

Reassessing the Dilemmas of Misdemeanor Governance and Exploring a Systematic Pathway—A Restorative-Measure Perspective

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Abstract. With the expansion of criminal legislation and shifts in crime patterns, China has entered an “era of minor offenses.” However, the prevailing governance model—centered on serious crimes—has struggled to meet the practical demands of misdemeanor governance. At its core lies an inadequate supply of systematic institutions that are adaptable to contemporary conditions. As a result, this field still largely relies on lay moral intuitions as the basis for judgment, leaving it in a loosely regulated and disorderly state. In response, and with due regard to national policy orientations, a systematic governance framework should be established that balances the protection of legal interests with the safeguarding of human rights. On the basis of clarifying standards for defining minor offenses, such a framework should promote the effective operation of substantive decriminalization mechanisms at the adjudication stage, and comprehensively improve measures for handling minor offenses. It should also address the blurred boundaries in the application of discretionary non-prosecution, activate mechanisms of conviction without punishment, and regulate the application of collateral consequences of crime. By strengthening the coherence and chain-like linkage among institutional modules, misdemeanor governance can be steered toward a more holistic and collaborative modern governance paradigm, thereby achieving an organic integration of crime prevention and social restoration.

Keywords: misdemeanor governance, systematic construction, restorative dispositional measures.

1. Statement of the Problem

In recent years, alongside socio-economic development, China’s criminal governance has undergone profound transformation. On the legislative front, the Criminal Law has successively added misdemeanor offenses. Statistics indicate that, compared with the 1997 Criminal Law, the number of offenses increased by 17.39% across twelve criminal law amendments. Among these changes, the growing proportion of misdemeanors has become a central trend: the share of offenses with a statutory maximum penalty of fixed-term imprisonment of no more than three years increased from 19.13% in 1997 to 21.18% in 2023. [1] These structural shifts reflect the influence of an “active criminal law” orientation, under which “the depth, breadth, and intensity of criminal-law regulation of social life have all expanded substantially—regulating not only more broadly, but also more stringently.” [2]

In practice, the structure of crime has also shifted: serious violent crime has declined, while minor offenses have risen in proportion. In 2024, offenses with comparatively high numbers of prosecutions included dangerous driving, theft, fraud, concealing or disguising criminal proceeds and the gains therefrom, and assisting information-network criminal activities; together, these five offenses accounted for 51.5%. [3] Against this backdrop, the preventive function of the Criminal Law has become an increasingly salient concern for legislators. This trend implicitly reflects an active legislative intention to strengthen social-order governance through criminal law—leveraging the deterrent effect inherent in criminal law and deepening its intervention into social life to prevent harmful conduct, thereby advancing the protection of societal legal interests and reducing crime at its source. At the same time, however, it also raises the risk of undermining the principle of restraint in criminal law, further tightening constraints on citizens’ freedom of action, and excessively intruding into private life in ways that may threaten human-rights protection. Behind these social realities is the

fact that China has not yet fully updated its philosophy of crime governance or completed the construction of institutions for misdemeanor governance, leaving this field in a partially disorderly state and giving rise to a range of social problems.

First, the punitive philosophy applicable to misdemeanors has not yet completed its transition. Influenced by a traditional heavy-penalty mindset, judicial personnel have been slow to shift their punitive outlook, and the general public's acceptance of misdemeanor governance remains relatively low.

Second, at the level of theoretical scholarship, systematic attention to misdemeanor governance remains insufficient. No unified, systematized governance policy or institutional framework has yet been formed. The boundary between crime and non-crime is unclear, and the application of specific decriminalization mechanisms still relies primarily on judicial discretion, leading to inconsistent adjudication and an excessively broad space for operational discretion—both of which may undermine judicial credibility.

Third, the scope of criminal-law application continues to expand. Taking the offense of dangerous driving as an example, it has ranked first in the number of criminal cases since 2019, with more than 300,000 individuals convicted each year. [1] While intoxicated dangerous driving is frequent in daily life and does pose latent risks to public safety, social life is diverse: not all conduct that formally fits within “dangerous driving” possesses the kind of punishability contemplated by criminal law. Categorically labeling all such actors as criminals does not align with ordinary social intuitions and sits in tension with the fundamental legal commitment to safeguarding human rights. Extending this point to misdemeanors more generally, an individual may cross a legal red line unintentionally due to limited legal awareness or momentary negligence; the person's subjective culpability and personal dangerousness are minimal, and the infringement of legal interests is slight or may even lack a realistic possibility of occurring. In such circumstances, the social harmfulness of the conduct does not reach the threshold that warrants the imposition of criminal punishment.

Fourth, sanctions for misdemeanors remain overly severe. Misdemeanor offenders are not sufficiently treated in light of their weak dangerousness and low harmfulness; sentencing continues to be guided primarily by a custodial logic rooted in the governance of serious crimes. This has generated a paradox between surging caseloads and limited judicial capacity. [4] According to data from the Supreme People's Procuratorate, in the first half of 2024, procuratorial organs nationwide accepted and reviewed 1.096 million criminal cases for prosecution—an increase of 1.2 times compared with the same period in 2004—while the proportion of misdemeanor cases was high: the offenses of dangerous driving and assisting information-network criminal activities alone accounted for more than 20%. [5] The large volume of misdemeanor cases consumes substantial judicial resources, further intensifying the pressure of “more cases, fewer personnel.”

Fifth, the expansion of the “criminal circle” has led to the generalized application of collateral consequences of crime. By bringing more conduct within the scope of regulation, the current Criminal Law places a “criminal label” on more individuals. Although such misdemeanor offenders may receive very light principal penalties, they often bear collateral consequences comparable to those imposed on serious offenders, producing a marked “inversion” between minor punishment and heavy ancillary burdens. This hinders reintegration and may contribute to higher recidivism. Moreover, one-size-fits-all collateral consequences risk distorting the function of misdemeanor governance and creating a slide into a “petty-offense trap”: while criminal legislation expands in an attempt to strengthen punishment and governance, institutional defects may cause a simultaneous decline in both penal and governance effects. Offenders thus bear responsibilities far exceeding what they should reasonably assume, causing the Criminal Law's social-protection function and its human-rights safeguarding function to diverge. [1] The balance between public and individual interests may tilt excessively toward the former, contradicting the legislative task of protecting citizens' rights.

Accordingly, from a perspective integrating theory and practice, this article conducts an in-depth analysis of the predicaments confronting misdemeanor governance. It further proceeds from a temporal and developmental viewpoint to move beyond a punishment-centered approach to criminal

governance, and to explore a pathway for constructing a misdemeanor governance system oriented toward governance as its core purpose—one that effectively balances the protection of legal interests and the safeguarding of human rights.

2. An Examination of the Predicaments in Misdemeanor Governance

In the field of misdemeanor governance, treating the Criminal Law as an instrument of social governance and crime prevention conflicts with the traditional view of criminal law that emphasizes the realization of its punitive function. Against the backdrop of the structural tension between the modernization requirements of misdemeanor governance and the punitive inertia of traditional criminal law, the problems currently confronting misdemeanor governance display the characteristics of systemic dysfunction. Specifically, this is manifested in the following aspects: at the front end, misdemeanors themselves lack a unified and explicit statutory concept, resulting in the generalized application of misdemeanor charges in judicial practice and an imbalanced expansion of the scope of criminalization; at the middle end, due to the absence of an integrated “criminal law in unity” mindset, the disposition of misdemeanor cases after entering judicial proceedings features a missing “decriminalization” segment and poor coordination in procedural linkages; at the back end, the consequences of crime present an imbalanced state, with excessively heavy internal penal consequences and spillover external social consequences, coupled with insufficient attention to safeguarding the lawful rights and interests of misdemeanor offenders and to their reintegration into society.

2.1. Front-End Predicament: Ambiguity in the Definition of Misdemeanors and the Imbalanced Expansion of the Scope of Criminalization

2.1.1. The Conceptual Definition of Misdemeanors Remains Unclear

Article 13 of the Criminal Law stipulates the concept of crime. As a concept opposed to “felony,” “misdemeanor” is a product of the theory of stratifying crimes. However, although “misdemeanor” is a concept commonly used in current scholarship, the law has not yet provided an explicit definition of misdemeanors. Academia has formed multiple divergent views regarding the criteria for identifying misdemeanors, mainly including the “substantive standard,” the “formal standard,” and the “comprehensive standard” that combines the two.[6]

Scholars who hold the “comprehensive standard” contend that, in identifying misdemeanors, one should both focus on the substantive aspects of the criminal act and take the penalty standard into account, [7] yet the formal-standard approach, when making penalty determinations, has in fact already considered the infringed legal interest, social harm, and other factors of the criminal act. It is precisely because of having made a substantive assessment that a penalty determination is reached. Therefore, this doctrine ultimately still converges on the “formal standard,” and conducting an additional substantive assessment in effect entails repetition. The “substantive standard” advocates using the nature of the crime and the degree of harm as the criteria for distinguishing misdemeanors, [8] emphasizing a break from purely formalized judgments and attention to the social harmfulness embodied in the act itself and the need for penal punishment, to maximize substantive justice. However, because this standard centrally involves value judgments, it is difficult to set a uniform criterion; in judicial practice, it must largely rely on the discretionary judgment of judicial personnel based on their own capacities, which easily gives rise to inconsistency in adjudication and implicitly carries risks of under-the-table manipulation. Accordingly, it lacks operability. Considering the drawbacks of both the “substantive standard” and the “comprehensive standard,” adopting the “formal standard” is more reasonable. The “formal standard” proposes using punishment as the benchmark to distinguish the gravity of crimes, with the advantages of clarity and intuitiveness. Because punishment includes statutory penalty and declared (imposed) penalty, two further positions have emerged under the “formal standard”: the “statutory-penalty standard” and the “declared-penalty standard.” The “statutory-penalty standard” enables a case, at the initial entry into judicial

proceedings, to be characterized as a misdemeanor or not, thereby ensuring that the actor in a misdemeanor case receives corresponding misdemeanor treatment throughout the entire judicial process, rather than only after the court renders its judgment; [7] the “declared-penalty standard,” by contrast, emphasizes that determining whether an offense is a misdemeanor or a felony should not be confined to the charge and the abstract seriousness of the specific offense, but should be evaluated comprehensively in light of the degree of personal dangerousness and other sentencing circumstances, thereby substantively reflecting the seriousness of the criminal act. If one has not sufficiently examined the case in light of concrete circumstances, and instead relies solely on the legislator’s subjective assessment of the offense’s severity, an “evil law” phenomenon may result.[6] Nevertheless, the “formal standard” is not without defects: first, defining the gravity of crimes by the severity of punishment lacks logical coherence in sequencing, because it should be the seriousness of the crime that determines the severity of punishment; second, relying purely on punishment disregards multi-perspectival evaluations of the seriousness of crime. Although legislators have considered the seriousness of crime when setting punishments, that evaluation is not subject to any constraints and thus naturally affirms the reasonableness of the legislator’s unilateral assessment; such judgment is unscientific.[9]

In addition, some scholars advocate embedding the criterion of “natural offenses and statutory offenses” into the crime-stratification model. The classification of natural offenses and statutory offenses originates from the representative work *Criminology* by Garofalo, one of the so-called “three saints of criminology.” In that book, he first proposed the categories of natural offenses and statutory offenses—namely, “a natural offense is an infringement upon the two basic sentiments of pity and probity, whereas a statutory offense is conduct that purely violates legal provisions but does not contravene basic morality,” [10] for example, natural offenses typically include theft and homicide, while statutory offenses typically include illegal business operations and tax evasion. Some domestic scholars have also pointed out that different institutional arrangements should be made with due regard to the differing characteristics of natural offenses and statutory offenses.[11] Based on the criminal attributes reflected in the concepts of natural offenses and statutory offenses, it may appear that statutory offenses can be incorporated into the category of misdemeanors, while natural offenses can be incorporated into the category of felonies. However, with social changes, the boundary between statutory offenses and natural offenses has gradually become blurred, and statutory offenses have also gradually acquired moral blameworthiness. In the absence of clear standards within this theory, adopting such a generalized classification entails risks.

