

Research on Prosecution-Defense Consultation in the Leniency System for Admission of Guilt and Acceptance of Punishment

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Abstract: Prosecution-defense consultation is fundamental to the Leniency System for Admission of Guilt and Acceptance of Punishment, rooted in cooperative justice and aimed at respecting the accused's status while balancing procedural and substantive justice. Its necessity stems from the need to resolve surging caseloads by shifting from adversarial to cooperative litigation. Despite the system's pilot conclusion, legal provisions on consultation remain unclear. Practical implementation reveals issues like information asymmetry, inconsistent sentencing standards, and procedural ambiguities. Defense counsel often face restricted file access, hindering meaningful negotiation. These problems risk reducing consultation to mere formality. This paper examines these dilemmas and proposes reforms: legislating clear sentencing negotiation rules, mandating evidence disclosure, substantiating legal aid functions, and strengthening judicial review of consultation procedures. These measures aim to ensure equal dialogue and optimize the balance between judicial efficiency and justice.

1. The Background of Prosecution-Defense Consultation in the Leniency System for Admission of Guilt and Acceptance of Punishment

For an extended period, China's traditional criminal justice system bore strong inquisitorial traits. However, as litigation philosophy transitions from adversarial to cooperative justice—continuously advancing equality between prosecution and defense—the Leniency System for Admission of Guilt and Acceptance of Punishment has become an indispensable component of the modern criminal justice apparatus. The legitimacy of its core mechanism, prosecution-defense consultation, cannot be explained by any single dimension; instead, it is rooted in the complex interplay of multiple theoretical foundations and practical imperatives [1].

1.1. The Transformation of the Litigation Model

Prior to the late Qing reforms, traditional Chinese legal culture lacked an independent concept of procedural law, featuring an inquisitorial model where defendants were objects rather than rights-

bearing subjects. The 1979 Criminal Procedure Law (CPL) formally established the criminal procedure system but retained strong *ex officio* characteristics under Soviet influence. Subsequent amendments in 1996, 2012, and 2018 drove a paradigm shift toward a mixed model incorporating adversarial elements. The Leniency System for Admission of Guilt and Acceptance of Punishment, while drawing from foreign plea bargaining concepts, possesses distinctive localized features and has sparked extensive scholarly debate. Liu Fangquan views expedited procedures as pioneering negotiated justice, suggesting judicial credibility should be enhanced through consultation [2]. Du Lei reveals the conflict between the *ex officio* logic and the negotiation logic within the system—that is, the clash between traditional state-dominated power and equal prosecution-defense consultation. He suggests acknowledging the consensual nature of the system and, while relying on the trial-centered doctrine, restricting the interference of *ex officio* logic in the negotiation process to reconstruct the litigation model. Zuo Weimin criticizes the misconception of treating efficiency as the core goal of the litigation model transformation, advocating that substantive leniency should take precedence over procedural simplification, and emphasizing the need to resolve the practical dilemma where suspects admit guilt but do not receive substantive leniency. Framing procedural efficiency as the paramount goal is arguably biased. Unlike the social environment and criminal caseload growth curves in the US and UK, China's criminal procedure—even after absorbing the essence of plea bargaining—retains strong inquisitorial features, rendering the procedure inherently economical (i.e., trials are already highly simplified and cost-effective) [3]. As the transformation continues, the focus should no longer solely pursue higher trial efficiency; otherwise, it will generate irreconcilable contradictions with China's inquisitorial model, leading to an imbalance between substantive leniency and procedural simplification.

1.2. The Unique Advantages of Prosecution-Defense Consultation

From the prosecution's perspective, consultation offers flexible adjustment within statutory boundaries, allowing penalties to precisely fit the case while embodying the policy of tempering justice with mercy. Unlike traditional litigation's relentless pursuit of absolute objective truth, the Leniency System reduces cognitive costs through negotiation. The prosecution, bearing the burden of proof, constructs the evidence chain, while the accused's cooperation serves as supplementary reinforcement, reducing uncertainties in fact-finding. This creates a "legal truth reinforced by consensus" that safeguards baseline justice while providing stable expectations, encouraging defendants to choose leniency and resolving inefficiencies caused by prolonged investigations [4].

