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# Study on The Limitations of The Lenient System of Pleading Guilty and Accepting Punishment

Xueqing Han

College of Ethnology and Sociology, Guangxi University for Nationalities, Nanning, 530006, China

## Abstract

**As an important part of carrying out the criminal policy of combining leniency with severity, the lenient system of confession and punishment has played an important role in improving litigation efficiency and protecting human rights. However, due to the differences in legislation, judicial practice and theory, the lenient system of confession and punishment has limitations in different degrees, which also leads to the difficulty in fully protecting the legitimate rights and interests of criminal suspects and defendants. Based on this, the next step to improve the lenient system of confession and punishment should be to use misdemeanor detention with caution, pay attention to the role of lawyers in criminal litigation activities, and improve the appeal procedure of cases applying the lenient system of confession and punishment, so as to deepen the reform of litigation system and build a scientific criminal litigation system in China.**

## Keywords

**The lenient system of pleading guilty and admitting punishment; Voluntary confession; Right to defense; Right of appeal.**

## 1. The Realistic Performance of The Limitations of The System of Pleading Guilty and Accepting Punishment.

### 1.1. China's leniency system "guilty" limitations.

The voluntary confession of criminal suspects and defendants is the foundation of the lenient system of confession and punishment, and it is also a necessary prerequisite for the application of the lenient system of confession and punishment. "Pleading guilty" can reduce the difficulty of investigation, weaken the pressure on judges to determine the facts of the case and save judicial resources. However, in practice, it is difficult to guarantee the voluntary confession of criminal suspects and defendants. In practice, there are mainly the following situations. First, the standard of "voluntariness" is difficult to define, which is embodied in the fact that it is difficult for the judicial organs to distinguish whether the confession statements of criminal suspects and defendants are in line with their inner voluntariness, and it is difficult to define whether the criminal suspects and defendants are forced to plead guilty or really voluntarily plead guilty. That is to say, compliance in voluntariness is difficult to be guaranteed. Second, the criminal suspects and defendants admit some criminal facts as they admit all criminal facts. That is to say, it is difficult to guarantee the sufficiency of voluntary confession. Failure to guarantee voluntary compliance and sufficiency not only easily leads to misjudged cases, damages the legitimate rights and interests of criminal suspects and defendants, but also weakens the credibility and authority of the judiciary [2].

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### 1.2. The limitation of the leniency system of confession and punishment in China.

In a sense, the lenient system of pleading guilty and admitting punishment is the lenient treatment that criminal suspects and defendants sacrifice part of their procedural rights, but this does not mean that criminal suspects and defendants are not entitled to effective defense in this process. In the Anglo-American legal system, the leniency system of confession and punishment is called "consultative justice". From this name, we can also see that the Anglo-American legal system pays attention to the transactions between the prosecution and the defense during the application of the leniency system of confession and punishment [3].This is also caused by its adversarial trial characteristics. The advantage of consultative justice lies in ensuring the important position of lawyers in cases of confession and punishment, and ensuring lawyers' independent defense rights. In our country, "admitting punishment" is the active acceptance of the punishment to be sentenced by the criminal suspect and the defendant. Lawyers' role in the application of the lenient system of pleading guilty is more biased towards witnesses than participants. In some cases, the prosecutor informed the lawyer to be present to witness after reaching an agreement with the criminal suspect on sentencing, so it is difficult for the lawyer to give his own suggestions on sentencing at this time [4].The judicial agreement between the prosecution and the defense and the parties can certainly make the trial simpler and faster, but if the sentence is improper, this acceptance will hinder the lawyer's right to independent defense.

### 1.3. The limitation of leniency in China's leniency system.

The original intention of the leniency system is to meet "four needs", namely: first, timely and effectively punish crimes and maintain social order and stability; Second, fully implement the criminal policy of combining leniency with severity and strengthen the protection of human rights in the criminal justice field; Third, rationally allocate judicial resources to achieve a better balance between justice and efficiency; Fourth, deepen the reform of litigation system and build a scientific criminal litigation system [5]. It can be seen that achieving the balance between justice and efficiency is one of the original intentions of the design of the lenient system of pleading guilty and punishing. However, the current legislation focuses on the realization of efficiency value, which makes it difficult to guarantee the right of appeal of criminal suspects and defendants. In order to save the judge's trial cost to the greatest extent, Germany, Italy and other countries have restricted the defendant's right to appeal in plea bargaining cases, which has further improved the efficiency of criminal proceedings, but it has damaged the defendant's legitimate rights and interests and is not conducive to the realization of justice [6]. In China, "leniency" includes both substantive leniency and simplified procedure, absorbing the experience and lessons from Germany. Although the Criminal Procedure Law of China does not limit the defendant's right to appeal, in practice, the rate of commutation of such cases after appeal is also very small, and the road to perfecting the leniency system of confession and punishment in China still needs to be explored from top to bottom.

