

# Study on the Sentencing Recommendation System under the Plea Leniency System

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**Abstract:** The most important part under the plea leniency system is the sentencing recommendation system, which as a heirloom culture is controversial but has the necessity and feasibility in judicial practice. The practical application of this emerging system in China has likewise given rise to many problems, such as varying standards of leniency, lack of experience in sentencing recommendations by the procuratorial authorities, and overly formalized participation by duty lawyers in terms of effectiveness, resulting in obstacles for the supervisory authorities in making sentencing recommendations. Therefore, it is necessary for us to study the sentencing recommendation system so as to guarantee the dual realization of the sentencing recommendation system in terms of procedure and substance.

**Keywords:** Guilty plea; Sentencing recommendation; Leniency; Sentencing negotiation

**Fund project:** Note: this paper is the final result of the postgraduate innovation project of Anhui University of Finance and Economics; Project Number: ACYC2019333; Project Name: Reviewing and Improving the Plea-Based Leniency System; Project leader: He Dongping; college: Law School.

## 1. Theoretical basis of the sentencing recommendation system

### 1.1 The concept of sentencing recommendation system

The time point of sentencing recommendation is after the beginning of public prosecution, which is a competence exercised by the prosecution. The establishment of this system is based on the fourth model of the development of the criminal procedure system proposed by Xiong Qihong, that is, the "abandonment of the trial model". In the process of public prosecution, the defendant is faced with two major procedures: conviction and sentencing. In effect, unlike the court's decision, the sentencing recommendation is not final, but is merely a strong statement of the defendant's specific degree of responsibility. In contrast, the importance of sentencing recommendations made by the prosecutor's office in cases related to guilty pleas cannot be overlooked, and are recognized by law as binding on both the court and the defendant.

### 1.2 Characteristics of the sentencing consultation system

(1) The premise must be that the person being prosecuted voluntarily and truthfully confesses to the crime. (2) the sentencing negotiation in the dominant position of the prosecution (3) the main body of the sentencing negotiation is the public prosecutor and defense counsel. (4) the specific content of the consultation can only be about the sentencing part, and the sentencing circumstances must be independently evaluated. (5) the results of the consultation is usually issued in the form of a letter of closure.

## 2. The purpose of establishing the sentencing recommendation system

### 2.1 Saving judicial resources

In terms of substance, the pursued person's choice to plead guilty and punish saves the resources of the Ministry of Public Security, which investigates the facts of the case, as well as the supervisory department; in terms of procedure, pleading guilty and punishing shortens the process and time of litigation and saves the resources of the court. As a whole, the pursued person's choice to plead guilty and apply the sentencing recommendation system has brought obvious resource savings to the overall judicial activity.

### 2.2 Implementing Restorative Justice

The ultimate goal of restorative justice is to repair the various social relationships damaged by criminal behavior, not just to punish criminals. Therefore, the sentencing recommendation system is carried out in a relatively calm mode rather than the highly confrontational courtroom mode. This is because after the pursued person has received a sentence recommendation, his or her guilt toward the victim will be reduced to a certain extent and he or she will think that he or she has been punished, but the sentence is not the same as relief for the victim, and there may even be situations where the victim is harmed twice. Therefore, it is difficult for defendants to reflect deeply on the social stability they have destroyed and the harm they have done to others, and they do not receive redemption in the true sense, while restorative justice is a turning point to change this dilemma. In the sentencing recommendation system, it is the pursued person's attitude of confession and repentance, apology and reconciliation with the victim as the standard of

leniency, which requires the pursued person to be sincerely repentant so that the victim's rights and interests can be best compensated.

### **3. The problems of the sentencing recommendation system**

#### **3.1 Insufficient legitimacy of sentencing recommendations**

The sentencing recommendation is also not binding on the prosecutor. From the existing law in China, it seems that the remorse of the prosecuted person after signing the plea agreement can also be fully protected. The situation of the defendant's remorse not only includes the defendant's refusal to plead guilty or refuse to plead guilty after pleading guilty, but also includes the defendant's refusal to plead guilty after pleading guilty and not satisfied with the proposed sentence. This situation not only fails to save judicial resources, but also greatly reduces judicial efficiency.

The law does not stipulate that the court must comply with the sentencing recommendations of the supervisory organs, but only in principle can listen to the recommendations, and the supervisory organs are allowed to modify the sentencing recommendations several times before the verdict, which leads to the supervisory organs usually maintain a negative attitude in the process of modifying the sentencing recommendations, which not only brings uncertainty to the court's sentencing, but also gives the court's judicial This not only brings uncertainty to the court's sentencing, but also adds a large burden to the court's judicial work.

#### **3.2 Substantive law has constraints on sentencing recommendations**

There is a duplication of evaluation between sentencing recommendation and surrender and confession. The leniency of the procedural law for plea of guilty and punishment is obviously greater than the leniency of the substantive law for surrender and confession. Pleading guilty and pleading guilty can also be used as a separate mitigating circumstance to affect sentencing, only pleading guilty but not pleading guilty should also be treated with leniency, but the range of leniency is significantly lower than that of pleading guilty and pleading guilty. Therefore, in order to meet the substantive law of confession, but also to meet the procedural law of pleading guilty to punishment, how to deal with a greater degree of leniency becomes no legal basis. From the substantive law, the illegality of the defendant's behavior should be determined after the end of the crime, will not be changed because of after-the-fact behavior, and the main purpose of the application of the plea is to save judicial costs, which conflicts with the quasi-base sentence provided by the substantive law.

### **4. The path to improve the sentencing proposal system**

#### **4.1 Clarify the independent status of plea of guilty and punishment**

Plea of guilty should be treated as an independent sentencing circumstance in the substantive law, because the Criminal Law has provided that criminal punishment can be reduced or exempted due to subsequent atonement, and such legal provisions are in essence in line with the core value of plea leniency, which is to repair the damaged social order and compensate the victims, so the plea of guilty as an independent circumstance has its jurisprudential basis.

Refine the definition of guilty plea, surrender and confession. The plea system requires the appellee to voluntarily and truthfully confess guilt, which obviously coincides with the provisions of the substantive law on surrender and confession, which require the suspect to truthfully confess the facts of his crime, and there is a great deal of competition between the two. Therefore, the plea of guilty and confession are refined to prevent double evaluation of a criminal act.

#### **4.2 Establishing a sound supervision mechanism**

In plea cases, the judge usually adopts the prosecutor's sentencing recommendation, and the prosecutor's opinion is particularly important at this time. Therefore, it is necessary to establish a sound assessment mechanism for sentencing recommendations, so as to supervise the legality of the procedure and the legitimacy of the content of sentencing recommendations and prevent the occurrence of abuse of power.

At the same time, the victim's right to supervise the sentencing recommendation process should be guaranteed. Although saving judicial resources is the first goal in plea cases, it is equally important to repair social relations as well as to compensate for the victim's violated rights and interests. This right of supervision should include the right to know and the right to object. First of all, the right to be informed includes knowing the progress of the entire plea procedure, and the results of the plea should be informed to the victims. But being informed is not the same as having no objection, so the victim should also have the right to object, not only to the plea process, but also to the final sentencing recommendation.

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