

China's New Criminal Justice Policy of Having 'Fewer Arrests, More Careful Prosecution and Detention': Possible Impacts

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Abstract

In China, there has been a criminal justice concept of having fewer arrests and more careful prosecution and detention. The number of serious criminal cases decreases, criminal cases are mainly minor and nonviolent offences nowadays. This structural change in criminal cases requires a modest and restrained approach. Therefore, the concept of having fewer arrests, especially more careful prosecution and detention became a criminal procedure law policy in recent years to protect human rights, maintain social relationships and save judicial resources. This research is expected to help having a deeper understanding and better application of the new policy, by observing its impact on people's behaviors. The research will focus on the content and implementation of the policy and possible impacts on people's behaviors under economic principles. The legal issue would be the possible changes in people's behaviors under the policy. This research has a limitation in how the policy should be further approached. And the question of whether the benefit of implementing the policy would exceed the cost remains to be answered. But the recognized benefits of this new policy would significantly impact China's current legal and economic environment.

Keywords: Criminal justice, Fewer arrests, Criminal procedure

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1. Introduction

The concept of the 'fewer arrests, more careful prosecution and detention' policy has been around for many years (Supreme People's Procuratorate, 2023). But a serious implementation took place in recent years mainly because China has entered the era of misdemeanors (Enshen, 2025). The first section of the paper talks about the policy itself in its origins, purposes, and examples of application in real-life examples. As Chinese society develops, there are higher demands for fairness, equality, and safe environments. And as Chinese Criminal Procedural Law develops, there is more recognition of the value to protect individual rights including the offenders. The policy also aims to maintain stable social relations and save judicial resources (Lihai & Ting, 2022). In practice, the policy would not apply to all criminal cases. The application is restricted to certain cases that meet the threshold of certain criteria. To engage closely with course materials, the paper will focus on the specific application of the policy towards criminal cases where enterprise operators are involved.

The second section focuses on the possible impacts of the policy on different sectors. By constructing the economic model of crime and punishment, the number of crimes committed will be reduced if the expected costs of the crime exceed its expected benefits. However, the policy seems to be decreasing the expected costs of committing crimes in a rough look, which would lead to an increase in the benefit of committing a crime. And we face a possibility that more crimes would be committed because of the policy. Nevertheless, the analysis of the policy suggests that it might not be the case because of the limited scope and the actual implementation of the application of the policy. But there could also be other social costs generated from the policy, including the reallocation of judicial powers and the level of discretion granted, which will also be assessed in the third section. The overall finding is that the social benefit will likely exceed social costs since the policy does not change how the law operates but rather governs the authorities to recognize more rights and new values that may not seem so important in history. But a close follow-up and developments would be required as the implementation of the policy takes place in future years.

The third section touches on the limitation of the paper while assessing the policy and its impacts. Not only do we obtain little information and insights on the topic, but also the data could be limited to show relationships that we are expecting to see. But in general, the execution of the policy resembles an expectation the government has

for the legal environment of criminal investigations and prosecutions. Especially after the pandemic the world has experienced in the past years, the economy and social stability have been challenged in the country.

In conclusion, the policy would likely be serving its aimed purposes without undermining the criminal procedure law too much. But it would require further implementation and study to determine the overall impacts more precisely. And the issue of how the policy should be approached in the future remains to be discussed.

2.0 The Policy

The ‘fewer arrests, more careful prosecution and detention’ policy is a new policy introduced in China in 2021. In the beginning, the Chinese Supreme Procuratorate has already proposed a similar policy idea for crimes committed by minors under 18 and private entrepreneurs. Now, the policy is promoted to apply to everyone who commits crimes under certain categories. The ideology of this policy can be traced back to the time of Mao Zedong in his publication and speech (Yong, 2022). During the Second Sino-Japanese War, Mao Zedong in his publication 《论政策》 had already reflected on ‘fewer arrests and no killings’ to unite people and persist the resistance against Japan. In 1962, Mao Zedong mentioned that ‘to better unite the party and the people, there should be less arrest and less killing, we must not arrest those who can be either arrested or not and we must not kill those who can be either killed or not’. The concept has been well-recognized, and it is expected to help unite people and maintain social relationships.

