

# The Mechanism, Practice Patterns, and Improvement Pathways of Administrative Self-Restraint in the Administrative-Penal Positive Articulation Mechanism

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**Abstract:** Despite long-term policy promotion of administrative-penal positive articulation in China, persistent issues like substituting administrative penalties for criminal punishments and failure to transfer cases remain, highlighting the insufficiency of existing external control mechanisms. Administrative self-restraint, as an endogenous control model where administrative entities constrain themselves, acts on articulation through three dimensions: organizationally, via horizontal and vertical decentralization of power to clarify responsibilities; internally, through supervision covering the entire process of procedures, information, and evidence; and normatively, by using checklist-based, directive, and procedural internal rules to narrow discretionary space. In practice, while it enhances articulation efficiency, evidence transfer success rates, and standardization, problems such as insufficient self-restraint motivation, limited supervision effectiveness, and lagging internal rules persist. To address these, optimizing organizational structures, building a synergistic mechanism between administrative self-restraint and external supervision, and dynamically optimizing internal rules are necessary to perfect administrative-penal positive articulation.

**Keywords:** Administrative-Penal Positive Articulation; Administrative Self-Restraint; Administrative Supervision; Substituting Administrative Penalties for Criminal Punishments.

## 1. Introduction

In the 1990s, China faced serious issues such as failing to transfer cases that should be transferred and replacing criminal penalties with administrative fines. In the subsequent period, the state made great efforts to resolve the poor connection between administrative law enforcement and criminal justice, and issued a series of normative documents on the "two-law connection" (connection between administrative law and criminal law). In August 2021, the Outline for the Implementation of Building a Law-Based Government (2021-2025) re-emphasized: "Improve the mechanism for connecting administrative law enforcement and criminal justice, strengthen the construction of the 'two-law connection' information platform, and promote the institutionalization of information sharing and the standardization of case transfer standards and procedures."

Administrative-criminal positive connection, i.e., the connection "from administration to criminal justice", mainly refers to the procedural mechanism by which administrative law enforcement agencies transfer cases involving suspected crimes to the corresponding competent authorities. The logical starting point of administrative-criminal positive connection is that administrative law enforcement agencies, in the process of investigating illegal acts, discover clues of crimes that should be filed and investigated by public security organs or cases involving suspected duty-related crimes.

Administrative self-restraint refers to the autonomous behavior of administrative subjects to voluntarily restrict their administrative acts and ensure that their administrative power operates within the scope of legality and reasonableness. In short, it is the self-control of administrative subjects over their own illegal or improper acts. Administrative subjects may, through their own organizational structure and operation, the formulation and application of internal rules, and the influence of administrative ethics and morality, as well as

civil servants' inherent concept of serving the people, voluntarily restrict and standardize administrative acts, reduce the negative effects of administrative power, limit it within the scope of legality, reasonableness, and compliance with the principle of proportionality, and on this basis, voluntarily promote correct administrative policies and pursue the realization of administrative justice and administrative civilization. [1]

The connection between administrative and criminal justice is a frontier field in current legal theory, and administrative-criminal positive connection is the key to linking administrative penalties and criminal penalties. It is urgent to introduce the theory of administrative self-restraint to seek a way to control power. This paper takes the key nodes where the theory of administrative self-restraint exerts power control in the administrative-criminal positive connection mechanism as the entry point. Using empirical and normative analysis methods, it sorts out and refines the mechanism of action of the administrative self-restraint theory in the administrative-criminal positive connection mechanism from the above three aspects, observes its practical patterns, and puts forward improvement suggestions. [2]

## 2. The Mechanism of Administrative Self-Restraint in Administrative-Penal Positive Articulation

### 2.1. The Control Function of Administrative Organizational Structure in Administrative-Penal Positive Articulation

Under the developmental trends of modern states, the scope and strength of administrative power will only increase. The scientific allocation of the administrative organizational structure is the prerequisite for clarifying articulation responsibilities and avoiding overlapping powers. The core of administrative self-restraint lies in "achieving checks and

balances through internal decentralization of power". This concept manifests in administrative-penal positive articulation as the horizontal and vertical control of administrative power by the administrative system's organizational structure.