## 2. The Analysis of The Causes of The Limitations of The Leniency System of Confession and Punishment

There are many reasons for the limitations of the lenient system of pleading guilty. Some scholars think that the lenient system of pleading guilty lacks the necessary institutional support and the matching connection of procedural reform. The original compulsory measures system and procedural arrangement can no longer adapt to this new litigation mode [7]. Some scholars believe that the characteristics of consultative justice, such as "asymmetric information" and "unequal resources", lead to "structural risks" Some scholars believe that at

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present, the judicial organs only apply the lenient system of pleading guilty based on the structure of light and heavy crimes in the final judgment of criminal cases, or put forward mandatory requirements for the compulsory application of the lenient system of pleading guilty, which makes it difficult to apply the lenient system of pleading guilty correctly [8].

The author thinks that the causes can also be analyzed from three aspects: confession, punishment and leniency. Firstly, the confession: the defect of the power restriction of the procuratorial organ and the wrong application of pretrial detention lead to the failure to fully guarantee the voluntariness of the criminal suspect and the defendant to plead guilty; Secondly, in the aspect of "recognizing punishment", it is difficult to guarantee the lawyer's right to defense because of the lack of right to speak in the negotiation with the procuratorate and the limitations in the application of the duty lawyer system; Finally, "leniency": the dispute over whether the defendant has the right of appeal makes it difficult to effectively exercise his right of appeal.

## 2.1. The willingness of criminal suspects and defendants to plead guilty faces challenges.

There are two main reasons that lead to the challenge of criminal suspects and defendants' voluntary confession. First, in practice, the supervision and constraints of procuratorial organs do not match the rights they enjoy. Although the Guiding Opinions clearly stipulates that the court should examine the voluntariness and legality of the confessions of criminal suspects and defendants who use the lenient system of pleading guilty and admitting punishment, it also gives the procuratorial organs more rights in cases of pleading guilty and admitting punishment, which directly leads to the leading position of the procuratorial organs in cases of pleading guilty and admitting punishment, and the court plays more of a "cooperator" role in judicial activities, so it is difficult to really play the role of restriction and supervision [9]. Second, out of natural awe of public security organs and procuratorial organs, criminal suspects and defendants are likely to confess crimes they have not done out of fear. In order to control the suspects and defendants and facilitate the trial, pretrial detention is widely used in China. Pre-trial detention can prevent suspects and defendants from escaping or destroying evidence and ensure the normal development of litigation activities, but it also aggravates the psychological burden of suspects and defendants, which leads to their sense of oppression. In this semi-forced state, it is difficult to effectively guarantee their voluntary confession [10].

## 2.2. At present, lawyers' right to independent defense is restricted.

Although the current laws and regulations make relevant provisions for giving full play to the role of lawyers, and the lawyer's presence as a witness is one of the conditions for signing the confession and punishment statement, the concept that lawyers have little right to speak in litigation activities has not been effectively corrected.

### 2.2.1. Lawyers have insufficient right to speak in negotiation.

The restriction of lawyers' right to independent defense is mainly reflected in the fact that even in the case of pleading guilty and admitting leniency, when listening to lawyers' opinions, the procuratorial organs often unilaterally inform lawyers of the suggestion of leniency, and there are too few consultations between lawyers and procuratorial organs, even if there are, most of them stay in sentencing opinions, and lawyers do not have full right to speak. [11] In the long-term legal culture, the procuratorial organ, as a state public authority, enjoys an unquestionable authoritative position, and its familiarity with the court as a state organ and the barrier-free communication are incomparable to lawyers.

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### 2.2.2. The phenomenon that lawyers on duty are falsely placed occurs from time to time.

In order to ensure that the criminal suspects and defendants who apply the system of pleading guilty and admitting punishment are fully and effectively defended, China has adopted the duty lawyer system and stipulated that lawyers should be present when signing the confession and admitting punishment. However, in practice, the effect of lawyers on duty participating in cases is not satisfactory. With the in-depth development of the lenient system of pleading guilty, the phenomenon of lawyers on duty is more and more obvious. On the one hand, some lawyers on duty are lazy to exercise the right of defense in such cases, resulting in that they are only witnesses in the form of signing a written statement, without actually knowing the situation of the case or conducting effective communication and consultation with the procuratorate [12]. On the other hand, some lawyers on duty are afraid to perform their legal obligations out of fear of bearing the adverse consequences of the case. These two factors lead to the phenomenon that the lawyers on duty are falsely placed in the case of pleading guilty and lenient punishment.

## 2.3. It is difficult to implement the defendant's right of appeal to which the system of pleading guilty and leniency is applied.

