

# Judicial Determination of Non-Penalization for Misdemeanor Cases

Ruyu Li

Beihang University, Beijing, 100191, China

**Abstract.** This paper primarily examines the judicial determination of non-penalization for misdemeanor cases and conducts an empirical study based on the analysis of 85 relevant court judgments. The study reveals that in judicial practice, the determination of non-penalization for misdemeanor cases exhibits a certain degree of flexibility and diversity, as judges take into account both the nature of the offense and the social context. Additionally, this study finds that, regarding mitigating circumstances, a threshold of five years of imprisonment is more appropriate than the traditional threshold of three years. Furthermore, the paper explores the issue of whether Article 37 of the Criminal Law can be applied independently. The empirical research also indicates that when no other provisions for exemption are applicable, judges tend to rely on Article 37 of the Criminal Law as a standalone basis for judgment.

**Keywords:** Misdemeanor; Non-penalization; Influencing Factors.

## 1. Introduction

The governance of misdemeanors has become a new issue in crime control in the new era [1]. In order to mitigate the collateral consequences of criminal penalties and alleviate the burden on defendants and judicial authorities caused by the growing prison population, there is a need for existing research to focus on exempting criminal punishment for minor offenses, aiming to address the aforementioned issues. Therefore, this paper aims to investigate the factors influencing minor offenses and the exemption of criminal punishment for such cases.

## 2. Factors Influencing Non-Penalization of Misdemeanor Cases

### 2.1 Data and Methodology

In this study, a total of 96 judgments of non-penalization for misdemeanor cases were obtained from the PKULaw Judicial Case Database using keyword filtering. The selected keywords were "criminal cases," "criminal trial of first instance," "grassroots people's court," "non-penalization," "judgment," and "2021." Due to missing data, 85 valid cases were ultimately selected as the research sample. The extracted information from each judgment includes the specific crime involved, the statutory maximum penalty for the charge, and the factors considered by the judge in sentencing. After organizing this information, the following sections will present a descriptive analysis based on these factors. This analysis aims to determine which offenses were involved in the judgments of non-penalization for misdemeanor cases. Since the selected sample consists of judgments of non-penalization, it is reasonable to assume that the crimes involved are misdemeanors. Otherwise, judges would not have made decisions to exempt the offenders from criminal punishment.

### 2.2 Determination of Misdemeanors

In this study, the definition of misdemeanors was derived by analyzing the charges involved in all the sample cases, along with their statutory maximum penalties and social harm. First, from the perspective of charges, among the 85 cases analyzed, the charges were ranked from most to least as follows: 28 cases (32.94%) of dangerous driving, 13 cases (15.29%) of intentional injury causing minor harm, 8 cases (9.41%) of producing and selling toxic or harmful food, 4 cases (4.71%) of fraud.

Furthermore, this article will compile the statutory penalties for the crimes involved in the sample judgments. Among these crimes, the highest statutory penalty does not exceed 5 years of fixed-term

imprisonment. Among them, crimes with a maximum statutory penalty of less than 3 years of fixed-term imprisonment (including less than 2 years, less than 1 year, and detention) account for 79.31%. Specifically, crimes with a maximum statutory penalty of detention account for 3.45%, crimes with a maximum statutory penalty of 1 year of fixed-term imprisonment account for 13.79%, crimes with a maximum statutory penalty of 2 years of fixed-term imprisonment account for 13.79%, and crimes with a maximum statutory penalty of 3 years account for 48.28%. The remaining 20.69% have a maximum statutory penalty of 5 years of fixed-term imprisonment. [It should be noted that the maximum statutory penalty mentioned here does not refer to the severest punishment prescribed by the Criminal Law, but rather the sentencing range cited by the judges in these 85 judgments, which corresponds to different circumstances specified in the sentencing guidelines provided in the notices issued by the Supreme People's Court and the Supreme People's Procuratorate regarding sentencing guidance for common crimes.] Therefore, it can be seen that when the maximum statutory penalty for the crimes committed by the defendants is below 5 years, judges are more likely to consider sentencing factors and tend to classify such cases as light crimes, resulting in the decision to exempt the defendants from criminal punishment.