2.1.2. The Over-application of Minor Crimes

Whether from the perspective of legal or social evaluation, minor crimes are extremely close to the dividing line between illegality and crime; a single step's difference leads to a qualitative distinction. As the starting point of minor crime governance, the concept and classification methods of minor crimes have not yet been clearly stipulated by law. The lack of crime stratification triggers the blurring of the boundaries of the crime circle, thereby bringing about the disorderly expansion of the Criminal Law. This lays a hidden danger for the problem of the over-application of minor crimes in judicial practice.

A history of human punishment exactly symbolizes the history of the gradual withering of punishment itself. [12] In the developmental history of penal concepts, the dominant position of retributivism has gradually shifted, and preventivism has demonstrated its unique social value. The governance of minor crimes also reflects this trend, particularly highlighting the importance of positive prevention theory. Under the guidance of this concept, criminal legislation has seen an increasing amount of “symbolic legislation,” incorporating certain behaviors into the regulatory scope of the Criminal Law to declare the state's negative attitude toward such behaviors. In this context, the Criminal Law increasingly becomes a tool for social governance, and administrators tend to expand its scope of application to govern social order. Meanwhile, China's crime governance has always centered on the core concept of “punishing every crime,” and “emphasizing strikes while neglecting protection” has become a tacitly understood discretionary processing method for many judicial

workers. This results in some behaviors and actors—which do not necessitate penal punishment and would suffice with an evaluation of illegality—being characterized as crimes. This not only blurs the boundary between administrative and criminal penalties but also raises suspicions of excessive intervention in citizens' freedoms.

To deeply analyze the judicial status quo of minor crime cases, and targeting the phenomenon of the over-application of minor crimes in judicial practice, the author selected three typical charges for empirical analysis: the crime of illegal hunting, the crime of dangerous driving (drunk driving), and the crime of illegal business operations. These three charges also typically embody the three current situations of the over-application of minor crimes: inconsistent judicial standards and the generalization of judicial discretion.

A. The Crime of Illegal Hunting

Paragraph 2, Article 341 of the Criminal Law stipulates that the crime of illegal hunting refers to the act of violating hunting regulations by hunting in a no-hunting area, during a no-hunting period, or using prohibited tools or methods, thereby destroying wild animal resources in a serious manner. Using "Wolters Kluwer" (WeiKeXianXing) as the inquiry platform, the author searched for judgment documents related to the "crime of illegal hunting," setting the "case type" to "criminal" and the "document type" to "judgment." Considering that the latest judicial interpretation of the "crime of illegal hunting"—the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Destroying Wildlife Resources (hereinafter collectively referred to as the Judicial Interpretation)—came into effect in April 2022, the author limited the judgment time to the year 2025. Through retrieval, from January 1, 2025, to November 5, 2025, a total of 392 cases were found on Wolters Kluwer. Through comparative qualitative analysis of the relevant judgments, the author found that different courts have inconsistencies in the conviction standards and cited legal provisions for the crime of illegal hunting in judicial practice.

First, the conviction standards are unclear. Through an empirical analysis of judicial judgment documents, the author found that judgments in practice invariably mention "no-hunting areas" and "no-hunting periods" as constitutive requirements of the crime. However, the majority merely state directly that the location of the defendant's act was a no-hunting area and the time of the act was a no-hunting period without providing any legal basis, or express it as "confirmed by a certain entity, the area is a no-hunting area, and the time the defendant committed the act was within a no-hunting period." Only a small portion provided explanations by citing relevant documents, namely that "no-hunting areas" and "no-hunting periods" are determined based on local government normative documents. However, there simultaneously exists the problem of citing regulations of different hierarchical levels. For instance, in the case of Li Moumou's crime of illegal hunting (Li Moumou illegal hunting case, Heilongjiang Province Shangzhi City People's Court (2025) Hei 0183 Xing Chu No. 104 Criminal Incidental Civil Judgment), the court cited a notice issued by the Shangzhi City Government of Heilongjiang Province; in the case of Ye Moumou's crime of illegal hunting (Ye Moumou illegal hunting case, Sichuan Province Meishan City Pengshan District People's Court (2025) Chuan 1403 Xing Chu No. 66 Criminal Judgment), the court cited a notice from the Pengshan District Government of Meishan City, Sichuan Province; and in the case of Li Moufeng's crime of illegal hunting (Li Moufeng illegal hunting case, Anhui Province Taihu County People's Court (2025) Wan 0825 Xing Chu No. 81 Criminal Judgment), the court cited an Anhui Provincial Government notice. In such situations, the issue of the legal validity of normative documents at different levels arises; for example, when provincial, municipal, and district-level documents coexist, how a selection should be made for citation.

Regarding the constitutive requirement of "prohibited tools and methods," the vast majority of judgments did not explain the legal norms relied upon to determine that the tools and methods used by the defendants involved were "prohibited tools and methods," nor did they explain why they belonged to such prohibited categories, seemingly treating this issue as unimportant.

The lack of clear guidance for the determination of "no-hunting areas, no-hunting periods, and prohibited tools and methods" will lead to unclear and inconsistent conviction standards, cause confusion in the application of law in judicial practice, and subsequently may lead to the improper expansion of the scope of conviction.

Second, the legal provisions for conviction are inconsistent. By thoroughly studying these cases, the author found that even for the determination of the crime of illegal hunting, the conviction provisions cited by different judges in their judgments are not entirely the same. Some judges only made judgments based on the provisions of Paragraph 2, Article 341 of the Criminal Law, such as the Ma Mou illegal hunting case (Ma Mou illegal hunting case, Zhengzhou Railway Transport Court (2025) Yu 7101 Xing Chu No. 100 Criminal Judgment); while some judges cited Article 7 of the New Judicial Interpretation as the basis for conviction in addition to the Criminal Law; some judgments simultaneously cited the Criminal Law, the Law of the People's Republic of China on the Protection of Wildlife, and the New Judicial Interpretation as the legal basis, such as the Lei Mou and Liu Mouyi illegal hunting case (Lei Mou and Liu Mouyi illegal hunting case, Yunnan Province Qujing City Malong District People's Court (formerly Malong County People's Court, Yunnan Province) (2025) Yun 0304 Xing Chu No. 121 Criminal Incidental Civil Judgment), providing an adequate analysis and explanation of how the defendants' behaviors met the constitutive requirements of the crime of illegal hunting; however, there are also judgments that still cited the Interpretation of the Supreme People's Court on Several Issues Concerning the Specific Application of Law in the Trial of Criminal Cases of Destroying Wildlife Resources issued in 2000 (hereinafter referred to as the Old Judicial Interpretation) as the basis for conviction, such as the Li Moufeng illegal hunting case.

For the exact same charge, the legal provisions cited by different courts are not the same: some only cite the Criminal Law articles and shelve the judicial interpretations; some even cite the abolished Old Judicial Interpretation for conviction. Internally, this phenomenon reflects differences in the professional levels of current judicial personnel, with some judges failing to keep up with legal updates promptly; externally, it will produce consequences that affect judicial fairness. Judicial interpretations are concretizations and supplements to the provisions of the Criminal Law, aiming to unify the application of law. The fact that courts apply judicial interpretations in some similar cases but not in others, resulting in differing legal bases, will lead to inconsistent conviction standards, which in turn gives rise to situations contrary to judicial fairness, such as "different judgments for the same case" and "heavy sentences for minor crimes."

B. The Crime of Dangerous Driving (Drunk Driving)

Article 133-1 of the Criminal Law stipulates the charge of the "crime of dangerous driving." This crime can be divided into "drag racing type," "drunk driving type," "overloading type," and "hazardous materials transport type." Among them, the drunk driving type of dangerous driving, as a typical minor crime, has been highly controversial due to its high frequency of occurrence and low threshold for conviction. Previously, the law solely set the standard of blood alcohol content for determining drunk driving dangerous driving, without taking into consideration what consequences the behavior caused. This also led to an extremely low conviction standard for this crime in judicial practice, where anyone meeting the blood alcohol content standard would invariably constitute a crime, unreasonably aggravating the consequences of the behavior and causing excessive judicial pressure. In December 2023, the Opinions of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice on Handling Criminal Cases of Dangerous Driving Intoxication (hereinafter referred to as the 2023 Legal Opinions on Drunk Driving) was issued. It further clarified enforcement standards by comprehensively considering blood alcohol content, the drunk driving behavior, and other circumstances during conviction. For behaviors where the blood alcohol content reaches the drunk driving standard but no substantive harmful consequences are caused, Article 13 of the Criminal Law is applied to exempt them from criminalization, thereby reasonably restricting the applicable scope of the crime of drunk driving dangerous driving. Currently, the Criminal Law adopts the conviction standard of an abstract

endangerment crime for this charge; in judicial practice, the occurrence of the behavior is judged as the constitutive requirement of the crime, and concrete judgments on the danger of the relevant behaviors are no longer made, making the probability of penal punishment evidently too high. In the theoretical circle, there is much debate regarding the specific application of the concept of abstract endangerment crime from the perspective of this charge.

The danger in an abstract endangerment crime is the danger that people conclude the behavior has in leading to the occurrence of harmful results based on general life experience, without requiring the urgency of the occurrence of infringing results. There is controversy in academic circles on issues such as whether it is necessary to specifically judge the danger in judicial practice during conviction and whether counter-evidence is permitted.

Some scholars support the abstract endangerment crime viewpoint. Some scholars believe that the act of driving a motor vehicle while intoxicated is sufficient to pose a threat to the personal and property safety of unspecified persons. The Criminal Law should actively exert its preventive function, using the concept of abstract endangerment crime to incorporate drunk driving behaviors into the strike scope of the Criminal Law, so as to reduce the risks and harms of this behavior and protect the legal interest of public safety in advance;[13] Professor Zhang Mingkai also believes that this crime is an abstract endangerment crime, and judicial personnel do not need to specifically judge whether the intoxicating behavior carries a public danger. On the one hand, this is because abstract endangerment crimes only require typified judgments; on the other hand, behaviors that lack abstract danger, such as driving a motor vehicle while intoxicated on a wilderness road with no pedestrians or motor vehicles, cannot possibly constitute this crime.[14] These scholars argue that based on the concept of positive criminal legislation, the legislator's purpose in establishing the crime of dangerous driving is to exert the preventive function of criminal law, conduct advance regulation over behaviors that may cause socially harmful consequences, advance the protection of the legal interest of public safety from ex-post relief to ex-ante prevention, and provide behavioral guidance through strict regulation to prevent such behaviors from occurring at the root. If a pathway to decriminalization is opened for them, the significance of abstract endangerment crimes would exist in name only, losing their inherent advance protection function.

