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**TÍTULO:** Problemas teóricos y prácticos del mantenimiento de convictos que cumplen condenas en recaída.

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**RESUMEN:** El artículo investiga las causas de la reincidencia de los condenados, y destaca los problemas para mejorar la legislación penal-ejecutiva de Rusia en el campo de la ejecución de penas de prisión para personas que cumplen penas en caso de reincidencia. Los autores proporcionan datos sobre cuestiones problemáticas que surgen en las actividades prácticas del personal de las instituciones penitenciarias de la Federación de Rusia en el proceso de detención. La atención se centra en posibles áreas prometedoras y los resultados del trabajo realizado para eliminar las dificultades en consideración. Los problemas se consideran teniendo en cuenta el análisis de los indicadores estadísticos de la Federación de Rusia.

**PALABRAS CLAVES:** recaída, detención separada de convictos, grupos criminales, resocialización.

**TITLE:** Theoretical and practical problems of the maintenance of convicts serving sentences at relapse.

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**ABSTRACT:** The article investigates the causes of recidivism of convicts, and highlights the issues of improving the criminal-executive legislation of Russia in the field of the execution of sentences of imprisonment for persons serving sentences in case of recidivism. The authors provide data on problematic issues that arise in practical activities of the staff of the penitentiary institutions. Attention is focused on possible promising areas and the results of work done to eliminate difficulties under consideration. The problems are considered taking into account the analysis of statistical indicators of the Russian Federation.

**KEY WORDS:** relapse, separate detention of convicts, criminal groups, resocialization.

**INTRODUCTION.**

The modern Russian state overcomes the difficult historical stage of its evolutionary development. After several decades of pseudo-democratic transformations, the country is gradually returning to the bosom of moral values, legal norms that affirm civil peace and social harmony are filled with moral meaning. At the same time, analyzing the level of the legal order in the country, it becomes clear that in order to achieve the set goals it is necessary to implement a whole range of measures aimed at improving and developing law-making and law enforcement.

## **DEVELOPMENT.**

### **Research methodology.**

Theoretical and methodological provisions were presented by the works of Russian scientists in the field of improving the process of detention of convicts serving sentences at relapse, their re-socialization, as well as studies aimed at finding new measures to prevent crimes committed by these categories of convicts in prisons, the problems of the effectiveness of the current federal legislation.

The solution of the tasks set in the work was carried out on the basis of the application of general scientific research methods in the framework of comparative, logical and statistical analysis, as well as through the method of theoretical and legal forecasting.

### **Study results.**

Problematic issues arising in the practice of separating persons serving sentences in penitentiary institutions of the Russian Federation for committing repeated crimes necessarily set the task of not only analyzing the legislation of the Russian Federation and the practice of its application in the appointment and execution of sentences of imprisonment by persons who committed repeated crimes, disclosure of the concept of recidivism and its types, justification for the need for separate detention of persons serving sentences for repeated crimes, but also to identify the negative consequences of the influence of the leaders of the groups and a negative orientation to other categories of convicts, the argument of the negative role of persons serving sentences in the re-formation of gangs of convicts held in isolation.

At the same time, it is important to propose effective methods of social resocialization of convicts both in places of deprivation of liberty and in the post-prison period.

According to the Ministry of Internal Affairs of the Russian Federation [3], from January to September 2019, 1,521.7 thousand crimes were registered in the country, or 2.1% more than for the same period last year. More than half of all recorded crimes (52.5%) are thefts of other people's property committed by theft, fraud, robbery, robbery. Almost every fourth theft (22.3%), every twenty fifth robbery (3.9%) and almost every ninth robbery (10.8%) were associated with illegal entry into a home, premises or other storage.

The number of identified crimes related to arms trafficking amounted to 21.3 thousand. In January-September 2019, 4.2 thousand crimes were committed using weapons.

Departments of internal affairs bodies identified 75.8 thousand crimes of an economic nature, their share in the total array of crimes of an economic nature amounted to 85.8%.

Foreign citizens and stateless persons in the territory of the Russian Federation committed 27.3 thousand crimes.