Then, from the perspective of the social harm caused by the offenses involved, the criminal acts in the sample of this study exhibit significant minor social harm. Taking offenses such as dangerous driving, intentional injury, production and sale of toxic and harmful food, and fraud, which are more prevalent, as examples for analysis. The 28 cases of dangerous driving involved in this study all involved drunk driving, but the blood alcohol content of the defendants ranged from 80 to 100 milligrams per 100 milliliters, and none of them caused any personal or property damage, indicating significantly minor circumstances and minimal social harm. The 13 cases of intentional injury involved in this study all resulted in minor injuries, and in 5 cases, both the victim and the defendant were at fault. In 13 cases, the defendant obtained the victim's forgiveness, indicating significantly minor social harm. In the 8 cases of production and sale of toxic and harmful food involved in this study, all of them had minor circumstances and did not cause any actual harmful consequences, indicating minimal social harm. In the 4 cases of fraud involved in this study, the alleged amounts involved in the fraud were slightly higher than the threshold for prosecution of 2,000 yuan, and all the illicit proceeds have been returned, indicating minimal social harm. Therefore, it can be concluded that judges are more inclined to render judgments exempting criminal punishment for cases with significantly minor social harm.

In conclusion, the definition of a misdemeanor can be summarized based on two aspects: the maximum statutory penalty, and the level of social harm. From the viewpoint of the maximum statutory penalty, misdemeanors are concentrated in crimes where the maximum prescribed penalty does not exceed 5 years of imprisonment, detention, or a fine. In terms of social harm, misdemeanors are associated with crimes that exhibit significantly minor levels of social harm. Based on this, this study suggests that misdemeanors eligible for exemption from criminal punishment are those with a maximum statutory penalty of less than 5 years of imprisonment and exhibit significantly minor levels of social harm.

### **2.3 Consideration Factors for Exemption from Criminal Punishment**

This study conducted an analysis of factors considered by judges in judicial practice when determining exemptions from criminal punishment, based on the summarization and categorization of the court's opinions in 85 sentencing documents. These consideration factors can be divided into two main categories: statutory factors and discretionary factors.

From the 85 sentencing documents examined in this study, common statutory sentencing factors were identified, including truthful confession (voluntary disclosure), surrender (voluntary surrender and truthful confession), accomplice status, meritorious performance, and minor criminal circumstances. Among them, the consideration factor of minor criminal circumstances appeared 50 times, accounting for 58.80% of the cases; truthful confession (voluntary disclosure) appeared 35 times, accounting for 41.20%; surrender appeared 22 times, accounting for 25.90%. Similarly,

common discretionary sentencing factors were identified, including voluntary confession and acceptance of punishment, obtaining forgiveness from the victim (or victim's family), first-time or occasional offense, returning all illegal gains and actively compensating for losses, and demonstrating genuine remorse. These factors appeared 55 times (64.70%), 21 times (24.70%), 11 times (12.90%), 15 times (17.60%), and 13 times (15.30%), respectively, in the 85 sentencing documents. It can be observed that judges often consider the above-mentioned statutory and discretionary factors when rendering judgments of exemption from criminal punishment, with the sentencing factors associated with misdemeanors that warrant exemption focusing more on minor criminal circumstances, truthful confession (voluntary disclosure), surrender, voluntary confession and acceptance of punishment, and obtaining forgiveness from the victim.

After determining the sentencing factors, judges need to adjust the baseline sentence based on these factors and consider the overall circumstances of the case to determine the appropriate sentence in accordance with the law. The specific methods of adjusting the baseline sentence for each sentencing factor are clearly stated in the "Sentencing Guidelines."