There are also some scholars who advocate introducing the viewpoint of quasi-abstract endangerment crime from extraterritorial criminal jurisprudence, namely that it belongs to the category of abstract endangerment crime, but it is necessary to specifically judge in judicial practice whether there is a danger of producing harmful consequences.[15] Some point out that for the crime of dangerous driving as an abstract endangerment crime, there will be cases where, although the actor meets the requirements for driving a motor vehicle while intoxicated, there was no danger of harmful consequences occurring based on the situation at the time. Convicting them uniformly at this time lacks justification and will lead to an expansion of the regulatory scope of the Criminal Law. However, at the same time, if the crime of dangerous driving is deemed a concrete endangerment crime, then the behavior can only be convicted when specific and clear damaging consequences are imminent. Too high a conviction standard would result in the provision failing to achieve the purpose of positive prevention and advance protection of legal interests. Therefore, a relatively compromised approach should be adopted: on the one hand, incorporating the crime of dangerous driving into the category of abstract endangerment crimes; on the other hand, requiring judicial personnel to judge whether the behavior poses a danger of causing harmful results.[16] Besides the judgment of judicial personnel, the existence of "counter-evidence" should also be allowed. In individual cases, the existence of abstract danger should be substantively judged. If the legislative presumption of the existence of danger can be overturned, the behavior cannot be identified as a crime even if it meets the formal requirements. Scholars supporting the quasi-abstract endangerment crime generally believe that drunk driving crimes belong to crimes with a low correlation to legal interests, and there is still a considerable distance between the danger implied by the behavior and the occurrence of the final harmful consequences. Therefore, they should not be uniformly criminalized; instead, a certain space for decriminalization should be left, allowing actors to use "counter-evidence" to prove that their

behavior will not actually lead to the occurrence of harmful results, thereby avoiding being identified as a crime.

C. The Crime of Illegal Business Operations

Article 225 of the Criminal Law stipulates the crime of illegal business operations, which includes four components: operating businesses of monopolized or exclusively sold goods without permission, buying and selling licenses or certification documents, operating financial businesses without permission, and a catch-all clause. However, in judicial application, this charge has gradually shown a trend of unreasonable expansion, transforming into a "pocket crime" (a catch-all offense) and becoming a tool for judicial organs to fully, or even excessively, exercise judicial activism.

From the perspective of legislative technique, the abuse of the catch-all clause is the root cause of the generalized application of the crime of illegal business operations. Item (4) of Article 225 of the Criminal Law inherently serves as a catch-all for the preceding three items; however, in practice, it has gradually become a catch-all for related charges within the chapter on crimes of disrupting the order of the socialist market economy. The lack of clarity in the wording of this catch-all clause has left room for it to become a "pocket crime." Following the promulgation of the 1997 Criminal Law, the Supreme People's Court and the Supreme People's Procuratorate successively issued multiple judicial interpretation documents, providing expansive interpretations of the content of the catch-all clause in Item (4) of Article 225, covering various fields such as finance, pharmaceuticals, and food. To a certain extent, this violates the principle of *nullum crimen sine lege* (legally prescribed punishment for a specified crime). The large-scale strike capability of this charge also makes "minor crimes not minor," reflecting a trend of expanding the legislative boundaries of this charge.

Using first-instance judgments of the crime of illegal business operations from 2017 to 2020 retrieved from the "Wolters Kluwer" platform as a sample, some scholars analyzed the citation of Article 225 of the Criminal Law and its various items in cases of illegal business operations. [17] (As shown in Table 1)

Table 1. Citations for Article 225 of the Criminal Law and its Items (2017–2020)

Cited Article/Item	2017		2018		2019		2020	
	Quantity (copies)	YoY Proportion (%)	Quantity (copies)	YoY Proportion (%)	Quantity (copies)	YoY Proportion (%)	Quantity (copies)	YoY Proportion (%)
Item (1)	2106	45.94%	2298	47.27%	3182	46.49%	2618	44.15%
Item (2)	5	0.11%	1	0.02%	5	0.08%	12	0.20%
Item (3)	217	4.73%	190	3.91%	289	4.22%	295	4.97%
Item (4)	809	17.65%	718	14.77%	878	12.83%	730	12.31%
Article 225 (Entirety)	1447	31.57%	1654	34.03%	2490	36.38%	2275	38.36%
Total	4584	100%	4861	100%	6844	100%	5930	100%

As can be seen from this table, the citation proportion of Item (4) of Article 225 continuously declined from 17.65% in 2017 to 12.31% in 2020; however, the citation proportion of the entirety of Article 225 has been rising year by year. That is to say, an increasing number of courts no longer choose to cite the Item (4) catch-all clause as the legal basis, but instead turn to citing the entire Article 225. From this, it is evident that the problem of the generalized application of the crime of illegal business operations has not actually fundamentally improved; it has merely changed its manifestation.

From the perspective of judicial practice, although expanding the applicable scope of the crime of illegal business operations through judicial interpretations can promptly respond to the needs of social governance, it blurs the boundary between administrative illegality and criminal offenses. According to Guiding Case No. 97 of the Supreme People's Court, when determining whether business behavior that violates relevant administrative management regulations constitutes the crime of illegal business operations, consideration should be given to whether the business behavior amounts to a severe disruption of market order. Business behaviors that violate relevant administrative management regulations but have not yet severely disrupted market order should not be identified as the crime of

illegal business operations. Wang Lijun's unlicensed purchase of corn did not harm the interests of grain farmers and consumers; on the contrary, it helped some farmers solve the difficulty of selling grain. Imposing criminal punishment on him clearly violated the national legal sentiment.

China operates under a socialist market economy system, where the market plays a decisive role in resource allocation. The resources the state invests in the judiciary are limited. The disorderly expansion of the crime of illegal business operations will not only lead to an excessive tilt of judicial resources toward minor crime cases—squeezing out governance investment in serious crimes and causing an imbalance in resource allocation—but it also harbors the risk of infringing upon the economic freedom of market entities. This can easily trigger anxiety among the entrepreneurial community, thereby suppressing innovation vitality and the driving force of market development.

2.2. The Mid-End Dilemma: Inadequate Articulation of Criminal Sanction Measures in Minor Crime Governance

Current academic discussions on minor crime governance predominantly focus on localized countermeasures and recommendations, with less emphasis on systematic and overarching institutional construction. Unlike the context of serious crimes, which emphasizes punishment and isolation, minor crime governance should focus more on the correction and reintegration of the actor to fully maximize preventive efficacy. Therefore, the scope of minor crime governance should encompass the entire process, from the actor's entry into the judicial process to their ultimate reintegration into society. Only through systematic institutional arrangements from a macro perspective can the normative expectations of minor crime governance be effectively realized.

In the mid-end phase of minor crime governance—namely, the judicial procedural flow of minor crime cases—there are issues such as the absence of institutional functions and the fragmentation of procedural links. The essence of this lies in the insufficient articulation of the criminal integration mechanism. Criminal integration requires a rational layout and smooth coordination of relevant criminal law mechanisms. The field of minor crime governance should likewise be guided by the concept of criminal integration, building a bridge among legislation, judicature, and social governance. This would transform the three into a mutually supportive institutional system with streamlined operational flows, thereby forming a specialized integration mechanism for minor crime cases. However, the current criminal integration mechanism has not yet fully taken shape, and various systems exhibit a fragmented state. This is primarily manifested by the fact that the attention of both academia and practice toward minor crime governance is largely confined to post-conviction treatment measures for offenders, such as the mechanism of conviction with exemption from punishment, leniency measures, and the application of collateral consequences of a criminal conviction. Conversely, there is insufficient focus on the early-stage procedural disposal and the protection of rights when the actor first enters the criminal process. Minor crime governance should not be restricted to isolated, fragmented interventions but requires a comprehensive, full-process institutional design. This is because criminal proceedings carry a strong element of state coercion; once an actor becomes involved, their fundamental rights immediately face the risk of being curtailed. The early-stage procedural disposal referred to in this paper mainly denotes the application of custodial measures among coercive measures and the realization of the functions of the non-prosecution system.

In current judicial practice, arrest and prosecution remain the norm, while non-arrest and non-prosecution are the exceptions. Firstly, the practices of non-arrest and non-prosecution misalign with the general public's value paradigms; the public may mistakenly believe that judicial organs are condoning crime, leading them to question judicial fairness and credibility, which imposes tremendous public opinion pressure on case-handling personnel. Secondly, the performance evaluation and accountability mechanisms within procuratorial organs are extraordinarily strict. For prosecutors, erroneously making a decision not to arrest or not to prosecute may result in them being held accountable based on subsequent verdicts rendered by adjudicatory organs. Consequently, to avert risks, they are inclined to opt for prosecution. However, for offenders of minor crimes with

exceptionally slight circumstances, there is a significant likelihood that their human rights will be infringed upon during this process.

Regarding coercive measures, their application to perpetrators of minor crimes in judicial practice is relatively harsh. Custodial measures such as criminal detention and arrest occupy a dominant position, seemingly showing no distinct difference from the treatment of serious felony offenders. Some scholars have conducted empirical research on minor crime cases of "intentional injury causing slight harm" and found that although the phenomenon of "arrest upon constitution of a crime" has been controlled to a certain extent in minor crime cases, studies show that the arrest rate during the investigation stage remains as high as 53%.^[18] However, coercive measures inherently constitute restrictions on an actor's personal or property rights. An over-reliance on custodial measures violates procedural justice. It not only infringes upon the procedural rights of minor crime offenders but may also exert a potential influence on the free evaluation of evidence by judges due to the offender's detained status, indirectly leading to harsher final outcomes and resulting in injustice from procedure to substance. At the same time, the failure of other non-custodial coercive measures (as alternatives to arrest) to fully fulfill their substitutive functions is another reason for the over-application of custodial measures. First, there is a lack of unified, quantitative evaluation indicators for an actor's social dangerousness. In practice, judicial personnel lack clear standards when assessing a criminal suspect's social dangerousness; driven by the objective of maintaining social order and safety to the greatest extent, they naturally lean toward selecting arrest measures. Second, under non-custodial measures, supervision primarily relies on traditional methods such as manual "tailing" and telephone verification. These methods involve high supervisory costs and significant difficulties, placing an excessive burden on judicial organs.

Regarding the non-prosecution system, the application rate in current practice has improved somewhat, but it remains generally low. In 2023, procuratorial organs nationwide decided to prosecute a total of 1.688 million people and decided not to prosecute 578,000 people, resulting in a non-prosecution rate of 25.5%.^[19] The system of relative non-prosecution is strictly limited to individuals who "do not need to be sentenced to a criminal penalty or are exempted from a criminal penalty." Under this system, the actor neither bears a criminal label nor receives criminal punishment; influenced by concepts of crime suppression and other factors, its scope of application is limited. In contrast, the system of conditional non-prosecution could be applied to individuals who might be sentenced to a certain penalty while simultaneously preempting a "probationary period." It possesses a special preventive function, can reasonably predict the actor's personal dangerousness and likelihood of committing a crime, and therefore has a broader space for application.^[1] However, current law restricts the conditional non-prosecution system solely to minors, leading to the blockage of the non-prosecution system as a pathway to decriminalization.

In addition to the absence of specific links in the integrated governance of minor crimes, there are also problems in the articulation between different links. Specifically, the scope of application and boundaries among conditional non-prosecution, relative non-prosecution, and the mechanism of conviction with exemption from punishment are unclear. In judicial practice, it is difficult to accurately and efficiently judge and actualize the rational selection of the corresponding system. This leads to different treatments for similar cases, thereby compromising the legal and social effects of minor crime governance.

