

# From “Sentencing Negotiations” to “Prosecution-Defense Negotiations”: On the Improvement Path of the Guilty Plea Bargaining System

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## Abstract

In China’s guilty plea cases, only limited sentencing negotiations involving the parties are allowed, and the voluntary nature lacks guarantees, resulting in a low willingness of the parties to participate in negotiations and difficulty in realizing the efficiency value of the leniency system for guilty pleas. In contrast to China’s limited sentencing negotiation system, some countries have adopted a “prosecution-defense negotiation” system, which allows comprehensive negotiations between the prosecution and defense on issues such as guilt, conviction, and sentencing, to achieve the active and voluntary guilty pleas by criminal suspects. This system has a high applicability rate and effectively resolves a large number of criminal cases. It is of great significance to absorb and learn from the rationality of the prosecution-defense negotiation system, define the negotiation subjects, expand the scope of negotiations, regulate negotiation behavior, clarify the consequences of negotiation, and establish a localized prosecution-defense negotiation system in China, which is crucial for improving China’s leniency system for guilty pleas and balancing values of justice and efficiency.

**Keywords:** guilty plea, sentencing negotiation, prosecution-defense negotiation, litigation efficiency

## 1. Introduction

Since the implementation of the leniency system for guilty pleas in 2018, it has had many positive implications for streamlining cases, improving litigation efficiency, and enhancing the effectiveness of social governance. However, in the current sentencing negotiation process, the content in which the parties can participate is extremely limited, and the unequal power dynamics between the prosecution and defense have hindered the realization of the value and effectiveness of the leniency system for guilty pleas. Based on differentiating “sentencing negotiations” and “prosecution-defense negotiations,” this article analyzes the necessity and feasibility of further referencing and adopting the prosecution-defense negotiation process in China’s leniency system for guilty pleas, aiming to find an operational path for establishing a prosecution-defense negotiation system with Chinese characteristics.

## 2. Differentiating “Sentencing Negotiations” and “Prosecution-Defense Negotiations”

The prosecution-defense negotiation system originated in the United States and involves negotiations between the prosecutor and the criminal suspect or defense counsel on a range of issues, including guilt, conviction, and sentencing, before the formal trial. The goal is to allow the prosecutor, under the premise of the voluntary guilty plea by the criminal suspect, to decide to withdraw charges, downgrade the prosecution, or provide favorable sentencing recommendations to the court when charging the defendant. In China’s guilty plea cases, the sentencing negotiation process is used, which differs from the prosecution-defense negotiation mechanism in the following aspects:

### *2.1 Difference in Negotiation Subjects*

In China's sentencing negotiation process, defense lawyers have limited involvement and are often only notified to be present as witnesses when the guilty plea agreement is signed. In the prosecution-defense negotiation system, negotiations mainly take place between the prosecutor and the defense lawyer, and the defendant cannot negotiate separately with the prosecutor but instead participates in the negotiation process through their defense counsel. (Chen Wencong, 2021) Additionally, the defense counsel can engage in negotiations with the prosecutor at any stage before the trial.

### *2.2 Difference in Negotiation Scope*

The 2018 revision of the *Criminal Procedure Law of the People's Republic of China* limits the scope of prosecution-defense negotiations to sentencing, based on principles such as legality of statutory crimes and proportionality of punishment to culpability. In contrast, the scope of prosecution-defense negotiations includes both conviction and sentencing.

### *2.3 Difference in Impact on Criminal Proceedings*

In China's leniency system for guilty pleas, once the defendant signs the guilty plea agreement and the prosecution files the indictment, the guilty plea agreement and sentencing recommendations should be submitted to the court for a voluntary and legality review of the defendant. In the prosecution-defense negotiation system, after negotiation, the case does not proceed to a formal trial. The negotiated terms essentially determine the final outcome of the case, and unless there are special circumstances that clearly violate fairness and justice, the judge should directly render a judgment based on the agreement reached by the prosecution and defense.

## **3. Analysis of the Necessity and Feasibility of Introducing Prosecution-Defense Negotiations in Guilty Plea Cases**

### *3.1 Necessity of Introducing Prosecution-Defense Negotiations in Guilty Plea Cases*

#### *3.1.1 Rational Allocation of Judicial Resources*

The criminal justice experience in the United States has demonstrated that the plea bargaining system resolves about 90% of criminal cases efficiently. Relying solely on an adversarial litigation system to handle criminal cases would result in high litigation costs and overwhelm or even collapse the criminal justice system. (Chen Ruihua, 2007) Therefore, while ensuring the truthfulness of the case and the implementation of legal justice, cases with clear facts and minor circumstances should be streamlined through simplified procedures and allocated fewer judicial resources, thus ensuring the proper allocation of judicial resources for complex cases.

