

Research on the Conditional Non Prosecution System in the Era of Minor Crime Governance

-- Taking Drunk Driving Cases as an Example

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Abstract

In the era of light crime governance, the use of detention and relative non prosecution system as routine means of handling drunk driving cases has certain limitations. Detention, as a punitive measure, sometimes fails to accurately reflect the legislative intent and may result in excessive punishment; Although relatively non prosecution has to some extent reduced the burden on the judiciary, its function is limited and it has not fully solved the deep-seated problems behind drunk driving. The conditional non prosecution system, with its unique emphasis on both "punishment" and "relief", provides new ideas for the handling of drunk driving cases. This system not only demonstrates the dignity and fairness of the law, but also provides an opportunity for the perpetrator to reform and reintegrate into society. To construct a conditional non prosecution mechanism for drunk driving cases, it is necessary to design a scientific and reasonable conditional non prosecution procedure based on the specific circumstances of the drunk driving case and the individual characteristics of the perpetrator. At the same time, to ensure the fairness and transparency of the mechanism, it is necessary to improve the social supervision mechanism and involve all sectors of society to jointly supervise the implementation of conditional non prosecution.

Keywords

Governance of Minor Offenses; Conditional Non Prosecution; Drunk Driving.

1. Introduction

With the advent of the era of misdemeanor governance, effective misdemeanor governance has gradually become a major proposition for China to realize the modernization of criminal procedure. The Eighth Amendment to the Criminal Law of the People's Republic of China added the crime of dangerous driving, and since then, the act of drunk driving a motor vehicle has been designated as an object of crackdown by the criminal law. Neither the nature nor the magnitude of the crime of dangerous driving is elaborated in the law, so it is defined as an abstract potential damage offense in criminal law theory.[1] Since drunk driving was criminalized, the maxim "Don't drive after drinking; don't drink before driving" has been deeply rooted in people's minds. While achieving remarkable governance results in combating this criminal act, it has also gradually led to serious collateral consequences of criminal punishment. Against this background, academic and practical circles advocate the use of the conditional non-prosecution system to reduce the proportion of criminalization and conviction in drunk driving cases, thereby meeting the requirements of the times for improving the legalization level of social governance.[2]

In December 2023, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the *Opinions on Handling Criminal Cases of Dangerous Driving by Drunk Driving* (in after referred to as the *Opinions*).

This is the second judicial interpretation on drunk driving specially formulated by the supreme judicial organs after the first one was released in 2013. Initially, the 2013 *Opinions* set 80 mg/100 ml as the criminalization criterion, which played a positive role in clarifying the standard for criminalization and regulating case-handling procedures. After ten years of practical testing, representatives from academic and practical circles have reflected that this standard is overly mechanical and simplistic. Therefore, compared with the 2013 *Opinions*, the 2023 *Opinions* for the first time formally established that the actor's positive behaviors, such as taking the initiative to receive education and training and participating in social services, should be included in the sentencing considerations for criminal cases of drunk driving. This move marks that the supreme judicial organs actively promote and fully and accurately implement the criminal policy of combining leniency with strictness for minor criminal cases represented by drunk driving.

Research on conditional non-prosecution as a non-punitive governance model for misdemeanors in criminal procedure focuses on two core dimensions in academic circles. Firstly, starting from the micro level, it in-depth analyzes and evaluates the rationality, effectiveness, and operability of the reform practice of conditional non-prosecution based on social public welfare services.[3]

This perspective often uses specific cases and data to explore how this model balances legal punishment with social education and restoration functions, as well as its effectiveness in improving judicial efficiency and promoting the re-socialization of offenders. Secondly, academic circles also proceed from the macro perspective of constructing a misdemeanor governance system, regard conditional non-prosecution as an important part of this system, and conduct in-depth discussions on its institutional design and practical approaches. Based on the new *Opinions*, this paper aims to discuss the governance dilemmas of drunk driving cases, reflections on these dilemmas, the necessity of applying the conditional non-prosecution system, and the institutional construction of conditional non-prosecution in drunk driving cases. [4]It strives to provide valuable references for judicial practice, promote the continuous improvement of the criminal justice system for drunk driving, and further advance the healthy development of China's misdemeanor governance system.

