

# Study on the Law Application of the Crime of Throwing Objects from High-Altitude

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## Abstract

High-altitude parabolic has always been known as "the pain hanging over the city" by the public, which poses a great threat to people's personal safety. The Independently criminalize high-altitude parabolic behavior in criminal law amendment (11) reflects that the criminal law responds to social concerns, guarantees people's rights and interests and fulfills the protection function. However, the introduction of a new crime often meets many difficulties in judicial practice. From the high-altitude parabolic behavior to the necessity of independent conviction, this paper interprets its constituent elements, and the distinction between sin and sin, demonstrate the law application of the crime of throwing objects from high-altitude.

## Keywords

High-altitude parabolic; Criminal law amendment (11); Judicial practice.

## 1. The Necessity of Criminalizing the Act of Throwing Objects from High-Altitude Independently

### 1.1. Independent Incriminating Background

With the development of market economy towards a deeper level, high-rise buildings gradually increase, people's living standards have also been greatly improved, the "overhead safety" began to focus on. Criminal law aimed at high-altitude parabolic caused by the method of profit violation of provisions on the crime of endangering public security with dangerous method, since there is no clear legal norms, cause local judiciary discretion is too big, a lot of high altitude parabolic caused by the method of profit violation in the application of law when the tort liability law and absorbed by the crime of endangering public security, easy to cause the illegal crime, Criminalization of criminal acts. In recent years, high-altitude parabolas happen all over the place, There is a growing demand for independent convictions for throwing objects from high-altitudes. The people call for it, and the law should respond to it. In response to this demand, legislators, after gradual exploration, Independently criminalize high-altitude parabolic, which is stipulated in the crime of disturbing public order.

### 1.2. Development History

At present, there are two main opinions in the academic circle. One is in favor of the independent criminalization of throwing from high-altitude parabolic, believing that the charges are more clear, and the sentencing system is more perfect, which effectively avoids the heavy sentence of misdemeanor. Opponents believe that the act of throwing objects from high-altitude can be found in the existing law, there is no need to be a separate attribution. [1] I agrees with the first view. Taking Ying tan City as an example, in four years, 67 cases of throwing objects from high-altitude occurred, causing 35 people to be injured and 21 items to be damaged.

The independent conviction of high-altitude parabolic behavior is imminent. In order to explore the application of high altitude parabolic throwing crime in judicial practice, we must understand its incrimination process. Issued by the Supreme People's Court on the properly in accordance with the opinions of the high-altitude parabolic, falling objects cases "(hereinafter referred to as" opinions ") , points out that the local court to put people's interests first, to distinguish the difference between the high and falling objects and actors subjective vicious, criminal law amendment (11) (Draft First Review), "throwing objects from high above, endanger public safety, Criminal detention or public surveillance and shall also, or shall only, be fined. "Those who commit the acts mentioned in the preceding paragraph, causing casualties or other serious consequences, and at the same time constituting other crimes, shall be convicted and punished in accordance with the provisions on heavier punishment." From endangering public security to endangering public security, there is a difference between "endangering" and "endangering" in terms of semantics, but in judicial practice, the two words are difficult to distinguish, legislators still point to the legal interests infringed by the act of flying projectiles to public security, which is a change of the same substance. The crime of throwing objects from high-altitude has been added to the criminal law amendment (11) (Draft Second Review). Those who throw objects from buildings or other high-altitude , if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than one year, criminal detention or public surveillance and shall also, or shall only, be fined. If other crimes are simultaneously constituted, he shall be convicted and punished in accordance with the provisions of a heavier punishment. [2] This legislative technology separates the act of throwing from the public safety law and makes it an independent crime. The act of throwing from high-altitude parabolic also has a clearer direction and the public has a clearer understanding of this crime.

## 2. Interpretation of Components of Airborne Parabolic Objects

According to the provisions of Article 291 bis of the Criminal Law of the People's Republic of China: Throwing objects from buildings or other heights, if the situation is serious , he shall be sentenced to fixed-term imprisonment of not more than one year, criminal detention or public surveillance and shall also, or shall only, be fined; Have the preceding behavior, at the same time constitute other crimes, convict and punished in accordance with the heavier punishment.

### 2.1. Buildings or High Altitude

Buildings are easy to understand and can be understood as the houses and factories we see, but how to identify "high-altitude parabolic" has not been clearly defined by legislators. From the definition of "working at height", we know that high altitude parabolic refers to a height above 2 meters, but it seems to be unclear in the criminal code. I think that high-altitude parabolic should refer to the distance between the space position of the item thrown and the landing of the item.

### 2.2. Definition of Thrown

What is "throw"? how to distinguish parabolic and falling objects.? "Throw" is drop, "throw" subjectively obvious is deliberately, including direct intent and indirect intent, such as to kill a person, throw rocks from the sky, it is directly intentionally, couple quarrel because of family matters, a chair through the window throw out this is indirect intent. Subjectively, "falling" is mostly a fault, but it does not rule out that the actor intentionally creates conditions to cause objects to fall and damage people.

### 2.3. Definition of "Goods"

As we all know, the tables and chairs, bricks and stones, sharp knives and flowerpots we see in our daily life are all objects. Here is a question: Are people and animals objects? If other conditions are met, can a mother who throws her child from a 24-story building be deemed guilty of throwing objects from a height, or a college student who throws a cat from a 17-story building? I think that people and animals can not be called "goods" here. If the above cases occur, according to the legal interests violated, the crime of endangering public security by dangerous methods, intentional homicide, intentional injury and other charges can be convicted and punished.