2.3. The Back-End Dilemma: Overly Severe Criminal Sanctions and Blocked Reintegration Pathways

The rendering of a guilty verdict is not the endpoint of minor crime governance. Currently, the criminal consequences borne by minor crime offenders present a dual dilemma of internal excessive severity and external spillover. Regarding penal consequences, there are problems such as the hollowing out of the punishment exemption mechanism and overly severe penalties. Regarding social consequences, the collateral consequences of a crime often possess long-term and overarching characteristics, leading to a passive situation where "the sentence is served, but the punishment does

not cease." Influenced by the inertia of "heavy penalism" (harsh punishment), judicial practice emphasizes the dual superimposition of penal punishment and social exclusion, essentially forcing minor crime perpetrators to bear complex pressures that exceed their culpability. This not only deviates from the original intention of correction and salvation in minor crime governance but also seriously hinders the resocialization process of minor crime offenders, potentially accumulating into hidden risks for social governance.

2.3.1. Over-reliance on Penalties for Minor Crime Punishment and the Unactivated Mechanism of Conviction with Exemption from Punishment

The criminal policy principle of tempering justice with mercy requires "differential treatment"—that is, implementing different punitive measures for criminal acts with varying natures, harmful consequences, and degrees of infringement on legal interests, ensuring leniency where appropriate and severity where necessary. Compared to serious crimes, minor crimes have less severe harmful consequences and a lower urgency of infringement upon legal interests, and the actors possess lower social dangerousness. Their likelihood of reintegrating into society after rehabilitation is high, and the required time is short. Therefore, leniency should be emphasized for minor crimes, adopting a basic stance of leniency in conviction and sentencing. However, currently, the practice of applying criminal penalties to minor crime offenders still occupies a dominant position, and there remains a bias towards custodial sentences in the choice of penalty types. For example, in 2024, the number of people sentenced to fixed-term imprisonment of less than three years and criminal detention was 853,727, while the number of people subjected to probation, public surveillance, and supplementary punishments alone was 545,442, accounting for approximately 61% and 39% respectively; in 2023, the former was 863,246 and the latter was 568,069, accounting for approximately 60% and 40% respectively. [20] This practice of still placing minor crimes within the same governance framework as serious crimes at the penal level cannot adapt to the governance requirements of the "era of minor crimes." On the one hand, indiscriminately applying "repressive sanctions" to minor crime offenders actually yields poor rehabilitative effects; its punitive significance far outweighs its educational role, whereas in an organic society, people care more about the restoration of harm.[11] Even short-term custodial sentences restrict the offender's freedom of action, separating them from society for a certain period, which is detrimental to the minor crime offender's subsequent reintegration into society and instead plants the hidden danger of "recidivism." On the other hand, short-term custodial sentences may bring minor crime offenders into contact with serious crime offenders, thereby triggering cross-infection. Furthermore, the over-application of criminal penalties will compress the functional space of other social governance means, disrupting the balance of pluralistic social governance. Currently, judicial practices in various regions have begun exploring corrective educational means such as solely applying fine penalties or social services similar to community correction measures, but a unified and feasible scheme has not yet been formed.

In addition to the bias in applying penalty types to minor crime offenders, the absence of a mechanism for conviction with exemption from punishment leads to some actors—who originally did not need to be subjected to criminal penalties—suffering from this most severe punitive measure. Article 37 of the Criminal Law stipulates that for those whose criminal circumstances are minor and do not require the imposition of a criminal penalty, they may be exempted from criminal punishment. This "conviction with exemption from punishment" mechanism confirms the defendant's status as an offender and the criminal nature of the act, but based on the minor circumstances, it determines that the offender does not need to actually suffer the punitive consequences of a criminal penalty. However, current laws do not make explicit provisions for the application procedures of non-penal punitive measures following an "exemption from criminal punishment," leading to unstandardized operations in judicial practice.

2.3.2. The Spillover of Collateral Consequences of Crime in the Context of Minor Crime Governance

The collateral consequences of a crime should refer to the system in which offenders are subjected to a series of rights restrictions in social life due to their "criminal record" after the execution of their sentence is completed. Some scholars also advocate expanding the applicable subjects to individuals related to the offender.[21] Against the backdrop of the continuous expansion of minor crime criminal legislation, on the one hand, in the front-end minor crime criminalization stage, issues such as generalized evaluation standards and easy criminalization lead to actors whose behaviors inherently lack penal punishability being unreasonably convicted and subsequently bearing collateral consequences. On the other hand, the existing collateral consequences system, characterized by its failure to distinguish between minor and serious crimes, unrestricted durations, and lack of systematization, triggers generalized application problems in practice. There is much controversy in the academic community regarding the future direction of this system.

Some scholars believe that the collateral consequences system has rationality and necessity for its existence. Collateral consequences are not a disadvantageous penalty imposed on offenders but possess neutral characteristics. Their function is to provide information for the comprehensive social governance project, preventing punished individuals from exceeding the scope of supervision and causing governance disorder. The core purpose is to construct and maintain the order of social governance.[22]

Other scholars argue that the nature of criminal penalties is to punish offenders, yet it cannot guarantee the elimination of the offender's social dangerousness. Therefore, after offenders are released upon completing their sentences, they may still possess high social dangerousness and a potential likelihood of re-offending. For the purposes of special prevention regarding offenders and the protection of public social interests, establishing a criminal record system is necessary.[23] Some argue that imposing certain restrictions on released offenders in areas such as employment is based on a cultural foundation formed by the public over many years—namely, psychological defense against offenders—as well as the social defense value inherent in this system.[24]

As the social evaluation impact suffered by an actor after committing a criminal act, collateral consequences arise because the general public cannot accurately assess whether the offender's dangerousness has been eliminated. For the purpose of protecting their own rights and interests, people will inevitably treat individuals with criminal records differently. This phenomenon has a profound public cultural foundation and a certain crime prevention function; thus, its existence is indeed necessary.

Another group of scholars believes that the collateral consequences system constitutes a supplementary and repetitive punishment imposed in addition to the penal punishment of the offender. Particularly against the backdrop of the "era of minor crimes," indiscriminately applying the same degree of collateral consequences to offenders of both minor and serious crimes leads to the phenomenon where "minor crimes are not minor." To a certain extent, this subjects minor crime offenders to unfair treatment, impacts the protection of human rights, and becomes a link with a major loophole in the minor crime governance system. Currently, China's collateral consequences system lacks unified legislative norms or institutional documents; instead, it is implemented based on local regulations and actual conditions, featuring diversity in content and disorder in expression. This institutional defect leads to a trend of generalized application of collateral consequences in judicial practice. The negative impact it has on the construction of the minor crime governance system can be reflected in the following multiple aspects:

A. Violation of the Principle of Proportionality

Imposing punishments on offenders should comply with the requirements of the principle of proportionality, achieving the "adaptation of penalty to the crime and culpability." The responsibility an offender must bear should be correlated with the specific unlawful act, and differentiated restrictions should be imposed based on the varying legal interests infringed upon by the prior act. However, the current design of the collateral consequences system does not actually consider the

correlation between specific crimes and their collateral consequences. The uniform application of identical collateral consequences to both minor and serious crimes disconnects the collateral consequences from the specific legal interests they intend to protect, creating an improper linkage.[25] This fails to meet the practical requirement of analyzing specific situations and cannot reflect the characteristics of individual cases. Meanwhile, no reasonable limits have been set on the application period of the system, endowing collateral consequences with a "lifelong" characteristic. After enduring penal punishment, offenders still have to suffer under the shadow of a criminal label for the rest of their lives, and the responsibility they bear far exceeds the adverse impacts caused by their criminal acts.

B. Violation of the Principle of Personal Culpability

The principle of personal culpability, one of the basic principles of China's Criminal Law, requires that criminal responsibility be borne by the offender themselves, and no one shall be punished for the unlawful acts of others. This is a fundamental requirement of fairness and justice. However, the indirect collateral consequences within the collateral consequences system seem to pose a challenge to this principle. Some scholars believe that for modern penal punishment to achieve its preventive function, it inevitably implicates the innocent, and indirect collateral consequences should be moderately retained.[26] Other scholars argue that achieving a preventive effect by imposing sanctions on innocent people lacks justification in itself, and indirect collateral consequences should be eliminated.[27] Under indirect collateral consequences, the independent personality of specific related persons is blurred, and the law requires innocent people to bear the consequences for the criminal acts of others due to "family ties, geographical origin," and other reasons. For example, the Measures for the Recruitment of People's Police by Public Security Organs (repealed on November 6, 2007) stipulated that individuals whose direct blood relatives, or collateral blood relatives having a significant influence on them, have been sentenced to death or are serving sentences shall not apply for the civil service examination for the people's police.[28] This institutional feature of extending the punitive consequences borne by offenders to their relatives has a certain cultural foundation, originating from the influence of the ancient Chinese "collective punishment" (Lianzuo) system. However, guided by the current positive criminal legislative concept, the scope of legislation has expanded, and an increasing number of actors are included in the category of crime, causing the number of affected relatives to grow exponentially. This "guilt by association" system can no longer fully adapt to the development of the current era.

C. Violation of the Principle of Legality (Nullum Crimen Sine Lege)

The principle of legality requires that criminal penalties must be explicitly stipulated by law. After an offender receives penal punishment, the application of the criminal record system belongs, to a certain extent, to a "secondary punishment." For an offender, restricting them from engaging in certain professions essentially restricts their survival, which already possesses the basic nature of a criminal penalty and should be regulated by the principle of legality. Imposing the limits of the principle of legality solely on criminal penalties while holding an open attitude towards the criminal record system practically hollows out the principle of legality. At present, collateral consequences feature a complex system and scattered content, with relevant provisions distributed across legal norms and normative documents of different hierarchies, lacking unified legal constraints. Although originating from the Criminal Law, they present a trend of drifting away from the legal system.

Regarding the nature of collateral consequences, scholars have provided different explanations from both the positive and negative aspects of the system. However, against the backdrop where a unified and clear legal provision regarding the system's application method has not yet been passed, this system has experienced a certain degree of functional alienation: the lack of a mechanism distinguishing minor from serious crimes leads to minor crime offenders bearing disproportionate collateral consequences, and in some cases, it is even alienated into a tool for venting social emotions. In the context of the expansion of minor crimes, it is necessary to integrate and revise the collateral consequences system, promoting its shift from "punishment-dominated" to "giving equal weight to

prevention and reintegration," in order to achieve a benign balance between social order and individual freedom, which aligns with the fundamental purpose of minor crime governance.

3. Exploring the Systematic Path of Minor Crime Governance

In order to resolve the series of problems currently faced in the field of minor crime governance and to achieve the organic integration of crime suppression and governance, there is an urgent need to construct a comprehensive minor crime governance system. This system should cover three main components: the identification of minor crimes, substantive decriminalization, and criminal treatment measures. Among these, criminal treatment measures further include the discretionary non-prosecution system, the mechanism of conviction with exemption from criminal punishment, and the governance of the collateral consequences of crime.