There have been two voices in the academic circles about whether the defendant in the case of pleading guilty has the right of appeal. Some scholars believe that one of the reasons for implementing the leniency system is to alleviate the current situation of many cases and save judicial costs, and to apply limited judicial resources to more complicated and controversial cases is the original intention of the leniency system. However, it is undoubtedly a denial of this original intention to allow the defendants who apply the lenient system of pleading guilty to appeal again. If the appeal leads to a protest, it will inevitably lead to the already tense judicial resources tilting to this kind of cases again, so this kind of scholars deny the defendants who apply the lenient system of pleading guilty to appeal [13]. Some other scholars believe that the right of appeal is the right of the defendant according to the first paragraph of Article 227 of China's Criminal Procedure Law, and the relevant provisions of the leniency system for pleading guilty have not deprived this kind of defendant of the right of appeal. According to the principle of freedom without explicit provisions in the law, even the defendant who applies the leniency system for pleading guilty has the right of appeal according to law. It is against the law and justice to deprive the defendant of the right of appeal on the grounds of maintaining judicial efficiency [14].

To discuss whether the defendant's right of appeal should be restricted, we should first understand the reasons for this kind of defendant's appeal. Through the analysis of 50 randomly selected cases, the author finds that the defendant who applies the lenient system of pleading guilty can be roughly divided into the following reasons: first, the defendant pleaded guilty because of the irregular application of the lenient system of pleading guilty, so he appealed; Second, due to unclear facts and insufficient evidence, the court of first instance misjudged; Third, the appellant found new evidence in his favor or a new commutation occurred; Fourth, there is no objection to the facts and legal findings, but it is considered that the sentencing of the court of first instance is too heavy, and all the final judgments in the sample based on this reason are to uphold the original judgment. Based on this judgment, it is not difficult to guess the thoughts of most appellants. First, the leniency is obtained through the system of pleading guilty and recognizing punishment, and then the appeal is made by using the provisions of the Criminal Procedure Law of our country that there is no additional punishment for appeal. It is gratifying that the commutation can be obtained, but even if it cannot be reduced, there is no loss. It can be seen that it is not advisable to affirm or deny the defendant's right to appeal in a blanket way. The author believes that the appeal cases can be

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divided into different categories by classifying the reasons for appeal, so as to achieve a balance between ensuring fairness and justice and giving consideration to efficiency and value.

## 3. The Countermeasures to Make Up for The Limitations of The Lenient System of Confession and Punishment

How to make up for the limitations of the lenient system of pleading guilty is a hot topic in academic circles. Some scholars believe that the lawyer's right of sentencing defense is a natural extension of the right of criminal suspects and defendants to plead guilty and admit punishment, which should be fully respected and protected. The procuratorial organs should provide institutional arrangements and guarantees for sentencing negotiation. Some scholars believe that effective defense should be realized and the operation of the duty lawyer system should be improved [15], some scholars believe that the parties' right to know should be strengthened and the negotiation procedure should be improved [16]. Some scholars believe that the standard of evidence should be properly grasped to realize the unity of quality and efficiency. The author thinks that the countermeasures to make up for the limitations of the leniency system of pleading guilty can start from the following three aspects.

### 3.1. The necessity of detention review.

First of all, we should make clear the subject of examining the necessity of detention. Taking non-custodial coercive measures can ensure the voluntary confession of criminal suspects and defendants to a certain extent, which also leads to the question of who should be the subject of the review of the necessity of detention. The subject of review stipulated in China's Criminal Procedure Law includes public security organs and procuratorial organs, but in the end, public security organs, as the organs rushing to the front line of handling cases, should undertake more obligations. The detention measures are taken by the public security organs, and the place of detention is also within the jurisdiction of the public security organs. Therefore, the public security organs have the most contact with criminal suspects and defendants and the most detailed understanding of the case, so they have an unshirkable responsibility to review the necessity of detention [17].

Secondly, we should adhere to the applicable principle of the necessity review of detention. The Guiding Opinions clearly take confession and punishment as the consideration factor for taking non-custodial compulsory measures. Public security organs and procuratorial organs should not apply this clause mechanically, nor can they induce criminal suspects and defendants to make false confessions on this ground. When dealing with the cases of the lenient system of pleading guilty, we should comprehensively consider the evaluation factors of the social harm of other criminal suspects and defendants.

### 3.2. Clarify the equal status of the prosecution and the defense.

Full debate between lawyers and prosecutors is the premise of ensuring the unity of facts and legal application, so lawyers play a very important role in criminal litigation cases. Although our country has the duty lawyer system and the provision that lawyers should be present when signing the confession and punishment statement, these provisions can only guarantee lawyers to participate in the process of confession and punishment, but they cannot guarantee that lawyers provide substantive help to criminal suspects and defendants.

