



Types of Forensic Methods for Investigating Crimes Committed in Penitentiary Institutions by Degree of Generality

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Abstract

Introduction. The article is devoted to the analysis of types of forensic methods for crime investigation (case study of crimes committed in penitentiary institutions), their systematization according to the degree of generality of the relevant methodological recommendations. Problems of forensic support for investigation of crimes committed in correctional institutions and pre-trial detention centers were firstly addressed in the mid-1960s. A little later foundations of the forensic methodology for investigating such crimes were formed. To date, there is a certain number of methodological recommendations. *Purpose:* to generalize and systematize previously developed methodological recommendations of the subject area and create theoretical foundations for further evolutionary development of the methodological and criminalistic provisions for investigation of penitentiary crimes. *Methods:* dialectical method of cognition, general scientific methods of analysis, generalization, systematization, interpretation, and theoretical methods of formal and dialectical logic. *Results:* on the basis of a scientific approach, the author reveals types of forensic methods for investigating crimes committed in penitentiary institutions and proposes their system according to the degree of generality. *Conclusions:* to date, forensic knowledge contains a number of developed (improved) individual methodological recommendations for penitentiary crime investigation (related to the specifics of the criminal's personality, methods of crime, stage of investigation, etc.), private (specific) methods, and a general methodology for investigating crimes committed by convicts in correctional facilities. It is required to develop a concept for investigating crimes committed in penitentiary institutions in order to further improve theoretical foundations and applied aspects of the subject area, forming starting points for subsequent creation of a general (group) methodology for investigating crimes committed by persons held in pre-trial detention facilities, as well as development of new and clarification of existing private methods.

Keywords: crimes committed in penitentiary institutions; forensic methodology; investigation of crimes; correctional facility; pre-trial detention center; convict; suspect; accused.

12.00.12 – Criminalistics; forensic examination activities; law enforcement intelligence-gathering activities.

5.1.4. Criminal legal sciences.

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Introduction

In history of science, according to A.S. Maydanov, it is rather common when a developed scientific theory is perceived as absolute truth. In fact, emergence and existence of many theories seems to be only a stage in the process of solving a certain problem. At the same time, the author rightly notes that even those theories, which eventually do not fit into the final process and fail, deserve their historical assessment and have a certain scientific significance [18, p. 48]. With regard to the sphere of scientific knowledge related to development and betterment of methodological recommendations for crime investigation, one should agree with the opinion of Yu.P. Garmaev, who emphasizes the need to generalize and concretize methods for investigating crimes simultaneously with development of forensic science itself [7, p. 155]. The above, in our opinion, fully applies to the methodological recommendations for investigating crimes committed by convicted, suspected and accused persons in correctional institutions and pre-trial detention centers, being worked out (improved) over the past fifty years. It is important to study the entire volume of already developed methodological recommendations [32], in order to identify ways and means of further research into the problems of investigation of such crimes.

According to philosophical knowledge, the category of the singularity presupposes presence of something unique and inimitable. A specific crime, representing a social phenomenon, also has similar qualities. Each crime has its own features inherent only to it, related to the situation of its commission, specific characteristics of the time, place, object, subject matter of criminal encroachment, the motive of the crime and the mechanism of its implementation, personal properties of the perpetrator, and trace patterns. All crimes are individual and irrevocable. Investigation of each requires an individual approach and a specific investigation methodology. At the same time, despite all individuality of the crime itself and activities of its investigation, there are many similar components that allow us to identify commonalities, interconnections, and identify patterns that unite them. The study of such irregularities, as well as development on their basis of appropriate recommendations aimed at boosting effectiveness of crime investigation are the tasks of the methodology for crime investigation.

The variety of crimes committed presupposes the development of an appropriate number of methods of their investigation. Crimes can have similar commonalities not only in terms of the object and subject of criminal encroachment, but also in terms of the specifics of the situation of their commission, the identity of the offender, the method of committing the crime, etc. All this forces scientists and practitioners to develop methods of investigating crimes that reflect one or another specificity that unites different crimes into a single community.

It so happened that initially there was no system or scheme to adjust developed methods for investigating crimes. To date, science and practice have accumulated quite a large volume of such methods. Moreover, the analysis of results of the work of dissertation councils in the specialty 12.00.12 "Criminalistics; forensic examination activities; law enforcement intelligence-gathering activities" over the past five years has shown that during this period alone, more than sixty methods were newly developed and improved, which amounted to practically half of all dissertations defended in this specialty. In the conditions of such an increase in the amount of new knowledge, there is a need for their generalization and additional scientific understanding.