3.1. Scientifically Defining the Concept of Minor Crime

Considering operability, efficiency, and judicial consistency, it is more feasible to adopt the "formal standard theory" for the identification of minor crimes. Regarding the academic debate over whether to use the statutory penalty or the pronounced penalty (the actual sentence rendered) as the standard, the statutory penalty standard is more in line with the needs of minor crime governance. First, when a criminal suspect enters the criminal proceedings after investigation, public security and judicial organs will make a preliminary determination of the nature of the suspected crime based on existing evidence. Consequently, they can determine the statutory penalty according to the charge, thereby judging whether it falls within the scope of a minor crime. This facilitates the application of special governance measures to minor crime suspects from the very initial stage of the proceedings. In contrast, the pronounced penalty requires the consideration of various aggravating and mitigating circumstances of the suspect and can only be determined after the criminal trial phase concludes. This delays the identification of minor crimes, making it difficult for the restrictions on the application of coercive measures at the front end and the decriminalization mechanisms at the prosecution stage to achieve their expected effects. This fails to fulfill the purpose of integrating minor crime governance throughout the entire process of criminal cases, limits the efficacy of the mechanisms, and fails to effectively protect the legitimate rights and interests of minor crime offenders. Second, adopting the pronounced penalty standard would, more seriously, contradict the value paradigms of the general public. Social contract theory posits that law is the expression of the general will, rather than the unilateral command of a sovereign; its fundamental purpose lies in safeguarding public welfare and justice. Judicial personnel must look through the text to seek the public rationality behind the law, ensuring that the application of the law does not violate the original intention of the social contract. For example, the crime of intentional homicide infringes upon the personal safety, life, and health of the public, representing legal interests of fundamental importance. Furthermore, this charge subjectively requires intent, reflecting that the offender commits such criminal behavior based on their active will. The probability of the harmful result occurring is high, and regardless of whether the harmful result actually occurs, the impact is extremely egregious; naturally, it should not be classified as a minor crime. However, the crime of intentional homicide may be pronounced with a relatively low penalty in the presence of circumstances such as criminal attempt, discontinuation of the crime, or meritorious service. Therefore, under the pronounced penalty standard, it holds the possibility of being included in minor crimes, which seriously violates the simple value concepts underlying the law. By contrast, although the crime of dangerous driving infringes upon public safety—a legal interest of equally fundamental importance—there is a certain distance between the constitution of this crime and the occurrence of actual harmful results. Its imminent danger is significantly lower than that of intentional homicide, so it can be classified as a minor crime; this can also be glimpsed from the difference in the statutory penalties of the two crimes. However, under the measurement standard of the distance to the infringement of legal interests, dangerous driving behaviors cannot be distinguished from the preparatory acts of intentional homicide, because both are

relatively far from the occurrence of the infringement. Yet, there is an inevitable connection between the preparatory acts of intentional homicide and the occurrence of harmful results; once realized, there is a high probability that the infringement result will occur, making it difficult for the public to accept its inclusion as a minor crime. In contrast, for intoxicated dangerous driving, the act of drunk driving is intentional, but the infringement on public safety is subjectively negligent. Its subjective malice is low, and the probability of infringement occurring is low; including it in minor crimes would not cause a major deviation from general value concepts.

Based on the adoption of the statutory penalty standard, using "fixed-term imprisonment of less than three years" as the specific demarcation standard for minor crimes possesses rationality and feasibility. First, this standard can ensure that the minor crime system has the necessary coverage. Among the 486 charges in China's Criminal Law, charges with a statutory maximum penalty of fixed-term imprisonment of less than three years account for approximately one-third,[1] indicating that this standard is highly compatible with the overall structure of the Criminal Law. If the standard of "fixed-term imprisonment of less than one year" advocated by some scholars were adopted, it might lead to an overly narrow scope of minor crimes, making it difficult to fully exert the institutional efficacy of minor crime governance. Second, "fixed-term imprisonment of less than three years" has become the connecting point for multiple important systems in China's criminal field, such as probation and criminal reconciliation procedures. Using this as a standard is conducive to achieving a smooth articulation between minor crime governance and existing criminal procedures and substantive systems. Finally, from the perspective of judicial practice, minor crime cases defined by this standard account for a high proportion of the total volume of criminal cases. According to data released at a press conference by the Supreme People's Procuratorate on February 10, 2023, between 2018 and 2022, minor crime cases resulting in a sentence of fixed-term imprisonment of less than three years or non-prosecution accounted for over 85% of prosecuted criminal cases.[29] This reflects that this standard aligns with the actual conditions of China's current social public order and crime trends, and helps to fully realize the goals of education, correction, and social reintegration in minor crime governance while maintaining judicial efficiency.

The approach proposed by some scholars in the academic community to classify minor crimes based on the standard of natural crimes (*mala in se*) and statutory crimes (*mala prohibita*)—that is, statutory crimes as minor crimes and natural crimes as serious crimes—lacks feasibility. Generally speaking, the criminal objects of natural crimes are basic human ethics and morals; the criminal objects of statutory crimes are the state's administrative management order. In China's criminal field, natural crimes and statutory crimes are merely conceptual classifications in a theoretical sense. Although they are highly significant interpretive tools, they are not statutory classifications in a legislative sense. Along with changes in social life, people's ideological concepts are also changing. There are some charges whose classification as natural or statutory crimes is blurred, and the phenomenon of the "natural criminalization" of statutory crimes has emerged. For example, regarding the crime of environmental pollution, due to the strengthening of public environmental awareness, severe environmental destruction behaviors have been endowed with moral condemnability. Therefore, in judicial practice, it is difficult to simply characterize a certain charge as a natural crime or a statutory crime, thereby affecting judicial efficiency. In addition, crudely treating statutory crimes as minor crimes and natural crimes as serious crimes cannot meet the needs of minor crime governance. The purpose of delineating minor crimes is to implement lenient measures for minor crime offenders; such a sweeping classification may lead to unfair phenomena in individual cases. Taking the crime of theft as an example, as an act subject to public moral condemnation, it is naturally classified within the scope of natural crimes. However, based on the principle that the Criminal Law does not interfere with family life, in cases of stealing property from family members, there is a possibility of applying relative non-prosecution for decriminalization depending on the attitude of the family members. In such instances, a conflict arises with its definition as a "natural crime—serious crime." According to statistics by relevant scholars, the crime of theft was included in the top five charges with the most applications of discretionary non-prosecution nationwide from 2015 to 2022,

gradually rising from fifth place to third place.[30] This reflects that there is actually a significant demand for the crime of theft to be included as a minor crime for governance. The practice of simply characterizing it as a natural crime and excluding it from minor crimes does not accord with practical needs.

3.2. The Pathway of Substantive Decriminalization

For minor crimes, the criminal trial is one of the most crucial links in governance. After a case is prosecuted to the court, a judge's rendering of a not-guilty verdict becomes the final pathway for decriminalization. This requires the judge to make a ruling by comprehensively considering multiple factors, such as the nature of the act and its social effects. Issues such as whether a certain behavior constitutes a crime or whether it is necessary to impose a criminal penalty actually yield vastly different results due to the judge's free discretion. In current judicial practice, through the analysis of typical administrative crime cases such as the crimes of illegal business operations, dangerous driving, and throwing objects from high altitudes, it can be seen that courts render guilty verdicts for the overwhelming majority of such cases prosecuted by the procuratorate; not-guilty verdicts are extremely rare. According to the judicial statistical communiqués of the Supreme People's Court, the number of individuals receiving not-guilty verdicts in criminal cases nationwide from 2019 to 2023 was 1,388, 1,040, 894, 631, and 804 respectively, accounting for a mere 0.83%, 0.68%, 0.52%, 0.44%, and 0.48% of the total number of criminal case verdicts in those respective years. This reflects the absence of the court's trial function within the minor crime governance system. Due to the "assembly line" operational model of case handling by the public security organs, procuratorates, and courts, once a case reaches the trial stage, it is difficult for the court to negate the procuratorate's prosecution opinion solely based on the proviso (of Article 13 of the Criminal Law).[4] Therefore, burdened by judicial pressure and the fear of the negative impacts caused by wrongful judgments, judges generally exhibit a reluctance or fear to render not-guilty verdicts in minor crime cases. They typically lack substantive judgment regarding minor crime cases, predominantly relying on formalistic conviction. Although this can maximize the regulation of all behaviors potentially involving crimes and achieve a preventive effect, it also results in the application of the Criminal Law to regulate behaviors that inherently did not require criminalization and punishment, thereby improperly increasing the burden on the actors.

To exert the function of the substantive decriminalization link within the minor crime governance system, it is necessary to construct a methodological system. Macroscopically, judges should adhere to a series of principles when trying minor crime cases. First, based on China's dual sanction system that distinguishes between illegality and crime, the principle of the modesty of criminal law (*ultima ratio*) should serve as the necessary prerequisite for rendering all judgments. During the trial process, judges should pay attention to properly handling the relationship between the Criminal Law and other departmental laws; especially regarding statutory crimes (*mala prohibita*), they must accurately grasp the scope of application of the Criminal Law. Even for charges with symbolic legislative significance, such as dangerous driving or throwing objects from high altitudes, one must not indiscriminately criminalize all related behaviors just to exert the Criminal Law's functions of behavior regulation and crime prevention. Instead, the actual effectiveness of applying the Criminal Law should be considered. When ideal governance effects can be achieved without resorting to the Criminal Law, the case should be dropped, firmly guarding the position of the Criminal Law as the last line of defense for the protection of rights and interests. Second, it is necessary to balance public interests with personal interests. A balance point must be sought between satisfying the societal members' demand for punishing crimes to ensure their own safety, and protecting the rights and interests of the actors. Judges cannot be led by public opinion to impose consequences on the actor that far exceed the severity of their behavior; this is essentially societal members excessively restricting offenders based on their subjective sense of security, thereby infringing upon the offenders' free human rights. Finally, the principle of parallel punishment and correction should be implemented. Judges should conduct their examination from a dual perspective—pre-trial and post-trial—considering the actor's criminal

behavior while simultaneously predicting the social effects after the judgment, ensuring that the corrective function is exerted alongside punishment to promote the minor crime offender's reintegration into society.

Microscopically, a dual-tier substantive decriminalization method needs to be constructed.

A. The first tier involves considering the substantive legal interests protected behind the charge. Especially for statutory crimes, it is necessary to break through the surface of legal regulations and systems, combining the purpose of the Criminal Law to analyze the true legal interests it intends to protect. For a certain behavior that formally perfectly meets the constitutive requirements of a crime, if a comprehensive value judgment of the entire case's circumstances reveals that imposing a punishment clearly violates national legal sentiment or common sense, common reasoning, and normal human feelings, decriminalization should be granted.

The theory of social adequacy, which originated in Germany, provides support for this. Hans Welzel believed that "all actions occurring within the historically evolved ethical order of social community life are socially adequate actions."^[31] Behaviors that possess normalcy and conform to societal value paradigms are excluded from criminal unlawfulness because of their social adequacy. Therefore, situations arise in judicial adjudication where a ruling conforms to criminal law provisions but contradicts public cognition and legal sentiment. The root of this lies in the diversity of social life, whereas the normative evaluation system of criminal law is more closed.^[32] For example, in the case of Zhao Chunhua's illegal gun possession, she made a living by setting up a shooting stall. Later, because the gun-shaped objects at her stall were identified as firearms, she was charged with the crime of illegal gun possession. It can be seen that the so-called gun possession was essentially Zhao Chunhua providing gun-shaped objects at a stall for customers' shooting entertainment to make a living, which holds no condemnability in the simple value paradigms of the public. However, the judicial organs ultimately rendered a verdict of conviction and punishment according to the Criminal Law. Another example is the crime of illegal fishing of aquatic products; such behavior is not entirely consistent with immoral behavior under traditional concepts and possesses a certain social adequacy within the current moral normative system. The development of law is the sum of multiple factors, including social politics and economics. The introduction and application of sociological theory provide an important analytical perspective for understanding and enhancing the practical efficacy of the law. Applying the theory of social adequacy can help us reasonably restrict the applicable scope of statutory crimes. Furthermore, the law is not an objectively unchanging entity, but a "symbol" continuously interpreted during judicial interaction. From the perspective of symbolic interactionism, substantive decriminalization in minor crime governance is essentially a process where the judge, acting as an interpreter, makes a "secondary definition" of behaviors that formally meet constitutive requirements, aligning legal symbols with social reality.

