

# *Study on perfecting judicial path under misdemeanor management*

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**Abstract:** With the change of the criminal structure in our country, the incidence rate of Petty criminals is gradually increasing, and the traditional criminal law concept of "heavy attack and heavy protection" of judicial organs must be changed in today's background of minor crime management. Judicial organs have some problems in the management of minor crimes, such as a rate of not executing probation after arrest is relatively high, a low rate of non-prosecution, and a large space for the application of non-custodial punishment. Therefore, in view of the difficulties in practice, it is proposed that judicial organs should actively implement the judicial policy of "less arrest and careful prosecution and careful detention" in practice, innovate non-custodial supervision methods, and actively cooperate with public security organs. To ensure the smooth development of legal proceedings, formulate universal non-prosecution provisions, promote consistency and unity from legislation to execution procedures, and then continuously improve the application rate of non-custodial sentences, and improve the level of judicial authorities in the treatment of misdemeanors.

## **1. Introduction**

In the new era, with the rapid development of our economy, in order to meet the needs of the development of the new era, new problems in the field of crime management, and better protect the rights and interests of the people, our criminal legislation has gradually changed to a positive criminal law concept. Since the eighth Amendment to the Criminal Law, China's criminal legislation has gradually shown that the number of misdemeanors has gradually increased, the threshold of crimes has been lowered, and a number of misdemeanors such as throwing objects at high altitude, dangerous driving, and dangerous operations have been added. Under the background of the new era, the incidence of felony cases in China is gradually decreasing, and the proportion of misdemeanor cases is on the rise, which further indicates that China's social governance has entered a new stage. In order to continuously increase the happiness and satisfaction of the people, in line with the rising trend of misdemeanor crimes, the management of Petty criminals by judicial organs is also imminent.

## 2. Presentation of problem

### 2.1. The criminal legislation of our country is partial to misdemeanour

Regarding the definition of misdemeanors, theoretically speaking, crimes with a statutory minimum sentence of more than three years of imprisonment are called felonies, and other crimes are called misdemeanors<sup>[1]</sup>. In recent years, with the rapid development of the economy, many harmful behaviors cannot be punished by law. The amendment to the Criminal Law further expands the scope of criminal law regulation by adding new charges and expanding the constitutive elements according to the actual situation, and recognizes some illegal behaviors that do not belong to the scope of criminal law regulation as crimes in legislation, so as to expand the application of criminal law<sup>[2]</sup>. Since the revision of the Criminal Law in 1997, the criminal law has been amended many times through the amendment of the Criminal law, and the criminal law has gradually changed from punishing crime to preventing crime, and played an important role in preventing risks. The amendment to the Criminal Law further expanded the scope of criminal punishment by adding new charges, lowering the threshold of crime, and further expanding the scope of criminal punishment. In 1979, there were not many charges in China's criminal law, but basically most of them were felonies. In 1997, the criminal law was revised, and the total number of charges increased, but the overall principle of heavy punishment was still reflected. The provisions on serious crimes have been continuously reduced, among which the Criminal Law Amendment (8) and the Criminal Law Amendment (9) have eliminated most of the crimes punishable by death, reduced the number of capital crimes, and added most of the misdemeanors, such as dangerous driving and false invoicing, which are the maximum statutory penalties of detention in the Criminal Law Amendment (8). In the Criminal Law Amendment (IX), the crime of helping information network crime, the crime of using false ID cards or stealing identity documents, and the crime of organizing cheating are misdemeanors<sup>[3]</sup>. In response to the problems arising in society, the Criminal Law Amendment (11) has added offences such as disturbing safe driving, dangerous operation, assaulting police officers and impersonation. It can be seen that misdemeanour is the main trend of the development of criminal law in our country, and the participation of criminal law in social governance is constantly increasing.

### 2.2. The needs of practical judicial practice

The Report of the Supreme People's Procuratorate on the application of the Plea leniency system in the People's Procuratorate pointed out that in the past 20 years, the number of criminal cases in China has been increasing, and the procuratorial organs have accepted and examined and prosecuted criminal cases. Crimes increased from 824,000 in 1999 to 2.2 million in 2019; Major changes took place in the structure of criminal offenses, with prosecutions of serious violent crimes dropping from 162,000 to 60,000. New types of crimes endangering economic and social management order, such as drunk driving, infringement of intellectual property rights, and destruction of environmental resources, increased significantly. The proportion of minor crimes sentenced to less than three years in prison increased from 54.4 percent to 83.2 percent<sup>[4]</sup>. In Beijing, for example, the number of people sentenced to more than 10 years in prison in 2022 dropped from 10.4% in 2003 to 3% today, the number of people sentenced to more than three years and less than 10 years dropped from 21.5% in 2003 to 13.4% now, and the number of people sentenced to less than three years in prison dropped from 68% in 2003. 1 percent to 83.7 percent<sup>[5]</sup>. Overall, theft, minor intentional injury still occupy the majority, help information network crimes and other cases are also gradually increasing, some scholars also pointed out that our country has officially entered the era of misdemeanors. With the decrease in the proportion of felonies and the increase in the