### **3. Recognition, Sentencing, and a Comparison with Theoretical Perspectives in Judicial Practice**

#### **3.1 Consistency between Theoretical Definition and Practical Application**

In China, there is a theoretical dispute regarding the definition of light crimes, primarily focusing on two points: (1) whether the standard for distinguishing between light and serious crimes should be based on the statutory penalty or the imposed sentence, and (2) whether the threshold for distinguishing between light and serious crimes should be set at 3 years or 5 years.

##### **(1) Standard based on the Statutory Penalty or the Imposed Sentence**

According to scholars who advocate the perspective based on the statutory penalty, they argue that the severity of the offense is reflected in the statutory penalty. Therefore, the distinction between light and serious crimes should be based on the statutory penalty, in order to achieve the intended substantive and procedural functions of such differentiation [2]. On the other hand, scholars supporting the perspective based on the imposed sentence contend that the standard for distinguishing between light and serious crimes should be the imposed sentence itself. The imposed sentence theory argues that using the statutory penalty as the standard for classifying crimes as light or serious presents a logical problem. The severity and nature of the criminal act should determine the penalty to be imposed on the defendant, and subsequently, the classification of the crime as light or serious. It should not be the other way around, where predetermined penalties are used to determine the character of a crime before it is adjudicated. However, criticisms of the imposed sentence standard mainly stem from the uncertainty associated with imposed sentences[3]. The imposed sentence is influenced not only by the specific severity of the offense in reality but also by the degree of personal endangerment and other statutory and discretionary factors related to sentencing. Using this criterion would render the classification of an act as a light or serious crime uncertain before the pronouncement, thereby nullifying the significance of distinguishing between light and serious crimes. As Gao Changjian points out, "The impracticability of this perspective lies in the fact that employing the imposed sentence to differentiate crimes into light and serious renders the distinction devoid of any meaning, as any given crime can be both light and serious" [4].

##### **(2) Criteria for Distinguishing Misdemeanors and Felonies: 3 Years or 5 Years**

The debate revolves around whether the threshold for distinguishing misdemeanors and felonies should be set at 3 years or 5 years of imprisonment. The proponents of the 5-year approach argue that 5 years of fixed-term imprisonment should serve as the dividing line. They believe this approach aligns with the legislative inclination. Furthermore, they point out that the Supreme People's Court has traditionally used 5 years of fixed-term imprisonment as the threshold for serious offenses in judicial statistics. For example, in the work report delivered by Wang Shengjun, the former President of the Supreme People's Court, at the Second Session of the Eleventh National People's Congress on

March 10, 2009, it was stated that in 2008, courts at all levels nationwide concluded a total of 768,130 criminal cases, with 1,007,304 offenders being sentenced, among whom 159,020 were sentenced to imprisonment for 5 years or more, including death penalty [6] Within the 5-year approach, some scholars further suggest that misdemeanors should be subdivided into minor offenses and relatively minor offenses. Tian Xinghong and Zheng Liping argue that misdemeanors and felonies should be distinguished based on the threshold of 5 years of fixed-term imprisonment, with misdemeanors including minor offenses that carry a maximum statutory penalty of 3 years of imprisonment or less.

On the other hand, the 3-year approach sets the threshold at 3 years of fixed-term imprisonment. Scholars holding this viewpoint also cite legal provisions and corresponding judicial interpretations as a basis. For instance, concerning territorial jurisdiction, the Criminal Law stipulates that Chinese citizens who commit crimes outside the territory of China and would be subject to a maximum penalty of 3 years of fixed-term imprisonment or less may not be prosecuted. Regarding protective jurisdiction, it is provided that if foreigners commit crimes against the Chinese state or its citizens outside the territory of China and would be subject to a minimum statutory penalty of 3 years of fixed-term imprisonment, the Criminal Law may be applicable. In terms of probation, it is stipulated that for criminals sentenced to imprisonment for 3 years or less, the court may grant probation if they meet the statutory conditions. In many articles of the Chinese Criminal Law, the threshold of 3 years of fixed-term imprisonment is considered as an important marker for determining the severity of punishment.