B. The second tier is the element-based judgment method founded on current crime constitution theories. China adopts a "qualitative + quantitative" crime determination model, and there are two ways to decriminalize: one is the failure to meet the constitutive requirements of a crime, and the other is being excluded from the category of crime due to a negligible quantity of criminality (insignificant severity).^[33] Whether it is China's traditional four-element theory of crime constitution or the three-stage system—which is increasingly influential due to its conformity with practical needs—both take conformity to constitutive elements as the core or prerequisite of judgment. In the crime determination logic of the three-stage theory ("conformity to constitutive elements - illegality - culpability"), the determination of the social harmfulness of illegality relies on reaching a minimum criminality threshold based on satisfying the constitutive elements. As a tool for measuring illegality, the conformity to constitutive elements, due to its inherent focus on formal review, essentially restricts the judgment of illegality within the formal evaluation framework of the constitutive elements.^[4] For the four-element theory of crime constitution, which centers on the judgment of the elements of a crime, it is even easier to overly focus attention on judging the degree to which an act formally meets the elements, while neglecting the process of comprehensively evaluating the whole case—that is, making a substantive evaluation incorporating multiple factors such as the act,

circumstances, and the actor. Based on this current state of China's crime theory system, judges in the trial process tend to apply a corroborative analysis between the act and the constitutive elements, thereby weakening evaluative analysis. Therefore, a substantive understanding of the constitutive elements of a crime should be emphasized. For behaviors that can be decriminalized, judicial discretion should be actively exercised. Based on the rationality of the rule of law, the intervention of minor crime legislation into public life should be controlled to the minimum extent possible.

Regarding the specific standards for the substantive decriminalization link, upon considering the formal conformity to constitutive elements, one can conduct a substantive review of legal interest infringement, an individualized review of the actor's culpability, and a review of the necessity of criminal sanctions.

(1) At the level of the substantive review of legal interest infringement, attention must be paid to the imminence of the legal interest infringement, adopting a lenient attitude toward behaviors that fundamentally lack the possibility of causing a harmful outcome to legal interests. At this level, it is particularly necessary to conduct a review of specific danger regarding abstract danger offenses, allowing the actor to be decriminalized through counter-evidence proving that the danger fundamentally did not exist or could not possibly occur. A portion of scholars in the academic community hold the "theory of prohibiting counter-evidence," arguing that the "danger" in abstract danger offenses is presumed to exist by the legislator at the time of legislation—meaning that an act satisfying the constitutive elements is naturally presumed to carry danger, and judicial judgment cannot be applied; otherwise, it would conflict with the legislative logic of abstract danger offenses.[34] However, this viewpoint harbors certain flaws. While we acknowledge that whether a certain act poses a danger should first be judged by the legislator, and based on this, certain acts are incorporated into the prohibited scope of the Criminal Law, human experience is limited while social life is infinite. Legislators can hardly foresee all possible future circumstances when drafting laws. It is possible that an actor commits an act meeting the constitutive elements of an abstract danger offense, but ultimately no danger arises. For instance, in the crime of falsely making out value-added tax invoices, if the actor's sole purpose was to artificially inflate corporate performance and it actually created no danger of loss to state tax revenue or property, convicting them merely because they satisfy the formal constitutive elements is arguably unreasonable. Therefore, the general judgments made by legislators based on experience regarding the existence of danger may contain errors or omissions. This requires judicial personnel to exercise judicial judgment, analyzing the specific circumstances of individual cases to avoid "mechanical justice" and to truly realize judicial value.

(2) At the level of the individualized review of the actor's culpability, judicial personnel—based on the concept of restorative justice—should comprehensively examine the criminal act, post-crime attitude, admission of guilt and acceptance of punishment, and the status of obtaining forgiveness. This is to substantively judge the actor's subjective malice, personal dangerousness, and likelihood of recidivism. The core lies in integrating universal legal norms with the specific situation of the individual actor, achieving an organic balance between the individual justice of case-by-case analysis and the uniformity of legal application, while focusing on social governance effects. Furthermore, in cases where the behavior is based on human weakness, is for public duty or altruism, or where the victim harbors major fault, the demands placed on the actor should be appropriately lowered, thereby better conforming to simple legal value concepts.

(3) At the level of reviewing the necessity of criminal sanctions, guided by the criminal policy of tempering justice with mercy, judicial personnel need to expand their perspective to the subsequent impact of the adjudication results, weighing the expectation and necessity of the penalty. That is, during the trial process, the judge must pre-judge what penalty might be imposed if the defendant is found guilty and whether a criminal conviction and punishment are necessary, or if there are alternative governance means that can better achieve the balance between education and punishment. Using this as the final review threshold before rendering a guilty verdict fully exerts the concept of prudence in applying criminal penalties.

For example, regarding the crime of producing and selling fake drugs as a statutory crime, the core controversy lies in how to identify "fake drugs." The case of Lu Yong suspected of selling fake drugs once aroused heated public debate. As a leukemia patient, Lu Yong purchased therapeutic drugs from India on behalf of fellow patients due to the exorbitant prices of domestic targeted drugs. These drugs were foreign medicines that had not obtained drug approval documents in China, which met the definition of fake drugs under Criminal Law Amendment (VIII). Therefore, his behavior formally met the crime of selling fake drugs. However, considering public opinion and social pressure, the procuratorial organ ultimately made a decision not to prosecute. The Lu Yong case promoted the revision of laws and regulations; Criminal Law Amendment (XI) deleted the content regarding the identification of fake drugs in the second paragraph of the original article, thereby excluding drugs produced and sold abroad but lacking domestic approval documents from the category of fake drugs. This sparked a debate over whether the identification of fake drugs should completely depend on prerequisite administrative regulations or whether the Criminal Law can make an independent value judgment. Scholars holding an affirmative view mostly argue from the perspective of upholding the principle of legality (*nullum crimen sine lege*) and maintaining the unity of the legal order, while scholars holding a negative view emphasize the judgment of substantive harmfulness.[35] I lean more toward supporting the negative view. Criminal penalty is the most severe punishment for an actor; behaviors capable of being included in the scope of the Criminal Law must reach a certain degree of severity and harmful effect. Otherwise, it contradicts the principle of the modesty of criminal law, leading to disorderly expansion that infringes upon citizens' fundamental rights. Therefore, the judgment of whether an act possesses substantive legal interest infringement in the sense of criminal law is undoubtedly the most core component. Blindly following the provisions of prerequisite regulations to judge whether something is a fake drug will lead into the trap of mechanical identification, focusing only on formal conformity while ignoring the substantive judgment of the act. Moreover, law has the characteristic of lagging behind social reality; when controversial issues arise, only by not rigidly adhering to textual provisions and conducting substantive value judgments on legal texts combined with actual conditions can fairness and justice be better realized. The textual modification in the Criminal Law Amendment also seems to have made a positive response to this viewpoint.

To make a substantive judgment on the legal interest infringement of the crime of producing and selling fake drugs, one must first determine what substantive legal interest the charge and the prerequisite administrative regulations intend to protect. From its placement in the code, the primary legal interest protected by this charge seems to be the order of the socialist market economy. However, order-maintenance types of legal interests lean more toward the interests of the state as a whole and are easily expanded and abused by rulers based on management purposes, triggering a crisis in human rights protection. Therefore, one should appropriately break through superficial formal judgments and recognize the threat that producing and selling fake drugs poses to the life, health, and safety of the public. According to the value orientation of the "concept of people's livelihood criminal law," we must adhere to a people-centric approach, abandoning the mechanical dogmatism of intensifying crackdowns merely to strengthen administration. Positioning the health and safety of citizens as the core legal interest of the crime of producing and selling fake drugs is more in line with the legislative purpose of the Criminal Law and is more likely to gain public approval.[36] Accordingly, those behaviors that formally constitute selling fake drugs but substantively pose no danger of harm to citizens' health and safety can achieve decriminalization due to the lack of legal interest infringement.

3.3. Resolving the Application Dilemma of the Discretionary Non-prosecution System

To enhance the efficacy of minor crime governance, unblocking the pathway for procedural decriminalization is a crucial step, and the non-prosecution system is precisely the core mechanism for procedural decriminalization. Currently, China has formed a non-prosecution system framework primarily comprising statutory non-prosecution, relative non-prosecution, non-prosecution due to insufficient evidence, and conditional non-prosecution. Among these, relative non-prosecution and

conditional non-prosecution provide space for procuratorial organs to exercise discretionary power to achieve decriminalization, and are collectively referred to as the "discretionary non-prosecution system."

Discretionary non-prosecution originates from the theoretical foundation of the "principle of discretionary prosecution" (*opportunité des poursuites*), which grants prosecutors the decision-making power on whether to initiate a public prosecution for a criminal case. This generates discretionary power over the outcome of criminal cases, promotes the rational allocation of judicial resources through diversion, and fully demonstrates the characteristic of "active justice" from the perspective of the prosecution. As the decriminalization pathway in the first link of the minor crime governance system, this system precedes the mechanism of conviction with exemption from punishment and the substantive decriminalization pathway in terms of its procedural position. Its degree of leniency is also significantly higher than that of the mechanism of conviction with exemption from punishment. Specifically, conviction with exemption from punishment only waives the penal consequences for the offender but does not deny the nature of their act as constituting a crime. This inevitably causes the actor to be branded with a criminal label, thereby subjecting their rights and freedoms to the restrictions of the collateral consequences of the crime. In contrast, the non-prosecution system achieves decriminalization directly through the decision of the procuratorial organ before the criminal case enters the trial stage. It not only exempts the penalty but even denies the actor's identity as a criminal, effectively making it as if the case "never happened" in substance. This produces an effect of restoring the status quo ante, greatly mitigating the impact on the actor's future life. However, because this system allows actors who have been identified as criminal suspects through investigation to directly exit subsequent judicial procedures, procuratorial organs have consistently maintained a cautious and restrictive attitude, resulting in a low actual application rate.

3.3.1. The Articulation among the Mechanism of Conviction with Exemption from Punishment, the Relative Non-prosecution System, and the Conditional Non-prosecution System

Based on the severity of the criminal acts corresponding to these systems, they can be arranged in descending order as follows: the mechanism of conviction with exemption from punishment, the conditional non-prosecution system, and the relative non-prosecution system. Together, these three constitute a tiered and articulated decriminalization system within minor crime governance. However, due to a certain degree of overlap in the normative descriptions of the applicable scopes and conditions of the aforementioned systems, their boundaries are often blurred in judicial practice, making it difficult for them to exert clear and synergistic institutional efficacy in this governance link. Therefore, it is necessary to further clarify the differences in the applicable scopes among the three. This paper will unfold a theoretical explication of the relationship among the three systems, taking personal dangerousness and legal interest infringement as the primary analytical dimensions.

A. The Mechanism of Conviction with Exemption from Punishment and the Discretionary Non-prosecution System: Personal Dangerousness

With the development and progress of social life, minor crime legislation has shown an expansionary trend. This reflects the rise of the positive criminal legislative concept, and the types of penalties have gradually formed a dual structure combining retributive punishment and preventive punishment. In the context of minor crime governance, the special preventive function of the criminal law is further emphasized, focusing on the rehabilitation of specific actors and crime prevention. Personal dangerousness directly embodies the likelihood of committing a crime—that is, the necessity of crime prevention. This indicator substantively reflects the actor's overall state within the perspective of crime and can be used to judge what kind of criminal treatment measure should be applied. Therefore, the key indicator distinguishing the mechanism of conviction with exemption from punishment from the discretionary non-prosecution system is personal dangerousness. Overall, the personal dangerousness of actors subject to the discretionary non-prosecution system should be lower than that of actors subject to the system of conviction with exemption from punishment. This is because collateral consequences of crime still exist under the mechanism of conviction with

exemption from punishment, whereas actors subject to the discretionary non-prosecution system do not need to bear them.