proportion of minor crimes, new requirements have been put forward for the judicial authorities to make effective governance in practice. At present, the level of misdemeanor management in the country is improving overall, but there are still some problems to be solved. As the last line of defense of crime management, the management of misdemeanor should be compatible with the judicial organs. In the current judicial practice, due to a long term based on the judicial concept of heavy punishment management, our country's misdemeanor management is still facing challenges, therefore, the choice of judicial path in the governance of misdemeanor crimes is particularly important, how the judicial organ to better govern the society and punish crime has become the key to the rule of law in an overall way.

### **3. The dilemma of misdemeanor management in judicial practice**

From the current trend, the number of misdemeanors in our country in the future, whether from the legislation or the proportion of crimes in actual practice, will continue to increase, in the judicial practice, there will still be some realistic problems, the judicial organs in the management of misdemeanors still face challenges.

#### **3.1. The rate of light probation after arrest is high**

To put it simply, probation cannot be applied immediately after a criminal is arrested. It can only be applied after a court ruling. With the implementation and implementation of China's criminal justice policy of cautious arrest, the rate of light probation after arrest has gradually shown a downward trend, according to statistics in 2019, the proportion of people sentenced to less than 3 years in prison, public surveillance, detention, and probation after arrest is 83.2%. With the implementation of guilty pleas and lenient criminal policies, in 2022, the proportion of suspended sentences, including public surveillance and detention, after arrest was 8.1 percent, and the non-arrest rate rose from 22.1 percent to 43.4 percent. However, the statistics do not include sentences of less than three years in prison, and in practice, the number of people sentenced to less than three years in prison is increasing<sup>[6]</sup>. The heavy punishment doctrine of the procuratorial organs in the past and the judicial concept of arrest for constituting a crime still need to be further changed. For criminal suspects of minor crimes, when considering their attitude of pleading guilty, the risk of re-offending, subjective malignancy, and the degree of harm to society are reduced, without affecting the advancement of the next judicial procedure, they can be considered not to arrest them and carry out non-detention measures.

Some prosecutors still believe that arrest is an effective means to combat crimes. When coercive measures were taken, prosecutors did not have clear standards for the punishment imposed on cases. At that time, in order to control criminal suspects, they arrested criminal suspects and entered the stage of review and prosecution. The suspect may be sentenced to a suspended sentence or less than three years in prison. In 2023, the Main Evaluation Indicators of the case quality of Procuratorial Organs clearly pointed out that in order to actively promote the work of parties' reconciliation and guilty plea, the indicators such as "no prosecution rate after arrest", "light probation rate after arrest, exemption from criminal punishment rate" and "sentence exemption from criminal punishment rate" were deleted, which met the requirements of procuratorial reform and judicial reform from the indicator orientation<sup>[7]</sup>. Prosecutors should change the traditional idea and take reasonable measures to control the criminal suspects who do not need to be arrested in minor crimes according to law.

#### **3.2. Low non-prosecution rate**

According to the work report of the Supreme People's Procuratorate, China's non-prosecution

rate rose from 7.5 percent in 2018 to 26.3 percent in 2022, indicating that China's non-prosecution work has made progress in the past few years, but it still needs to be further strengthened compared with other countries in the world. In judicial practice, non-prosecution is a watershed in whether a case enters the proceedings before trial. The low rate of non-prosecution indicates that most cases enter the court and are tried, convicted and sentenced by the people's court. At present, with the gradual growth of misdemeanor cases in China, the low rate of non-prosecution is obviously contrary to the original purpose of adding misdemeanor crimes in criminal law to carry out social governance.