Besides the underlying purposes of the new policy, one important reason to reinforce the policy is that the number of cases prosecuted for serious violent crimes has dropped from 108,000 to 59,000 people from 2013 to 2022. The non-arresting rate increased from 17.9% to 39.2% since 2013, and the non-prosecution rate increased from 4.9% in 2013 to 32.7% in 2022. Solely in 2022, the non-arresting rate has increased by 11.1% from January to March (Supreme People’s Procuratorate, 2022). The proportion of serious violent crime and minor crime has changed significantly. Even though the total amount of crime committed may continue to increase, the percentage of serious violent crimes has dropped, and the percentage of minor crimes has been increasing every year (Shengming, 2022). With such a significant change in the criminal case structure, it is necessary to introduce and implement this new policy because it would have an obvious impact from now on.

2.1 The Application

By law, the ‘fewer arrests, more careful prosecution and detention’ policy is mainly applicable to the following categories of cases:

- 1 Minor criminal cases may result in a sentence of less than three years imprisonment;
- 2 Less serious offences that may be sentenced to more than three years imprisonment but are negligent crimes, first time committing an offence, incidental crimes, or accomplice in a joint crime;
- 3 Cases that the defendant pleads guilty and is punished without any egregious circumstances;
- 4 Cases that will not cause social harm by not detaining minors, elders, students in school, researchers in key positions of major research projects, and business operators.

Even if the policy is deemed to be applicable, it also depends on other factors as well. ‘Fewer arrest’ emphasizes the need for the procuratorial organ to examine whether an arrest is necessary. This requires a comprehensive consideration of different measures including available evidence, social risk, physical condition, and other possible factors of the suspect. ‘Careful prosecution’ aims to have the prosecutorial organ consider the necessity of prosecution. There is no need for further prosecution if non-prosecution is more conducive to safeguarding the public interests and interests of the defendant and the victim, promoting economic and social development, and repairing social relations after considering the case circumstances. ‘Careful detention’ addresses the necessity of continued detention after the arrest. The review of the necessity of detention evaluates whether the obtained evidence would support a decision to arrest the accused. It aims to solve the problem of extended detention so that people will not turn out to be arrested longer than they are required under the law.

2.2 Aimed Purposes

2.2.1 Protecting Human Rights

With the rapid economic growth and shifts in social contradictions, there are higher demands for fairness, justice, and human rights protection within criminal proceedings. Before the accused is charged with a criminal offence, he or she is not guilty. And at this stage, their rights should not be unreasonably restricted. The policy would help to eliminate unnecessary arrests and therefore violations of the human rights of the accused. At the same time,

fewer arrests and cautious detention can help to reduce the burden on judges to prevent them from aggravating criminal punishment to avoid the consequence that the prison term may turn out to be longer than the accused's final sentence. It is about finding the optimal position that balances the values of punishing crimes and protecting human rights.

2.2.2 Maintaining Social Relationship

The structure of criminal cases has changed in China. From 1999 to 2019, the number of serious violent cases prosecuted by procuratorial authorities across the country has dropped from 162,000 to 60,000, an average decrease of 4.8%. The proportion of people sentenced to more than three years imprisonment has dropped from 45.4% to 21.3%. And cases sentenced to less than three years imprisonment have increased from 53.9% to 77.4%. The data suggests that the portion of serious violent crimes is decreasing. Compared with natural crimes such as violent injury, robbery and rape, most statutory crimes are less detrimental to society. It would have good legal and social effects to have fewer arrests.

2.2.3 Saving Judicial Resources

Having necessity reviews before prosecution and detention helps to save judicial resources. Public expenditure can be reduced by reducing the number of pre-trial detentions for perpetrators of minor cases, shortening the detention time, reducing the number of detainees, and reducing the work burden on supervisory places. The costs of imprisonment include 'not only the cost to the prisoner being miserable, but also the expense of building and operating prisons, and a loss of productivity of the offender during the period of incarceration' (Stephen, 2019).

