the inventory and loaned out as a matter of routine. In addition, it may be that to confiscate the evidence or seized property is too complicated. The problem of how to quickly and effectively administer seized property to ensure the sameness or uniformity of the items, and at the same time strengthen the Loot Storage capacity to maintain the state and value of seized property, remains an urgent problem for prosecutorial entities to solve.

Secondly, seized property mostly comes from judicial police agencies transferred with the case, and after the case is prosecuted, there is a mechanism of sending the file and evidence to the court for custody and trial, and when the verdict is confirmed, the seized property is transferred from the court to the District Prosecutor's Office for execution of sentence. Thus, the process for seized property from the time of seizure, involves custody until its destruction or return, requiring cooperation of other agencies to achieve a multiplier effect with half the effort. In addition, the cleaning and destruction of seized property should be handled by appropriate and legitimate professional institutuons depending on the nature of the seized property. However, the resources of the District Prosecutors' Offices vary widely, it may be difficult to clean up the property properly and quickly. In the future, it will be worthwhile to make efforts to consolidate highly technical and professional seized property for destruction.

The Taiwan High Prosecutors Office (THPO) is strengthening the mechanisms for keeping and destroying stolen evidence in prosecutorial entities, and responding to external concerns about ensuring the sameness or uniformity and status of stolen evidence. On October 4, 2021, we convened relevant prosecutors and administrative divisions to discuss and establish

the "Loot & Evidence Management and Supervisory Unit". It was decided to integrate the existing THPO annual operational inspection and the General Affairs Section's administrative audit mechanism for management of stolen evidence in all District Prosecutors' offices. The Enforcement Section prosecutors, in conjunction with the Enforcement Section, General Affairs Section, Civil Service Ethics Office, and Research and Evaluation Section, will conduct annual on-site inspection of the confiscated evidence at local prosecutorial loot storage facilities, to understand the current situation and difficulties encountered in the storage and handling of stolen evidence in the Loot Storage.

II. Future Directions

The Enforcement Section, THPO, from November 2, 2021 to November 17, 2021, led the relevant sections to complete the first inspection at the THPO territorial jurisdiction's District Prosecutor's Offices, elucidating the following future directions:

(I) Standardizing operational process

Ensuring seized property is categorized and stored according to its nature. The definition of seized property as represented by the document caption word "Custody No." is agreed upon by each District Prosecutor's Office. Also, the District Prosecutor's Offices will establish standard operating procedures for the entry, exit, custodial storage, and removal of general items, drugs, guns, ammunition, valuables, large stolen evidence, and urine samples. Additionally, the custody of certain stolen evidence which is not easy to keep may be entrusted to a third person or agency (organization), and likewise should be included in the document caption word "Custody No.", so as to enable effectively administering later examination and verification.

(II) Establishing the concept of logistics space

If the stolen property has specifications and is suitable for shelf storage, it shall be stored in order according to the seized property's annual serial and Custody No.: If there are no specifications and an item cannot be shelved, the Loot Storage space should be virtualized and marked with coordinates in the case management system facilitating search and management examination. For reasons of temporary relocation of other space, it must be

immediately synchronized in the case management system to supplement the registration.

（III）Building intelligent storage

An RFID system can strengthen the efficiency of inventory and audit, and facilitate the placement or removal of stolen items in and out of custodial inventory, and also according to the different nature of seized property help build the most efficient intelligent administration for the warehouse. The system can also be connected with the RFID system established by judicial police agencies. Then when the seized property is transferred to the District Prosecutor's Office, the contents of the list and the photos of the seized property in its original state will be directly imported into the Loot Storage system.

（IV）Accelerating the clearing of stolen evidence

1. Shortening examination processes for stolen property destruction or auction

（1）Urine section: The District Prosecutor's Offices will handle the destruction of urine sample evidence without further presentation to the THPO for approval.

（2）Drug Section: When each District Prosecutor's Office reports to the THPO on the destruction of drug evidence, a single inventory should not exceed 200 items and should be reported in electronic documents (including attachments) to ensure greater efficiency.