In recent years, China's "careful litigation" policy has achieved great results and proved its necessity in practice, but at the same time, the low rate of non-prosecution reflects some problems. For criminal law cases, the common people and even the judicial organs believe that we should "strike hard", for criminals should maintain a sense of struggle, although in terms of policy, our criminal justice has set up the relevant provisions of combining mercy with severity, such as guilty plea leniency, but the criminal justice is still strictly based. Regarding the provisions of the policy of cautious arrest and cautious arrest, there is not much controversy in the theoretical and practical circles, but there are some problems on how to better implement it. The procuratorial organs have set a proportion of themselves for a long time and strictly limit non-prosecution. The proposal of "careful prosecution" is the directional adjustment of China's criminal prosecution policy. It is a practical problem how to make judicial personnel realize their inner cognition in a short time<sup>[8]</sup>. Although the decision not to prosecute is a procedural decision, the result will be an entity result, and the criminal suspect will be essentially innocent, which conflicts with the previous "strike hard" thinking, which is not formed in a short period of time and can not be changed in a short period of time, so there is great resistance in judicial practice. And that affects the decision not to prosecute. Under the background of misdemeanor management, we need to realize that the purpose of misdemeanor is not to increase crime, but to prevent it. Between prosecution and non-prosecution, it is necessary to comply with the provisions of the law, and it requires the judicial organs to correctly understand the harm of the case and the necessity of punishment. Under the management of minor crimes, the utilization rate of non-prosecution in our country can also achieve further improvement.

### **3.3. Excessive application of custodial sentences**

The treatment of criminal in China is divided into imprisonment and non-imprisonment, non-imprisonment penalty mainly includes probation, control, single supplementary penalty, exemption from criminal punishment, etc. Take probation as an example. According to the data of the China Law Yearbook and the Judicial Statistical Bulletin of the National Courts in 2022, the application rate of probation in 2013-2022 has remained at about 30%, while the average rate of minor crimes has reached more than 80%. From this, we can see that among the current probation in China, Some minor crimes do not apply probation, but in Europe and the United States, probation is the most widely applied sanctions, the application rate of probation in the United States is usually maintained at more than 60%, and it is also the most effective means of punishing crimes among non-custodial sentences. At present, the number of people sentenced to non-imprisonment in China generally shows an upward trend, since 2007, basically maintained at 30%, and maintained at a low level for a long time. Most criminal suspects commit minor crimes but do not apply non-imprisonment, and the application of non-imprisonment punishment is generally low. In terms of misdemeanor management, the criminal concept and method do not fit well with the problems in practical practice, and imprisonment is still the most typical way to punish crimes. Misdemeanor should be promoted simultaneously with light sentencing. With the increasing number of

misdemeanor crimes in legislation and justice, the sentencing of suspects of misdemeanor crimes should also be mild. The use of suspended sentences, surveillance and single additional sentences should be further improved. In the era of changing criminal structure and increasing misdemeanors, it is the requirement of The Times to improve the application of non-custodial punishment.

#### **4. Constructing the judicial path choice of misdemeanor management**

The change of criminal structure requires that the judicial organs should base on the current policy, change the judicial concept and actively promote the management of minor crimes. According to the plight of the judicial organs in the management of misdemeanors, the following suggestions are put forward to explore the path choice of the judicial organs to better manage the society.

##### **4.1. Implement the judicial policy of "careful prosecution and careful detention with fewer arrests"**

The staff of the judicial organs should actively change the previous spirit of heavy punishment, the concept of "criminal arrest" and "criminal prosecution" with the progress of China's social governance, is no longer suitable for continuing to implement in the era of misdemeanor management, judicial practice should be consistent with the transformation of formal policies, reduce the use of measures restricting personal freedom, and gradually realize the normalization of non-custodial measures. The procuratorial organs should change the concept of law enforcement and thoroughly implement the judicial policy of "less arrest and less prosecution and less detention". In cases, the separation system of serious crimes should be established, and the criminal suspects of minor crimes should not be arrested as far as possible according to the circumstances of their crimes and their repentance, and the examination of social harm should be strengthened. Avoid unnecessary detention of criminal suspects or other coercive measures during the proceedings. The staff of the procuratorial organs should establish the concept of "beware of prosecution and imprisonment", which needs to be more clear and detailed in the division of cases, to provide guidance for the staff, and clearly point out which illegal and criminal behaviors need to be "beware of prosecution and imprisonment", so that the staff of the judicial organs can gradually develop new ways of thinking and behavioral habits through guidance.

##### **4.2. Establish a non-custodial supporting system**

With the transformation of crime management in China, non-custodial measures are also gradually rising. Procuratorial organs can borrow high-tech means such as the Internet, electronic bracelets or cloud reports through the Internet, strengthen their own Internet information means for cloud supervision, and use the Internet to monitor non-custodial criminal suspects, which can avoid some criminal suspects from committing minor crimes. The procuratorial organs are afraid of their escape, so as to ensure the smooth progress of the proceedings and arrest the criminal suspects, and adopt the behavior of supervision on the cloud to avoid the criminal suspects being sentenced to misdemeanors after arrest, and reduce the rate of light probation after arrest. This is not only conducive to the rehabilitation of criminal suspects, but also to avoid the panic caused by the arrest of criminal suspects to parents, is conducive to social harmony and stability, and better save judicial resources. At the same time, after the procuratorial organ adopts the cloud supervision method, in order to ensure the smooth progress of the proceedings, it should share resources with the people's court and the public security organ. The gradual implementation of misdemeanors can be well controlled even without arrest, and the suspects who violate the rules will be arrested again,

reducing the rate of light probation after arrest.

