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Application Rules and Procedural Construction of Conditional Non-prosecution for the Crime of Drunk Dangerous Driving

Mingxu Han

School of ArtificiaIntelligence Law, Southwest University of Political, Chongqing, China
2769056030@qq.com

Abstract: Entering the era of minor offenses, China has begun to construct an efficiency oriented system for the governance of minor offenses. In recent years, the number of cases of drunk dangerous driving has surged, but some cases have minor circumstances and the subjective malice of the perpetrators is low. If criminal responsibility is pursued uniformly, it will waste judicial resources and exacerbate social conflicts. The conditional non prosecution system, as a practical path for mitigating punishment, provides a new judicial transfer path for the handling of drunk dangerous driving crimes. This article takes the crime of drunk dangerous driving as the research object, and combines typical cases to systematically explore the applicable boundaries and procedural construction of conditional non prosecution. In theory, this system is supported by the theory of individualized punishment and the concept of restorative justice, emphasizing differentiated treatment of minor crimes, and revealing its legitimacy basis through comparative legislation at home and abroad. Research suggests that the reasonable application of conditional non prosecution in the crime of drunk dangerous driving can balance judicial efficiency and fairness, and promote the return of offenders to society. In the future, it is necessary to refine the applicable standards and optimize the supervision mechanism through legislation to achieve the dual unity of legal and social effects.

Keywords: Drunk dangerous driving crime, Conditional non prosecution, Applicable boundaries, Procedural construction, Lenient punishment.

1. Introduction

In recent years, the criminalization of criminal offenses in China has shown a trend towards lighter offenses. For example, in the field of drunk dangerous driving crimes, data from a certain procuratorial organ shows that in cases where the blood alcohol content has just reached the standard of 80mg/100ml and no actual damage has been caused, about 40% of the defendants have been sentenced to detention and fined, which has sparked controversy between "mechanical justice" and "labeling effect". This kind of "one size fits all" accountability model not only exacerbates the shortage of judicial resources, but may also lead to obstacles for criminals to return to society, which goes against the concept of lenient punishment [1]. Based on the above practical difficulties and theoretical controversies, this article focuses on three core issues: firstly, how to prove the legitimacy of conditional non prosecution through the theory of individualized punishment and the concept of

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restorative justice? Secondly, how to construct applicable boundaries that cover subjective malignant assessment, quantification of social harm, and other elements? Thirdly, how to design a progressive procedure of "investigation hearing investigation" to balance efficiency and fairness?

2. Theoretical basis for conditional non prosecution of drunk dangerous driving crime

2.1. Basic concepts and definitions

As the core objective element of this crime, the criteria for determining "drunkenness" vary significantly among different countries. China adopts a single numerical standard, which means that a blood alcohol content (BAC) of ≥ 80mg/100ml constitutes the basis for criminal prosecution. In the perspective of comparative law, the standard in various states of the United States is generally 80mg (0.08%), but Utah adopts a strict standard of 50mg; Article 316 of the German Criminal Code stipulates that BAC ≥ 110mg constitutes an abstract dangerous crime [2]; Japan distinguishes between a two-level punishment system for "drunk driving" (BAC ≥ 30mg) and "drunk driving" (BAC ≥ 80mg) [3]. This difference reflects the value balance between protecting legal interests and safeguarding human rights in various countries - the "zero tolerance" policy represented by Germany emphasizes the priority of traffic order, while China's current standards reflect a moderate tolerance legislative orientation. At the same time, the behavioral elements of this crime need to be defined from the dual dimensions of physical space and behavioral form: the physical level requires "driving a motor vehicle on the road". According to Article 119 of the Road Traffic Safety Law, "road" covers highways, urban roads, and the jurisdictional areas of units that allow social vehicles to pass through; There is a normative dispute between "abstract dangerous crimes" and "specific dangerous crimes" in terms of behavioral patterns [4]. China adopts an abstract dangerous crime legislative model, which assumes the existence of a dangerous state as long as it meets the BAC standard, without the need to prove the actual harmful consequences. Section 4 of the 1988 Road Traffic Act in the UK stands in stark contrast to the former, which requires proof of significant impairment of driving ability due to alcohol; Some state laws in Australia have refined 'dangerous driving' into specific types of behavior such as speeding by 50% or more and snake driving.