As of October 1, 2019, 533,207 people were being held in the penitentiary system, of which 432,579 were serving sentences in 702 correctional colonies. including: 33,269 people were serving sentences in 122 colony settlements; in 7 correctional colonies for those sentenced to life imprisonment and persons for whom the death penalty by means of pardon was replaced by imprisonment, the sentence was served in 2017; in 209 pre-trial detention facilities and 96 rooms functioning in pre-trial detention facilities at the colonies, there were - 98301 people; 1145 people were serving sentences in 8 prisons; in 23 educational colonies for minors - 1182 people.

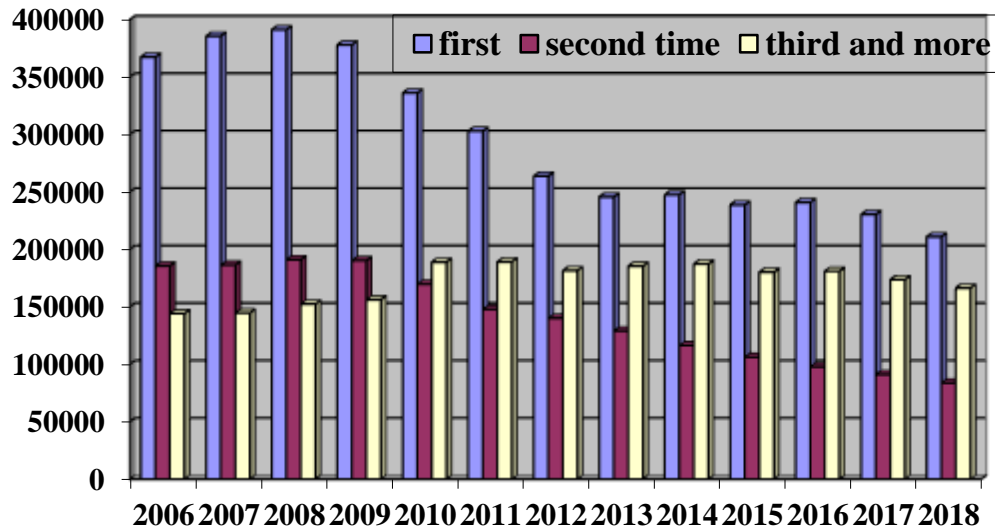
The institutions contain 42869 women, including 33961 - in correctional facilities, medical correctional facilities, medical institutions, and 8908 - in pre-trial detention facilities and facilities operating in pre-trial detention facilities at colonies. In women's colonies, there are 13 children's homes in which 437 children live [4].

Most convicts belong to socially vulnerable groups of the population, and also suffer from various socially significant diseases. From 3 to 9% of those entering pretrial detention facilities are HIV-infected, 4% suffer from mental illness, 2.7% are ill with alcoholism and drug addiction, 7.5% are pulmonary tuberculosis.

The high crime rate in the country is primarily caused by the presence of a number of criminogenic factors that have a negative impact on the state of citizens' protection from this public ailment. From the above statistics it is clear that the country's population is most worried about the high level of grave and especially grave crimes, as a result of which people die, harm to their health and property is caused; an increase in the number of crimes related to the trafficking of weapons and drugs; the spread of corruption in government, including law enforcement, bodies [Polishchuk N.I. (2018)].

Studying the quantitative dynamics, as well as the criminological and penological characteristics of persons serving sentences of imprisonment, it should be noted that since 2008 the “prison population” has decreased by more than a third. So, if in 2008 the total number of people sentenced to imprisonment was 734,291 people, while in 2018 their number was 460,923 people [4].

Despite the overall reduction in the number of crimes committed, the number of people serving sentences in prisons continues to remain at a high level. It should be noted that every second disclosed crime is committed by a person already convicted. According to official statistics, the proportion of repeat offenders serving sentences in places of deprivation of liberty is 54%, while 36% of this number were convicted more than three times, which is 10% higher than ten years ago (Fig. 1) [4].

**Fig.1. Characterization of prisoners**

In this context, it is necessary to note the fact that in the share of recidivism a significant place is occupied by positively characterized convicts who were released from places of imprisonment not at the end of the term, but ahead of schedule. The national average relapse rate among people released on parole is 24%, which causes not only alertness, but also a number of questions regarding the effectiveness of this legal institution.