（3）Part of looted/stolen evidence other than urine samples: ① All District Prosecutor's Offices shall send a letter to the THPO reporting looted evidence destruction or auction settlement lists, and within 14 days of receipt of the document, the THPO shall acknowledge in writing, then the Research and Examination Section shall periodically conduct audits. ② We must simplify the THPO audit process by revising the detailed list of the hierarchy of responsibilities, and changing issuance of the letter of approval of the audit results to the District Prosecutor's Office, to the executive prosecutor to determine. ③ The THPO will prepare a "Checklist for Destroyed and Auctioned Stolen Evidence" and request each District Prosecutor's Office to review the items listed in the above checklist before applying for the examination of destroyed stolen evidence. This will reduce the need for THPO to order further supplementation or corrections,

and thus will shorten the audit period.

2. Seized property destroyed or sold before judgment is Finally confirmed

（1）Urine samples: If the defendant does not dispute the test results and does not contest the identity of the urine during the investigation, then the defendant's written or signed consent to discard the urine should be obtained as soon as possible, and the property should be expeditiously destroyed.

（2）Large amounts of seized drugs: In accordance with Article 18, Paragraph 2 of the Narcotics Hazard Prevention Act, Regulations for Prosecutors Office to Destroy the Drugs Seized.Before the Judgement is Confirmed, the prosecutorial entities may request the court to decide on the early destruction of any large amount of drugs that are vulnerable to danger or inconvenient to store, respectively, during investigation and trial.

（3）Sale during investigation: Article 141 of the Code of Criminal Procedure provides that "If the seized property, as confiscated or forced collected, may be lost, damaged, lose value, difficult to keep, or too expensive to keep, it may be sold for its value and the proceeds of which shall be retained." The sale, as referred to in the preceding paragraph, shall be conducted by the prosecutor. The prosecutor shall make good use of this mechanism to expedite the liquidation of seized property and to ensure its value, and shall work closely with the Administrative Enforcement Agency, MOJ, in the future to effectively carry out its implementation.

3. Seized property transferred to court for trial

（1）In accordance with the legally specified lawsuit provisions of Article 264, Paragraph 3 of the Code of Criminal Procedure, when a prosecution is initiated, the record and exhibits shall be sent therewith to the court. Therefore, the corresponding court of each prosecutorial entity has a Loot Storage to receive all stolen evidence which should be transferred to the court for safekeeping, except for special circumstances such as when evidence is not easy to keep or too costly to keep.

（2）When the seized property cannot be transferred to the custody of the court due to special circumstances, the list of seized property shall be completed with the court in accordance with the contents, to clarify the custodial responsibilities.

4. Expeditiously issuing orders for disposal of stolen property: In the cases with judgments finally determined by the court, where the confiscated items are declared confiscated and held to be worthless they are to be destroyed, or for valuable items subject to variable value; If the confiscated items (including evidence/exhibits) are not declared confiscated, the procedures of return and public announcement are carried out, and if it is confirmed that they have no value, they can be discarded and destroyed even though they are not declared confiscated.

