

Study on Non-Prosecution Criteria for Dangerous Driving Crime of Driving a Motor Vehicle on a Road While Intoxicated

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Abstract

After the SPSS analysis of 577 non-prosecution cases in Shanghai, it is found that the standard of non-prosecution for drunk-driving dangerous driving cases is still not uniform. There are three main problems: blood alcohol concentration standard is vague and quite different; road type preference is inconsistent; vehicle, damage and criminal record do not have a significant impact on non-prosecution. In this paper, a standard model of “1 + X” with hemol concentration as the main body and assisted by other relevant factors is constructed, which is specifically hemol concentration (50%), minor circumstances (30%), confession attitude (15%) and other matters (5%). The above 75 points are preliminarily determined as pass points for non-prosecution. As a specific application of discretionary non-prosecution, the standard model of “1 + X” for non-prosecution reflects the organic combination of discretionary non-prosecution and leniency for confession system.

Keywords: drunk driving, dangerous driving crime, non-prosecution, empirical analysis

1. The Question Is Raised

In 2020, courts across the country concluded 289,000 cases of dangerous driving, ranking first among criminal cases. Since the establishment of the “dangerous driving crime” in 2011, after more than ten years of theoretical and practical exploration, different standards have been formed for drunk driving in different regions, but there are still many problems. In practice, the use of “proviso” to conclude that the “hard injury” of innocence theory and the principle of legal punishment conflict, might as well look forward to the stage of examination and prosecution. (Zhou Guangquan, 2022)

In the previous empirical studies related to drunk driving sentencing, two methods are used in the areas selected cases. First, the researchers use their own resources to select the drunk driving cases in a grassroots court in a certain place for several years for analysis. This selection method has some defects. On the one hand, if all the sample cases come from a basic court, it means that the scope of the sample only comes from an administrative area at the county level, which inevitably has the defect of too small sample scope and cannot serve as guidance and reference for other regions. Second, the nationwide search is conducted in the China Judicial Documents website or Peking University Law and Italy and other legal resources websites, and the proportion is determined through stratified sampling to select appropriate samples. This way of selection also has some defects. Generally, the judgment documents are used to study the standard of exemption or innocence of drunk driving and dangerous driving crime, and the study of non-prosecution cannot be fully carried out. At present our country drunk driving not prosecution standard presents the trend of geopolitical, around the country evaluation standards are different, only a few provinces are drunk driving not prosecution standardization of related pilot work, that is to say, there are quite a lot of procuratorate in drunk driving not prosecution lack of normative guidance, not prosecution standard and prosecution exemption or innocent standard or certain difference, blindly choose judgment documents or expand the scope of not prosecution documents sample selection, will reduce the quality of the sample, after SPSS data analysis will get some unreasonable coefficient reference.

Faced with this situation, this paper believes that Shanghai should be taken as the area to select sample cases. On the one hand, Shanghai has carried out a lot of work on the standardization of drunk driving non-prosecution in the city. Although the standards have changed accordingly with the in-depth of the research, the grass-roots procuratorates in Shanghai strictly follow the relevant standards when handling drunk driving non-prosecution cases. After drunk driving was officially punished in 2011, Shanghai actively explored the standard for drunk driving. On the other hand, from the punishment of drunk driving crime, Shanghai has dealt with more drunk driving cases. The selected area with Shanghai as the sample case is of good reference significance for the future governance of drunk driving behavior in the whole country and for the practice of the situation policy of combining mercy with severity. Therefore, by extracting 577 effective samples for SPSS analysis, this paper sorts out the practical situation of drunk driving non-prosecution in Shanghai, and tries to construct the “1 + X” standard model of non-prosecution, so as to promote the organic combination of discretionary non-prosecution and lenient punishment system.

2. Status of Non-Prosecution for DUI-Type Dangerous Driving Offenses

According to the Sentencing Guidelines on Common Crimes (II) (Trial) published in 2017, the principle of drunk driving stipulates that “significant minor circumstances and little harm”. Shanghai accordingly issued the sentencing guidelines on common crime (II) (trial) (hereinafter referred to as the “implementation rules”), and the will not as a crime processing discretionary standard as “blood alcohol content in 100 mg / 100 ml below and is a first offender, guilty, repentance, without causing other losses or consequences”. In the past five years, what is the practice of drunk driving in Shanghai? This paper sorts out the cases of non-prosecution and summarizes the practical situation of drunk driving crime in terms of crime and rules of evidence.