The process of scientific cognition of a phenomenon is a complex cognitive activity, during which a researcher can use a wide variety of scientific tools. Systematization is one of fundamental cognition methods. In this regard, the statement of A.Y. Golovin is appropriate: "... the use of forensic systems is cognitive in understanding the nature and essence of various forensic objects, concepts and terms, the most accurate perception and application of forensic recommendations..." [9, p. 4]. Using this method, we will attempt to generalize the entire scope of forensic methods for investigating crimes committed by convicts, suspects, and the accused in correctional institutions and pre-trial detention centers.

Professor R.S. Belkin's proposal not only to single out private forensic methods, but also form their entire complexes covering types of crimes [2, pp. 340–341] has become a scientific and theoretical basis for identifying many modern group [16], enlarged [6], basic [13], and general [35] methods of crime investigation. At the same time, it should be noted that there are still no unambiguous and generally accepted criteria for attributing the developed forensic methods to a certain degree of generality.

However, we back Y.P. Garmaev and R.N. Borovskikh's ideas that different scientific opinions can be reduced to two conditional approaches: two-level and multi-level [6, p. 76].

Representatives of the first approach (V.A. Obraztsov, Yu.P. Garmaev, M.V. Kardashevskaya (M.V. Subbotina), R.N. Borovskikh, S.A. Kuemzhieva, etc.) distinguish two types of methods that have different alternative names, but do not have fundamental differences: private methods (specific, homogeneous, intraspecific, etc.) and enlarged (general, basic, specific, group, etc.).

According to the second approach, there are three or more levels of methods for crime investigation, depending on the degree of generality of methodological recommendations. Thus, E.P. Ishchenko identifies the following levels of methodological recommendations: methods of high degree of generality, methods of average degree of generality, methods of small degree of generality, specific methods for investigating certain types and subspecies of crimes in various common investigative situations [12, p. 484]. N.P. Yablokov adheres to a four-level approach, highlighting the highest level of generality of methodological recommendations, a lower level of generality of methodological recommendations, a traditional level, and methods for investigating specific crimes [37, pp. 45–46]. V.M. Proshin suggests considering the system of forensic methodology based on the following elements: a general forensic method, forensic generic method, forensic specific method, forensic subspecific method, and private methods of forensically similar groups of crimes [26, p. 77].

The current state of forensic methodology theory development and analysis of newly formed private methods, attempts to integrate them, and variety of crime classifications, fundamental to development of appropriate methodological investigation recommendations, necessitates elaboration of a multi-level approach. In this regard, we stick to the classification proposed by Professor N.G. Shurukhnov, singling out 4 levels of the degree of generality of methodological recommendations: 1) a concept for investigating a certain kind of crimes; 2) a general (group) forensic method; 3) a private (specific) forensic method; 4) individual methodological recommendations for crime investigation [33, pp. 252–253].

The study of scientific developments related to the development of methodological

recommendations for investigating crimes committed in penitentiary institutions shows presence of the following developments in this area, the generalization of which allows us to talk about the possibility of their systematization (Fig. 1).

At the level of individual methodological recommendations for investigating crimes committed in penitentiary institutions, theoretical and practical provisions relate, as a rule, to a particular type of crime and reveal only certain features of crime investigation (due to the specifics of the offender's personality, means of committing crime, investigation stage, etc.) [23, p. 34]. They are the following:

methodological recommendations to identify methods of escape from correctional facilities and the use of this information for investigating such crimes [19];

methodological recommendations of the initial stage of investigation of escapes from correctional institutions [20];

methodological recommendations of the initial stage of investigation of crimes committed by leaders and members of organized criminal groups in places of detention [17];

methodological recommendations for investigation of crimes committed by minors in juvenile correctional facilities [8];

methodological recommendations for investigation of hooliganism, sexual crimes, theft, arson and criminal non-compliance with fire regulations committed by convicted persons to imprisonment [15].

The private (specific) method should include developments, the content of which reflects a full-scale process of investigating a particular type of crime committed in penitentiary institutions, in particular:

a method for investigating escapes from places of deprivation of liberty [11, 29, 39];

a method for investigating disorganization of the activities of institutions providing isolation from society [3, 28];

a method for investigating murders and harm to health committed by convicts in correctional institutions [10, 24];