However, the prosecutorial authority is required to have a public hearing for almost all cases that would be decided to be non-arresting or non-prosecuting. Even though a court trial may be avoided, a public hearing will take place to settle subsequent issues such as confession, compensation, or administrative punishments. It could be argued that it is not likely to have a net change in judicial costs. But the public hearing is necessary if the defendant is not prosecuted in the end. Not only will the hearing ensure the correctness of the non-prosecuting decision, but it also will settle issues that are not avoidable. Therefore, it might be controversial whether there would be a large saving on judicial costs. But in the long run, the reduction in the number of people being arrested and detained would likely decrease the cost to a degree that there would be an overall decrease in judicial costs. Even if the judicial cost is not reduced by a large amount, there are other benefits of having the policy.

2.3 Enterprise Operation under the Policy

The possible crimes committed by enterprises could be monopolizing the market, operating illegal businesses, or racketeering on behalf of the enterprises. It is important to punish these crimes. But at the same time, it is also important to ensure the regular operation and production of these enterprises for economic purposes.

1 In the past year, 306 responsible persons have not been arrested and 1381 responsible individuals have not been prosecuted in Anhui Province solely.

2 Jiangsu Province published 8 representing cases. One of them concerns a delay of detention during the peak season of the accused's business. The accused breeds and sells crabs. In June 2021, the accused organized people gambling, which constitutes a criminal offence in China. And he was under arrest at the end of July of the same year. However, his business has experienced a huge damage due to floods and the business is barely functioning. After the arrest, there will be no one in the family who knows how to breed crabs and operate the business. More importantly, the peak season of crabs is coming in just a few months. There will be a great loss to the business by not being able to participate in the peak season. Because of the arrest, the operation has been worse, and workers are not able to get paid. If the business shuts down, there will be an additional cost of workers reallocating themselves to other workplaces. Workers in this industry usually acquire specific skills to this industry and it would be hard for them to be employed in other workplaces. As also mentioned in Spurr (2019), 'the reduction of the offender's productivity and earning capacity will lower the opportunity cost of crime and increase the likelihood that he will return to crime'. If the accused loses his business, it is more likely for him to return to crime. Under his application for bail pending trial, the prosecutor decides to exempt him from arrest during the time of his business operation. He would be sentenced and arrested after the end of the peak season.

3 There was also an enterprise producing walking treadmills, but more than 3,000 of them do not qualify for the required national standards for treadmills (Mei, 2023). If the manufacturer is found guilty of producing and selling inferior products, there will be a considerable amount of fines and 15 years imprisonment. To ensure the operation and production of the enterprise, the offender has been granted bail. And the prosecutorial authority

investigated and noticed that the walking treadmill produced by the enterprise is structured and operated differently from a normal treadmill. It is unreasonable to use the current national standards to assess whether the product is inferior. The producer is not prosecuted in the end. Rather than assessing the case circumstances in a court, the prosecutor engaged in an investigation in an early stage to prevent any further costs by having people and their enterprises involved in further judicial proceedings.

4 Another representative case concerns a criminal offence of polluting the environment by dumping hazardous waste (Suzhou People's Procuratorate, 2022). But this case is a counterexample where the policy will not be applicable due to the severity of its harmful impacts on the environment. The accused was reported and given an arrest warrant. Even though the final sentence will be under three years imprisonment, the policy is nevertheless not applicable.

There are also other cases concerning different business fields in the market. Within different cases, the offenders could be committing various types of offences, which could be related to the operation of their enterprises or completely unrelated offences. The assessment of any decision of whether to arrest, detain, or prosecute them depends on many factors. The prosecutorial authorities are required to have a closer investigation and examination of individual cases from an early stage of the cases. While the policy is designed to have several benefits, some externalities come with the application of the policy. It is important to recognize the potential impacts.