From the defense perspective, the consultation mechanism fundamentally reshapes the defendant's subjectivity. It grants the accused and their counsel bargaining power over sentencing outcomes, transforming them from passive recipients of judgment into active participants in determining their own fate. This innovation compels prosecutors to formulate precise, reasonable sentencing recommendations, enhances the substantive efficacy of the right to defense, and ensures that courts' principled adoption of prosecution recommendations maintains a minimum standard of fairness. The mechanism thus balances institutional efficiency with individual rights, creating a more equitable dialogue within criminal justice [5].

2. Dilemmas of Prosecution-Defense Consultation in the Leniency System

The 2024 White Paper on Criminal Procuratorial Work shows the Leniency System applied to 1.698 million persons (86.9% rate). Prosecutors issued sentencing recommendations for 1.412 million, with 95.6% being determinate. Court adoption rate reached 96.6%, while adjustments were suggested for 158,600 during trial. First-instance acceptance hit 96.9%, effectively rehabilitating offenders and achieving significant social governance results [6]. This macro-pattern of high application, adoption,

and judgment acceptance rates demonstrates the system's remarkable success in conserving judicial resources and improving litigation efficiency. However, it also prompts a critical inquiry: in concrete practice, is prosecution-defense consultation truly a substantive game centered on evidence and sentencing, or does it merely remain a procedural confirmation of pre-determined sentencing plans, thereby achieving such rapid results?

2.1. The Prosecution's Exclusive Right to Initiate Consultation

The Leniency System's core lies in introducing negotiated justice to balance judicial efficiency with substantive justice through prosecution-defense consensus. However, this vision depends on substantive consultation procedures. China's current Criminal Procedure Law and judicial interpretations feature macro-level declarations but lack micro-level regulations governing consultation. The initiation right is monopolized by prosecutors, with defendants having no statutory avenue to proactively negotiate, placing them in a passive "bestowed favor" position. Regarding process, Article 173 enumerates opinion content but omits procedural elements like negotiation rounds and objection mechanisms. This legislative vagueness reduces "listening to opinions" to formalism, stripping consultation of procedural gravity and justice guarantees, ultimately failing to foster true equal dialogue.

2.2. Lack of Substantive Consultation Between Prosecution and Defense

The successful implementation of prosecution-defense consultation depends on whether the defense can present compelling bargaining chips—such as alternative plans or evidence—to prompt prosecutorial concessions. Only when both sides possess symmetrical bargaining power can the defense accurately predict outcomes and ensure the voluntariness of guilty pleas. However, the procuratorate, wielding state power, controls procedural initiation and monopolizes case information, easily extracting overwhelming bargaining chips from dossiers. Conversely, suspects—even with legal counsel—face severe resource constraints, lacking investigative capacity to unearth substantial counter-chips. This profound asymmetry means the defense can rarely mount forceful challenges to pre-set sentencing plans. Consequently, so-called "equal consultation" frequently degenerates into unilateral domination, effectively coercing the accused into signing plea affidavits. The negotiation becomes a formality rather than genuine dialogue, undermining both the legitimacy of outcomes and the rights of defendants.

In judicial practice, the space for lawyers to engage in meaningful negotiation remains extremely constrained, a situation scholars describe as a "prosecution-dominated unilateral pricing mechanism [7]." Under the current framework, duty lawyers in China primarily function as cooperative witnesses, focusing on procedural endorsement rather than substantive advocacy. Due to late intervention, restricted access to case files, and the lack of investigative authority, they cannot exercise the "substantive defense" checks and balances characteristic of Anglo-American legal systems. Although the Leniency System theoretically pursues the synergy of efficiency, rights protection, and judicial fairness, insufficient procedural safeguards and imbalanced power dynamics prevent the transition from "formalistic consultation" to "substantive consensus." Future improvements require refining relevant laws and regulations while strengthening the role of defense counsel.