### 2.4. Determination of Serious Circumstances

There is no list of serious circumstances in the provisions, we can look for answers from other charges in the criminal law. "Serious" generally considers the number, place, time, scene and tools of the harmful behavior, etc. I believe that the following situations should be considered as "serious": (I) throwing objects repeatedly; (II) Throwing objects in crowded places; (III) Throwing sharp instruments; (IV) Throwing objects causes serious social and public disorder; (V) Other serious circumstances.

## 3. Case Analysis of Throwing Objects from High-Altitude

On March 1, criminal law amendment (11) formally implemented, high-altitude parabolic crime as an independent charge to implement the first day. Li yang court on the trial of the first high-altitude parabolic case, The defendant Xu mou made a high-altitude throwing crime was sentenced to 6 months in prison, and fined 2000 yuan. The case was the first in the country to be convicted of throwing objects from a high-altitude parabolic. The judgment of the case of throwing from high-altitude parabolic will no doubt have a warning effect on the perpetrator of throwing from high-altitude parabolic, and will also have a positive guiding effect on the judicial recognition and punishment of the behavior of throwing from high-altitude parabolic. I took "throwing crime from high-altitude parabolic" as the title in Peking University magic weapon search, showing 7 domestic first cases, 3 hot cases. The following cases are used to illustrate how the judicial authorities determine the crime of throwing objects from high-altitude in judicial practice.

The first case: At about 23:00 on March 24, 2021, the defendant Li Honglan, in her residence, Room XXX, No. XXX, Lane XXX, Yongsong Road, Minhang District, in order to be convenient, dropped the transparent plastic bags containing waste glass bottles, express packaging and other garbage from the window of the south balcony, and then dropped them to the lawn near the pedestrian path to the south of the building. He was sentenced to criminal detention for 5 months, suspended for 6 months and fined 1,000 YUAN by Shanghai Minhang District People's Court for throwing objects from high altitude.

The second case: Some college students in Chifeng Ma to vent their emotions, in a bathroom in the high-rise dormitory building, will be a folding wooden horse out of the window, will be downstairs passing by the victim he was injured, through forensic identification, the victim he injury constitutes a slight injury. March 23, 2021, the Hongshan District, Chifeng People's Court convicted Ma of throwing objects from height, sentenced to 10 months in prison, and fined 5,000 yuan.

Judging from the cases of throwing objects from high-altitude that have been pronounced at present, the sentencing range is also less than one year in prison, and most of them are subject to probation. Effectively avoid the misdemeanor heavy sentence, protect the interests of the defendant, effectively implement the principle of adaptation. It can be seen from these two cases that, first of all, the crime of throwing objects from high-altitude is a kind of minor crime,

and the court does not show expansion in the trial of throwing objects from high-altitude with little harm, but makes a judgment strictly in accordance with the legal norms. Second, no harmful consequences are required for the behavior. Finally, there is the complexity of the types of high-altitude parabolic objects, such as glass bottles, express packaging, wooden utensils and so on.

#### **4. The Difference between the Crime of Throwing Objects from High-Altitude and Other Charges**

##### **4.1. Distinction between Crime of Endangering Public Security by Dangerous Means and Crime of Endangering Public Security by Dangerous Means**

In chapter two of the special provisions of the criminal law, crime of endangering public security, Public in public security refers to unspecified or majority persons. [3] The legal interest of the crime of throwing objects from high-altitude is the public order, which does not require the target to be an unspecified majority of people, but can be specific or minority. The damage result in the crime of endangering public security by dangerous means is a kind of concrete danger and dangerous crime. The crime of throwing objects from high- altitude is a kind of behavior offense. They also pointed out that it should be cautious to consider throwing objects from high-altitude as a crime of endangering public safety by other dangerous means, which is stipulated in Articles 114 and 115 of the Criminal Law. [4]

##### **4.2. Distinguish It from the Crime of Picking Quarrels and Provoking Trouble**

The crime of picking quarrels and provoking trouble refers to the act of Wanton provocation, beating, harassing or arbitrarily destroying others, or Occupy public and private property, or cause disturbances in public places, or causing trouble in a public place and seriously damaging the social order. Some scholars think that the two belong to imagine competition, in the judicial practice can be set up at the same time, but I thinks that although the two infringes upon the legal interests are public order, from the subjective said, high altitude parabolic behavior are not necessarily directly intentionally, also includes indirect intent, its subjective vicious sometimes smaller, but stir-up-trouble crime is directly intentionally, intentionally, subjective vicious. The objective behavior of aerial throwing crime requires throwing behavior, while the objective behavior of picking quarrels and provoking trouble crime does not require this behavior. From the subjective and objective analysis, the gap between the two is very obvious.

##### **4.3. With the Crime of Intentional Homicide, Intentional Injury and Other Charges**

From the Angle of legal interest of infringement, the crime of throwing objects from high-altitude violates public order, while the crime of intentional homicide and intentional injury are the interests of personal safety. The two are co-crimes. If the behavior of throwing objects from high altitude causes the actual death or injury of people, the crime of intentional homicide and intentional injury can be convicted and punished with heavier punishment.

#### **5. Conclusion**

The Independently criminalize high-altitude parabolic behavior in criminal law amendment (11), which reflects the law's response to social concerns, guarantee people's rights and interests, and fulfill the protection function. By analyzing the distinction between "high-altitude", "throwing" and "serious circumstances", and the crime of endangering public security with dangerous methods, the crime of picking quarrels and provoking troubles, the crime of intentional homicide, and the crime of intentional injury, I provides a kind of thinking about how to apply the crime of high-altitude throwing in judicial practice, so that the "pain hanging

over the city" can be effectively dealt with. It is another embodiment of the continuous progress of the construction of rule of law in China, which is of great significance to the comprehensive rule of law.

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