2.1 Descriptive Statistics and Effective Identification

Through the “Weike First” database search, 1,227 drunk driving cases in Shanghai were selected, including 7 in 2022, 1,162 in 2021 and 58 in 2020.¹ The data of 1,227 non-prosecution decisions were cleaned, 19 indicators such as vehicle type, road type, respiratory test, hemol concentration and accident type were extracted, and other types of dangerous driving crimes such as “overload” were excluded, a total of 577 valid samples were obtained, and SPSS software was used to analyze relevant influencing factors.²

Of the 577 drunk driving cases, 532 were men, much higher than 45 for women, indicating that drunk driving is mostly found among men, with relatively few women. It can be seen from the academic background that most of the people who are not prosecuted are junior high school (32.1%) and junior college degree (22.7%), while the master’s degree (4.0%) and doctoral degree (0.5%) are less, which means that compared with the people with low education, the probability of knowing the law is less against the law. It can be seen from the occupation types of the undicted people: the majority of the ordinary employees of the company (40.2%), and other people from all walks of life are also involved. As can be seen from the age distribution, most ages are concentrated between 20 and 50 years old, and the most ages are between 30 and 40 years old (40.73%). (See Table 1)

Table 1. Sample statistics

Gender	man	532	92.2%
	woman	45	7.8%
Academic qualifications	primary school	33	5.7%
	junior middle school	185	32.1%
	senior middle school	90	15.6%
	junior college education	131	22.7%
	undergraduate course	112	19.4%
	Master Degree Candidate	23	4.0%
	doctoral candidate	3	0.5%
	General employees of the company	232	40.2%
Career	unemployed	83	14.4%

	peasant	23	4.0%
	Migrant workers	95	16.5%
	liberal professions	19	3.3%
	Corporate executive	77	13.3%
	self-employed	25	4.3%
	retire	12	2.1%
	Personnel in public institutions	10	1.7%
	student	1	0.2%
Age	10-20 Years old	1	0.17%
	20-30 Years old	108	18.72%
	30-40 Years old	235	40.73%
	40-50 Years old	159	27.56%
	50-60 Years old	60	10.40%
	60-70 Years old	14	2.43%

2.2 The Current Practice of Non-Prosecution

2.2.1 The Hemol Concentration Standard Is Vague and Quite Different

As the most important consideration for drunk driving non-prosecution, Shanghai limited the standard to less than 1.00 mg/mL, but in the study sample, the mean hemol concentration of the nonindicted was 1.16157, the minimum was 0.8, and the maximum was 2.37, indicating that the hemol concentration of the nonindicted was quite different. The skewness is 0.989, which indicates that the data is slightly right-biased distribution compared with the normal distribution, and 1.846 indicates the steep peak state of the data distribution, which further shows that the hemol concentration is between 0.85-1.5mg/ml, and only a few populations have the hemol concentration above 2.00 mg/ml. (See Figure 1)

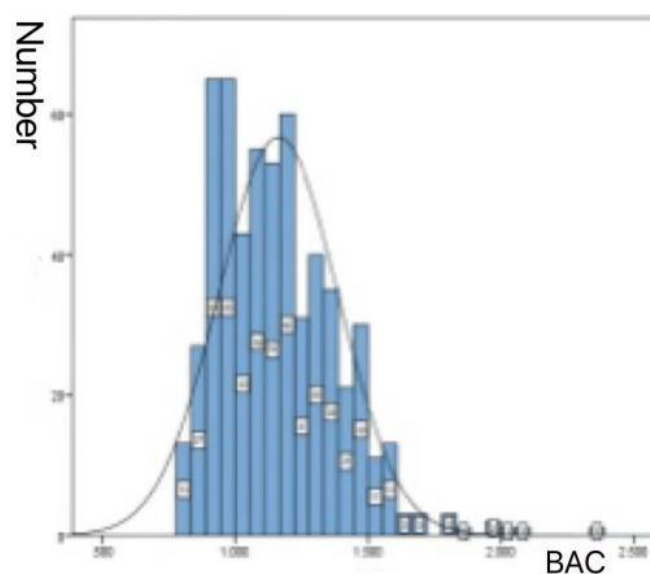


Figure 1. Human hemol concentration histogram

According to the analysis, it is found that the main consideration of hemol concentration is not strictly limited to 1.00 mg/mL. In the actual non-prosecution cases, the hemol concentration was less than 50% below 1.00 mg/mL, and even a small peak of more than 1.00mg/mL occurred. On the one hand, this shows that the Shanghai procuratorial organs can flexibly apply the non-prosecution and not stick to the rigid blood alcohol concentration standard in dealing with the cases of drunk driving and dangerous driving crimes. But on the other hand, it also shows that the standard of hemol concentration is vague and seems to be empty.