3.0 Possible Impacts

3.1 Economic Model of Crime and Punishment

According to the economic model of criminal behaviour, a person will commit a crime if the expected benefits of the crime exceed its expected costs.

$$\text{Cost of Punishment (magnitude*probability of being caught)} \\ \text{Benefit} > \quad \quad \quad + \\ \text{Direct Cost of the Crime}$$

If we wish to reduce the number of crimes, we need to reduce the expected benefits or increase the expected costs. Unlike the expected benefits, the expected costs are usually not apparent. The expected cost could be: '(1) the expected costs of punishment; (2) the opportunity cost of the individual's time and the physical risk involved; and (3) the expenses of supplies used in this occupation'. The 'fewer arrests, more careful prosecution, and detention' policy seems to have the effect of lowering the expected cost of committing a crime because it lowers the expected costs of punishment. Even though the policy is only applicable to certain categories of criminal cases and undertakes consideration of various factors, the expected costs would still be lowered and therefore affect how people behave after the implementation of the policy. We are going to focus on cases committed by enterprise operators, and there could be four scenarios:

- 1 The criminal activity is not caught;
- 2 The crime is captured but the offender is subjected to an exemption of both the custodial measures and the prosecution;
- 3 The crime is captured, and the offender will be prosecuted but subjected to an exemption of arrest and detention;
- 4 The policy is not applicable.

Under the first scenario, people would likely continue committing crimes because the benefit exceeds the cost a lot by not having the cost of punishment. The last scenario punishes the crime. The policy is not applied in these two scenarios so it will not have an impact on criminal behaviors. The second and third scenarios present how the policy can be applied in different ways. In the second situation, the expected cost of punishment is reduced to almost nothing because the offender will not be arrested or prosecuted. If the social benefits of a crime exceed its social cost, there is no reason to prevent it.

But in general, society should prevent crime if its social costs exceed its social benefits Referring to the polluting case, the social cost will be a detriment to the environment and the residents. The social benefit may be the

higher efficiency and lower cost for the polluter's business operation. But the benefit the enterprise is outputting is far from being equivalent to the social cost. It is harder for the environment to recover from pollution than when businesses could be spending more time and money on dumping their waste. Therefore, the crime should be punished even if the final imprisonment is less than three years. The policy makes criminal procedures more flexible in terms of punishing crimes. It also makes the criminal law system more efficient by allowing deeper compliance with economic rules of crime and punishment.

The crab selling case is another example of how the policy can flexibly punish crime and reduce social costs. In this case, the detention and prosecution are delayed for the enterprise operator to operate his business during the upcoming peak season. Even though punishment is still granted, a delay in the punishment reduces the social cost. The social costs of not delaying the punishment could include (1) a loss in the crab industry because the labour force is set, there will be fewer crabs in the market if the offender can output; (2) the unemployment rate would probably increase because the offender is highly likely to lose his business so that there will be more workers looking for jobs; (3) a loss in tax collection, there will be less tax collected if the enterprise fails; (4) the prisoner being less miserable; and (5) decrease in the likelihood of the offender getting back to crime after his release. The offender would be less miserable if he had his business operating at least for a longer period. Additionally, there are also other benefits of delaying the offender's imprisonment. Even though the punishment is still imprisonment, the potential social benefits would be restoring the business and preventing an increase in the unemployment rate. In the end, the social benefits would likely exceed the social costs by having the delay because the intervention of the policy reduced the social costs.

In the past, given the relatively weaker controlling power of the procuratorial authority over the investigation process, some prosecutors might be afraid of the difficulties to obtain evidence from the police. Because of this, procuratorial authority tends to grant arrests and prosecute crimes immediately after the existing evidence seems to be sufficient to arrest. Provided the past practice of criminal procedure rules, the new policy would have a significant benefit if prosecutors were granted more discretion. Even though there could be other substantial impacts from the policy, the policy itself would positively impact society by reallocating the interests in recognizing new values.

3.2 Other Substantial Impacts

Not only the policy would change the behaviors of those who have the potential in committing a crime, but also it would be influential on the behaviors of the prosecutors, courts, and participants from different aspects of society. And these impacts could lead to even further changes in behaviors.

To notice, this paper only addresses the limited scope of potential impacts. The five major impacts are whether the policy would (1) connive crimes; (2) induce new crimes; (3) change the structure of the legal system; (4) grant too much discretion; and (5) provide enough remedies.

