

# The Expanded Application of Conditional Non-prosecution System in the Era of Petty Crimes

Jiayue Zhang

Shanghai University of Political Science and Law, China

## ABSTRACT

In response to the new changes in the crime structure under the background of the era of minor offenses, it is necessary to expand and modify China's current conditional non-prosecution system. Currently, China's conditional non-prosecution system suffers from narrow scope of application and strict application conditions, making it difficult to achieve the aspirations of non-prosecution in judicial practice, and failing to realize the system's functions and values. This paper aims to transform the application of the conditional non-prosecution system in the context of minor offenses by addressing its scope of application, additional conditions, and probation periods, and advocates for oversight of its implementation.

## KEYWORDS

Minor Offense Governance; Conditional Non-prosecution System; Application Conditions.

## 1. INTRODUCTION

Crime Governance, as a crucial aspect of maintaining social security and public order, crime governance has traditionally relied primarily on criminal means, with a focus on severe violent crimes involving bodily harm. However, in the current era of minor offenses, characterized by a decline in the number of severe violent crimes and heavy sentencing rates, coupled with an increase in the number of minor crimes and light sentencing rates, this "double rise and double decline" trend necessitates a shift in the primary focus of crime governance towards minor offenses as an inevitable choice in pursuing effective crime governance. From the enactment of the Criminal Law in 1997 to the adoption of the "Amendments (XII) to the Criminal Law of the People's Republic of China" by the Standing Committee of the 14th National People's Congress on December 29, 2023, nearly three decades of criminal legislative activities have exhibited a marked one-way trend towards criminalization, raising concerns about potential violations of the principle of modesty in criminal law. While the twelve amendments to the Criminal Law have contributed to the gradual improvement of the Criminal Code, weaving a tighter criminal net than ever before to address the modern society's increasing risks, they have also led to rapid expansion of the scope of crimes and a surge in the number of criminal cases, posing new challenges and demands on the adaptability and efficiency of criminal proceedings among the general public. This paper explores the feasibility of the conditional non-prosecution system in the era of minor offenses, analyzes its legislation, application, practical limitations, and future development and improvement.

## **2. LEGISLATION AND APPLICATION OF CONDITIONAL NON-PROSECUTION SYSTEM**

In the context of the era of minor offenses, with the in-depth development of judicial practice and diversification of crime types, traditional prosecution and trial models appear overly harsh and rigid in some cases. As a more flexible and humanized judicial approach, the conditional non-prosecution system has gradually attracted widespread attention.

### **2.1. Historical Evolution of Conditional Non-prosecution System**

Originating in Western countries, the conditional non-prosecution system aims to educate, rescue, and rehabilitate criminal suspects by setting certain conditions, thereby preventing crime and reducing social confrontation. In China, the conditional non-prosecution system has also undergone a process from pilot projects to gradual promotion, particularly in juvenile delinquency cases where it has been widely applied.

Internationally, different countries and regions have varying regulations regarding the applicable objects and scope of the conditional non-prosecution system. For instance, Germany expanded its application from juvenile suspects to all individuals over 50 years, while Japan never restricted the applicable objects from the outset, considering only the nature, severity, and social repercussions of the case. The United States, while placing certain restrictions on applicable objects, grants prosecutors considerable discretion to decide whether to apply the system based on the specific circumstances of the case.

In contrast, China's conditional non-prosecution system is explicitly limited to juveniles. This regulation facilitated its stable operation in the initial stages of the system, but with the development of judicial practice, consideration can be given to expanding its applicable objects to better adapt to social changes and demands.

### **2.2. The Value of Conditional Non-prosecution System**

Firstly, it contributes to judicial efficiency. The conditional non-prosecution system embodies the juvenile justice policy of education, persuasion, and rehabilitation, aligning with individualized and socialized treatment paths. Not only does this system provide juveniles with opportunities for repentance and reduced likelihood of recidivism, but it also conserves judicial resources and enhances judicial efficiency. In the era of minor offenses, the average annual proportion of heavy sentences has declined consecutively since 2012, falling below 10% in recent years, while the proportion of minor offenses accounts for 80% to 90%. The judicial costs and efforts invested in minor offense cases are undoubtedly substantial, with corresponding social benefits difficult to quantify. Failing to differentiate litigation processes between minor and serious offenses would amount to a waste of social resources and unnecessary judicial pressure.

Secondly, the system underscores the subjectivity of offenders. Blindly convicting offenders of minor offenses may be unjust, especially considering that a significant portion of newly enacted minor offenses in China infringe upon the broader concept of social order, which the public finds harder to comprehend compared to conventional property losses and bodily harm. Moreover, considering the significant development disparities across regions in China, judging offenders' actions solely based on a single standard is prone to criticism and fails to effectively correct and guide behavior. Therefore, appropriately applying the conditional non-prosecution system to minor offense cases offers offenders a second chance at correction, guiding their behavior through the imposition of probationary periods and related obligations, thereby encouraging them to actively fulfill their social responsibilities and reduce the risk of recidivism.

Furthermore, the conditional non-prosecution system promotes social harmony and stability, enhancing public trust in the judiciary.