B. The Conditional Non-prosecution System and the Relative Non-prosecution System: Legal Interest Infringement

The core of distinguishing conditional non-prosecution from relative non-prosecution lies in the legal interest infringement. The legal interest infringement of the behaviors corresponding to conditional non-prosecution should be higher than that of relative non-prosecution. The reason why relevant behaviors can be decriminalized through the application of conditional non-prosecution instead of entering the trial procedure is that the actor's personal dangerousness is low, eliminating the need for restriction through conviction and punishment.

Regarding the evaluation method for legal interest infringement, the author believes that special considerations of national policy can be integrated. Using macro-national policy orientation as a value guide, a "surface + deep" evaluation system can be constructed by combining criminal law standards with sociological standards. The "surface" refers to the measurement standards for the severity of legal interest infringement in criminal law theory, including: ① the nature of the legal interest (e.g., whether it is a personal legal interest or a public legal interest); ② the quantitative judgment of harmful consequences (for material offenses, the amount of loss or degree of damage must be considered; for abstract danger offenses, the likelihood of the danger materializing must be considered); and ③ the subjective aspect of the actor. The "deep" level refers to transcending the abstract discussion of legal interest infringement in traditional criminal law and examining it within specific social relationships. First, consider the reparability of the legal interest. Restorative justice theory points out that crime is an injury to people and relationships, and the goal of justice should include repairing these injuries rather than blindly punishing. Whether the legal interest infringement of an act is "relatively high" can be judged by whether the injury it caused can be effectively repaired through concrete actions; if the actor actively repairs the damage and obtains forgiveness, the overall social harmfulness of their act has already been greatly reduced. Second, judge the actor's potential for resocialization. Hirschi proposed that individuals do not commit crimes because the "bonds" they establish with society constrain them.[37] Therefore, to judge the level of legal interest infringement of an act, one must look not only at the objective harmful results but also at the strength of the actor's social bonds, and whether the criminal act is accompanied by a rupture in social connections. For an adult with strong social bonds, an accidental deviant act causes less overall destruction to social relationships; thus, from this perspective, their legal interest infringement is clearly lower. For actors whose social bonds exhibit certain fractures, repairing their relationship with society through the additional conditions of the conditional non-prosecution system can better maximize governance efficacy. Third, consider it from the perspective of realizing the general preventive function of the criminal law. Unlike the relative non-prosecution system, which does not carry substantive consequences, the conditional non-prosecution system—by attaching obligations such as compensation and public service labor—makes the actor bear corresponding procedural responsibilities. This declares to society the Criminal Law's negative evaluation of such behaviors, helping to strengthen normative consciousness and exerting the function of general prevention. Therefore, for behaviors that indeed require warning and regulation through the Criminal Law but do not necessarily need to be uniformly prosecuted in court, priority should be given to considering the application of the conditional non-prosecution system.

3.3.2. Clarifying the Applicable Scope of the Relative Non-prosecution System

According to the provisions of Article 177, Paragraph 2 of the Criminal Procedure Law of the People's Republic of China, if a suspect meets the conditions of having "minor criminal circumstances" and "no need to be sentenced to criminal punishment or may be exempted from criminal punishment according to the provisions of the Criminal Law," the procuratorate may make a decision not to prosecute.

First, there is much debate in the academic community regarding whether the charges applicable to this system include all charges or are strictly limited to minor crimes. Given that serious crime

cases often involve more complex circumstances and more severe infringements on legal interests, they are better suited for conviction and punishment through trial procedures. The trial process serves to deter criminals and the public, exerting an educational and corrective function. From the perspective of judicial practice, the 2007 Quality Standards for Procuratorates Handling Prosecution Cases (Trial) stipulated that procuratorial organs may make a non-prosecution decision if a criminal suspect meets the conditions for relative non-prosecution and simultaneously satisfies one of five specific scenarios. The descriptions of these five scenarios were actually restricted to the scope of minor crimes.[38] Therefore, the author believes that the applicable scope of the relative non-prosecution system should be limited to minor crime cases.

Second, it is necessary to clarify the application conditions of the system through the issuance of judicial interpretations. Unifying the standard for judging "minor criminal circumstances" and clarifying the logical relationship between the two conditions will prevent the system from degenerating into the mere moral judgments of judicial personnel due to a lack of explicit standards, which would undermine judicial fairness and authority. We can observe that the application conditions of the relative non-prosecution system partially overlap with the description of the mechanism of conviction with exemption from punishment stipulated in Article 37 of the Criminal Law. It is necessary to clarify the relationship between relative non-prosecution and conviction with exemption from punishment in terms of their applicable scope. The core lies in the fact that offenders eligible for relative non-prosecution possess even lower personal dangerousness. When applying the relative non-prosecution system to a certain actor contradicts the severity of their behavior, the level of their personal dangerousness, and public evaluation, they should be excluded from the applicable scope of this system, and further consideration should be given to whether the mechanism of conviction with exemption from punishment can be applied to them.

3.3.3. Expanding the Applicable Subjects of the Conditional Non-prosecution System

Currently, China still continues the conditional non-prosecution system written into the special procedures for minors in the 2012 Criminal Procedure Law, which centers on educating, redeeming, and reforming minors who have committed minor crimes. However, combining foreign legislation and the practical needs of current minor crime governance, the applicable subjects of the conditional non-prosecution system should be expanded to adults, because this system holds a unique and important value within the minor crime governance system. Compared with conviction with exemption from punishment, conditional non-prosecution shares the commonality of the discretionary non-prosecution system—namely, eliminating the criminal label. Compared with relative non-prosecution, the conditional non-prosecution system sets a certain threshold for the actor to achieve complete decriminalization; only subjects who pass the probation period can be decriminalized. This can effectively avoid the situation of individuals slipping through the net due to relaxed conviction standards, and "effectively make up for the governance imbalance between crime punishment and prevention in the minor crime control model." [39]

Taking the crime of obtaining loans by fraud as an example, the actor usually commits the act to resolve business difficulties and possesses relatively low subjective malice. At the same time, the legal interests protected by this charge are primarily the loan security of financial institutions and the financial management order; its social harmfulness is usually directly reflected as the risk of the loan being unpayable. If the actor can repay the loan before prosecution, substantively eliminating the risk of loan loss, then the substantive legal interest infringement of their act is greatly reduced. Consequently, conditional non-prosecution—by attaching obligations such as signing a statement of repentance, paying fines, or engaging in public service—can powerfully dispel the necessity of prosecution.

Regarding the penal application standard for the adult conditional non-prosecution system, it should be set at "fixed-term imprisonment of not less than three years and not more than five years." The standards of "fixed-term imprisonment of less than one year" or "fixed-term imprisonment of less than three years" supported by some scholars contain irrationalities. First, because the conditional non-prosecution system can minimize the impact on the actor while exerting a certain corrective

function, it aligns with public demand and has a broad potential application scenario. Restricting the standard to fixed-term imprisonment of less than one year would lead to an overly narrow applicable scope, making it difficult to effectively exert its expected function. Second, because the severity of a penalty reflects the gravity of the crime, offenders sentenced to fixed-term imprisonment of less than one year or less than three years basically fall within the category of having minor criminal circumstances. This would blur the boundaries between conditional non-prosecution and relative non-prosecution, making it impossible to reflect their respective unique institutional values. Furthermore, since the behaviors corresponding to conditional non-prosecution possess a considerable degree of legal interest infringement, the system should be applied prudently upon activation, and it is only suitable to promote the application of this system in fields closely related to the country's future development plans.

3.4. Activating the Mechanism of Conviction with Exemption from Criminal Punishment

Within the institutional framework of minor crime governance, once a defendant is found guilty of a minor crime, the procedure enters the sentencing phase. This phase utilizes the mechanism of conviction with exemption from criminal punishment, as stipulated in Article 37 of the Criminal Law, as an important governance tool. On the surface, this mechanism seems to contradict the simple value concepts of the masses, but in reality, this system cannot be equated with "the offender bearing no consequences under certain conditions." Professor Zhang Mingkai argues: "It must be acknowledged that the inevitability of investigating illegal acts coexists with the exemption of punishment for guilty acts; the coexistence of the two actually refers to the separation between the scope of establishing a crime and the scope of punishment, which can also be called the separation between the standard for establishing a crime and the standard for punishment." [40] First, exempting an offender from criminal penalty does not equal exempting them from all consequences. They can still be ordered to bear responsibilities based on the circumstances of the case, such as compensating for losses, apologizing, and other non-penal disposition measures; it is just that the form of responsibility is no longer receiving a criminal penalty. Second, the components of the "conviction with exemption from penalty" mechanism include not only "exemption from penalty" but also "conviction." Once the actor is characterized as a criminal, the collateral consequences of the crime will ensue, thereby imposing restrictions and impacts on their life, employment, etc. Therefore, while incentivizing minor crime offenders to turn over a new leaf and reintegrate into society as soon as possible, the mechanism of conviction with exemption from penalty actually does not conflict with judicial fairness. Under the background of minor crime governance, this system can effectively advance the trend of penal leniency and achieve the mitigation of criminal penalties. For offenders who have committed minor crimes, it can reduce the burden of the actor's criminal culpability while satisfying society's demand for punishment, reasonably limiting the adverse effects on the actor and preventing their detachment from society.

According to the provisions of Article 37 of the Criminal Law regarding conviction with exemption from criminal punishment, the conditions for applying this mechanism can be divided into two parts: first, the circumstances of the crime are minor; second, there is no need to impose a criminal penalty.

Regarding the definition of whether the circumstances of the crime are minor, the object of judgment, "criminal circumstances," should include both circumstances relevant to conviction and circumstances relevant to sentencing to achieve a comprehensive judgment. In terms of time span, these criminal circumstances should encompass pre-crime, mid-crime, and post-crime circumstances, enabling a judgment from a comprehensive perspective to avoid bias and to truly and completely reflect the gravity of the crime. In terms of relevance, it requires a direct connection to the facts of the crime; universally applicable circumstances lacking direct relevance should not be taken into consideration. At the same time, it should be noted that "minor criminal circumstances" here primarily refers to the slightness in terms of social harmfulness. The object reflected by the circumstances should be restricted to social harmfulness and cannot be conflated with personal dangerousness;

otherwise, the two application conditions of the mechanism of conviction with exemption from criminal punishment would be conflated, failing to effectively exert the function of an admission threshold.