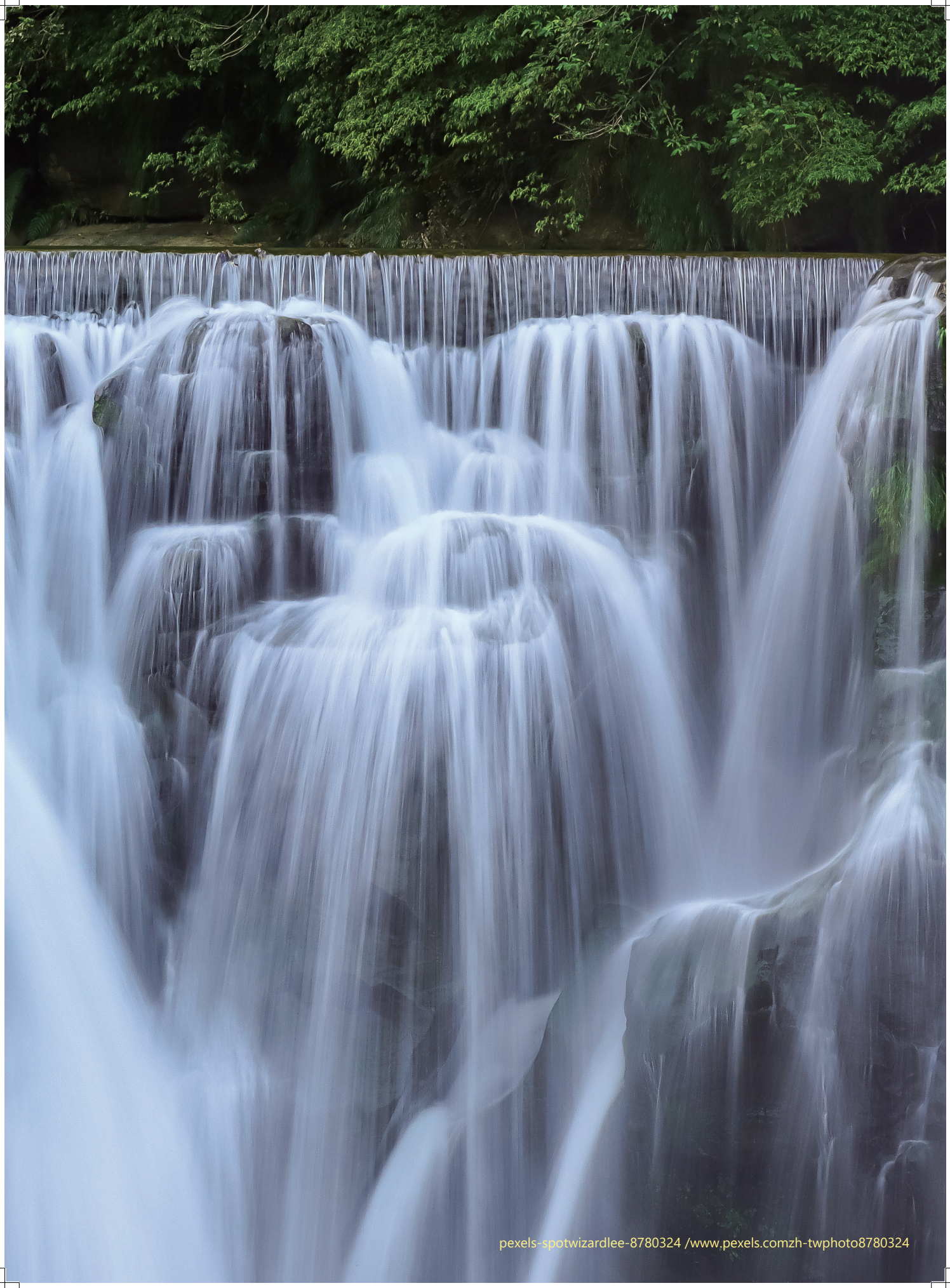
5. Clearing out old stolen evidence cases

（1）Where there is an account but no corresponding property, because the warehouse has no seized property, if judged according to the contents of the list of valuable seized goods, and querying the case transfer unit still produces no results, then sign the Chief Prosecutor shall be asked to review the matter for recordation; If the contents of the list of seized property are judged to have no value, the list of seized property will be duly filed of record after the Chief Prosecutor's approval.

（2）When there is property without a corresponding account, i.e., the inventory does not correspond to a case, then the seized property shall be first photographed and filed, and those with value may be sold. Those without value shall be discarded.

（V）Establishing professional destruction agencies' cooperation channels

When the seized property is toxic, dangerous, corrosive or infectious, such as drug precursors, drug semi-finished products, urine, firearms, ammunition and explosives, it may be difficult for the District Prosecutor's Office to clear out the seized property completely by itself or entrust it to another to handle the matter. As for seized property the nature of which involves higher technicality and professionalism, the THPO has begun contacting specific institutions for centralized processing, which can be used by District Prosecutor's Offices in the future.



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