

# The Plight and Improvement of Duty Counsel in the Plea Leniency System

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## Abstract

The effective participation of duty counsel in the Plea Leniency System is crucial for safeguarding the legitimate rights of the accused and upholding judicial fairness. Since the revision of the Criminal Procedure Law in 2018, this mechanism has become an integral part of plea bargaining proceedings. However, multiple practical challenges persist. This paper argues that the core issue lies in the ambiguous role of duty counsel, who are not explicitly granted the status of *defense counsel*, resulting in a weak foundation for their procedural rights. Furthermore, inadequate protection of the right to access case files and the right to meet with clients in practice often reduces legal assistance to a mere formality. Additionally, a rigid subsidy mechanism fails to incentivize lawyers to deliver high-quality services. To address these shortcomings, this paper advocates for clarifying the defense counsel status of duty lawyers, systematically establishing pathways to secure their core rights, and implementing a flexible incentive system linked to workload and service quality. Such measures would enhance the effectiveness of their participation, strengthen institutional credibility, and ensure the system functions as intended.

**Keywords:** duty counsel, defense counsel status, right to access case files, right to meet with clients, flexible subsidy mechanism

## 1. Introduction: The Duty Counsel System Meets Both Theoretical and Practical Needs in China's Plea Leniency System

Since the revision of the Criminal Procedure Law in 2018, the duty counsel system has been formally established. This system is designed to provide timely legal consultation and other basic assistance to accused individuals in plea leniency cases. Under conditions of limited judicial resources, the duty counsel system addresses the urgent practical need for accused persons to obtain legal assistance, demonstrating clear positive effects in expanding the coverage of legal aid and improving litigation efficiency<sup>1</sup>. However, the implementation process has revealed multiple shortcomings in the practical operation of this system. The role of duty counsel often remains ambiguous, and insufficient procedural rights hinder their ability to perform their duties effectively. These challenges have led to a situation where duty counsel are frequently reduced to a procedural role, merely 'witnessing' the signing of plea agreements, which significantly deviates from the system's intended functions of safeguarding procedural rights and protecting legal interests<sup>2</sup>. Against this backdrop, clarifying the responsibilities and authority of duty counsel and addressing the practical challenges they face in fulfilling their duties have become critical issues for the further development of the Plea Leniency System. This paper aims to outline the main difficulties currently confronting duty counsel and, on this basis, explore potential pathways for improvement, with a view to providing references for the ongoing optimization of this system.

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<sup>1</sup> FAN Chongyi. (2017). In Praise of the Legal Aid Duty Lawyer System. *People·Rule of Law*, (10), 60-62.

<sup>2</sup> ZHOU Xin. (2019). Critical Reflections on the Practice of Duty Lawyers in Plea Leniency Cases. *Legal Forum*, 34(04), 42-49.

## 2. Analysis of Practical Challenges Duty Counsel Confront Ambiguous Roles and Inadequate Rights in Practice

### 2.1 Legal Ambiguity in Role Definition Restricts the Rights of Duty Counsel

The Duty Counsel System represents a significant innovation within China's criminal justice framework. Its institutional positioning encompasses multiple attributes: it serves not only as a crucial supplement to the traditional legal aid system but also functions as a safeguard measure with a judicial relief nature. The core objective of this system is to provide timely and free basic legal assistance to accused individuals without retained *defense counsel* during critical procedural stages such as investigation and review for prosecution. In essence, duty counsel are undoubtedly part of the legal aid lawyer cohort. However, their specific responsibilities and service model exhibit distinct characteristics, making it difficult to equate them simply with general legal aid defense lawyers.

This unique institutional identity has, in judicial practice, led to significant ambiguity and practical challenges regarding its precise definition. Concerning the role of duty counsel, the Pilot Measures for Expedited Criminal Procedures defines them as *legal aid providers*. Their primary responsibilities include 'offering legal consultation and advice, informing criminal suspects and defendants of the legal consequences of opting for expedited procedures, assisting them in procedural choices and sentencing negotiations, and safeguarding their lawful rights and interests in accordance with the law'<sup>1</sup>.

