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Study on the Prevention of Criminal Misjudgment Under the System of Confessing Crime, Admitting Punishment and Leniency

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Abstract

The system of confession, admission, punishment and leniency has changed the appearance and structure of China's criminal proceedings, and has increased the Systematic risk of generating criminal misjudged cases at the levels of evidence, procedure, litigation structure and case structure. Under the perspective of the lenient system of confession and punishment, criminal wrongful cases have special connotations and manifestations. In practice, the specific reasons for wrong cases are the improper evidence collection of judicial personnel driven by litigation interests, the voluntary false confession of suspect, and the lack of defense functions. To resolve and prevent the risk of criminal misjudgment, we should introduce evidence standards, improve the duty lawyer system, strengthen the protection of the litigation rights of the accused, and strengthen the examination and judgment of evidence.

Keywords

Criminal error cases,Confession of guilt and leniency of punishment;,Duty lawyer.

1. Introduction

On October 26, 2018, the Sixth Meeting of the Standing Committee of the 13th National People's Congress voted to adopt the Decision on Amending the Criminal Procedure Law of the Criminal Procedure Law of the People's Republic of China, which formally included the system of confession, punishment and leniency after more than two years of pilot work in the Criminal Procedure Law. In October 2019, one year after the revision of the law, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of National Security, and the Ministry of Justice jointly issued the "Guiding Opinions on the Application of the leniency system for confession and punishment", filling the loopholes in the leniency system for confession and punishment, and timely responding to various doubts in the theoretical and practical fields. There are as many as 18 articles in the revised Criminal Procedure Law that involve the lenient system of confession and punishment. The leniency system for confession and punishment is not only included in Chapter 1 of the Criminal Procedure Law, "Tasks and Basic Principles," but also stipulated in Article 5 of the Guiding Opinions that "the leniency system for confession and punishment runs through the entire process of criminal litigation and is applicable to all stages of investigation, prosecution, and trial. It can be seen that the establishment of the leniency system for confession and punishment is not a small and specific procedural reform, but a fundamental and institutional change that runs through criminal proceedings. Since the establishment of the principle of leniency in confession and punishment in the 2018 Criminal Procedure Law, the implementation of the leniency system for confession and punishment has been more than four years. The application rate of this system by the national procuratorial organs in the review and prosecution stage has been above 85% in the past two years, which can be said to have made considerable progress. However, while playing a significant role in criminal proceedings, it is also necessary to prevent the risks it brings. The improvement of litigation efficiency will inevitably bring about a reduction in the value of fairness. The risks brought by the lenient system of confession and

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punishment include the reduction of victims' relief rights, the reduction of proof standards, the omission of crimes and charges, as well as judicial corruption in power money and power trading. Among them, the violation of the voluntary nature of confession and punishment causes the greatest harm to the problem of unjust, false, and wrongful cases. The core of criminal procedure reform must not be at the expense of fairness and justice. If it is simply to pursue efficiency and harm judicial fairness, it is putting the cart before the horse, which goes against the original intention of the reform. In recent years, research on the leniency system for confession and punishment has become increasingly popular, but there is little research on the prevention of formal misdemeanors under this system. Therefore, refining the research on the prevention of misjudged cases under the system of plea of guilty and leniency of punishment can more effectively safeguard the legitimate rights and interests of suspect, more highlight the great progress of Socialism with Chinese characteristics under the rule of law, and is of great significance to improving the people's sense of judicial gain, happiness and security.