In accordance with the criminal legislation of Russia, a crime of offense is the commission of an intentional crime by a person who has a criminal record for a previously committed intentional crime (part 1 of article 18 of the Criminal Code of the Russian Federation). The commission of a new intentional crime by a person who has a criminal record indicates the increased social danger of such a person and the need to apply more severe criminal legal measures to him.

From the wording of Art. 18 of the Criminal Code, the following characteristic signs of relapse can be distinguished: the commission of a crime intentionally; conviction of a previous offense; committing several crimes at different times.

Upon recognition of the recidivism, the criminal records listed in part 4 of Art. 18 of the Criminal Code, including for intentional crimes of minor gravity, as well as in conditional conviction and deferment of execution, if they were not canceled, and the convicted person was not sent to serve sentences in prison. In addition, a recidivism will not be the commission of a deliberate crime by a person previously convicted of a crime committed through negligence, or vice versa, if a reckless crime is committed by a person who has a criminal record for a deliberate crime.

It is necessary to pay attention to the fact that a prerequisite for recognizing a relapse is a person's criminal record for a previously committed crime. From the perspective of criminal law, a criminal record is the legal status of a citizen who was found guilty of a crime by the court, and to whom punishment and other measures of a criminal law nature were applied.

A person is considered to be convicted from the day the court verdict comes into force until the moment the conviction is canceled or withdrawn. Attention should be paid to the fact, that the cancellation and removal of a criminal record is not dependent on the criminological characteristics of the identity of the offender and his behavior during the serving of the sentence. When solving this issue, the social danger of the crimes committed is mainly taken into account.

In detailing this problem, the Plenum of the Supreme Court of the Russian Federation in its Decree of May 29, 2014 No. 9 "On the Practice of Appointment and Change by the Courts of Types of Correctional Institutions" indicates that the convictions withdrawn or canceled in the manner established by Art. 84, 85 and 86 of the Criminal Code of the Russian Federation for crimes committed through negligence, as well as a criminal record, referred to in part 4 of Art. 18 of the Criminal Code, are not taken into account in the recognition of relapse.

A criminal record for crimes for which a conviction was recognized as conditional, or serving a sentence for which is postponed, is taken into account when a relapse is recognized if the

conditional conviction or the postponement of serving a sentence was canceled before the person committed a new crime and the person was sent by the court to serve the sentence in prison [7].

Depending on the number of convictions for previously committed crimes, as well as on the severity of previously committed crimes and the severity of a newly committed crime, the criminal law (Article 18 of the Criminal Code of the Russian Federation) distinguishes three types of relapse: simple (part 1), dangerous (part 2) and especially dangerous (part 1).

In a simple relapse, a person commits an intentional crime in the presence of a criminal record for a previously committed intentional crime. In order to recognize a relapse as dangerous, the offender must: a) commit a serious crime for which he is sentenced to real imprisonment if he has previously been convicted two or more times for a deliberate crime of moderate gravity to imprisonment; b) commit a serious crime, if he had previously been convicted of a serious or especially serious crime to real imprisonment.

Relapse of crimes is recognized as especially dangerous:

- a) When a person commits a serious crime for which he is sentenced to real imprisonment, if this person has previously been convicted twice for a serious crime to real imprisonment.
- b) When a person commits a particularly serious crime, if he had previously been convicted twice for a serious crime or had previously been convicted of a particularly serious crime.

In accordance with Art. 63 of the Criminal Code, recidivism is recognized as an aggravating circumstance. It should be noted that when imposing a sentence during relapse, not only the nature and degree of public danger of previously committed and newly committed crimes are taken into account, but also the circumstances by which the corrective effect of the previous punishment was ineffective.



According to Art. 58 of the Criminal Code of the Russian Federation, relapse is taken into account when a convict sentenced to imprisonment appoints a type of correctional institution. At the same time, the criminal law does not provide for the separate detention of persons who have committed a crime during relapse within the same correctional institution, allows for the possibility of changing the type of punishment (commutation with a milder one) and the application of parole for this category of convicts. We believe that this legal regulation does not comply with the principle of differentiation and individualization of the execution of sentences, reduces the level of correctional impact on repeat offenders, and weakens private and general prevention, which ultimately leads to failure to achieve the main goals of punishment.