### **2.1.1. Horizontal Control of Administrative Power in Articulation by Administrative Organizational Structure**

In administrative-penal positive articulation, the horizontal concentration of administrative power mainly manifests as two types of risks: First, a single department handling the entire process of "investigation --- characterization --- transfer," such as market supervision departments independently judging whether a case involves a crime, easily avoiding transfer obligations due to departmental interests (fines as revenue). Second, the conflation of powers in organs possessing both administrative and criminal functions, with public security organs being a typical example of entities wielding both administrative penalty and criminal investigation powers. Public order departments are responsible for both administrative law enforcement and independently deciding whether to initiate criminal investigations, leading to the substantive use of preliminary investigations and substitution of administrative actions for criminal proceedings.

### **2.1.2. Vertical Control of Administrative Power in Articulation by Administrative Organizational Structure**

Vertical control aims to address insufficient transfers caused by local protectionism. Higher-level administrative organs regulate subordinates through performance indicator setting and case-specific supervision. On one hand, incorporating transfer rates, transfer accuracy rates, and evidence compliance rates into the performance assessments of subordinate administrative agencies, issuing criticism notices to units that persistently fail to transfer cases that should be transferred. On the other hand, for cases involving major public interests, higher-level authorities can directly intervene to review transfer decisions, preventing subordinates from abandoning transfers due to local economic protection.

## **2.2. The Constraining Function of Administrative Supervision Mechanisms in Administrative-Penal Positive Articulation**

### **2.2.1. The Constraining Role of Procedural Supervision over the Entire Administrative Law Enforcement Process**

Relying on the "whole-process recording system for administrative law enforcement" stipulated in Article 47 of the Administrative Penalty Law, key articulation procedures are supervised. Specific supervision points include: First, characterization discussions. Verifying the existence of "collective discussion records" to prevent individuals from arbitrarily deciding against transfer. Second, transfer timelines. Supervising whether the "review is initiated within 3 days after discovering a suspected crime" to avoid delays. Third, material completeness. Checking if transfer materials comply with Article 6 of the Transfer Regulations, such as including the "Transfer Letter for Suspected Criminal Cases" and "List of Involved Items." [3]

### **2.2.2. The Constraining Role of Information Supervision on the Information Sharing Platform**

The information-sharing platform is a crucial technological vehicle for supervision within administrative self-restraint, functioning to break down information barriers and visualize the articulation process. Information supervision must combine administrative self-restraint with technological empowerment. Agencies should internally build an articulation information-sharing sub-platform, interfacing with the overarching "two systems articulation" platform, enabling real-time input of case information and dynamic warnings. The platform automatically triggers alerts, prompting law enforcement officers to review whether transfer is necessary. Simultaneously, the platform must record the entire process information from "case acceptance - investigation - review - transfer/non-transfer." Higher-level authorities can supervise subordinate articulation situations in real-time through the platform, preventing concealment and omission of reports.

### **2.2.3. Pre-review of Evidence Supervision for Administrative Evidence Transfer**

Addressing the conflict between administrative and criminal evidence rules, administrative agencies internally review physical evidence for "legality of the collection procedure" and "integrity of the custody chain." For testimonial evidence, they review whether illegal collection methods like coercion or inducement were used, clarifying the rule that testimonial evidence generally requires re-collection by criminal investigation organs, and can only be used directly under statutory circumstances such as death, disappearance, or overseas status. This prevents the risk of illegality in evidence transfer at the source. [4]

## **2.3. The Regulatory Function of Internal Administrative Rules in Administrative-Penal Positive Articulation**

### **2.3.1. Regulation of Discretionary Space by Checklist-Based Referral Standards**

To address the ambiguity in judging "suspected crime" in practice, administrative law enforcement agencies can use administrative self-restraint theory to establish checklist-based referral criteria, thereby refining the basis for discretion. Checklist-based approaches transform abstract "suspected crime" standards into concrete indicators, reducing discretionary errors caused by law enforcement officers' misunderstandings and preventing intentional avoidance of transfer.

### **2.3.2. Resolution of Rule Conflicts by Directive Evidence Transfer Norms**

The differences between administrative and criminal evidence rules present articulation difficulties that directive internal norms can specifically resolve. Internal norms can refine operational guidelines for evidence transfer, distinguishing "physical evidence" from "testimonial evidence": Physical evidence requires noting "time and place of collection, custodian" to ensure chain integrity; Testimonial evidence requires stating "time of inquiry, whether audio/video recording was simultaneous," clarifying "exceptions requiring re-collection." These guidelines should also align with Article 54 of the Criminal Procedure Law and relevant judicial interpretations, preventing evidence transfer failure due to law enforcement agencies' "unfamiliarity with criminal evidence rules." Such directive norms provide clear

rules for evidence transfer, avoiding invalidation due to unclear rules.