Due to the fact that duty counsel are not explicitly granted the legal status of *defense counsel* under the current Criminal Procedure Law, their role is generally limited to providing pre-trial legal assistance and typically does not include the responsibility of appearing in court for defense. Under this identity framework, duty counsel naturally lack procedural rights such as access to case files and evidence investigation. This directly and significantly limits their capacity to participate effectively and exert influence during the sentencing negotiation phase—the core component of plea leniency cases.

The ambiguity in role further results in poor coordination mechanisms between duty counsel and conventional criminal legal aid. In judicial practice, the work of most duty counsel usually concludes after providing brief legal consultations, procedural guidance, or assistance in applying for changes to coercive measures—tasks that are immediate and temporary—rarely extending to courtroom defense. When an accused individual requires comprehensive defense services, a formal legal aid application process must be initiated separately, involving stringent eligibility reviews. If a defendant in a plea leniency case withdraws their plea and meets the criteria for legal aid, a defense counsel will then step in to handle the case. This often leads to duplication of efforts between the initial and subsequent stages, affecting the progress and efficiency of case proceedings. For the accused, the assistance provided by duty counsel creates a discontinuity in legal support, failing to develop into the in-depth defense required<sup>2</sup>.

### 2.2 Rights Deficiencies Severely Constrain Duty Counsel's Ability to Deliver Substantive Assistance

#### 2.2.1 Lacking Case File Access Renders Legal Advice Superficial and Weakens Defense

Access to case files is fundamental for lawyers to understand the details of a case and form professional judgments. However, as duty counsel are not explicitly recognized as defense counsel under the Criminal Procedure Law, their entitlement to review case files exists in a legal gray area. This ambiguity directly results in inconsistent application in practice<sup>3</sup>. Although a few regions have attempted to improve the quality of legal assistance by allowing or even requiring duty counsel to familiarize themselves with case details, including reviewing case files, before signing a plea agreement, the vast majority of jurisdictions across the country view such file access as unnecessary or even prohibited. Without the safeguard of the right to review case files, duty counsel often have to rely solely on the one-sided statements of the suspect and brief explanations from case handlers to grasp the situation. This makes it difficult for them to comprehensively and objectively assess the chain of evidence or the logic of the charges. Particularly during the review for prosecution stage, the absence of the right to access case files means duty counsel cannot examine materials related to the facts of the case, the evidence on record, or sentencing circumstances. Consequently, they are unable to offer targeted opinions on matters of fact, evidence, conviction. This sentencing, nor can they effectively influence highly specialized

<sup>1</sup> YAO Li. (2017). The Role and Function of Duty Lawyers in Plea Leniency Proceedings. *Studies in Law and Business*, 34(06), 42-49.

<sup>2</sup> ZHU Yuling, WANG Ping. (2021). The Effective Participation of Duty Lawyers in Plea Leniency Cases. *Journal of Shanxi Provincial Committee Party School of C.P.C.*, 44(04), 81-86.

<sup>3</sup> AO Yi. (2023). Pathways to Improving the Right to Access Case Files for Duty Lawyers. Selected Award-Winning Works from the 4th *National Prosecutors Reading and Essay Competition*. People's Procuratorate of Xinyu City, Jiangxi Province, 478-482.

sentencing recommendations or assist the accused in negotiating sentencing with the prosecution<sup>1</sup>. This informational asymmetry inevitably confines the legal consultations and procedural advice provided to a limited and often speculative nature, rarely engaging with the substantive core of the case. Research conducted by the Beijing Municipal Justice Bureau explicitly notes that duty counsel typically do not undertake tasks such as reviewing case files or evidence collection, resulting in superficial participation. Consequently, the quality of their legal opinions is difficult to assure, and fundamental errors in judgment may arise due to incomplete information. For example, there have been instances in practice where duty counsel, during the prosecutorial review stage, failed to identify issues in charge classification, such as potential confusion between the crime of drug transportation and the crime of drug possession. These errors were only later rectified during trial after legal aid counsel conducted a comprehensive review of the case file. Without the foundational right to access case files, the legal assistance offered by duty counsel falls short of fulfilling its intended purpose of safeguarding rights.