3. Optimization Paths for Prosecution-Defense Consultation in China's Leniency System

Based on the analysis of the practical dilemmas of prosecution-defense consultation within China's Leniency System, it is evident that existing institutional mechanisms and safeguard measures still have substantial room for improvement. To realize substantive consultation, this section will elaborate

on how to consolidate the institutional foundation by refining relevant legal regulations, break down information barriers through a mandatory evidence disclosure system, enhance the defense's negotiating capacity by strengthening the role of lawyers, and ensure the neutrality of judicial adjudication, thereby constructing an optimization path that aligns with the structural logic of China's judicial system.

3.1. Refining the Prosecution-Defense Consultation System

The statutory phrase "listening to opinions" should be revised to "sentencing negotiation," establishing a two-way initiation mechanism for consultation. When a defendant voluntarily expresses intent to plead guilty, the prosecutor must inform them of their rights and inquire about their willingness to apply the procedure in the presence of defense counsel. Meanwhile, the defense should have the right to proactively apply for consultation. Negotiation formally commences only upon mutual consent. Prior to formal negotiations, information symmetry must be established. Prosecutors should be required to disclose exculpatory or mitigating evidence, while defense counsel must evaluate evidentiary strength, explain conviction risks to the defendant, and obtain authorization before negotiating. A reasonable preparation period must be guaranteed, allowing the defense to accumulate "sentencing chips" through file review and investigation. Subsequently, the prosecutor proposes a preliminary sentencing plan, which the defense may accept, challenge, modify, or counter. Finally, agreement signing must formalize legal effect through a written contract embodying equal consultation. The sentencing agreement, drafted by the prosecutor, includes admitted facts and prosecutorial commitments, and requires signatures from the accused, defense lawyer, and prosecutor to manifest its consensual nature. The accused may withdraw from or seek to adjust the agreement at any time prior to formal indictment, necessitating recommencement of consultation according to established procedures[8].

3.2. Establishing a Fair Prosecution-Defense Dialogue Mechanism

To establish a fair prosecution-defense dialogue, complete evidence disclosure is the baseline for equal negotiations. Within the Leniency System, an evidence exchange mechanism should be established based on comprehensive sharing, with tiered disclosure as an exception. For core evidence related to conviction and sentencing, the prosecution must bear the obligation of active and complete disclosure. For peripheral evidence, an index directory may be created, with the defense granted the right to apply for access when necessary. This balances the accused's right to know with judicial efficiency [9]. Correspondingly, the defense must also fulfill disclosure obligations, including procedural bars, exculpatory evidence, and sentencing mitigation materials. Through full information exchange, the defense can counterbalance the prosecution's sentencing advantage, securing more favorable outcomes and achieving genuinely equal dialogue and substantive sentencing negotiation [10]. Furthermore, lawyers should intervene earlier in proceedings. The trigger point for legal aid should be advanced to at least the criminal detention or arrest-approval stage. Once a suspect is detained or an arrest warrant is sought without retained counsel, legal aid should be assigned. This lawyer may submit opinions on detention necessity, social danger, and the suspect's attitude toward pleading guilty. Such early intervention allows defense arguments to substantively influence pretrial coercive measure decisions, potentially using detention mitigation as a vital bargaining chip, thereby laying a more equitable foundation for subsequent leniency negotiations [11].

4. Conclusion

China's criminal procedure has shifted from an adversarial to a consultation-based model. The

Leniency System's high application rates demonstrate efficiency gains, yet substantive prosecution-defense consultation remains unrealized. Genuine admission requires equal dialogue grounded in facts and evidence, not unilateral coercion. Substantive consultation protects defendants' rights, prevents wrongful convictions, and ensures system credibility. Future reforms must refine evidence disclosure, strengthen defense counsel, and improve sentencing negotiations. Only through advancing theory and practice can the Leniency System deliver both efficiency and fairness in every case.

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