### **3. Examining the Effectiveness of Administrative-Penal Positive Articulation from the Perspective of Administrative Self-Restraint**

#### **3.1. Practical Effects of Administrative Self-Restraint in Articulation**

Practically, administrative self-restraint, through its three-dimensional action of "structure --- supervision --- rules," has improved administrative-penal positive articulation in several aspects: First, enhanced articulation efficiency through horizontal division of labor and vertical supervision. Second, improved smoothness of evidence transfer; the pre-review mechanism in evidence supervision has increased the success rate of transferring administrative evidence for criminal use. Third, unified articulation standards; the checklist-based and procedural design of internal rules have reduced instances of "differential transfer for similar cases." [5]

#### **3.2. Existing Shortcomings: Reflection Based on Limitations of Administrative Self-Restraint**

##### **3.2.1. Insufficient Self-Restraint Motivation: Conflict Between Departmental Interests and Efficiency Priority**

The effectiveness of administrative self-restraint depends on the consciousness of administrative agencies. However, in practice, some administrative law enforcement agencies, influenced by "departmental assessments," engage in "selective transfer" of suspected criminal cases. For example, concealing criminal clues for cases involving high fines but low criminal filing thresholds to retain administrative penalty revenue. Some agencies simplify articulation procedures to pursue case handling efficiency, such as transferring cases without conducting evidence pre-review, leading to rejection by judicial organs. Furthermore, in horizontal inter-departmental collaboration, the absence of a "unified assessment mechanism" results in low willingness for cooperation between some agencies and public security organs, leading to buck-passing of articulation responsibilities.

##### **3.2.2. Limited Supervision Effectiveness: Inherent Limitations of "Self-Supervision"**

The supervision mechanism of administrative self-restraint struggles to overcome the "acquaintance dilemma": On one hand, in procedural supervision, some agencies experience procedural emptiness, like collective discussions becoming formalities or delayed information entry. On the other hand, evidence supervision relies on internal review positions, but reviewers are mostly internal personnel within the administrative law enforcement system who may have biased understandings of criminal evidence standards, leading to misjudgments on evidence admissibility.

##### **3.2.3. Lagging Internal Rules: Disconnect from Legal Revisions and Practical Needs**

The update speed of internal administrative rules struggles to match legal revisions and practical changes. First, some rules fail to incorporate newly revised legal crime types in a timely manner; the referral checklists of some administrative

law enforcement agencies are not promptly supplemented, resulting in "failure to transfer cases that should be transferred." Second, rules fail to respond to new practical problems, lacking clear normative guidance, leading to chaotic articulation.

### **4. Improvement Pathways for Administrative-Penal Positive Articulation from the Perspective of Administrative Self-Restraint**

#### **4.1. Optimization of Organizational Structure**

Articulation links administrative enforcement procedures with criminal justice procedures, involving numerous power entities like administrative agencies, public security organs, procuratorates, and courts, easily leading to a "collective action dilemma." Establishing a scientifically standardized articulation mechanism is the institutional guarantee and support for unified legal application and effective articulation. To fundamentally resolve issues of failure to transfer cases, substituting penalties for punishment, and difficulty in transferring cases, based on Article 27(2) of the Administrative Penalty Law and practical exploration, the current focus should be on improving the joint conference system, case consultation mechanism, and information sharing mechanism. [6]

##### **4.1.1. Improving the Joint Conference System**

Adopting a "procuratorate-led coordination" approach, upgrading joint conferences from "temporary consultations" to a "regular mechanism." Led by the procuratorate, monthly joint conferences involving administrative agencies, public security organs, and courts should be held, focusing on discussing "cases with disputed transfer standards" and "difficulties in evidence transfer." Administrative agencies should also submit "Monthly Articulation Work Reports," strengthening the external support for administrative self-restraint through "multi-party participation."