### (3) Consistency Between the Recognition Criteria for Misdemeanors in Practice and the Academic Community

Although there is theoretical controversy, the concepts of felonies and misdemeanors used in Chinese criminal law theory have generally relied on the statutory penalty as the criterion for distinguishing misdemeanors [7][8][9]; The specific threshold adopts the 3-year approach; Under this approach, crimes that carry a minimum statutory penalty of 3 years of imprisonment or more are considered felonies, while other crimes are classified as misdemeanors.

Comparing the theoretical definition of misdemeanors with the characteristics of misdemeanors identified from 85 relevant judgments in this study, it can be concluded that the main similarity lies in the fact that in judicial practice, judges primarily rely on the statutory penalty to differentiate between misdemeanors and felonies in their judgments because the ultimate sentence imposed in these cases is exemption from criminal punishment. The difference lies in the fact that in practice, judges' specific boundaries for recognizing misdemeanors are not limited to crimes carrying a maximum statutory penalty of 3 years of imprisonment. According to data statistics, 20.69% of misdemeanor cases resulting in exemption from criminal punishment involved crimes with a maximum statutory penalty of 5 years of imprisonment. Therefore, in judicial practice, the definition of misdemeanors tends to lean towards the 5-year approach. This deviates somewhat from the widely accepted 3-year approach in the theoretical community.

### (4) Consistency between Mitigating Factors for Exemption from Criminal Punishment in Legislation and Considerations in Practice

In accordance with the relevant provisions of the Criminal Law, the mitigating factors for exemption from criminal punishment are as follows: the defendant having been already punished abroad, the deaf-mute or the blind, defense or avoidance beyond the necessary limit, attempted crimes, interrupted crimes, accomplices, voluntary surrender, exposing the criminal acts of others, having significant contributions, return of proceeds and compensation, juvenile offenders, elderly offenders (Over 75 years of age), confession and admission of guilt, active compensation for victim's economic loss and obtaining forgiveness.

Based on the sentencing sections of the 85 judgments examined in this study, the sentencing factors stipulated in the legislation are consistently taken into account by judges in practice. However, judges also exercise their discretion to comprehensively assess the level of harm posed by the specific criminal conduct in each individual case. Consequently, the final sentencing determination often reflects a result that is the product of a comprehensive evaluation.

## **4. Definition of Misdemeanor, Factors Influencing Exemption from Criminal Punishment in Misdemeanor Cases**

### **4.1 Definition of Misdemeanor**

Although the division between misdemeanors and felonies in China is based on a three-year maximum term of imprisonment and is the current mainstream view in academic circles, our analysis of the 85 judgments involved in this study reveals that in judicial practice, over 20% of the cases exempted from criminal punishment as misdemeanors involved offenses with a statutory maximum penalty of five years' imprisonment. If the definition of misdemeanors is limited to offenses with a maximum penalty of three years' imprisonment, it would contradict the actual situation in practice and hinder judges in handling misdemeanor cases. In fact, the annual work report of the Supreme People's Court in China uses a standard of five years, rather than three years, to categorize the handling of cases as misdemeanors or felonies. For example, in the 2009 report, the Supreme People's Court stated, "Courts at all levels nationwide concluded 768,130 criminal cases and convicted 1,007,304 offenders, among whom 159,020 offenders were sentenced to imprisonment for more than five years or to death." Clearly, according to the Supreme People's Court, cases with sentences of less than five years fall under the category of less serious offenses. Since cases with sentences below five years are considered less serious offenses, it follows that cases with statutory penalties below five years should also be classified as misdemeanors.

Therefore, although misdemeanor cases exempted from criminal punishment are mainly concentrated in offenses with a maximum statutory penalty of three years' imprisonment, considering practical aspects, this article believes that it is more appropriate to define the scope of misdemeanors as offenses with a maximum statutory penalty of five years' imprisonment, which would also provide more guidance for judicial practice.

