

On the Impact of Precision in Sentencing Recommendations on Appeal Rates in Plea Cases

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Abstract: With the continuous development and improvement of the leniency system for guilty pleas and penalties in China, the study of sentencing recommendations within the system, which closely connects the prosecution, the defense and the trial, has also been continuously emphasized. From the development trend, determining the sentence is the main form of sentencing advice in the future. Moreover, precise sentencing recommendations will ultimately affect the appeal rate by influencing the prosecuted party, the trial party and the criminal process itself. Theoretically, the more precise a sentencing recommendation is, the more likely it is to be inconsistent with the final verdict and thus cause an appeal. However, in practice, through the research methodology of computational social science and the collection and collation of relevant data, it has been concluded that, under the same conditions, accurate sentencing recommendations are effective in reducing the appeal rate in guilty plea cases.

Keywords: Sentencing Recommendations; Leniency in Plea Bargaining; Determinate Sentence Recommendations; Case Appeal Rate.

1. Introduction

In recent years, the proportion of suggestion from prosecutorial organizations in procuratorial work has increased dramatically, from a relatively marginal position in procuratorial work in the past to one of the core areas today. According to the work report of the Supreme People's Procuratorate at the Fifth Session of the Thirteenth National People's Congress: throughout the year, the rate of application of leniency in pleas of guilty and penalties exceeded 85 per cent, the rate of adoption of sentencing recommendations exceeded 97 per cent, and the rate of first-instance judgements served was 96.5 per cent, which is 22 per cent higher than that of other criminal cases. It can be said that sentencing recommendations have gradually evolved into an important judicial system, both in the academic and practical fields. However, academic research on the sentencing recommendation system still remains at the theoretical level, with a relative lack of research on the various specific types of sentencing recommendations and the role they play in the various stages of criminal proceedings.

2. Appeal Rate in Plea Cases

From the earliest introduction of the judicial concept of plea bargaining into China to its formal institutionalization, standardization and inclusion in the Criminal Procedure Law of the People's Republic of China (CPL) in 2018, the plea-bargaining system has experienced various theoretical as well as practical debates, questions and dilemmas over the years. In fact, through the specific deconstruction of the system of leniency in plea bargaining, it can be seen that the relationship between the prosecution and the defence in China's criminal proceedings has gradually begun to move from confrontation to cooperation.

The core of the system of leniency for guilty pleas lies in the "plea", that is, within the limits of the law, the prosecution and the defence negotiate fully on the details of the facts of the case, the application of the legal norms, and the space for obtaining penal incentives to save the judicial process.

However, in order to fully protect the rights and interests of the parties involved in the criminal procedure, the defendant is given the right to appeal. In other words, the original intention of the plea-bargaining system was to realise the "simplification and streamlining" of the judicial process and the rational allocation of judicial resources by means of a simpler court trial, more efficient questioning and debating, and a significantly lower appeal rate. However, the value and significance of this reform will be undermined if the appeal rate in plea bargaining cases cannot be clearly and further reduced. The value and significance of the gradual refinement of sentencing recommendations is diversified, and the impact of the gradual refinement of sentencing recommendations on the appeal rate will be directly related to whether or not the reform of the system of leniency of guilty pleas can be fully realised.

3. Precision of Sentencing Recommendations in Plea Cases

Sentencing recommendations are the main mechanism of the procuratorial authorities to achieve lenient punishment, which affects the operation of the proceedings in plea and punishment cases. A sentencing recommendation in a guilty plea is a rigidly binding sentencing recommendation made by the procuratorate to the court. Plea in the sentencing recommendations and non-plea in the sentencing recommendations, compared to produce a number of new changes: sentencing recommendations of higher precision, sentencing recommendations on the court has special constraints, sentencing recommendations of the adjustment and supervision will be towards the systematic direction of improvement. Prior to this, China's theoretical and practical circles for the procuratorial authorities have a broad consensus on the sentencing recommendations, most of the views that the sentencing recommendations should be guaranteed to a certain extent, otherwise there will be contrary to the current litigation system, eliminating the court's jurisdiction, the impact of the "entity of the realism", and to lower the standard of proof and so on a series of dangers. This

point was also verified in the legal norms of that year: article 3, paragraph 1, of the Opinions on Several Issues Concerning the Standardisation of Sentencing Procedures (for Trial Implementation) issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice (now defunct) in 2010 stipulates that: "In cases of public prosecutions, the People's Procuratorate may make a recommendation on sentencing. The sentencing recommendation should generally be of a certain range."