As noted above, the form of relapse determines the type of correctional institution in which the sentence is to be served after the court has entered into legal force. So, in penal colonies of a strict regime, males are sentenced for committing especially serious crimes, who had not previously served imprisonment, as well as in case of a relapse or a dangerous relapse of crimes, if the convicted person had previously served imprisonment.

In penal colonies of a special regime - men are sentenced to imprisonment for committing especially serious crimes, who have not previously served imprisonment, as well as to relapse or dangerous relapse of crimes, if the convict has previously served imprisonment (Article 58 of the Criminal Code of the Russian Federation).

Speaking of persons first sentenced to deprivation of liberty, it should be noted that the following persons who have not served their deprivation of liberty are:

- persons sentenced to punishment in the form of correctional labor or restriction of liberty to a person who, on the grounds provided for in Part 4 of Art. 50 and h. 5 Article 53 of the Criminal Code, these sentences were commuted to imprisonment:

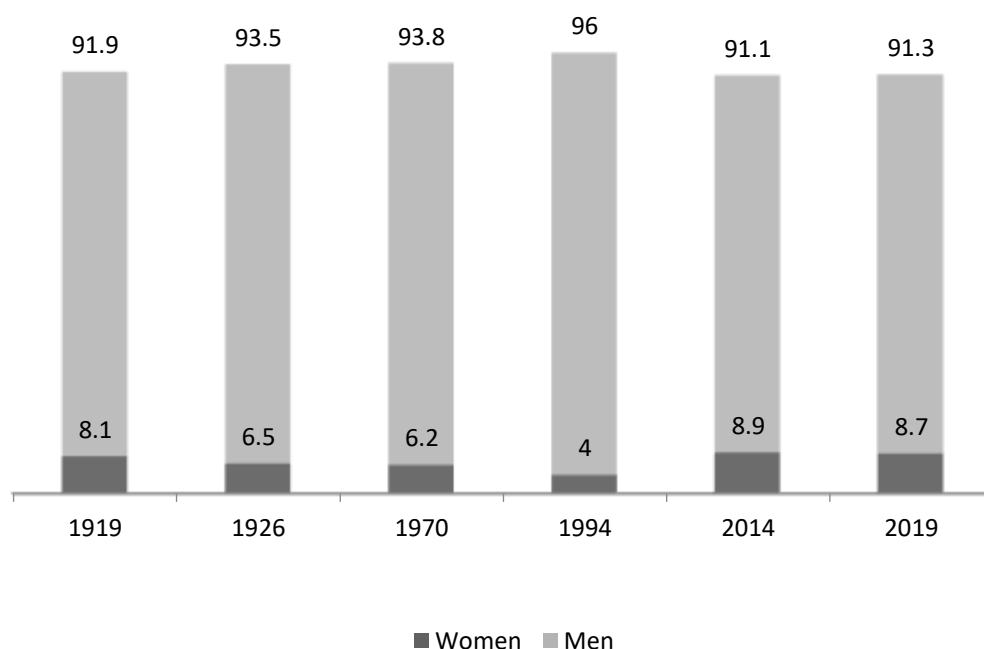
- To whom for a crime in accordance with Part 2 of Art. 55 of the Criminal Code of the Russian Federation, the court instead of imprisonment-imposed punishment in the form of detention in a disciplinary military unit.
- Who was in a correctional institution upon a court verdict, if in respect of his sentence was quashed by way of supervision with the dismissal of the case, either a sentence not related to deprivation of liberty was imposed or a conditional sentence was applied.
- A person sentenced to deprivation of liberty, but who has not actually served a sentence in correctional institutions in connection with the application of an amnesty to him or release from serving a sentence by way of pardon or by not executing a sentence in cases of expiration of statutory limitation periods in accordance with Art. 83 of the Criminal Code.
- Previously sentenced to imprisonment within the term of his detention in custody as a preventive measure, since she did not serve her sentence in a correctional institution.
- A person serving a prison sentence, in the event of his conviction to imprisonment for a crime committed before the first sentence.
- Those sentenced to deprivation of liberty and having served a sentence in places of deprivation of liberty for acts whose criminality and punishability have been eliminated by the current law, and, equally, if the current law does not provide for the punishment of imprisonment [2].