3.2.1 Conniving Crimes

It is possible that some applications of the policy would lead to the connivance of crimes by reducing the expected costs of the crime. A guiding case provided by Shanxi Province Procuratorate concerns an operator of several enterprises misappropriating funds from one of the firms he is representative of. The offender has been arrested but granted bail. Even though he was prosecuted and charged with three-year imprisonment, he is subjected to probation. In the end, there is no actual punishment. Even though the type of offence is not creating the same social cost as illegal gambling, polluting, or misappropriating public funding, reducing the expected cost of crime by applying the policy may increase the possibility of the offender returning to the previous crime. For the second time committing the same crime, it is unlikely that the policy will be applicable in the circumstances that the offender had a history of a similar offence. But the total social cost of having crimes is higher. Even though the punishment for the first crime does not guarantee that the offender will not return to crime, the expected cost of punishment would increase. The allocation of judicial resources would no longer be sufficient.

But the data collected in Jinhua, Zhejiang Province in 2021 suggests that there is no significant increase in the rate of people returning to crime after this city had the largest drop in the rate of pretrial detention and lowest rate of prosecuting minor crimes in Zhejiang Province. Not every person who commits a crime would necessarily return to any crime in the first place.

3.2.2 Inducing New Crimes

As the policy gives protection to the offenders, there would be a social cost of people losing their confidence and reliance on the legal system. In cases where the offenders are not convicted and punished, the prosecutorial

authority would need to consider the consequences of people trying to 'settle' the issue themselves by committing crimes outside the court. Such extreme circumstances may be rare because the policy is applied only to minor crimes so that the application of the policy would not create much hatred or revenge mentality. And it is unlikely that people would have extreme reactions, but there could be a change in the behaviors of not only people who wish to commit crimes but also those who may be victims or involved in the cases. Therefore, it is also important to completely solve the conflict and confrontation. And the application of the policy should be based on the consideration of whether the existing conflict can be resolved without further legal proceedings. When the policy is applied, the implementation should be able to help the parties to reach an agreement and pay for the damages if any so that it would eliminate unstable factors that may follow the decision.

3.2.3 Operation of the Legal System -- Switch in Judicial Roles

Before the authorities decide on whether it is necessary to lift an arrest, detention, or prosecution, they must assess individual cases at an early stage because the application of the policy needs to rely on evidence and reasonable grounds. A public hearing may be required. The procedure and reasoning undergoing the decisions are like what a court would have done: engage with the statutory provisions and case scenarios. The policy could be reallocating judicial resources.

However, one of the aims of the policy is to save judicial resources. And having prosecutorial authorities assess the case carefully before further prosecution can save judicial resources. Nevertheless, cases that should be prosecuted will proceed with a prosecution and conviction, and the assessment beforehand could reaffirm the importance of punishing the crime with the court. Even though the court has discretion on whether the offender should be convicted or sentenced, a careful assessment beforehand will decrease the probability of wrongly convicting crimes. For cases that would be considered applicable under the policy, judicial resources are saved by not having the court review and provide similar decisions. This could be problematic because there is now more discretion granted to prosecutors. But since the policy only applies in certain cases, the general operation of the legal system would not be affected much.

It is not precise to conclude that the court's function has been taken away by the prosecutorial authority because a case that is subject to non-prosecution will not appear in the court. And more importantly, not arresting does mean that there will be no punishment or imprisonment after the conviction. The policy concerns the necessity of arresting offenders that may not cause significant harm or those who generate social benefit by not being arrested. If the court concludes that the offender should be punished, the offender is not free from the punishment because of the application of the policy at the early stage. To better apply the policy, it requires different authorities including the police, prosecutor, and the courts to have a unified understanding and application of judicial standards and procedures.

3.2.4 Granting Too Much Discretion

It is argued that this policy is a retreat from rule by law to rule by man. And giving too much discretion could aggravate the effect of other potential impacts. If a decision is made without close investigation and serious consideration, the discretion of making the decision provides a higher chance of conniving and inducing crimes. Therefore, there is a high level of requirement and responsibility for the prosecutorial body. The prosecutor needs to be familiar with the policy and case circumstances and convict and sentence crimes correctly under the application of relevant standards.