##### **4.1.2. Enhancing the Case Consultation Mechanism**

Administrative agencies need to establish dedicated articulation consultation positions to liaise with public security organs and procuratorates. For major and complex cases, law enforcement officers can consult judicial organs during the investigation phase to discuss whether a crime is suspected and how to secure evidence. For cases where the "boundary between administrative illegality and criminal offense is blurred", written consultation must be sought and the replies retained as the basis for transfer review, avoiding self-restraint failure due to professional limitations. [8]

##### **4.1.3. Optimizing the Information Sharing System**

Promoting the interconnection between internal agency platforms and the "procuratorial supervision platform". Administrative agencies need to grant procuratorates access to "full-process articulation information," mainly including review records, procedural compliance reports, and evidence lists. Procuratorates can view transfer status in real-time through the platform, which automatically prompts supervision for cases with unprocessed warnings or missing review procedures, achieving information integration between administrative self-restraint and procuratorial supervision. [7]

## 4.2. Building a Synergistic Mechanism of "Administrative Self-Restraint + External Supervision"

Administrative self-restraint, relying on agencies' "self-regulation," is prone to supervision becoming nominal due to departmental interests or power inertia. A triple linkage of "administrative internal supervision --- procuratorial supervision --- public supervision" is needed, embedding external supervision into the administrative self-restraint process to form a closed loop of "self-constraint + external checks and balances," solving the problem of weakened internal supervision.

### 4.2.1. Strengthening Administrative Internal Supervision Mechanisms

Clarifying supervision boundaries using "Power Lists + Responsibility Lists." The Power List is the core rule of administrative self-restraint. Agencies need to formulate an Administrative-Penal Positive Articulation Power List, clearly defining the boundaries of responsibility between units handling administrative violation investigations and those responsible for transfer decisions, prohibiting business departments from bypassing review to directly decide against transfer. Simultaneously, an Articulation Responsibility List should be formulated, incorporating situations like dereliction in transfer review duties or absence of evidence supervision into the scope of accountability. For instance, if the legal department approves a transfer without identifying illegal administrative evidence, it should bear joint liability.

### 4.2.2. Introducing Procuratorial Supervision Mechanisms

Procuratorial supervision is statutory external supervision. It needs to leverage information exchange for precise supervision aligned with the administrative self-restraint process, externally reinforcing administrative self-restraint. Using methods like procuratorial suggestions to jointly correct illegality, procuratorates should adopt a tiered response to administrative self-restraint defects: For "minor procedural flaws," issue Procuratorial Suggestions to guide agencies in improving internal processes; For "substantive illegality," such as "using administrative detention to replace criminal detention to evade transfer" or "failure to transfer leading to substitution of penalties," issue Notices for Correcting Illegal Acts and copy the higher-level administrative agency, demanding rectification within a time limit; For suspected duty-related crimes, directly transfer the case to the supervisory organ, forming a "supervision---accountability" closed loop.

### 4.2.3. Expanding Public Supervision Mechanisms

Promoting the "proactive disclosure" of articulation information. Administrative agencies should quarterly publish Administrative-Penal Positive Articulation Work Reports on their official websites, containing core data like "number of transferred cases, number of non-transferred cases and reasons, evidence transfer compliance rate." For "non-transferred cases," the "administrative illegal facts, criminal prosecution standards comparison, and legal basis for non-transfer" must be disclosed to avoid "black-box operations."

## 4.3. Dynamic Optimization of Internal Administrative Rules

### 4.3.1. Updating Referral Checklists Based on the Unity of the Legal Order

Calibrating checklist logic with the unity of the legal order. Acts permitted by civil or administrative law necessarily lack criminal illegality. Referral checklists should not include situations where an act is not prohibited by administrative law but is subject to criminal prosecution, ensuring the correspondence between administrative illegality and criminal prosecution thresholds aligns with the overall legal order, preventing agencies from mis-transferring or omitting transfers due to logical contradictions in the checklist.

### 4.3.2. Refining Evidence Supervision Operational Guidelines: Resolving "Chaos in Administrative Evidence Transfer"

Administrative evidence transfer is a critical link in articulation. Operational guidelines need refinement to address difficulties in authenticating physical evidence, abuse of exceptions for testimonial evidence, and improper custody of electronic data.

### 4.3.3. Establishing an Administrative Self-Restraint Evaluation Mechanism

Setting "Three-Dimensional" evaluation indicators. Administrative self-restraint needs evaluation indicators set across structure, mechanism, and effectiveness dimensions. First, the organizational structure operation dimension: assess the performance rate of legal review positions and the effectiveness of specialized articulation bodies to analyze if internal decentralization is effective. Second, the supervision mechanism effectiveness dimension: assess the warning handling rate on information platforms and the rectification rate for evidence supervision issues. Third, the rule implementation dimension: assess the match rate of referral checklists and evidence compliance rate, covering core aspects of administrative self-restraint.

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