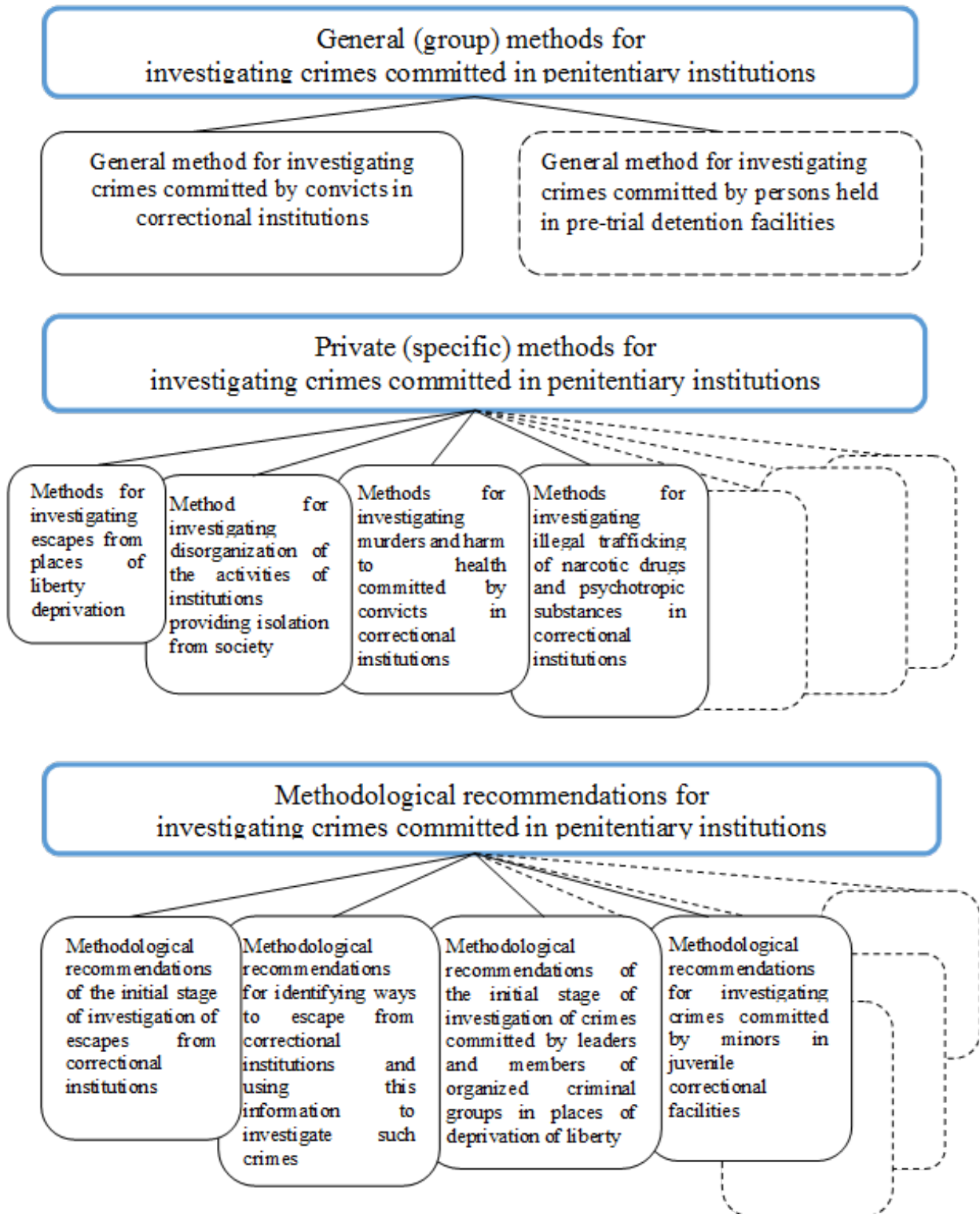
a method for investigating fraud committed by convicts in institutions of the penitentiary system using cellular mobile communication systems [22];

a method for investigating illegal trafficking of narcotic drugs and psychotropic substances in correctional institutions [5, 30].

Though the structure of the private (specific) method differs among the researchers, its

Figure 1

Types of forensic methods for investigating crimes committed in penitentiary institutions by degree of generality



essence is similar: this level of methodology should provide recommendations as close to practical application as possible concerning the entire process of investigating a specific type of crimes [14, p. 83].

It should be noted that we do not consider private methods of investigating crimes committed by employees of the penitentiary system in this research, despite the fact that there are scientific developments in this area [4], and forensic literature has other points of view on the system of crimes committed in institutions and bodies of the Federal Penitentiary Service of Russia [27], which differs from the one we use [1; 34].

The general (group) method of crime investigation combines theoretical, scientific and practical provisions, which are recommendations for investigating crimes grouped on a certain basis, having forensic significance in developing a common approach to investigation of such illegal acts. At the same time, it cannot (and should not) be a direct physical union of all private methods that fall under the group basis. General methods cannot replace private ones, but they are the starting point for them, since they generalize the specifics characteristic of private methods united by it, contain general provisions of theoretical and applied significance that allow complementing existing private methods, expanding and concretizing them with regard to the revealed general patterns inherent in the entire group of crimes.