2.2.2 Inconsistent Preferences for Road Types

Among the non-prosecution cases, 319 accidents (55.3%) occurred at more dangerous intersections, 160 accidents (27.7%) occurred on ordinary roads, 69 accidents (12%) occurred at parking lot exits (inside), and 15 accidents (2.6%) occurred on expressways or expressways. (See Figure 2)

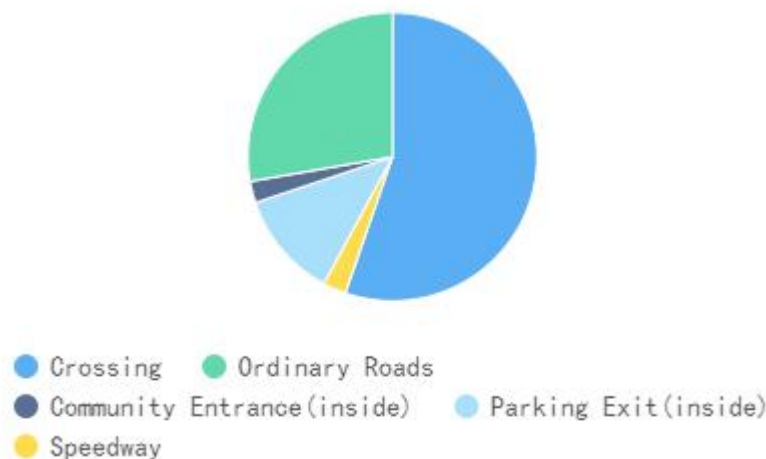


Figure 2. Road type fan diagram

According to “implementation detailed rules” regulation, drunk driving motor vehicle on highway or urban expressway, can be given a heavier punishment, ought to be determined in 3 months criminal detention above benchmark punishment commonly. However, it can be seen from Figure 2 that the behavior occurred on the highway but may still be not prosecuted. The causes can be explored from two aspects. First, “no damage” is more weighted than “happening on the highway”. Only 8 percent of the cases caused damage, and 15 highway accidents caused no damage. Second, different district prosecutors may have inconsistent preferences. Among the top five procuratorates in the number of cases, Baoshan District is mostly concentrated at intersections (87.9%), which are 0 cases occur on expressways, while in Minhang District, 50.6% cases occur on ordinary roads, about twice that of ordinary roads and 30 times that of expressways (4 cases). The procuratorial organs of the different regions actually show different preferences for the types of roads without prosecution, and the policy tendencies of the different districts may be inconsistent, showing the breadth and imbalance of the discretionary standards.

2.2.3 Vehicles, Damage, and Bad Criminal Records Do Not Have a Significant Impact on the Non-Prosecution

Among the vehicle types, 97.2 percent of the vehicles are small (micro) ordinary buses, while motorcycles and trucks are relatively few. Among the accident types, most (92%) did not cause actual damage, and five accidents were not harmful types, such as drunk parking, short-distance car moving, and emergency assistance. Of the previous convictions, only 13 had previous convictions, and the cases with the highest sentence declared as guilty had caused no actual damage. These three factors are generally in line with habit cognition, and do not have a significant effect on the decision not to prosecute.

3. The Standard Construction of Drunk Driving Non-Prosecution

The seven categories of drunk driving listed in the implementation rules that “can be severely punished” are actually just a guiding role, even if the perpetrator meets a certain category or several categories, he may not be prosecuted. Non-prosecution for drunk driving type of dangerous driving crime should be a kind of discretionary non-prosecution. The author suggests building a “1 + X” standard model of non-prosecution, analyzing the weight of different factors, and making a decision after comprehensive consideration.

3.1 “1 + X” Standard Model of Non-Prosecution

3.1.1 Determine the Subject Status of the Serinol Concentration

The Opinions on Several Issues concerning the Application of the Law in Handling Criminal Cases of Drunk Driving Motor Vehicles (hereinafter referred to as the Opinions) make it clear that the blood alcohol concentration of 0.8 mg/mL constitutes “drunk driving”, and there is no requirement for serious circumstances or bad behavior. According to the Implementation Rules, the standard that cannot be treated as crimes is that the hemol concentration is below 1.00 mg/mL, but 73% of the non-prosecution cases are above 1.00 mg/mL, and the decision not to prosecute is basically on “minor circumstances”, rather than “significantly minor circumstances”. Many scholars in China do not agree with the single identification standard of blood alcohol concentration, and some scholars believe that there is no inevitable relationship between the blood alcohol concentration and human consciousness and the control of traffic work. (See Mo Hongxian, Yang Wenbo, 2022) Therefore, the non-prosecution and examination of the drunk driving type of dangerous driving behavior should adopt the comprehensive identification standards.