#### 3.2.1. Ensure that there is sufficient consultation space between lawyers and procuratorial organs on the number of crimes.

The first problem that should be solved to guarantee the lawyer's right to independent defense is to balance the status of both the prosecution and the defense in litigation activities. Lawyers and procuratorial organs should be provided with more space for consultation on the number

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of charges and crimes. To achieve this goal, lawyers' participation in the case should be guaranteed. First, lawyers' right to meet should be fully guaranteed. Before signing the confession and punishment statement, lawyers should communicate with criminal suspects many times to understand the facts of the case so that they can express their opinions on the charges and crimes when communicating with procuratorial organs in the next step.

#### 3.2.2. Improve the duty lawyer system, and eliminate the phenomenon that duty lawyers are falsely placed.

Article 36 of the Criminal Procedure Law and Article 12 of the Guiding Opinions clearly define the functions and responsibilities of duty lawyers. The purpose of establishing the duty lawyer system is to provide effective legal aid for criminal suspects, make them understand the nature and consequences of confession and punishment, ensure the voluntariness of criminal suspects' confession and punishment, and avoid the occurrence of blind or wrong confession and punishment. In practice, because some lawyers on duty are lazy or afraid to exercise their right of defense, the original intention of establishing this system is difficult to be realized. In order to change this phenomenon, we should start from two aspects: first, strengthen the protection of the rights and interests of lawyers on duty. Formulate corresponding legal documents, earnestly safeguard the legal rights of lawyers on duty, and ensure that they fully perform their statutory duties. In order to prevent the lawyer on duty from being liable for improper defense for fear, a "fault-tolerant" mechanism should be established. If the lawyer on duty has performed his duties due diligence, the defendant is found to be forced to plead guilty in the subsequent trial, and the lawyer on duty cannot be held accountable. Second, strengthen the supervision of lawyers on duty. Establish the corresponding supervision and punishment mechanism, clarify the punishment scheme for the lawyers on duty who are lazy in performing their statutory duties or who violate the law and discipline in the process of performing their duties, and ensure that the lawyers on duty can provide substantive and effective legal help to the criminal suspects who apply the system of pleading guilty and lenient punishment.

### 3.3. The appeal of the case of plea bargaining and leniency system.

#### 3.3.1. Guarantee the defendant's right of appeal against facts and evidence.

In the first instance, the basis for the judgment of a case with disputed facts and evidence may not exist, and this kind of judgment is most prone to unjust, false and wrong cases. Therefore, if the defendant objects to the facts and evidence found in the first instance or presents new evidence at the same time of appeal, the value of justice will be greater than the value of efficiency for such cases, and going through the second instance procedure is a necessary measure to avoid grievances. Therefore, the right of appeal of such defendants should be guaranteed [18].

#### 3.3.2. Regulate the defendant's right of appeal that only comments on sentencing.

From the sampling results, it is less likely that the facts of the case are clear and the law is applied accurately, but the sentencing is biased. Setting the right of appeal for this small possibility alone will lead to the waste of judicial resources. Therefore, limiting the right of appeal of such defendants can not only ensure the rational allocation of judicial resources, but also achieve the final result of judicial justice.

Of course, it is undeniable that there are cases of excessive sentencing, and restricting the defendant's right to appeal to the lenient system of pleading guilty does not mean giving up the protection of the legitimate rights and interests of such defendants. Appeal is not the only way to solve the problem of excessive sentencing in the first-instance judgment. Such defendants can defend their rights through effective communication between defenders and procuratorial organs before the first-instance judgment and applying for trial supervision procedures after the judgment is made.

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## 4. Conclusion

Since the revision of the Criminal Procedure Law, it has been more than three years since the leniency system of confession and punishment was put into practice. It must be affirmed that it has given criminals the opportunity to voluntarily compromise with the law and society, to turn evil into good, and has indeed resolved the contradictions and conflicts caused by criminal acts. The judicial resources saved based on the simplification of procedures can also be used in more complicated and prominent aspects of social contradictions. However, because the theory lags behind the practice, there are inevitable limitations in the implementation process, and it is difficult to fully guarantee the voluntary confession of criminal suspects and defendants, it is difficult to effectively display the right of independent defense of lawyers, and it is still difficult to implement the right of appeal in related cases. Based on this, the necessity of detention is strictly examined to ensure the voluntary confession of criminal suspects and defendants; Attach importance to the role of lawyers in the lenient system of confession and punishment in order to achieve equality between the prosecution and the defense, and lawyers can enjoy the right of independent defense; It will be an urgent countermeasure to ensure the defendant's right to appeal by handling the appeal separately in the next stage of the system of pleading guilty and admitting punishment.

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