2. Current Situation of Drunk Driving Case Governance

2.1. Basic Status of Drunk Driving Case Governance

Since the criminalization of drunk driving was implemented in 2011, the number of dangerous driving cases concluded by courts nationwide has shown a significant upward trend. Starting from over 90,000 cases in 2013, such cases had already jumped to the third place in terms of the number of criminal cases, accounting for 9.5% of the total criminal cases that year. This momentum continued to strengthen in the following years. By 2015, the number of cases surged to nearly 140,000, not only firmly occupying the second place in criminal cases but also accounting for 12.61% of all criminal cases.

In 2019, dangerous driving cases reached an unprecedented peak, with the number of concluded cases soaring to 319,000 throughout the year. It not only surpassed theft, which had long been the top criminal offense, but also became the most prominent criminal charge of the year with a nearly one-quarter share. By 2020, although the number of cases dropped slightly, courts nationwide still concluded as many as 289,000 dangerous driving cases, accounting for 25.9% of the total criminal cases-far exceeding theft by 1.71 times.

Six months after the implementation of the new *Opinions* in 2023, procuratorial organs across the country accepted 171,000 dangerous driving cases during the examination and prosecution stage, a significant decrease of 38.7% compared with the previous year. In the decision-making stage of prosecution, procuratorial organs instituted public prosecutions for

143,000 of these cases, a decrease of 12.2% from the same period last year. Meanwhile, for cases with obviously minor circumstances that did not meet the criminal standards, procuratorial organs actively performed their functions in accordance with the law and supervised public security organs to withdraw nearly 20,000 relevant cases.

2.2. Application of the Non-Prosecution System in Drunk Driving Cases

In 2022, the number of non-prosecuted individuals reached 348,000, a 1.5-fold surge compared with 2018, demonstrating the in-depth implementation of the "combining leniency with strictness" principle in judicial practice. In 2023, the non-prosecution rate rose significantly to 24.58%, hitting a record high in judicial statistics.

Focusing on dangerous driving cases, the author conducted a special search using the Pkulaw Database with three keywords: "crime of dangerous driving", "indictment decisions", and "non-prosecution decisions", to conduct an in-depth analysis of the procuratorial organs' non-prosecution decision-making trends in drunk driving cases in recent years.[5] Through retrieving relevant public documents from 2017 to 2023, the detailed data shown in Table 1 was compiled, which intuitively reflects the practical situation of procuratorial organs flexibly applying non-prosecution decisions based on the specific circumstances of each case when handling drunk driving cases.

Table 1. Non-prosecution Situation of the Crime of Dangerous Driving from 2017 to 2023

Year	Non-prosecution Decision	Indictment	Non-prosecution Rate
2023	2362	7247	24.58%
2022	8539	25995	24.73%
2021	86667	246506	26.01%
2020	67221	253298	20.97%
2019	40356	278930	12.64%
2018	19625	266465	6.86%
2017	6883	136446	4.80%

As can be seen from Table 1, the non-prosecution rate for the crime of dangerous driving has been increasing year by year from 2017 to 2023. Statistical analysis of more than 300 randomly selected dangerous driving cases shows that among the cases where procuratorial organs made non-prosecution decisions on dangerous driving acts, the majority were classified as discretionary non-prosecution, accounting for as high as 98%. Only a small number of cases resulted in decisions of mandatory non-prosecution or non-prosecution due to insufficient evidence.

In dangerous driving cases from the end of 2023 to April 28, 2024, the reference circumstances included in the non-prosecution decisions issued by procuratorates mainly included "minor criminal circumstances and pleading guilty and accepting punishment", "first offense and pleading guilty and accepting punishment", and "minor criminal circumstances, voluntary surrender, first offense, and pleading guilty and accepting punishment". The legal norms mainly applied to these non-prosecution decisions include Article 15 and Paragraph 2 of Article 177 of the Criminal Procedure Law of the People's Republic of China; Paragraph 1 and Paragraph 3 of Article 37, Article 67 of the Criminal Law of the People's Republic of China.

3. Governance Dilemmas of Drunk Driving Cases

3.1. Limitations of the Discretionary Non-Prosecution System

The discretionary non-prosecution system aims to impose lenient and mitigated handling on criminal suspects' acts, granting procuratorial organs considerable discretionary power to a certain extent. Driven by the traditional concept of "prosecution upon establishment of a crime", judicial organs often adopt a relatively harsh attitude when handling criminal cases, tending to prosecute directly without fully considering the necessity and rationality of prosecution. With changes in the crime structure, especially the sharp increase in the number of minor offenses such as drunk driving, the original strict standards for examination and prosecution have become increasingly inadequate.[6] Although the legislative intent was to curb drunk driving through severe criminal legal means, the actual effect has been a rise in the number of drunk driving cases, and the problem remains severe.