It should be noted that when appointing the type of correctional institution, the unexpunged and outstanding criminal records of the person at the time of the commission of a new crime are taken into account, in particular, when a relapse is recognized. Consequently, the expiration of the conviction term for one or more crimes during the last sentence does not entail a change in the type of correctional institution.

Taking into account the psychophysiological characteristics of a person's personality, as well as in order to ensure personal safety and educational work in correctional institutions, separate detention of men and women, minors and adults sentenced to imprisonment is established. These requirements are enshrined in the Minimum Standard Rules for the Treatment of Prisoners and the penal legislation of the Russian Federation.

Statistical evidence shows that in Russia the vast majority of people deprived of their liberty are males. The percentage of women convicted, relative to men, over the past hundred years has practically remained unchanged (Fig. 2).

**Fig. 2 The ratio of the number of convicts depending on gender**



At the same time, when studying the percentage of male and female persons serving a sentence of imprisonment for committing repeated crimes in 2018, the relapse rate among the total number of men who previously served a sentence of imprisonment is 43%, while women - 49%.

This situation is primarily due to the fact that women sentenced to imprisonment for any type of relapse serve their sentences only in penal colonies of the general regime, since according to national legislation, alternative types of penal institutions for this category of convicted women are not provided. To implement the requirements for the separate detention of various categories of convicts, it is important to change the structure of correctional institutions for women, bringing domestic legislation in line with generally recognized international regulatory legal acts.

We believe that the actual implementation of the institution of separate detention of convicts in dangerous and especially dangerous recidivities for all categories of convicts will contribute to the achievement of the main goals and objectives of the domestic criminal enforcement legislation.

In detailing this problem, it should be noted that the real absence of these correctional institutions does not allow to fully comply with the legal requirements enshrined in Art. 80 of the Criminal Code of the Russian Federation, establishing the need for separate detention of female convicts in case of dangerous and especially dangerous relapse.

This circumstance leads to the concentration of criminally oriented individuals within the same penitentiary institution, gives rise to the possibility of their negative influence on other categories of convicts, reduces the educational and preventive impact, therefore, the likelihood of re-committing a crime after being released from prison is increased. In addition, the lack of an effective system of separate detention of repeat offenders in places of deprivation of liberty leads to the formation of criminal groups and the development of a criminal subculture in conditions of isolation from society.

The unlawful activity of members of criminal groups is characterized by stability and is aimed at facilitating the conditions for serving a sentence. The people who form their bones violate regime requirements in every possible way, refuse to comply with the legal requirements of the

administration staff, and also otherwise interfere with the normal functioning of the penitentiary institution.

It should be noted that criminal groups are carriers of recidivism, since their negative influence falls on them as negatively characterized, but vacillating convicts. In this regard, persons with pronounced antisocial attitudes require strict isolation from other categories of convicts.

It is necessary to pay attention to the fact that the current model of corrective action does not fully use the psychological, pedagogical and psychotherapeutic components of this process. In this regard, on the one hand, a scientific approach based on a compromise between prisoners and the administration of a correctional institution is of particular interest, and on the other, an increase in psychotherapeutic measures involving relevant specialists.

The model, based on a compromise between the convicts and the administration, implies the conclusion on a voluntary basis of constructive agreements that upon arrival at the correctional institution the convict undertakes to faithfully fulfill the duties assigned to him by law throughout the entire period of serving the sentence, and the administration provides the possibility of early changes in conditions serving a sentence.

In our opinion, such a system will facilitate the implementation of the process of self-regulation of the behavior of convicts during the period of serving a sentence, guarantee the realization of the legitimate interests of convicts and will be a kind of guarantee to reduce the number of offenses.

Consequently, the involvement of psychotherapists in regular corrective and educational activities will lead to a qualitative separation of the negatively characterized from the positively characterized convicts in places of deprivation of liberty, which, in turn, will enhance the effectiveness of the educational impact on each category of people, as well as reduce the number of crimes and other offenses in prisons.