### 2.2.2 Restricted Client Meetings Undermine Substantive Communication

While the right to meet with clients is generally recognized in practice, certain practical issues persist. On one hand, due to the lack of clear and uniform regulations regarding the identity and procedural requirements for duty counsel, practices often refer to those applicable to legal aid lawyers. However, challenges such as ad hoc notifications, incomplete procedural documentation, and geographical distance significantly increase the difficulty of arranging meetings. On the other hand, a more critical obstacle lies in the *perfunctory* and *non-confidential* nature of such meetings. Studies indicate that in some regions, although duty counsel are able to meet with the accused, they are frequently unable to conduct private and sufficient communication<sup>2</sup>. Meetings may be conducted only in the presence of case-handling personnel, during which the lawyer's inquiries are reduced to confirming whether the accused is 'voluntarily' pleading guilty and accepting punishment. Meanwhile, the accused, lacking a private setting, often finds it difficult to candidly express doubts or articulate case details. Such supervised and constrained meetings essentially deprive both parties of the opportunity to build trust and engage in in-depth communication. As a result, lawyers are unable to obtain comprehensive and truthful information, and consequently cannot provide targeted legal analysis or strategic advice<sup>3</sup>. Under these circumstances, effective communication between the client and the lawyer is fundamentally impeded, making substantive legal services nearly impossible to deliver.

## 3. Pathways for Improvement Systematic Reform Should Clarify Roles Protect Rights and Optimize Funding

To ensure that the duty counsel system truly fulfills its original purpose of safeguarding the legitimate rights of the accused and upholding judicial fairness, it is essential to establish a scientific, rigorous, and operationally effective framework. The current issues stem primarily from the long-standing ambiguity surrounding the role of duty counsel, which directly hinders the clarification of their responsibilities and the realization of their rights. Furthermore, while documents such as the National Standards for Criminal Legal Aid Services provide a basic framework for service quality, their provisions are relatively general. Assessments tend to become perfunctory, failing to offer substantive guidance for the service delivery process. Additionally, the rigid and relatively low subsidy scheme fails to correspond to the actual professional workload of duty counsel and provides little incentive for them to deliver in-depth and effective legal assistance. Therefore, improving the system must begin with clarifying the role definition, followed by systematic enhancements in two key areas: quality control and incentive safeguards.

### 3.1 Defining Duty Counsel as Defense Counsel Ensures Effective Participation

The issue of defining the identity of duty counsel remains a central point of contention in the implementation of the Plea Leniency System. The current scholarly debate primarily centers on two opposing views. One advocates for designating duty counsel as *defense counsel*, thereby granting them full procedural rights<sup>4</sup>. The other insists on maintaining their statutory designation as *legal aid providers*, emphasizing the temporary and emergency

<sup>1</sup> ZHENG Weimei. (2018). On the Duty Lawyer System of Legal Aid in the Context of Leniency System of Guilty and Punishment Admission. *Journal of Political Science and Law*, 35(02), 15-23.

<sup>2</sup> WEI Yuening, ZHU Yuqing. (2024). The weakened functionality of duty lawyers in cases involving admission of guilt and acceptance of punishment: Patterns, causes, and countermeasures. *Journal of Chongqing University (Social Science Edition)*, 30(04), 252-263.

<sup>3</sup> CHEN Kai, DONG Hongmin, TANG Yeni. (2018). An Empirical Study on Improving the Legal Aid System for Plea Leniency Cases: Based on an Empirical Analysis of Hangzhou. *Chinese Rule of Law*, (06), 65-70.