#### *3.1.2 Improvement of the Leniency Program for Guilty Pleas*

In China, during the pre-trial stage, investigative and prosecutorial agencies extensively use pretrial detention measures against criminal suspects, leading to prolonged detention in custodial facilities and limited access to external information. It is common for prosecutors to interrogate detained suspects without the presence of defense counsel or duty lawyers. This situation places significant pressure on the criminal suspects. Furthermore, neither the suspects nor the duty lawyers have access to the case files held by the prosecutor during the review and prosecution stage, resulting in a severe information asymmetry between the prosecution and defense. In such a situation of imbalanced information and power, it is difficult to ensure the voluntariness and reasonableness of guilty pleas, which can lead to defendants retracting their guilty pleas during the trial and appealing, wasting judicial resources.

#### *3.1.3 Guaranteeing the Voluntariness and Rationality of Negotiations*

Currently, in China, the subject setting of sentencing negotiations often leads to the situation where criminal suspects can only negotiate with prosecutors on their own in most cases. Defense attorneys and duty lawyers become witnesses who merely witness the signing of the guilty plea agreement by the criminal suspects, rather than legal assistants who assist the suspects in negotiating with the prosecutors. In judicial practice, prosecutors have the right to hear the opinions of the criminal suspects and negotiate with them in the absence of defense attorneys and duty lawyers. In such cases, criminal suspects are prone to accepting incorrect information given by prosecutors and making decisions that they perceive as "reasonable." (Chen Ruihua, 2007) Introducing the system of control-defense negotiation establishes the negotiating role of defense attorneys and duty lawyers in guilty plea cases, which can guarantee the voluntariness and rationality of negotiations for criminal suspects.

### *3.2 Feasibility of Introducing Prosecution-Defense Negotiations in Guilty Plea Cases*

#### *3.2.1 Rise of Cooperative Justice Theories*

Private cooperation justice models, such as criminal reconciliation and non-prosecution for corporate compliance, and public cooperation justice models represented by the sentencing negotiation system, are being widely applied in case handling. The extensive application of cooperative justice models has positive implications for

restoring damaged social relationships and balancing justice and efficiency. Therefore, by introducing the prosecution-defense negotiation mechanism and deepening the reform of China's sentencing negotiation system, it is possible to ensure that the interests of all parties involved in the negotiation of guilty plea cases are maximally considered under the premise of ensuring fairness. Against the backdrop of the rapid development of cooperative justice models, the introduction of the prosecution-defense negotiation mechanism is feasible.

### 3.2.2 Support from Mature Theoretical Foundations

Scholars have analyzed and argued for various forms of future development of prosecution-defense negotiations in leniency programs for guilty pleas, as well as optimization and transformation of the tripartite structure of the prosecution, defense, and court in prosecution-defense negotiations. The academic discussion on improving the sentencing negotiation system has primarily focused on power balance between the prosecution and defense, the scope of negotiations, and court involvement in pre-trial negotiations. Building on the contributions and ideas of scholars regarding the leniency system for guilty pleas, the introduction of the prosecution-defense negotiation mechanism has a solid theoretical foundation. With strong support from the academic community, obstacles to the introduction of the prosecution-defense negotiation mechanism can be overcome.

### 3.2.3 Notable Results from Pilot Programs

In the pilot implementation of the leniency system for guilty pleas, some regions have expanded the scope of negotiations to include guilty pleas in cases that involve specific and complex characteristics, multi-person collaboration, and continuous offenses, where evidence collection is difficult due to long intervals between incidents. For example, a procuratorate in City L, considering substantive justice while not tolerating crime, applied the leniency system for guilty pleas to certain cases where the suspects refused to confess, the case had a long duration, and evidence collection was challenging. The criminal suspect was patiently and comprehensively informed by the prosecutor about the relevant provisions of the leniency system for guilty pleas, and after persuasion and communication by the duty lawyer, the suspect decided to plead guilty and confessed to the theft. In the presence of the duty lawyer as a witness, the suspect signed the guilty plea agreement, and the prosecutor accordingly recommended a lenient sentence. Finally, the court confirmed the sentencing recommendation and made a lawful judgment. (Kang Haojie, 2019)