In relation to the system of crimes committed in penitentiary institutions, the general investigation method is the method of investigating crimes committed by convicts in correctional institutions, developed by N.G. Shurukhnov [35]. Subsequently, it was partially supplemented with general methodological recommendations formulated by V.V. Nikolaichenko [21]. At the same time, it should be noted that this system of crimes includes not only illegal acts committed by convicts, but also crimes of suspected and accused people committed in correctional institutions and pre-trial detention facilities. To date, such a general methodology has not been formed yet.

As for the concept for investigating crimes, N.G. Shurukhnov states that at this systematization level one should develop theoretical foundations and applied aspects of illegal acts, united by generic characteristics that are of a certain forensic significance. In this understanding, the concept has a forecast

and current orientation [36, p. 82]. We agree with S.N. Churilov that the content of group and generic methods "... does not reflect (and cannot reflect) description of ways of committing and concealing crimes of a certain type and their characteristic trace patterns ..." [31, p. 75]. This logically follows from the regularity existing between philosophical categories "quantity" and "quality". However, it should be noted that the method of a high generalization level should not solve the task of directly applying all its provisions in the process of investigating a specific crime. It is obvious that it is not possible to develop a unified method or methodology for investigating any crime [38, p. 560]. At the same time, the high level of generality of methodological recommendations is aimed at solving a number of tasks that lower-level methods cannot address, in particular:

- to determine a terminological apparatus that has a fundamental importance for development of general methodology recommendations, clarify and systematize concepts and categories included in it, substantiate their content at the doctrinal level (in the absence of legislative regulation);

- to identify a forensically significant basis for systematization of crimes that constitute a certain kind, which helps to further identify the place of a specific type of illegal act in the generic system of crimes;

- to form a generic forensic characteristic that allows, when generalizing data, to identify common patterns of commission, concealment of crimes, which will subsequently represent starting points for the formation (clarification) of forensic characteristics of groups and types of crimes included in the kind under consideration;

- to identify features of the system to investigate crimes forming a certain kind, clarify subjects of investigation and determine system-forming patterns of their activities that affect effectiveness of investigation of crimes united by a generic feature;

- to establish patterns for formation of forensic situations characteristic of crimes united at the generic level; develop the basis for algorithmization of the investigation process in such conditions;

- to identify patterns of counteraction provided during investigation of crimes united by a generic feature, determine the directions and form proposals to overcome it;

- to develop a general idea of the tactical and forensic support for investigating crimes belonging to a certain kind.

According to V.M. Proshin and A.M. Kustov, the crime investigation concept is not only a generic methodology, but also includes "... scientific provisions on legal support, organization of crime investigation, etc..." [25, p. 123]. We share this point of view, since generalization of a significant number of different specific and group crimes due to expanded horizon of research of the subject area inevitably reveals general patterns of a legal and organizational nature that determine a common approach to the formation of a methodology for investigating crimes united by a generic feature.

The object of the concept for investigating crimes committed in penitentiary institutions is criminal activities of convicts, suspects, and accused persons staying in correctional institutions and pre-trial detention centers, and activities of subjects of investigation of such crimes, including neutralization of counteraction. Regularities of investigation of such offenses are the subject of the concept.

The content of the concept should be formed according to the following system:

- theoretical ideas on the concept, essence and criminalistic classification of crimes committed in penitentiary institutions;
- theoretical provisions on legal and procedural support for investigation of crimes in the penal enforcement system and the entities that carry it out;
- methodological foundations of forensic support, including provisions of the generic-level methodology aimed at investigating such crimes;
- theoretical provisions on countering investigation of criminal offenses, organizational

and methodological recommendations for its neutralization.

The concept for investigating crimes committed in penitentiary institutions is understood as a system of theoretical ideas and provisions, methodological foundations, organizational and methodological recommendations concerning investigation of criminal acts committed by convicted, suspected, and accused persons held in correctional institutions, detention centers, neutralization of interested persons' counteraction, which is the starting point and basis for methods to investigate such crimes.

Conclusion

Identification of generic patterns will help form scientific and theoretical foundations and applied provisions for investigating crimes committed in penitentiary institutions, which will be starting points for development (clarification) of group and specific methods of investigating crimes committed by convicted, suspected, and accused persons in correctional institutions and pre-trial detention centers.

The functional purpose of the concept for investigating crimes committed in penitentiary institutions is to identify generic patterns affecting the mechanism of commission and investigation of such crimes, in particular the crime commission situation; personal qualities of convicts (suspects, the accused), determined by the influence of specific conditions of a closed institution (correctional facility, pre-trial detention center), high concentration of criminally oriented persons, persistence of informal norms of behavior; features of the system of investigation of such crimes, legal and organizational support for activities of the relevant subjects of investigation.

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