<sup>4</sup> CHENG Yan. (2017). On the Value and Perfection of the Duty Lawyer System. *Law Science Magazine*, 38(04), 116-124.

nature of their services<sup>1</sup>. This paper contends that, based on the functional requirements of the system and the practical needs of rights protection, the role of duty counsel should be unequivocally defined as that of *defense counsel*, rather than confining them to the formalistic label of *legal aid provider*.

Examining the original intent of the system design, while duty counsel were initially positioned as *legal aid providers*, this designation has revealed significant limitations within the plea leniency process. Entering a guilty plea is not merely a simple procedural choice; it constitutes a disposition by the accused of their major procedural rights. At this critical juncture, if duty counsel are limited to providing only basic consultation—without the right to review case files, unable to meet with clients privately, and constrained in their ability to participate in substantive negotiations—their assistance can easily become a mere formality. This substantially undermines the guarantee that a defendant's guilty plea is made both voluntarily and with full awareness of its consequences<sup>2</sup>. The tendency for duty counsel to be reduced to *procedural witnesses* in practice, coupled with the lack of effective legal safeguards behind high guilty plea rates, both reflect the systemic risks arising from insufficient rights protection.

Therefore, this paper argues that duty counsel should be explicitly granted the legal status of *defense counsel*. This does not negate the timeliness and universal accessibility of their services but emphasizes the necessity of equipping them with the procedural rights essential for providing substantive assistance. Furthermore, their right to participate and express opinions during plea negotiations should be formally recognized, enabling them to offer professional input on sentencing recommendations and fulfill a supervisory and balancing function<sup>3</sup>. Of course, establishing duty counsel as *defense counsel* does not equate them entirely with retained counsel or legal aid-appointed defense counsel. Their services may still emphasize immediate intervention and focused protection during the plea leniency stage. However, in terms of rights, they should meet the standard of being 'sufficient to provide effective assistance.' Only by legally affirming the defense counsel status of duty lawyers can we fundamentally resolve the issues of ambiguous roles, inadequate rights, and ineffective performance. This would enable them to become a reliable safeguard for protecting the legitimate rights of the accused and ensuring the fairness and credibility of the plea leniency process.

### 3.2 Guaranteeing File Access and Client Meetings Enables Effective Legal Assistance

Currently, the 'right to access case files' and the right to meet with clients for duty counsel are not adequately guaranteed. To provide effective legal assistance, duty counsel must be entitled to the right to information. Specifically, it should be stipulated that during the review for prosecution stage, when a criminal suspect expresses an intention to plead guilty and accept punishment, or when the procuratorate intends to propose a sentencing recommendation, duty counsel shall have the right to review key evidential materials from the case file. This should at least encompass: the prosecutorial opinion; core evidence establishing the primary facts of the alleged crime, including essential documentary evidence, expert evaluations, and audio-visual materials; as well as the suspect's previous statements and defenses<sup>4</sup>. To realize this right, a corresponding 'streamlined access' procedure should be established. Upon application by the duty counsel, the handling authority should, in principle, facilitate access within 24 hours. This can be achieved through the e-case filing system or by arranging a designated location with necessary conditions for note-taking. Additionally, the authority must provide necessary explanations regarding content that cannot be disclosed according to law, such as matters involving state secrets<sup>5</sup>.

Secondly, it is essential to establish standardized procedures to guarantee both the 'timeliness' and 'confidentiality' of the right to meet with clients. The focus of this safeguard should be on ensuring that meetings serve as genuine channels for effective communication, rather than mere procedural formalities. On one hand, the procedures for arranging meetings should be simplified. For duty counsel stationed at detention centers, meetings should be arranged immediately upon presentation of documentation from the legal aid authority and the lawyer's practicing certificate. For lawyers temporarily assigned to provide assistance at other case-handling

<sup>1</sup> WU Hongyao. (2018). On Legal Orientation and System Construction of the Duty Lawyer System in China. *Law Science Magazine*, 39(09), 25-32.