From the perspective of the evidence, hemol concentration is a very clear and easily accessible factor.” Drunk driving” “drunk” is rooted in blood alcohol content, so blood alcohol concentration is a factor that must be considered. From the histogram of the prosecuted hemol concentration (Figure 1), the peak of the normal distribution of hemol concentration is between 1.15~1.20mg/mL, and the mean value is 1.16157mg / mL, so it is advisable to boldly determine the measure of hemol concentration as 1.20mg / mL. Among the 577 samples, the hemol concentration exceeded 0.8 mg/mL, and 364 cases (63%) had 0.8~1.20mg/mL, so the standard of 1.20 mg/mL is more reasonable than 1.00mg / mL.

3.1.2 Denial the Significant Impact of the “Can Be Given a Heavier Punishment” Situation

The seven “discretionary circumstances” in the Implementation Rules may not significantly affect the non-prosecution. None of the 15 cases of drunk driving on the highway caused actual damage, and one case required emergency assistance to others. Overall, “highway” cases account for a very small proportion (2.6%), and the standard is single to complicate the decision not to prosecute. Other “secondary cases” all have a valid sample of 0, so the cross-impact between it and the decision of non-suit cannot be analyzed. Of course, this also reflects that the possibility of other cases is minimal and does not have statistical value, so the significant impact on the decision of non-suit can be denied.

It is undeniable that “heavier circumstances” can be used as a measure of “minor” or “significantly minor”. Driving a motor vehicle drunk on a highway or an urban expressway, or having been drunk for driving a motor vehicle with administrative punishment or criminal investigation, can indicate the social harm to a certain extent. Although it is generally considered that the crime of the type of dangerous driving while drunk is an abstract dangerous crime, the “danger” still needs to be defined, and this proposed danger needs to be at least to the extent that the road traffic safety is in a dangerous state. Therefore, if it is only a parking lot with less traffic, a single factor may not meet the standard of prosecution.

3.1.3 Give Certain Weight to Relevant Factors

The “1” in the standard model for the “1 + X” prosecution refers to the hemol concentration, while the “X” is the multiple associated factors. The influence of educational background, occupation, gender and other factors on non-prosecution, such as one-way analysis of variance of educational background and blood alcohol concentration, found that there was no significant difference in the blood alcohol concentration of drunk driving among different people with academic background, so the influence of educational background was excluded. The content of “X” is divided into four categories: minor circumstances, confession attitude and other matters. According to the weight value of SPSS analysis, the hemol concentration of 50%, 30% for minor circumstances, 15% for confession attitude and 5% for other matters are preliminarily determined that more than 75 points is the pass score not to prosecute, that is, the comprehensive score is greater than or equal to 75 points, and the procuratorial organ can consider making the decision not to prosecute.

The standard of the model was refined, and the hemol concentration was divided into 50 at the initial trial of 0.8~1.20mg/mL, for each 0.1 mg/mL increase with a fraction reduction of 1. Minor cases are divided into three parts:

No damage is 10 points, otherwise 0 points;

No drunk driving record is 10 points, otherwise 0 points;

Drunk driving is 10 points on non-highway or urban expressway, otherwise 0 points.

In the attitude of confession surrender or confession 5 points, guilty 5 points, 3 points, occasionally guilty 2 points. Other matters are 5 points, mainly refers to the short-distance moving of cars, emergency rescue to others and other situations, as well as considering the stability of private enterprises. Whether the model is feasible and

not needs to be tested. In the case of dangerous driving, Fang's blood alcohol concentration was 1.53 mg/mL, and he was driving a motor vehicle on the urban expressway, but it caused no actual damage. He himself could truthfully confess his crime after the case, and voluntarily pleaded guilty, which was a first and occasional offender. After synthesis, Fang XX scored 46 in blood alcohol concentration, 20 for minor circumstances, 15 in confession attitude, and 0 for other matters, totaling 81 points. Therefore, the decision not to prosecute can be considered.³⁴ In the dangerous driving case of Jin XX, Jin XX drove a small car into the rear of the cross-country bus, causing vehicle damage (material damage value of 1118 yuan), and the traffic police detachment determined that Jin XX took full responsibility for the accident. Jin xx blood alcohol concentration of 2.02 mg/ml, it's criminal record, is a first offender, an occasional offender, with the plot of surrender, after the case pleaded guilty, repentance performance. Overall, Jin XX scored 41 for hemol concentration score, 20 for minor plot score, 15 for confession attitude score, and 0 for other matters, with a total of 76 points. All the above tests are in line with the expected results of the model, but considering the regional characteristics of the data and the error of the standard coefficient, this model needs to be tested in more cases, but it can also provide a certain reference value.