In 2017, the Supreme People's Court issued the Guiding Opinions on Sentencing for Common Crimes (II) (Trial Implementation), which provided specific standards for the conviction and sentencing of drunk driving cases, emphasizing various consideration factors including the degree of intoxication, vehicle type, driving environment, speed, actual damage consequences, and remorse attitude. Many provinces and cities across the country have successively formulated standards for the application of non-prosecution and probation in drunk driving cases, generally adopting a judgment model of "comprehensive consideration of blood alcohol content combined with specific circumstances". However, this practice has also exposed some problems:

Firstly, there are differences among regions in the identification of blood alcohol content thresholds or specific circumstances, leading to drastically different handling results for similar cases in different regions. This has triggered doubts about "different judgments for similar cases" and the fairness of case decisions.

Secondly, human tolerance to alcohol varies individually. Relying solely on blood alcohol content as the judgment standard makes it difficult to accurately reflect the impact of alcohol content on the driving ability of different individuals, potentially leading to misjudgment or lenient sentencing by judicial organs.

Finally, facing the significant growth in the number of minor offenses such as drunk driving, the traditional examination and prosecution standards targeting serious crimes are insufficient to effectively meet the requirements of the era of misdemeanor governance and the diversification and complexity of case types.

Therefore, improving the criminal handling mechanism for drunk driving cases requires not only unifying and standardizing standards to ensure judicial justice but also fully considering individual differences to achieve precise crackdowns. At the same time, it is necessary to adjust examination and prosecution strategies in a timely manner to respond to new changes in crime forms in a more flexible and efficient way.

3.2. Severe Collateral Consequences of Criminal Punishment

According to the explicit provisions of Article 133-1 of the Criminal Law on the crime of dangerous driving, drunk driving is clearly defined as the crime of dangerous driving, with the maximum statutory penalty of criminal detention. In judicial practice, given that drunk driving cases are usually clear in facts and conclusive in evidence, most of these cases result in criminal detention.[7] However, even with a sentence of criminal detention, the actor inevitably bears the label of a "criminal". This not only means they will face criminal punishment but also endure a series of far-reaching collateral consequences accompanying criminal punishment.

At the individual level, they will lose the qualification to engage in professions such as soldiers, public security officers, judicial officers, lawyers, doctors, and notaries. Incumbents in these

industries may also face the risk of dismissal. For their families and descendants, drunk driving not only makes the actor's children bear the social label of "offspring of criminals" but also may severely restrict their future career choices-especially the possibility of entering public service fields. This causes long-term adverse impacts on family stability and the future development of children.

Therefore, the collateral consequences caused by drunk driving crimes are far more severe than the mere criminal punishment. They hinder the offender's reintegration into society, disrupt family order, exert pressure on children's employment and life, and thus threaten social harmony and stability.[8] Given the high incidence of drunk driving cases in criminal offenses and the resulting large group of "criminals", if relevant legal systems and measures are not improved in a timely manner, the potential social contradictions and risks will become increasingly prominent and cannot be ignored.

4. Necessity of Applying the Conditional Non-Prosecution System

4.1. The Phased Mission of Criminalizing Drunk Driving Has been Accomplished

Since drunk driving was incorporated into the scope of criminal law, public security organs nationwide have generally regarded drunk driving crackdowns as an important part of their daily work. Although this initiative has led to a significant increase in the number of criminal cases involving dangerous driving, it has also effectively reduced the rate of serious traffic accidents caused by drunk driving.[9] Currently, the vast majority of drunk driving cases do not result in serious consequences, indicating that years of popularization of the legal rule "no drunk driving" and the improvement of public awareness of "don't drive after drinking" have achieved results. Society as a whole has gradually moved from the initial stage of relying on severe criminal penalties to strengthen norms to a new stage of more rational and differentiated governance.

This transformation is inseparable from the persistent regular law enforcement efforts of public security organs and the positive changes in public awareness. These combined factors have jointly reduced the negative social impacts caused by drunk driving. Against this background, the Criminal Law, as a dual norm guiding judicial organs' judgments and public behavior, may face the problem of excessive punishment if severe penalties continue to be implemented after being widely accepted. The appropriate relaxation of judicial standards for drunk driving in the new Opinions issued by the supreme judicial organs is based on a profound insight into the actual situation of drunk driving cases and changes in public attitudes in recent years.[10] It fully demonstrates the supreme judicial organs' deep understanding and accurate grasp of the current actual situation of drunk driving cases and changes in public perceptions, which is undoubtedly an appropriate move in line with the trend of the times and social needs.