<sup>2</sup> WANG Haiyan. (2019). Triple Deviation: The Dilemma of the Duty Lawyer System in the Procedure of Guilty Plea and Accepting Punishment with Leniency. *Law Science Magazine*, 40(12), 12-23.

<sup>3</sup> RONG Jing. (2019). The Role Positioning and Improvement Strategies of Duty Lawyers in the Plea Leniency System. *Journal of Huaqiao University (Philosophy & Social Sciences)*, (02), 96-106.

<sup>4</sup> YANG Bo. (2018). On the Functional Orientation of the Duty Lawyer System in Plea Leniency Cases. *Journal of Zhejiang Gongshang University*, (03), 34-43.

<sup>5</sup> WANG Yunpeng. (2021). Issues and Reflections on the Participation of Duty Lawyers in Plea Leniency Cases. *Prosecutorial View*, (24), 60-61.

institutions, the respective institution should facilitate the rapid completion of meeting procedures to prevent delays in legal support due to administrative bottlenecks. On the other hand, the ‘privacy’ of meetings must be strictly ensured. Case-handling personnel shall not be present during meetings, either directly or indirectly, to observe or monitor the conversation. Detention centers or relevant institutions should provide a private and undisturbed setting for such consultations<sup>1</sup>. Simultaneously, a minimum guaranteed duration for necessary meetings should be ensured. For instance, in ordinary cases, lawyers should be allotted at least 30 minutes for independent communication with the accused. During this time, the lawyer must complete essential tasks, including informing the individual of their procedural rights, explaining the legal consequences of pleading guilty and accepting punishment, understanding the case details, providing consultation, and verifying the voluntariness of the plea.

Furthermore, an immediate feedback and remedy mechanism should be established for instances where these rights are obstructed. If a duty counsel’s request to access case files or meet with a client is denied without justified reason, or if the meeting process is improperly interfered with, the counsel should have the right to submit a written objection to the judicial administrative authority or the case management department of the procuratorate at the same level or at a higher level than the case-handling authority. The department receiving the objection should investigate and urge corrective action within a stipulated timeframe, providing a written response to the lawyer regarding the outcome. Compliance with the protection of these rights should be incorporated into the case quality evaluation system for judicial authorities, thereby establishing a binding constraint.

### 3.3 A Flexible Incentive-Based Funding Mechanism Improves Service Quality

At present, funding for legal aid in China primarily relies on government fiscal allocations. Although investment has increased annually, these allocations still constitute a very low proportion of overall national fiscal revenue. Consequently, the economic compensation allocated per duty counsel for handling legal aid cases remains minimal<sup>2</sup>. From a national perspective, the prevailing subsidy rates remain generally low. Empirical research indicates significant disparities in the daily compensation standards for duty counsel established across various provinces, autonomous regions, and municipalities. In economically developed regions, the daily subsidy can reach 600 yuan<sup>3</sup>, while the rate in some central and western provinces falls as low as 200 to 300 yuan<sup>4</sup>. More critically, the prevailing subsidy mechanism predominantly follows a ‘daily rate’ model or a minimal ‘flat fee per case’ structure, neither of which correlates with the actual scope or quality of services rendered. In most regions, regardless of whether a duty counsel provides multiple consultations, meets with suspects, or participates in sentencing negotiations on a given day, they receive only a fixed daily allowance. This egalitarian approach—where workload and performance are not differentiated—directly incentivizes some duty lawyers to merely show up and sign documents, lacking financial motivation to provide in-depth and effective legal assistance. Consequently, the subsidy system fails in its intended protective function and instead exacerbates the formalistic tendencies of the duty counsel role.

To break this impasse, the first step is to increase dedicated funding for duty counsel. The central government should enhance fiscal transfers for legal aid to economically disadvantaged regions, taking into account varying levels of economic development across the country. Simultaneously, local governments must expedite the inclusion of duty counsel funding within their respective fiscal budgets to ensure stable and accessible financial resources. Regions with the capacity may also explore establishing special development funds to diversify funding sources.