3.2 The Organic Combination of Discretionary Non-prosecution and Lenient Punishment of Guilty Plea

The system of leniency for confession is a basic criminal legal system that will run through the whole process of investigation, examination, prosecution and trial. Promoting the organic combination of discretionary non-prosecution and lenient punishment system for guilty plea will help to improve the procuratorial efficiency, relieve the pressure of procuratorial organs and judicial organs in handling cases, and also reflect the "people-oriented" case justice. In practice, the spirit of the reform of the system of lenient punishment for guilty plea has not been implemented in drunk driving cases, but has led to the more severe application of punishment. (Shi Yanfang, 2020) The standard model of "1 + X" for non-prosecution is actually the application of discretionary non-prosecution. How to combine it with lenient punishment for guilty plea can be expounded from two aspects.

First, leniency of guilty plea is one of the main contents of discretionary non-prosecution. The "1 + X" standard model of non-prosecution takes the attitude of confession as an important consideration, and reviews the circumstances of the perpetrator in different cases. This model design itself recognizes the value concept of leniency in confession. Punishment is not the end, but prevention is the fundamental essence. Although the statutory punishment of drunk driving is not high, the accompanying consequences will actually affect the future of the perpetrator and his family, which does not comply with the principle of appropriate guilt and punishment. To promote the lenient punishment for guilty plea will make the discretionary non-prosecution a possibility within the framework of the legal system. If the case is not necessary to use the punishment means, the discretionary non-prosecution system should be applied, so that the results can play a good educational and preventive effect.

Second, discretionary non-prosecution is one of the effective means of lenient punishment for pleading guilty. If the actor who performed drunk driving pleaded guilty in the examination and prosecution stage, the prosecution should not only initiate the prosecution and propose lenient sentencing suggestions, but also apply the discretionary not to prosecute according to the standard model of "1 + X" not to prosecute, and make a decision not to prosecute the actor. Although the crime in the trial stage also includes two means of innocence and exemption from criminal punishment, the exemption from criminal punishment will actually bring "criminal record" to the party concerned, and the serious incidental consequences will lead to the difficulties in the perpetrator's future life. (See Sang Benqian, 2021; Xie Zhiyong & Lei Yuwei, 2020) Incharge obviously wastes a lot of judicial resources. Most of the cases of drunk driving and dangerous driving crime are mild types, and the process of declaring innocence only after the trial undoubtedly aggravates the pressure of the judicial organs to handle cases. At this time, the discretionary decision not to prosecute is undoubtedly a good choice, through the standard judgment, the qualified minor case decision not to prosecute is in line with the guiding spirit of lenient punishment of guilty plea.

4. Conclusion

The number of drunk driving dangerous driving cases is high, after more than ten years of theoretical and practical exploration, many problems have not been solved. After SPSS analysis of 577 non-prosecution cases in Shanghai, it was found that the standard for drunk driving cases was not unified, with three main problems: blood alcohol concentration standard is vague and quite different; road type preference; vehicle, damage and previous record do not have a significant impact on non-prosecution. Therefore, this paper tries to construct a standard model of "1 + X" with hemol concentration as the main body and assisted by other relevant factors, which is specifically hemol concentration (50%), minor circumstances (30%), confession attitude (15%) and other matters (5%). It is preliminarily determined that more than 75 points are pass points for non-prosecution. As the specific application of discretionary non-prosecution, the "1 + X" standard model of non-prosecution not

only reflects the organic combination with the lenient punishment system for guilty plea, but also is a favorable way to realize the function of prevention that is greater than punishment.

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¹ Retrieved in the “Weike First Law Information Base”, the search conditions: “Cause of case: dangerous driving crime, criminal case”, “Key words: drunk”, “Region: Shanghai”, last visit on September 28, 2022.

² All index assignments were quantified to study influencing factors of non-prosecution criteria and cross-analysis between factors. Specifically, the practice is as follows: vehicle types are divided into three categories: “1. Small (micro) type of ordinary bus; 2. truck; 3. motorcycle.” Accident types can be divided into:” damage: 1. Two-car accident 2. Bicycle accident 3. Personal injury. No damage: 4. Parking and rest 5. Short distance moving the car 6. Emergency rescue 7. No accident.” Road types can be divided into five categories:” 1. intersection; 2. ordinary roads; 3. Community gate (inside); 4. parking lot exit (inside); 5. Highway.”

³ Hu Min Jian Xing Bu Su [2021] No. 553.

⁴ Hu Pu Jian Xing Bu Su [2021] No. 635.

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