However, with the plea-bargaining system gradually being established, the refinement of sentencing recommendations in practice and theory has shown a different need for the times. The revised Criminal Procedure Law of 2018 formally stipulates the plea-bargaining leniency system, and it is widely debated whether the procuratorate can put forward specific and definite sentencing recommendations for the plea-bargaining cases. Article 33 of the Guiding Opinions on Guilty Pleas and Punishments of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice stipulates that: "In handling guilty plea cases, the people's procuratorate shall, in general, make recommendations for determining the sentence. It may also make recommendations for range sentences in cases of new types and uncommon offences, felony cases with complex sentencing circumstances, etc."

The precision of sentencing recommendations, also known as determinate sentencing recommendations, is a concrete manifestation of the precision of sentencing recommendations, manifested in the determination of the type of sentence, the duration of the sentence and the manner of execution of the sentence. According to data published by the Supreme People's Procuratorate, following the formal establishment of the plea-bargaining system and the promulgation of normative documents on guidelines for sentencing recommendations, sentencing recommendations have continued to show a trend towards precision. The comparison between determinate sentencing recommendations and range sentencing recommendations has shifted from 36.79%-63.21% in 2019 to 63.42%-36.58%, with both completely reversing the applicable ratio between determinate and range sentencing recommendations in the January 2019 to August 2020 period. It is during the phase of complete ratio switching that the advantages of the refined features of sentencing recommendations are most clearly demonstrated, which is precisely why this paper chose this time period for its data.

4. Impact of Precision in Sentencing Recommendations on Appeal Rates

As mentioned above, although sentencing recommendations face controversy from many areas in the process of refinement, the increased application of deterministic sentencing recommendations has an irreplaceable value in solving many of the current realities, including the reduction of the appeal rate in guilty plea cases.

From the point of view of the prosecuted party, by increasing the degree of precision of sentencing recommendations, the prosecuted party can be given a clear psychological expectation. Prosecutors only put forward a relatively certain sentencing recommendations, in order to make the accused of the future may be sentenced to have a

clearer psychological expectation, and a clear expectation of punishment is a certain sentence sentencing recommendations to reduce the appeal rate of the case of the premise of the foundation. The certainty brought about by determinate sentencing helps the accused to "admit punishment" on the basis of guilty pleas, and only on this basis can the plea-bargaining procedure be constructed to reduce the legitimacy of the appeal rate of cases.

From the perspective of the judiciary, by enhancing the refinement of sentencing recommendations, will undoubtedly further reduce the workload of judges. When the prosecuting authority puts forward a definitive sentencing recommendation, the judge only needs to compare the sentencing recommendation with the facts and the law to determine whether it is in line with the basic principle of "appropriateness of punishment to the crime". In this way, the judge can devote more resources and energy to other core details of the case, "prescribing the right medicine", enhancing the interpretation of the law and reasoning with regard to the main facts and circumstances, reducing the risk of disapproval of the final judgment by the prosecuting party and the accused, and thus lowering the appeal rate of the case.

From the point of view of the development of the criminal procedure itself, compared with the simplification of the criminal procedure and the pursuit of efficiency, the overly abbreviated trial procedure may indeed have the risk of increasing the appeal rate due to insufficient questioning and defense, but the sentencing recommendation of our country's determinate sentence usually needs to be based on sufficient and thorough evidence and consultation of the case. In other words, as the accused not only undergoes the pre-court sentencing negotiation stage, he or she will have trust in the possible penalty scale of the case, and in the subsequent stages of the criminal procedure, based on the expectation of a determinate sentence, he or she will continue to increase his or her acceptance of the final judgment, which will ultimately reduce the appeal rate of the case effectively.

From the perspective of trial-centered reforms and principles, the precision of sentencing recommendations can effectively help to achieve trial simplicity, efficient questioning and defense, and maximize the rational allocation of "judicial resources", indirectly promoting the reduction of the appeal rate of the case. Although at the theoretical level, the negotiation space of determining the sentencing recommendation and the penalty change space is small, part of the degree will make the interrogation and debate procedures in advance and ultimately lead to the trial of the virtual. However, from a practical point of view, as long as the sentencing recommendation has been fully questioned and defended by the evidence and facts, then it is indeed appropriate to reduce the arrangement of cumbersome links in the trial process. Historical experience and facts have proved that, against the background of limited judicial resources and unlimited criminal incidence, it is impossible for any criminal system to conduct thorough cross-examination and debate in all criminal cases. The more it tries to achieve absolute justice in each case, the more likely it is to lose absolute justice for society as a whole. It is only by increasing the use of definitive sentencing recommendations to realize the separation of complexity and simplicity, and the scientific simplification of procedures, that the principle of evidence-based adjudication and the principle of direct speech can be genuinely implemented in a relative majority of cases, thereby promoting a two-way improvement in the

quality and quantity of trials and lowering the rate of appeals in criminal cases.