### **3. PRACTICAL LIMITATIONS OF CONDITIONAL NON-PROSECUTION SYSTEM**

Despite its significant role in judicial practice, the conditional non-prosecution system faces practical limitations. Firstly, its scope of application is relatively narrow, limited to juvenile offenders who may be sentenced to imprisonment of up to one year for certain types of crimes under China's new Criminal Procedure Law. This scope may fail to cover all minor offense cases eligible for conditional non-prosecution.

Secondly, the scope of application is stringent, primarily applicable to offenses punishable by imprisonment of up to one year, excluding numerous offenders with minor offenses and low social danger. Considering recent criminal legislative activities, many offenses punishable by imprisonment of up to three years pose relatively limited social harm, necessitating their inclusion within the scope of the conditional non-prosecution system.

Finally, the decision on conditional non-prosecution lacks stability. Its outcome essentially treats the offender as innocent, ostensibly embodying the humanity and modesty of the law but failing to fully realize its educational function. It struggles to guide and educate offenders' behavior and thought, making it susceptible to challenges and questioning from stakeholders like public security authorities and victims.

### **4. DEVELOPMENT AND IMPROVEMENT OF CONDITIONAL NON-PROSECUTION SYSTEM**

#### **4.1. Restricted Scope of Application**

Expanding the advantages of the conditional non-prosecution system in the era of minor offenses is reasonable but should be limited to avoid unpunished offenses. Specifically, adults potentially sentenced to imprisonment of up to three years should be included. Globally, the scope of conditional non-prosecution is not limited to juveniles, and China's current restriction primarily stems from concerns about the abuse of prosecutorial discretion by procuratorial organs. After years of development, judicial practice, especially at the grassroots level, has expressed a strong demand for expanding the applicable objects of the conditional non-prosecution system, perhaps indicating the maturity of conditions for amending relevant legal provisions. Therefore, it is recommended to broaden the scope of the conditional non-prosecution system to include some adult offenders of minor offenses, with priority given to those who infringe upon orderly legal interests and commit less severe offenses. Additionally, the additional conditions and probation periods for adult minor offense cases under the conditional non-prosecution system should differ from those for juveniles.

#### **4.2. Educational Nature of Additional Conditions**

The core of the conditional non-prosecution system lies in educating, rescuing, and rehabilitating criminal suspects through the imposition of certain conditions. Therefore, emphasis should be placed on their educational nature when formulating additional conditions. Specifically, individualized conditions such as community service, psychological counseling, and vocational training can be tailored to the suspect's age, personality, and cause of crime, facilitating better recognition of mistakes and behavioral corrections.

Internationally, countries typically impose educational conditions within the conditional non-prosecution system, aiming to educate, rescue, and rehabilitate criminal suspects. China can draw

upon this practice, focusing on the educational nature of additional conditions and formulating personalized conditions based on suspects' specific circumstances. Simultaneously, enhanced coordination and cooperation with other related systems, such as community correction and psychological counseling, can better achieve the goal of educational rescue.

### **4.3. Adaptability of Probation Periods**

The probation period is a crucial aspect of the conditional non-prosecution system. It should be adaptable, taking into account factors such as the suspect's specific circumstances, the nature of the offense, and circumstances to ensure a balance between achieving educational rehabilitation and avoiding undue leniency or severity.

When setting the probation period, full consideration should be given to factors such as the suspect's subjective malice, personal danger, past performance, and support conditions. Specifically, the length of the probation period can be determined comprehensively based on these factors to ensure it achieves educational rehabilitation without being overly lenient or strict.

### **4.4. Implementation and Oversight of Conditional Non-prosecution System**

The implementation of the conditional non-prosecution system requires rigorous oversight mechanisms to ensure its fairness and effectiveness. This includes internal oversight by procuratorial organs, external oversight by the public, and information transparency. Firstly, procuratorial organs should fully consider opinions from public security authorities, victims, criminal suspects, and their legal representatives or defenders when deciding on conditional non-prosecution to ensure fairness. Secondly, procuratorial organs should regularly assess suspects' performance during the probation period to ensure compliance with additional conditions. Finally, for suspects who perform well during the probation period and meet the conditions for non-prosecution, procuratorial organs should promptly make non-prosecution decisions and notify all relevant parties.

Additionally, to ensure transparency, procuratorial organs can establish open and transparent information-sharing mechanisms, enabling the public to understand the system's operation. Meanwhile, the public and media can oversee the implementation of the conditional non-prosecution system and offer constructive opinions and suggestions.

## **5. CONCLUSION**

The conditional non-prosecution system, as a flexible and humanized judicial approach, holds significant importance in the era of minor offenses. In particular, as the era of petty crimes quietly arrives, the intensive research into the inherent nature of statutory offenses embodied in petty crimes has urged contemporary criminal law scholars to devise corresponding procedural designs for litigation processes. These designs aim to emphasize the educational aspects of criminal law, while preserving its inherent behavioral guidance function, thereby encouraging members of society to live within the legal framework rather than being pushed in the opposite direction. This endeavor necessitates greater systematic thinking.

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