#### **4.3. Expand the application of the norm of non-prosecution**

At present, there are some rules of non-prosecution system in our country, such as conditional non-prosecution and discretionary non-prosecution. The procedure of non-prosecution is a systematic process, further simplifying the procedure of non-prosecution, improving the efficiency of judicial staff and improving the internal evaluation mechanism are the key to expanding the application of non-prosecution. However, the evaluation of non-prosecution cases is now a key work within the procuratorial organs, which also leads the procuratorial organs to worry about being questioned when deciding not to prosecute. It also affects the application of non-prosecution. At present, local procuratorial organs in China have issued guidance opinions on the discretion of prosecution, which can be applied normatively when procuratorial organs make the decision not to prosecute, which reduces the pressure of discretion to a certain extent. When the procuratorial organs issue work guidelines based on local actual conditions and improve internal non-prosecution work, they will also be subjected to some public opinions, because the applicable standards are different in different places. For example, the alcohol content in some areas is different before filing a lawsuit. Such local differences will lead to public opinions, which will question the judicial credibility. Therefore, a national uniform rule guide with universal effect should be formulated to ensure the consistency of the rules, and the local government should formulate procedural rules on this basis, and the higher procuratorate should supervise and guide the non-prosecution work guide formulated by the lower people's procuratorate to guide the actual operation to ensure the standardization and consistency of the local rules<sup>[9]</sup>. On the other hand, the transparency of the non-prosecution procedure should be increased, and the procuratorial organs should conduct the hearing procedure of non-prosecution, listen to the opinions of the people and relevant personnel, ensure the application of the norm of non-prosecution, and reduce the doubts of staff. What kind of punishment should be imposed on criminals who do not prosecute, the procuratorial organ should actively communicate with the administrative organ, and put forward procuratorial opinions on administrative punishment, which also plays a role in cracking down on illegal personnel.

#### **4.4. Increase the application rate of non-custodial sentences**

In recent years, the number of minor crimes has reached 80%, and the number of cases seriously endangering personal safety has gradually declined, which further indicates that China's social governance has achieved great results, and the application of non-custodial punishment should be directly related to the proportion of minor crimes and the effect of social governance, so the expansion of the application of non-custodial punishment is also in line with the current situation of practice. Non-custodial punishment is conducive to the harmony and stability of the parties, and promotes the resolution of contradictions. It is also the inevitable choice of misdemeanor management, which is in line with the judicial philosophy of careful prosecution and careful detention.

In recent years, in order to improve the application of non-custodial punishment, China has formulated a series of measures. On July 19, 2019, the comprehensive reform in the field of political and legal affairs held in Chengdu, Sichuan Province, proposed to speed up the integrated construction of criminal law enforcement, improve the community correction system, and build a unified and coordinated criminal law enforcement system that connects prison punishment and non-custodial punishment. Promote the linkage between punishment and reform, management and correction, and return and assistance. Article 2 of the Community Correction Law, which came into effect on July 1, 2020, stipulates that offenders sentenced to public surveillance, suspended

sentences, paroles and temporary sentences outside prison shall be subjected to community correction according to law<sup>[10]</sup>. These provisions fully show that our country attaches great importance to the application of non-imprisonment, and the implementation of social correction law further provides a legal basis for the implementation of non-imprisonment. To improve the application of non-custodial punishment, we should refine the application standards of non-custodial punishment, unify the application standards, inform the problems encountered in non-custodial punishment in time to put forward solutions, keep pace with The Times, and constantly improve the application rate of non-custodial punishment.

## 5. Conclusions

With the change of the criminal structure, the judicial organs of the Party should change the original concept of heavy attack and heavy protection under the management of minor crimes, implement the criminal policy of "less arrest and careful prosecution and careful imprisonment", and integrate criminal management into social management better. In judicial practice, the management of minor crimes has made great achievements, but it can be improved in some aspects, implementing the judicial policy of "less arrest and careful prosecution and careful detention", establishing non-custodial supporting systems, innovating supervision methods and actively cooperating with public security organs, formulating working rules on non-prosecution to promote consistency and unity from legislation to execution procedures, and constantly improving the application rate of non-custodial sentences. So that the judicial organs in the misdemeanor governance to achieve greater achievements, promote the high level of misdemeanor governance, and further promote the comprehensive construction of socialist rule of law country.

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