4.2. Need to Construct a Sound Legal Connection Mechanism

The new Opinions not only retains the form of the 80 mg/100 ml standard but also relaxes it substantially, which is consistent with the two-tier theory of crime evaluation method that prioritizes form over substance. The scope of identifying drunk driving as an administrative violation has been expanded, which means that criminal cases of drunk driving will decrease at the source, thereby reducing litigation burden and saving judicial resources. In China's Criminal Law, a crime is a unity of qualitative and quantitative elements. For specific charges, the quantitative elements of the crime will change with social changes. Judicial organs can at most delineate a quantitative range for individual crimes in a specific period, which needs to be adjusted in a timely manner according to changes in the times and situation.

For specific drunk driving cases, whether criminal punishment is deserved also needs to consider various factors such as the drunk driver's height, weight, health status, usual alcohol consumption, and performance after drinking. In addition, within the quantitative range of the crime, it is necessary to carefully weigh the differences and particularities of individual cases to ensure the appropriateness of criminalization and sentencing.[11] In short, although digital standards are clear, they are overly mechanical and rigid, unable to cover all situations of whether drunk driving constitutes a crime, and may even lead to biased and inappropriate conclusions. Reflecting on and adjusting the digital standards for determining drunk driving can effectively make up for the defects of rigid standards. On the basis of substantive interpretation, a higher-level connection mechanism between administrative law enforcement and criminal justice for drunk driving cases can be gradually constructed to meet society's expectations for substantive rule of law and substantive justice.

4.3. Exploration Under the Background of the Era of Misdemeanor Governance

We are in an era pursuing misdemeanor governance. There is no fixed model for social governance, nor is there a universally applicable and long-term effective crime governance plan. The evolutionary track of drunk driving governance—from administrative violation to criminal offense, and now to regression to administrative violation within a specific scope—reflects not only the adjustment of legal boundaries but also the profound changes in social changes and internal structural fine-tuning. Both the criminalization and decriminalization of drunk driving are only specific manifestations of such changes in the era background in the field of criminal law.

Essentially, the crime of dangerous driving is an administrative offense, and its harm degree and punishment needs fluctuate with the development of the social environment, which is fundamentally different from natural offenses (i.e., crimes whose maliciousness stems from the act itself and is not affected by external conditions).[12] The Criminal Law cannot preset a fixed response strategy for acts such as drunk driving because it does not have the characteristic of "malum in se" (evil in itself). In fact, the core of the problem is not whether to regulate drunk driving, but how to regulate it effectively and in line with legitimate legal principles. This requires us to find an optimal balance between the effectiveness and legitimacy of legal regulation after careful consideration and weighing of pros and cons. The exploration of new law enforcement concepts and judicial models is indispensable in this process.

The core goal of the issuance of the new Opinions is clear: to reduce unnecessary national investment in handling drunk driving cases through optimizing resource allocation, and strive to achieve results in reducing the negative social impacts caused by the criminalization of drunk driving.[13] This initiative is not only a profound reflection and repositioning of the application of criminal penalties under the current misdemeanor governance model but also a conscious correction and transcendence of the previous excessive reliance on pre-administrative law to handle drunk driving issues. It marks that we are moving towards a more precise, efficient, and humanized direction on the path of legal governance.

5. Institutional Construction of Conditional Non-Prosecution for Drunk Driving Cases

5.1. Setting Definite Applicable Conditions

At present, China's criminal legal system has not clearly defined specific standards for misdemeanors, leaving a vague area in this field. In academic and practical circles of criminal law, the mainstream view tends to adopt a formal standard, that is, judging by statutory penalty, and holds that crimes with a statutory penalty of fixed-term imprisonment of not more than three years should be defined as misdemeanors.[14] However, some scholars advocate a

substantive standard, proposing that the actually declared penalty should prevail-only cases with a declared penalty of fixed-term imprisonment of not more than three years should be regarded as misdemeanors.