### **4.2 Factors Influencing Exemption from Criminal Punishment in Misdemeanor Cases**

The exemption from criminal punishment raises the issue of "penal necessity," which means that a guilty verdict without imposing a sentence can achieve the purpose of punishment. The purpose of punishment is the unity of retribution and prevention, with prevention encompassing both specific and general deterrence. [10] The spirit behind exempting from criminal punishment lies in the fact that, from the perspective of social harm, the circumstances of the criminal conduct are minor, causing relatively little harm to society, and a conviction without punishment is sufficient to demonstrate the state's negative evaluation of the behavior. From the perspective of specific deterrence, the individual poses a low risk of personal danger, and the likelihood of recidivism decreases. A conviction without punishment is sufficient to prevent further offenses and serve as a warning to others who may still engage in criminal behavior, thereby obviating the need for punitive measures. The assessment of whether there is a decrease in personal danger posed by the offender and the degree of social harm caused by the criminal conduct requires the judge to examine the specific circumstances displayed by the offender during the commission of the crime, after the crime, and throughout the entire trial stage.

By comparing the factors that judges typically consider in sentencing for exemption from punishment in judicial practice with the statutory sentencing factors stipulated in the Criminal Law and the statutory and discretionary sentencing factors specified in the Guidelines for Sentencing, this study suggests that in judicial practice, judges should base their judgments on the statutory sentencing factors and comprehensively assess whether the offense is eligible for exemption from criminal punishment based on the specific circumstances of each individual case. Factors that can influence judges in exempting misdemeanor cases from criminal punishment include the minor nature of the offense, truthful confession (admission), voluntary surrender (turning oneself in and truthful confession), accomplice status, meritorious service, as well as discretionary sentencing factors such as voluntary admission of guilt and acceptance of punishment, genuine repentance, obtaining forgiveness from the victim (or their family members), first-time or occasional offense, returning all illegal gains and actively compensating for losses.

## 5. Conclusion

This study has focused on the judicial determination of exempting criminal punishment for minor offenses. Through the use of descriptive analysis, key information was extracted from the judgments, including the charges involved, statutory maximum penalties, sentencing factors, verdicts, and the legal basis for the judges' decisions. These findings were then organized and summarized to elucidate the criteria used by judges in judicial practice to determine minor offenses and the discretionary basis for exempting criminal punishment. Furthermore, a comparative analysis was conducted between the handling of minor offenses in practice and the theoretical definitions and sentencing factors of minor offenses in academia. Based on these analyses, this study provides conclusions regarding the determination of minor offenses and the factors influencing the exemption from criminal punishment.

Noteworthy findings have emerged from this study. Firstly, it was revealed that the judicial determination of exempting criminal punishment for minor offenses exhibits a certain degree of flexibility and diversity in practice. While there are common statutory requirements and principles, judges consider the specific circumstances of the crime and the social background when making their determinations. Secondly, it was observed that, despite the statutory maximum penalties for most minor offenses being below 3 years of fixed-term imprisonment, there are cases in practice where offenses carrying a statutory maximum penalty of 5 years of fixed-term imprisonment are still classified as minor offenses.

However, this study has certain limitations. Firstly, the sample size is relatively small, consisting of only 85 court judgments, which may not fully represent the judicial determination of exempting criminal punishment for minor offenses as a whole. Secondly, the methodology employed primarily involves descriptive analysis, providing qualitative descriptions and summaries, but has limitations in explaining the underlying mechanisms and influencing factors of judicial determination. Additionally, further research is needed to explore various aspects. For instance, the impact of exemption judgments on social order and crime prevention could be examined. Future research can continue to delve into this topic from multiple perspectives. For example, expanding the sample size, adopting quantitative analysis, exploring different types of minor offenses and including regional differences.

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