Conditional non prosecution refers to the system that the procuratorial organ suspends prosecution of suspect who meet legal conditions after setting a certain test period and attaching specific conditions (such as compensation for losses, participation in public service, etc.). In the current Criminal Procedure Law of our country, conditional non prosecution is mainly applicable to juvenile crimes, but in recent years, judicial practice has gradually expanded to include minor crimes such as dangerous driving. For example, after the implementation of the 2024 Opinions, the procuratorial organs have made non prosecution decisions for more than 30000 cases of minor drunk driving, and strengthened administrative penalties through the execution linkage mechanism, reflecting the practical value of conditional non prosecution.

2.2. Legitimacy basis for conditional non prosecution

The theory of individualized punishment emphasizes the flexible adjustment of punishment application based on the individual circumstances, harmfulness of behavior, and repentance of the offender. For the crime of drunk dangerous driving, if the perpetrator has a low alcohol content and no malicious circumstances, the mechanical application of imprisonment may have a negative effect of "criminal labeling", while conditional non prosecution can achieve a balance between punishment and correction by setting alternative measures such as social services and driving bans [5]. For example, the Opinion stipulates that for individuals with a blood alcohol content of 150-180 milligrams and no adverse circumstances, probation can be applied. If the perpetrator actively

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compensates and pleads guilty to punishment, it further conforms to the individualized discretion logic of conditional non prosecution.

Restorative justice focuses on repairing social relationships that have been damaged by criminal behavior, emphasizing the compensation of the perpetrator to the victim and the community. In drunk driving cases, conditional non prosecution can be achieved by requiring the perpetrator to participate in traffic safety publicity, compensate for accident losses, and other means to encourage them to actively take responsibility and restore social trust [6]. For example, in a joint crime case of dangerous driving tried by the Songzi City Court in Hubei Province, the two defendants were sentenced to probation and a fine for pleading guilty and actively handling the accident, reflecting the practical application of restorative justice. In addition, the Opinion requires the procuratorial organs to strengthen the promotion of legal knowledge and prevention at the source of drunk driving cases, further highlighting the social governance function of the system.

2.3. Comparison of domestic and foreign legislation and practice

The conditional non prosecution system in China initially only targeted juvenile delinquency, but with the advent of the era of minor offenses, achieving effective governance of minor offenses has become a major issue in the modernization of Chinese criminal litigation. This background has activated the minor offense governance function of the conditional non prosecution system, and at the same time, it has been promoted by the paradigm shift of the modernization of the national minor offense governance system, expanding its exploration to adult minor offense cases [7]. For example, the 2024 Opinion specifies that administrative penalties will be given priority for minor drunk driving behavior, and only cases that meet specific conditions will be prosecuted. At the same time, the "execution linkage" mechanism will ensure full coverage of legal responsibilities. In addition, the Supreme People's Procuratorate issued a notice on deepening the implementation of the new regulations on drunk driving and promoting legal governance, requiring procuratorial organs at all levels to strengthen the review standards for drunk driving cases and actively promote the coordinated application of the conditional non prosecution and leniency system for confession and punishment.

The "conditional non prosecution" system in Germany can provide important reference for China. This system allows prosecutors to terminate the procedure after attaching conditions such as performing public service and compensating for losses to minor crime cases, and its scope of application covers adult crimes [8]. For example, in Germany, dangerous driving cases often require the perpetrator to attend traffic education courses or complete community service as an alternative to punishment. Compared to other countries, China's conditional non prosecution policy is still limited by its narrow scope of application and a single set of conditions. In the future, we can learn from Germany's experience and clarify the applicable standards for adult misdemeanors in legislation, and enrich the corrective measures during the probation period. For example, measures such as compulsory alcohol treatment and the installation of alcohol locks can be added to enhance the flexibility and effectiveness of the system.