5. Research Using Computational Social Science Research Methods

In 2009, sixteen scientists, led by David Lazer of Harvard University and Alex Pentland of the Massachusetts Institute of Technology (MIT), published an article entitled "Computational Social Science" in the prestigious journal *Science*, marking the birth of this new interdisciplinary discipline. In contrast to the traditional path of social science, where empirical data are obtained through questionnaires, statistics, and field surveys, computational social science, more typically a darling of the Internet age, relies on big data from platforms such as shopping sites or social media to discover correlations in human actions that have often been overlooked in previous social science inquiry, and to propose solutions to more macroscopic social phenomena, often unexpected but logical explanations for more macroscopic social phenomena.

The Bayesian causality formula, which is a computational social science method for deriving causality, was substituted into the case data to accurately calculate the impact of the refined deterministic sentencing recommendations on the appeal rate of the cases, given the same number of cases in which the plea-bargaining process was applied.

Using Bayesian causal network calculations, for things A and B, we have.

$$P(A|B) = P(A, B) / P(B)$$

$$P(B|A) = P(B, A) / P(A)$$

$$P(A|B) = [P(B|A)P(A)] / P(B)$$

P(A) is the probability that event A will occur

P(B) is the probability that event B will occur

P(A, B) is the probability of simultaneous occurrence of the

P(A|B) is the probability of event A occurring if event B occurs.

Table 1. Bayesian causality table

	Number of cases appeals	Number of cases not appealed	add up the total
Determination sentence	3	87	90
Range sentence	6	79	85
add up the total	9	166	175

According to the data published by the Supreme People's Procuratorate, between January 2019 and August 2020, China's overall sentencing recommendation adoption rate reached 87.7 per cent, with 89.9 per cent for determinate sentencing recommendations and 85.6 per cent for range sentencing recommendations. It can be seen that the slightly higher rate of adoption of determinate sentencing recommendations proves that, in practice, determinate sentencing recommendations have not been resisted by the trial authorities, as some views have suggested. In cases where the plea-bargaining mechanism was applied, the appeal rate in cases after the adoption of determinate sentencing recommendations was 2.56 per cent, while the appeal rate in cases after the adoption of range sentencing recommendations

also remained at 5.66 per cent. The values were substituted into a Bayesian causality table.

To expand on this, set up a judicial database with 100 guilty plea cases with determinate sentencing recommendations and 100 guilty plea cases with range sentencing recommendations, and based on the rate of adoption of the two types of sentencing recommendations and the rate of final appeals of the cases published by the Supreme Prosecutor's Office, the Bayesian causality table can be obtained (Table 1):

That is, in "The impact of sentencing recommendation refinement on appeal rates in guilty plea cases with the same caseload":

$$P(A|B) = P(A, B) / P(B)$$

$$P(\text{appeal} | \text{determinate sentence}) = P(\text{appeal, determinate sentence}) / P(\text{determinate sentence}) = (3/175) / (90/175) = 1/30 \approx 0.033$$

$$P(\text{appeal} | \text{range sentence}) = P(\text{appeal, range sentence}) / P(\text{range sentence}) = (6/175) / (85/175) = 6/85 \approx 0.071$$

$$P(\text{appeal rate}) = 9/175 \approx 0.051$$

Thus, it can be concluded that the appeal rate in cases where the ordinary application of the sentencing recommendations of the guilty plea procedure was applied was 5.1 per cent, while the appeal rate in those cases where a range sentencing recommendation was adopted was 7.1 per cent, and in cases where a determinate sentencing recommendation was adopted, the appeal rate was 3.3 per cent.

6. Summary

Given the same number of cases, the appeal rate in guilty plea cases in which a determinate sentencing recommendation is applied is not only 1.8 percentage points lower than that in ordinary guilty plea cases, but also 3.8 percentage points lower than that in cases in which a range sentence is applied. It can be seen that standardised and scientific sentencing recommendations can not only promote the operation of the lenient plea and punishment procedure, but also significantly reduce the appeal rate in plea and punishment cases, and greatly enhance judicial efficiency and the social effect of case handling. Therefore, in the future, China's procuratorial authorities should continue to steadily improve the trend of refinement of sentencing recommendations in guilty plea cases, and increase the proportion of determinate sentencing recommendations in judicial practice.

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