Regarding the condition of "no need to impose a criminal penalty," it can substantively be understood as an evaluation of the offender's personal dangerousness. In minor crime cases, the main reasons courts still impose criminal penalties after determining guilt are based on the following two considerations: First, the criminal act has reached a level of severity that warrants corresponding criminal responsibility, and social justice is achieved through the imposition of a penalty; Second, the actor's personal dangerousness is relatively high, and if they are not deterred and corrected through criminal penalties, they may continue to endanger society. However, it must be pointed out that the fundamental purpose of criminal penalties mainly lies in punishment and prevention, rather than directly eliminating personal dangerousness. Therefore, relying solely on the criminal penalty itself is often insufficient to thoroughly eliminate the possibility of the offender reoffending. In other words, the mechanism of conviction with exemption from criminal punishment can only be applied when the type of legal interest infringed by the crime is severe and the degree of infringement is high, but the actor's personal dangerousness is so low that there is no need to impose a criminal penalty, yet it is still necessary to confirm their identity as a criminal to draw attention to the act. For example, in the crime of intentional homicide, which infringes upon the citizen's right to life and is of fundamental importance, if the offender calms down in a timely manner during a crime of passion and voluntarily stops the killing act, constituting a discontinuation of the crime, there is a possibility of applying the mechanism of conviction with exemption from criminal punishment. Therefore, the assessment of personal dangerousness has become an important link in this mechanism. However, a unified scientific system for assessing the personal dangerousness of offenders has not yet been formed, and judicial staff still mainly rely on experience or simple evaluation indicators for qualitative analysis.[41] In response to this, the process and system for assessing personal dangerousness should be clarified through legislation, adopting a method that combines qualitative and quantitative analysis. A chain-style review and assessment system should be structured chronologically into five modules: the risk assessment of the criminal behavior, the individual psychological risk assessment, the post-crime reparative performance assessment, the social support and recidivism environment assessment, and a comprehensive weighing of public interests, in order to achieve a scientific evaluation of this indicator of personal dangerousness.

3.5. Standardized Application of Measures for the Collateral Consequences of Crime

3.5.1. Clarifying the Nature of the Collateral Consequences of Crime

Individual human beings live in society, and interpersonal relationships constitute the foundation of society. The renowned French philosopher and social thinker Michel Foucault proposed the theory of disciplinary power, pointing out that power in modern society is not entirely concentrated in the hands of rulers, but is essentially diffused in every corner of specific social contexts.[42] Therefore, societal members' evaluation of a certain individual substantively determines their position and status within the network of social relations. Out of moral condemnation for illegal acts and a psychological guardedness against crime, societal members often naturally exclude those with criminal records from entering their living spaces, thereby conducting identity screening through various restrictive access mechanisms to reduce potential threats to their own rights and interests. It is precisely in this interaction between social defense and moral isolation that the system of collateral consequences of crime in the sense of criminal law has been formed and reinforced. The collateral consequences of crime are rights restrictions imposed on the offender themselves or their relevant family members based on their status as a criminal. Regarding whether the system of collateral consequences of crime belongs to criminal penalties, administrative punishments, or non-punitive measures, there is much controversy in the academic community. The author believes that the system of collateral consequences of crime should not inherently possess a punitive nature; instead, it is a special disposition measure aimed at crime prevention, distinct from criminal penalties and administrative

punishments. From the perspective of bearing responsibility, the offender has fulfilled their legal responsibility once the execution of their criminal penalty is completed. The subsequent application of collateral consequences should be strictly limited to guarding against individuals whose personal dangerousness has not yet been eliminated, exerting the function of preventing recidivism, rather than extending the criminal penalty in disguise. Otherwise, it will fall into the dilemma of infinite punishment, substantively harming the legitimate rights and interests of the offender. Because the generation of collateral consequences of crime is premised on the status of a criminal, with the core purpose of preventing crime, and is primarily stipulated through lower-level regulations, the author is more inclined to agree with classifying it as a type of security disposition (*security measure*).

3.5.2. Specific Elaboration on the Contents of the Application Principles for the Collateral Consequences of Crime

As a social defense mechanism, the system of collateral consequences of crime can, to a certain extent, play a role in preventing reoffending. At the same time, it can strengthen the deterrence against offenders through means other than criminal penalties, such as social life treatment, thus possessing the necessity of existence. However, in the context where minor crimes increasingly occupy a dominant position, the collateral consequences of crime face the problem of an unreasonably expanded application, indiscriminately attaching criminal labels to too many people. According to "Labeling Theory," the mechanism for controlling crime is also a cause that leads individuals to commit crimes.[43] Because the actor is labeled as "guilty," they suffer disadvantages in employment, social welfare, and other aspects, making reintegration into society quite difficult and easily triggering reoffending. Strengthening the standardization of the system of collateral consequences of crime and reasonably restricting its applicable scope has become a pressing priority.

To improve the system of collateral consequences of crime in the minor crime governance system, we can start with the following principles. First, the principle of relevance. It emphasizes that the type of collateral consequences of crime must be related to the legal interest targeted by the criminal act. The relevance between the two must be interpreted specifically in concrete scenarios. It is not permitted to expansively interpret the infringed legal interest under the pretext of maximizing the protection of personal interests or social public safety, extending it to rights and interests of a general significance, and establishing relevance through subjective imagination, thereby prohibiting those with prior convictions from entering fields that pose no obvious threat. Second, the principle of proportionality. The impact of the collateral consequences of crime on the rights of a person with a prior conviction should be commensurate with the severity of the criminal act they committed or the harmful consequences caused. On the one hand, limits should be placed on the duration of collateral consequences for minor crimes; applying perpetual collateral consequences to an actor without a legitimate reason must not be allowed. For example, an actor discovers their pet dog has been stolen, and the other party flees in a vehicle. The actor calls the police and then chases the other party in their car on a deserted national highway at night, hoping to force the other party to stop and recover their property. During this process, they rear-end the dog thief's vehicle and are suspected of the crime of dangerous driving. In this situation, we can see that the actor's purpose was to protect their own rights and interests, their subjective malice is extremely low, and the possibility of them committing relevant criminal acts again is small. If they are prohibited for life from obtaining a driver's license or engaging in the teaching profession, this would be obviously unfair. Setting differentiated terms for collateral consequences based on the varying degrees of social harmfulness, personal dangerousness, and recidivism likelihood of different offenders is a practice that can better balance the protection of social interests with the safeguarding of the human rights of actors. On the other hand, the hierarchical nature of the system of collateral consequences of crime should be strengthened. Different systems, types, and degrees of severity of collateral consequences should be established for serious crimes and minor crimes, with a key emphasis on the leniency of collateral consequences for minor crime offenders. Third, the principle of personal culpability, strictly adhering to the inherent standpoint of criminal penalty that "one is responsible for one's own actions." [28] We should eliminate systems that are no longer suitable for the development of the times in the context of social progress, and

eradicate the influence of the system of guilt by association involving relatives within the realm of minor crimes. The minor criminal act itself has low harmfulness, and the actor themselves bearing the collateral consequences of the crime is sufficient to bear the responsibility for the act. Expanding the subject of responsibility to their family members substantively constitutes an infringement on their human rights. Moreover, in the context of the expansion of minor crime legislation, the number of crimes continues to rise, and the group of offenders' family members implicated by this is also increasingly large. This leads to an excessively broad scope of social subjects indirectly affected by the *Criminal Law*, which not only may trigger public doubts about the legitimacy of the *Criminal Law* but also easily weakens the social recognition and authority of the law.

To adapt to the needs of minor crime governance, the system of collateral consequences of crime should be improved. However, currently, the collateral consequences of crime are scattered across norms in different fields and hierarchies, making a unified institutional reconstruction unrealistic. Coupled with the inertia in the transformation of social cognition, even if reform requirements are proposed at the central level, the response and adjustment in various fields will still require a process. Therefore, in the initial stage of improvement, a specialized review mechanism can be established to grant minor crime offenders the right to appeal against collateral consequences. If they believe they have suffered unreasonable restrictions in their social life, they may appeal to a review panel or file a lawsuit in court. If the review confirms that the restriction is indeed unreasonable, the relevant entities should be ordered to rectify it and make a public announcement, thereby using external forces to promote the gradual adjustment of social concepts.

3.5.3. Institutional Design for Excluding the Collateral Consequences of Crime

It is necessary to clarify the scenarios for excluding the application of the system of collateral consequences of crime. First is the situation where the offender's personal dangerousness has been completely eliminated after assessment. Only minor crime offenders who have been convicted with an exemption from criminal penalty, sentenced solely to a fine, sentenced to a deprivation of qualifications, or sentenced to community service can be exempted from bearing the collateral consequences of crime through this pathway. For example, an actor who casually provides a bank card to others due to a lack of legal knowledge, constituting the crime of assisting information network criminal activities, will have almost zero personal dangerousness after paying the fine and fulfilling the community service requirements, and thus can no longer bear the burden of collateral consequences. However, it must be noted that the evaluation of personal dangerousness needs to be strictly controlled here; it can only be applied to those actors whose personal dangerousness has truly been eliminated. Second, after the expiration of the term of the collateral consequences of crime borne by the offender, no further restrictions may be imposed on them.

However, even if the actor is exempted from bearing the collateral consequences of crime because they meet the conditions for exclusion, the "criminal label" on them may still trigger implicit discrimination in society. Although this discrimination is no longer presented in the form of an overt system, it may transform into a tacitly understood differential treatment, which will still hinder minor crime offenders from truly reintegrating into society. To alleviate the social exclusion brought about by the criminal label, reference can be made to the system of sealing juvenile criminal records to explore the construction of a system for sealing minor criminal records applicable to adults.

Currently, there is controversy in the academic community regarding whether to adopt a criminal record expungement system or a criminal record sealing system. However, the criminal record expungement system has a major flaw: its absoluteness. The existence of a prior criminal record has a deterrent effect, which can effectively curb the actor's psychological motivation and realistic active inclination to reoffend,[42] thereby possessing the function of special prevention. In addition, completely expunging a prior record will cause it to lose its original auxiliary function of conviction and punishment in the judicial process. When an actor who has already had their criminal label removed through the criminal record expungement system commits another criminal act, judicial organs cannot make a determination of recidivism or repeat offending based on the circumstances of the prior record, because the prerequisite for determination no longer exists. This practically

undermines the *Criminal Law's* provisions on reoffending and multiple offenses, conflicts with legislative intent, and weakens judicial authority. Therefore, adopting the criminal record sealing system possesses greater rationality and feasibility.

In this regard, it is necessary to clarify the relationship among record sealing, the reporting of prior records, and occupational prohibition, in order to achieve a smooth institutional articulation. First, the prior record reporting system should transition from universal reporting to limited reporting. After criminal records are sealed, there is no need to report them in scenarios such as seeking employment (for ordinary professions), pursuing higher education, undergoing qualification reviews for military enlistment, applying for entry/exit documents, or participating in ordinary social activities. However, reporting is still required when applying for specific positions such as civil servants or judicial personnel, or in statutory situations involving national security reviews. Second, occupational prohibition, as a non-penal punishment measure made by the court during adjudication based on the circumstances of the case and the need to prevent reoffending, should not be affected. Under the implementation of criminal record sealing, professions involving occupational prohibition still require the actor to report and are prohibited from being engaged in.

4. Conclusion

Minor crimes are significantly lower in their infringement on legal interests and social harmfulness compared to serious crimes. This dictates that criminal policy and the law should adopt a treatment stance toward minor crime offenders that is distinct from that applied to serious crimes, trending toward overall leniency, and achieving a conceptual transformation from being "punishment-centric" to a "combination of punishment and education, with a focus on governance." However, the orientation of strengthening the human rights protection of offenders in minor crime governance may create tension with the simple retributive sentiment that "crime is shameful" embedded in traditional social concepts. Therefore, in institutional design and implementation, it is necessary to prudently grasp the balance between punishment and correction, adopting a step-by-step and gradual implementation strategy. The ultimate goal is to seek a balance among maintaining social order, safeguarding public safety, and respecting the legitimate rights and interests of offenders. This approach gives due consideration to both the penal effects of the Criminal Law and the broader social effects, not only fulfilling legal responsibilities but also promoting the restoration of social relations and the resocialization of the actor.

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