3. Application rules for conditional non prosecution of drunk dangerous driving crime

3.1. Clarification of applicable conditions

The application of the conditional non prosecution system needs to be based on a clear framework of conditions, reducing the harm of arbitrariness and non standardization in judicial practice. Firstly, the subjective malice and repentance of the perpetrator are the core evaluation dimensions. Subjective malice needs to be comprehensively judged from the motivation of drunk driving, whether one has a professional driving identity, and the ability to control behavior after drinking. The manifestation of

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repentance needs to be verified through specific behaviors such as whether the perpetrator truthfully confesses, voluntarily compensates for losses, and signs a commitment to quit drinking. For example, a prosecutor's office in a certain district of Beijing once handled a case where the perpetrator had a blood alcohol content of 85mg/100ml. As the perpetrator voluntarily parked in a safe area and tried to contact a chauffeur but was unsuccessful, it was ultimately determined that their subjective malice was low and they were eligible for conditional non prosecution. Secondly, the severity of the criminal circumstances needs to be quantified through objective standards, which can draw on the judgment logic of "absolutely no danger" in the German Criminal Code, taking into account factors such as blood alcohol content threshold, driving distance, and spatiotemporal environment. Finally, the assessment of social harm needs to break through traditional result oriented thinking, introduce dynamic risk assessment models, and combine variables such as the type of vehicle driven by the perpetrator, real-time traffic flow on the road, and whether minors are carried for weighted calculation, in order to avoid judging solely based on whether actual damage has occurred.

3.2. Limitations on scope of application

To prevent conditional non prosecution from becoming a "privileged channel", strict exclusion rules must be established. Firstly, the inapplicable situations should cover two core scenarios: one is drunk driving causing personal injury or significant property damage, such as collision protection barriers causing losses of more than 100000 yuan; The second is that the perpetrator has engaged in obstruction of justice such as evading inspection and forging evidence. In a typical case released by the Zhejiang Provincial High Court in 2022, the defendant fled after colliding with a police car, even though the alcohol content was only 90mg/100ml, and was still excluded from the conditional non prosecution. Secondly, the exclusion of multiple instances of drunk driving requires a "zero tolerance" stance. According to the legislative experience of California's "lifetime ban on drunk driving for three times", individuals who engage in drunk driving twice or more within five years should be held criminally responsible, regardless of the severity of the circumstances, in order to strengthen the deterrent effect of punishment [9]. In addition, professional drivers, such as school bus drivers, should also be strictly restricted in their application due to their involvement in special areas of public safety.

3.3. Standardization of judicial discretion

The exercise of discretionary power by the procuratorial organs needs to follow the principle of "dual constraint", which is specifically reflected in the "legal norm constraint of the boundary of discretionary power" and the "supervision mechanism constraint of the power operation process". Both construct a three-dimensional constraint framework for discretionary power from the perspectives of substantive rules and procedural control. At the level of discretion boundaries, it is necessary to establish a guidance mechanism that combines a "positive list" and a "negative list": the former clarifies the specific circumstances and evidence standards that can be applied, while the latter lists rigid clauses that must be prosecuted. For example, the procuratorial organs of Jiangsu Province have incorporated 20 indicators such as blood alcohol content and accident liability ratio into the quantitative scoring system through the "Guidelines for Non prosecution of Drunk Driving Cases", achieving a dual layer filtering of "machine screening cases+manual review". In terms of mechanisms to prevent abuse of power, we can learn from Japan's "prosecutorial review committee" system and establish a third-party supervision committee composed of National People's Congress deputies, legal experts, and community representatives to conduct compliance reviews on cases that are proposed to be conditionally non prosecuted. We can also build a "sunshine justice" barrier through technical means such as legal document public opening and recording of hearing processes.