Secondly, it is imperative to establish a flexible incentive system closely linked to three key dimensions: workload, case complexity, and service quality. Specifically, the subsidy standards should be refined to establish a ‘flexible incentive mechanism.’ This can be achieved by breaking down the duties of duty counsel into distinct procedural stages and assigning corresponding billing components. For example, core tasks such as meeting with the accused, reviewing case files, participating in sentencing negotiations, and applying for changes to coercive measures could be calculated separately based on workload. Differentiated subsidy rates would then be applied according to the typical time investment and professional expertise required for each stage. Furthermore,

<sup>1</sup> YANG Xuemei. (2018). Research on the Participation of Duty Lawyers in the Plea Leniency System. Liaoning Normal University.

<sup>2</sup> XU Jianli. (2019). Further Research on Legal Aid Duty Lawyer System. *Jiangxi Social Sciences*, 39(09), 194-201.

<sup>3</sup> LIU Mei. (2024). A Study of the Legal Aid System from the Perspective of the Right to Equality: Taking the Issue of ‘Different Aid for the Same Case’ by Duty Lawyers as an Example. *Journal of Nanjing Normal University (Social Science Edition)*, (01), 112-122.

<sup>4</sup> Jingyuan County Justice Bureau. (2025). Public Notice on the Disbursement of Duty Allowances for Lawyers at the Jingyuan County Legal Aid Center from April to July 2025. (2025-09-22) [2025-12-25]. [https://www.nxjy.gov.cn/xwzx/gsgg/202509/t20250926\\_5040257.html](https://www.nxjy.gov.cn/xwzx/gsgg/202509/t20250926_5040257.html).

financial compensation must be closely tied to the aforementioned quality assessment outcomes. Services characterized by conscientious performance, thorough communication, professional opinions, and positive evaluations from both clients and judicial authorities should receive significantly higher material rewards. Conversely, services that are perfunctory or merely procedural should correspond to substantially lower compensation. This clear principle of ‘better pay for better performance’ would transform economic incentives from mere cost reimbursements into a quality-driven signal, genuinely motivating duty counsel to pursue substantive and effective service delivery.

#### 4. Conclusion: Systematic Improvement of the Duty Counsel System Is Vital for a Just and Efficient Plea Leniency System

The establishment and development of the duty counsel system represent a significant component of China’s reform of criminal procedure, evolving in tandem with the Plea Leniency System. Its progression from pilot programs to codification in law reflects the dual pursuit of judicial efficiency and rights protection within the nation’s rule of law advancement.

As analyzed throughout this paper, the current challenges faced by duty counsel in practice are multifaceted. These difficulties stem from ambiguous role definition, a lack of core procedural rights, and inadequate incentive mechanisms. Collectively, these issues risk distorting the intended function of duty counsel, potentially reducing them from the envisioned ‘providers of legal assistance’ to mere *witnesses of procedural legitimacy*.

Therefore, improving the duty counsel system should not involve piecemeal adjustments. A holistic approach is required. First, it is imperative to formally recognize duty counsel as *defense counsel*, thereby granting them the necessary authority commensurate with the complexity and significance of their cases. Second, robust safeguards for the ‘right to access case files’ and the ‘right to meet with clients’ must be implemented. Finally, a flexible subsidy mechanism linked to workload and service quality should be established, emphasizing responsibilities while correspondingly ensuring rights and fair compensation. These enhancements aim to better incentivize lawyers and improve the overall quality of legal aid.

Admittedly, no system is perfect. The refinement of the duty counsel system is a collaborative endeavor requiring sustained attention and cooperation from judicial authorities, legal aid institutions, the legal profession, and society at large. Moving forward, building upon existing practices, continued detailed observation and evaluation are essential. Through ongoing adjustments and the strengthening of supporting measures, the duty counsel system can be solidified into a reliable safeguard for rights within the Plea Leniency framework. This will ensure the system not only enhances judicial efficiency but also withstands scrutiny under the principles of rule of law and justice.

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