There has been extensive controversy in academic and practical circles over whether cases where the maximum statutory penalty exceeds three years of fixed-term imprisonment but are ultimately sentenced to fixed-term imprisonment of not more than three years in judicial practice, based on factors such as the specific nature and circumstances of the crime, should be classified as misdemeanors.[15] This paper holds that when constructing the conditional non-prosecution system, a clear sentencing condition should be set for the definition of misdemeanor cases, i.e., the penalty imposed on the case should be within fixed-term imprisonment of not more than three years. Such a definition is not only convenient for practical operation but also balances the social harm of crimes and the rational allocation of judicial resources to a certain extent.

In terms of the objective aspects for which conditional non-prosecution can be applied to misdemeanor cases, on the basis of ensuring clear facts and sufficient evidence, the case itself should also be characterized by minor criminal circumstances and relatively low social harm. Even if a case meets the basic conditions for prosecution, it may be considered for conditional non-prosecution if its social impact is small and the severity of the criminal act is not high. From a subjective perspective, procuratorial organs should comprehensively consider various factors when deciding whether to apply conditional non-prosecution.

For example, the actor's degree of subjective malice, whether they voluntarily plead guilty and accept punishment with sincere remorse, and whether they actively take measures to compensate the victim.[16] These factors comprehensively reflect the actor's cognition, attitude towards their own behavior and subsequent remedial measures, and are of great significance for evaluating the possibility of recidivism and social danger. When deciding whether to apply conditional non-prosecution to misdemeanor offenders, procuratorial organs should fully consider these subjective factors.

5.2. Establishing Correction-Centered Programs

China's current pilot work on conditional non-prosecution mainly focuses on the model of social public welfare services, aiming to achieve the dual purposes of education and punishment through such services. Faced with diverse types of misdemeanor cases and individual offenders with distinct personalities, the existing social public welfare service model often struggles to provide professional and precise correction measures, making it difficult to fully achieve the expected correction effects and preventive governance goals.

Therefore, governance programs under the conditional non-prosecution system can be added, with correction as the core value pursuit. Introduce more diversified governance programs such as legal education and admonition to strengthen criminal suspects' legal awareness and rule consciousness; addiction treatment assistance for specific needs to help misdemeanor offenders involved in drug use or other addictive behaviors get out of difficulties; and psychological treatment support to provide professional psychological counseling and intervention for offenders with psychological problems, promoting the recovery of their mental health.[17] These targeted correction measures can more effectively realize the preventive governance of misdemeanors and facilitate the smooth reintegration of offenders into society.

5.3. Improving the Supervision and Inspection Procedures for Correction Programs

Misdemeanor offenders' voluntary participation in governance programs is the basis for the legitimacy of the conditional non-prosecution system. Misdemeanor offenders should be entitled to participate in program design, and through equal dialogue and negotiation with

procuratorial organs, jointly formulate mutually recognized and accepted supervision and inspection methods.

Under the framework of the agreement, the governance plan is more in line with their personal circumstances and needs, which not only helps enhance the pertinence and effectiveness of the governance program but also further consolidates the legitimacy basis of the conditional non-prosecution system.[18] To improve the transparency and credibility of governance programs, the assessment of the program can be incorporated into the public hearing procedure of procuratorial organs.

In the hearing procedure, multiple subjects including procuratorial organs, misdemeanor offenders, defense lawyers, victims, and supervision and inspection teams can participate to jointly evaluate and supervise the governance results. By deeply integrating social resources and public welfare forces, we can promote the continuous optimization and improvement of governance programs and provide more comprehensive and professional correction and assistance for misdemeanor offenders.

6. Conclusion

At present, governance measures including discretionary non-prosecution and probation have been adopted for "drunk driving-type" dangerous driving acts, but these methods have gradually shown limitations in practice, and the collateral impacts of their criminal consequences remain far-reaching. Following the judicial concept of less arrest and cautious prosecution, the conditional non-prosecution system can demonstrate unique advantages by virtue of its dual characteristics of "punishment" and "correction".

This system can not only ensure that drunk driving offenders are punished in proportion to their crimes, reflecting the legal principle of adaptability of crime, responsibility and punishment, but also provide opportunities for drunk driving offenders to reform themselves, helping them smoothly reintegrate into society and effectively avoiding the adverse social impacts caused by excessive punishment. Endowing drunk driving offenders with the right to re-integrate into society is the core value advocated by restorative justice.

To achieve more efficient and humane governance of misdemeanors such as drunk driving, specific plans should be made at the institutional level. By setting definite conditions, establishing correction programs, strengthening supervision mechanisms and other measures, we can ensure that the conditional non-prosecution system plays the greatest role in the governance of misdemeanors such as drunk driving.

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