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The "legal norm constraint" achieves the "rule of law" through positive and negative lists, while the "supervision mechanism constraint" achieves the "rule of procedure" through external participation and technological transparency. Together, they form a "rigid constraint flexible balance" system of prosecutorial discretion, which not only avoids mechanical justice but also prevents arbitrary power.

4. Procedural construction of conditional non prosecution for the crime of drunk dangerous driving

4.1. Conditions and main body for program startup

The initiation of the program should follow a dual track model of "prosecutor led and party involved". The proactive review by the procuratorial organs needs to rely on the big data intelligent screening system to complete preliminary filtering within 48 hours after accepting cases, and initiate evaluation procedures for cases that meet basic conditions such as blood alcohol content threshold and no accident liability. At the same time, the perpetrator should be granted the right to apply and be allowed to initiate a special review procedure by submitting written materials, medical proof of alcohol withdrawal, and other evidence. For example, the "Intelligent Assistance System for Drunk Driving Cases" developed by the Pudong New Area Procuratorate in Shanghai can automatically identify cases that meet the application conditions through algorithms and push notification letters, which not only guarantees the exercise of rights but also avoids program idling.

4.2. Specific design of the program

The program operation requires the construction of a "trinity" progressive framework: firstly, social investigation and risk assessment should be led by judicial administrative organs, introducing tools such as psychological assessment scales, family guardianship ability assessments, and community correction feasibility surveys, to form a risk assessment report containing 30 indicators. Secondly, the introduction of the hearing procedure needs to break through the formalism and follow the German "consultative justice" model, setting up mechanisms for "tripartite participation" (prosecution, perpetrator and their defense counsel, victim) and "two hearings" (factual determination hearing and investigation plan hearing), with a focus on reviewing substantive content such as compensation agreement performance and public service plans [10]. Finally, the establishment of a supervision and inspection mechanism requires the implementation of "classified management". For those with lower risk levels, a "loose supervision" approach of electronic wristband positioning and regular interviews should be adopted, while for those with medium to high risk levels, a "strengthened intervention" approach of alcohol treatment and community services should be implemented. For example, the personalized inspection plan of "30 hour traffic volunteer counseling+6 psychological counseling sessions" promoted in Shangcheng District, Hangzhou City.

4.3. Program termination and legal consequences

The termination stage of the program should embody the principle of "incentive compatibility" and adhere to the criminal policy of balancing leniency and severity. After the completion of the investigation period, the procuratorial organ shall organize an evaluation team composed of the investigation organ and community representatives to make a final decision based on the integrity of the actor's performance of obligations, the degree of re socialization, and other standards. When making a decision not to prosecute those who meet the standards, it is possible to explore the establishment of a criminal record sealing system to achieve limited elimination of criminal labels; For those who violate their inspection obligations, a tiered sanction system should be established. For the first violation, the inspection period can be extended and stricter obligations can be imposed. For

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serious violations, the conditional non prosecution decision will be immediately revoked and public prosecution will be initiated. In addition, the program rotation mechanism needs to be linked with the expedited procedure to ensure the unity of litigation efficiency and judicial fairness. The entire program construction needs to clarify the operational rules of each link through judicial interpretation, and strengthen the responsibility for handling cases through the internal assessment mechanism of the procuratorial organs, ultimately achieving the dual value goals of crime prevention and rights protection.

5. Conclusion

The application of conditional non prosecution for the crime of drunk dangerous driving is not only a manifestation of lenient punishment, but also a balance between judicial efficiency and fairness. This article analyzes its theoretical basis, applicable boundaries, and program construction, and proposes suggestions such as clarifying applicable conditions, optimizing program design, and strengthening supervision mechanisms. In the future, relevant legislation and practices should be further improved to ensure that the application of conditional non prosecution in the crime of drunk dangerous driving can achieve both legal and social effects.

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