Isolation from society for many years, including the constant presence among other criminals, leads to a change in the mental processes of the person, his behavior, as well as interaction with other people, the environment and himself. The factors of transformation of personal characteristics and the lack of a smooth transition from isolation of convicts to life in society are one of the main problems in the process of their re-socialization. So, more than 60% of those who have served their sentences in prisons repeatedly commit crimes in the first three years after their release.

In our opinion, the current system of preparation for release does not fully cope with its responsibilities and requires qualitatively new approaches to this process. So, it is necessary to develop the institution of transitional regimes for serving sentences of imprisonment by convicts, which would guarantee the regular implementation of contacts with the outside world.

Under the transitional regime should be understood such conditions of deprivation of liberty that provide convicts the right to go beyond the prison, and in the future, the opportunity to live outside it.

According to the current criminal executive legislation of Russia, the regime restrictions of most correctional institutions do not provide for regular contact with the outside world. The exception is general regime penal colony. At the same time, most of the "recidivists" are serving their sentences in the colonies of strict and special regimes, and therefore they are deprived of this opportunity. We believe that the solution to this problem lies in the introduction of preferential conditions for serving sentences in each type of correctional colony into which positively characterized convicts can be transferred.

Persons serving sentences in preferential conditions will be able to receive long visits with relatives, including outside the correctional institution, attend cultural and educational events, and, in exceptional cases, stay outside the correctional institution. It should be noted that the current PEC

of the Russian Federation provides for such an opportunity, however, the category of such convicts is minimal.

According to statistics, the number of convicts living outside the penal colony ranges from 0.5–1% of the total number of convicts serving sentences of imprisonment [Gorban D.V. (2018), p. 12].

To consolidate the results of correction of convicts during the serving of sentences, as well as their successful socialization after release, it is necessary to actively involve civil society institutions in this process, since it is their activity that largely determined the current stage of development of domestic legislation based on those global transformations that occurred in the social, political, economic, legal and spiritual life of our country.

Legal reforms necessitated a review of the relationship between personal and state interests in favor of a particular person, not the state. Today, society makes higher demands on the work of law enforcement agencies that protect the rights, freedoms and legitimate interests of citizens [Polishchuk N.I. (2016)].

Correcting the convicted person is becoming increasingly difficult, with each new criminal record a person is more and more indifferent to punishment. Deprivation of liberty for those repeatedly convicted becomes the norm; places of imprisonment become home. Therefore, it is necessary to improve the institutions for the separate maintenance of various categories of repeat offenders and their re-socialization, eradicating the “repeat offenders” and changing their identity to a law-abiding lifestyle.

## **CONCLUSIONS.**

One of the factors contributing to the growth of quantitative indicators of crime in Russia is the high rate of recidivism, which can be reduced if the entire process of the execution of sentences with respect to this category of people in prisons is improved.

The activities necessary for carrying out in this area should include:

- Separate detention within the same penitentiary institution of persons who committed a crime in dangerous and especially dangerous relapse from other categories of convicted persons.
- The introduction of the institution of separate detention of convicts in correctional institutions in case of dangerous and especially dangerous relapse for women.
- Strict isolation for persons with antisocial attitudes from other categories of convicts.
- An increase in activities of a psychotherapeutic nature with the involvement of relevant specialists, especially psychotherapists.
- The introduction into practical work of correctional institutions, the conclusion of voluntary constructive agreements between newly arrived convicts and the administration on the conscientious fulfillment of the duties assigned to convicted prisoners throughout the entire period of serving their sentences, in exchange for providing the administration of the institution with the possibility of early changes in the conditions of detention.
- The introduction of preferential conditions for serving sentences in each type of correctional institution for the positively characterized convicts transferred to them.
- Involvement of civil society institutions in the process of resocialization of repeat offenders.

The result of a comprehensive and balanced approach to the process of executing sentences of imprisonment in relation to persons who have repeatedly committed crimes will be the fundamental changes in the entire criminal-executive system of Russia. The exclusion of any possibility of interaction of repeat offenders with other categories of convicts with a further change in their attitude to previously committed socially dangerous acts will lead to the achievement of the goals of criminal and penal legislation, as well as to a decrease in the level of crime in the country.



**Conflict of interest.**

The authors confirm the absence of a conflict of interest.

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