## 4. The Specific Construction of the Prosecution-Defense Negotiation System in China's Guilty Plea Cases

### 4.1 Definition of Negotiation Subjects

In the current sentencing negotiation process in China, the negotiation subjects are limited to the prosecutor and the criminal suspect or defendant, excluding defense lawyers by default, with the provision that the prosecutor can consider the suggestions of defense lawyers or duty lawyers. However, the premise for implementing the prosecution-defense negotiation process is that the criminal suspect must have sufficient power to engage in equal communication with the prosecutor and make judgments and decisions based on their actual circumstances. Therefore, the negotiation subjects should be defined as the prosecutor, defense lawyers, duty lawyers, and criminal suspects, allowing the degree of involvement by the criminal suspect based on their level of education and legal knowledge.

### 4.2 Definition of Negotiation Objects

Currently, in China's sentencing negotiation process, the negotiation object is limited to the range of sentencing for the criminal suspect. The prosecution and defense negotiate the degree of charges that the criminal suspect may face. In the prosecution-defense negotiation system, however, negotiations can involve both sentencing and the charges themselves. Based on the pilot cases of guilty pleas, it is meaningful to expand the scope of prosecution-defense negotiations appropriately.

For specific and complex cases involving joint crimes, where there are long intervals between the collection of evidence, and evidence collection is difficult, the prosecutor, considering not condoning crimes, can use the prosecution-defense negotiation process to prompt the criminal suspect to confess to their crimes. At the same time, the criminal suspect has bargaining power to engage in equal communication with the prosecutor.

### 4.3 Regulation of Negotiation Behavior

The regulation of negotiation behavior between the prosecution and defense should consider the following aspects:

First, the prosecutor should fully respect the role of defense lawyers and duty lawyers as negotiation participants when negotiating with them and the criminal suspect. The negotiation should not be seen as a "favor" from the government but as a dialogue on an equal footing between the prosecution and defense.

Second, in the prosecution-defense negotiation process, the prosecutor should fully explain the rights and obligations of the leniency system for guilty pleas and ensure that the criminal suspect participates in the

negotiation with full knowledge of the system. This guarantees the voluntariness of the guilty plea to a certain extent.

Third, the signing of the guilty plea agreement by the criminal suspect should meet the following conditions: the prosecutor should consider the suggestions of defense lawyers and duty lawyers, and the criminal suspect should agree to the negotiated terms of the guilty plea and sign the agreement in the presence of their defense lawyer or duty lawyer as a witness. The consideration of suggestions from defense lawyers and duty lawyers by the prosecutor during the prosecution-defense negotiation process should be mandatory, rather than optional.

#### 4.4 Clarification of Negotiation Consequences

By delineating the negotiation subjects and defining the negotiation objects, negotiation behavior can generate negotiation consequences, forming a complete prosecution-defense negotiation process. The specific aspects are as follows:

##### 4.4.1 Choice of Criminal Procedural Measures

China's current leniency system for guilty pleas needs to rely on general criminal procedural measures, such as expedited procedures, simplified procedures, and ordinary procedures, to be effective. This reliance undermines the independence of the procedure itself. By introducing the prosecution-defense negotiation process in the leniency system for guilty pleas, the problem can be better addressed. The prosecution-defense negotiation process allows the prosecution and defense to reach agreements on specific cases, which can then be handled through this process, thereby exerting an independent influence on criminal procedural measures.

##### 4.4.2 Rights and Obligations of the Defendant

In cases handled through the prosecution-defense negotiation process, the defendant enjoys the convenience brought by the procedure but also assumes certain obligations. In guilty plea cases handled through the prosecution-defense negotiation process, after signing the guilty plea agreement, the defendant's right to appeal should be reasonably limited to prevent unlimited abuse of the right to appeal and the occupation of judicial resources while applying the prosecution-defense negotiation process.

##### 4.4.3 Impact on Courtroom Trials

In cases handled through the prosecution-defense negotiation process, except in cases with apparent violations of fairness and justice, errors in factual determination, or insufficient evidence to establish the defendant's guilt, the court should recognize the legal effect of negotiated agreements and, in principle, render an immediate verdict. In the application of the prosecution-defense negotiation process, due to the emphasis on the role of negotiations between the prosecution and defense, the court should cede some of its adjudicatory power. However, during the trial of guilty plea cases, independent and impartial judgment should still be exercised to ensure the voluntariness and reasonableness of guilty pleas by defendants and the clarity of factual determination, completeness of evidence materials, and fairness and justice in the final disposition of the case.

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