However, the discretion is also limited to the extent that there will not be many applicable cases in the first place. And even if any discretion is wrongfully placed, the social cost is not expected to be extremely high because the application of the policy depends on the nature of the cases where most of which are not serious. But the expected cost should not be neglected because it is not high. It is important to increase the quality of the policy implementation and supervisory mechanisms to ensure that this newly introduced policy will achieve its designated objectives. And this requires more experience in applying the policy and guidance in exercising discretion.

3.2.5 Limited Remedies

By concept, the policy does not change the operation of criminal procedural rules. Cases that are proceeded to the court can be appealed by the offender or the prosecution and reviewed again by the original court or upper courts. The remedy issue seems to be irrelevant in such situations. But it is unlikely that the offender would be unsatisfied with a result of non-arresting or non-prosecution.

The rising issue is how would an improper application of the policy be spotted and remedied. Besides the prosecutors themselves being responsible for cases, it is important to have a remedy for wrongly applying the

policy. The court does not have the jurisdiction to review a case that has not been prosecuted in the court. Victims of a case are generally entitled to seek a reconsideration of the decision. The prosecution also has the right to revisit a case. But it is better to have clear guidance on how decisions can be remedied. Even though the concept of the policy has been around for many years, the implementation could encounter several challenges. It is important to follow up with the policy in the future to notice the overall impact.

4.0 Limitations

The policy itself is still in its early stage of implementation. As mentioned in the previous section, the policy could have many substantial impacts. Even though the policy has been designed based on great experience, there would be some limitations in implementation. We need to be aware of the potential limitations of the policy and be ready to react to unexpected effects.

The future collections of data could have limitations in addressing some issues. Firstly, a decrease in the number of cases prosecuted cannot necessarily indicate a change in the number of crimes committed. In other words, we do not assume a strong causal relationship between the policy and fluctuation in the number of crimes committed. Even though the policy is applicable only towards crimes that are not serious, the policy could have an impact on people's initiatives of whether to commit a crime in the first place. There will always be other reasons behind the crimes. This limitation can be understood by making an analogy with Zimring's study of the death penalty in Singapore. We have talked about how the peak was possible due to the administrative change for stricter enforcement of deadlines. Similarly, this new policy should be considered more as an administrative change in the application of current criminal procedure rules rather than a change in the nature of the rules themselves. The criminal procedure rules for arresting, prosecuting and detention remain the same. What has been changed is the balance of different interests and the purpose of the application of relevant criminal procedure law rules.

Secondly, even if we expect the new policy to be able to improve the quality of the prosecutorial process, the data in the first few years cannot fully indicate whether the policy has helped false convictions. But we can say that the policy would have helped to protect human rights and promote human rights. Whether the accused will be arrested, prosecuted, or detained in the end, a careful investigation and decision on arresting and prosecuting will protect the accused's human rights.

Thirdly, the previous section shows that the policy could help protect the production by enterprises and the activeness of the market in some cases. But this new policy is a criminal procedure policy, rather than a pure economic policy. Besides achieving its designated purposes, there may or may not have a direct effect on the operation of enterprises. It could be hard to derive a strong relationship between the policy and the wellness of the economy.

5.0 Conclusion

The paper has assessed the 'fewer arrests, more careful prosecution and detention' policy, which has not been a new concept in Chinese criminal law procedures. Data suggests that the structure of criminal cases has changed dramatically, which corresponds with the data from various cities and provinces. Therefore, an introduction of the policy is necessary.

Case examples are demonstrated to assess possible applications of the policy. The policy has social benefits, but it needs to be applied carefully to avoid incurring potential social costs. Even though there is limited information, the policy would likely bring a change into the legal system with an overall positive impact. Since the policy is not a retreat but rather an improvement for legal conviction and punishment, the expected benefit is likely to exceed the expected costs. But we need to be aware of other potential costs generated from any change in people's behaviors following the application of the policy. The prosecutorial authority is also required to have high quality in compliance with the policy.

When there are more case data, not only the data would help to improve the observation of this article, but also provide a clearer guide in the application of the policy. In future, further researches on the change pattern of people's behavior due to the policy can be conducted. Especially if there are differences in behavior patterns for different offences, and whether the prosecutor would treat different offences differently, in order to find the likelihood of application of the policy in cases and whether the policy can bring benefit in the long run.

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