At the same time, when a new system is introduced in criminal proceedings, it is necessary to guard against a series of risks that may arise. The risks brought by the lenient system of confession and punishment include the reduction of victims' relief rights, the reduction of proof standards, the omission of crimes and charges, as well as judicial corruption in power money and power trading Among these risks, the most harmful and difficult to prevent is the occurrence of criminal wrongful cases. Realizing judicial fairness is one of the purposes and original intentions of the lenient reform of confession and punishment, and criminal misjudgment is undoubtedly the greatest threat and challenge to judicial fairness. The objective law shows that justice and efficiency are a pair of eternal contradictions in criminal proceedings, and they are the relationship of Unity of opposites. The improvement of litigation efficiency will inevitably bring about the impairment of the value of justice. The implementation of the leniency system for confession and punishment has improved the efficiency of litigation, but it must not be at the expense of fairness. If the pursuit of efficiency alone harms judicial fairness, it is putting the cart before the horse and running counter to the original intention of the reform. This article starts from the mechanism and actual situation of the leniency system for confession and punishment, analyzes the internal risk factors and specific causes of criminal misjudgment under the background of system implementation, and constructs a preventive mechanism for criminal misjudgment under the leniency system for confession and punishment.

2. Analysis of the Specific Reasons for Causing Unfair, ,and False

2.1. The illegal evidence collection behavior of judicial personnel driven by interests

The application of the lenient punishment system for pleading guilty greatly caters to the litigation interests of public security organs. For public security organs, it can reduce the pressure of interrogation and the burden of collecting other evidence; For procuratorial organs, it can improve their prosecution rate and victory rate; For the court, it can shorten the trial cycle, improve the completion rate and guilty verdict rate. The Supreme People's Procuratorate has issued a special assessment document that requires procuratorial organs nationwide to apply lenient punishment for pleading guilty to no less than 70% of cases. According to the author's observation, in practice, the proportion of cases handled by procuratorial organs in various regions applying the lenient procedure of confession and punishment is much higher than 70%. Under the pressure of huge litigation interests and assessment, the judicial authorities will try their best to promote the application of the lenient system of confession and punishment, and even take some illegal or improper means to urge suspect to plead guilty. Because the voluntariness of the defendant's confession is guaranteed by multiple mechanisms,

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the use of Forced confession and other means against the will of the suspect to obtain confessions has been curbed. In practice, illegal evidence collection behaviors that lead to wrong cases are mainly shown in the following three situations.

2.1.1. False promises.

The judicial organ overestimates the effect of leniency or makes promises that cannot be fulfilled to lure the suspect into voluntary confession. In practice, there are mainly two situations: one is that the judicial personnel made a promise of leniency to the suspect, and after obtaining key evidence, they were tried through the ordinary procedure; The second is that the judicial personnel exaggerate a large amount of leniency, which makes the suspect make false statements under the temptation. In the case of "Hogejiletu", investigators used allowing him to use the restroom as bait and falsely claimed that "the victim was not dead", luring him to "admit to killing and then go home", and obtained false guilty statements from Hogejiletu. From another perspective, false promises are equivalent to judicial personnel using "deception" means, and the lenient punishment system for pleading guilty has become a tool and bait for judicial organs to deceive confessions, eroding the "trust interests" that national judicial organs should have, and therefore should be prohibited.

2.1.2. Confession and inducement.

It has been proven that improper inducement, deception that leads to despair among the defendant, and the use of information with strong concealment through instructions can directly lead to false statements. In recent years, in many criminal misjudged cases in China, besides the persistent disease of Forced confession, there is always the shadow of confessing and inducing confessions. The confessions obtained by confessing and inducing confessions did not violate the voluntariness of the suspect's confessions in form, and these behaviors themselves were also in the gray zone between the normal interrogation strategy and illegal evidence collection. The Criminal Procedure Law of China prohibits confessions and inducements during investigation, but they have not been included in the exclusion scope of illegal evidence, which makes it more difficult to detect, detect, and exclude the confessions obtained through confessions and inducements. To some extent, the harmfulness of confessing, inducing confessions and deceiving confessions is even greater than that of Forced confession, because suspect will get rid of the influence of Forced confession when the litigation stage and the subject of interrogation change. Confessions and inducements are easy to prompt suspect with very hidden information, making it difficult to distinguish true and false confessions, whose impact will cover the whole process of criminal proceedings. In addition, the accusation, inducement and deception of confessions may cause suspect to confuse objective facts with false confessions, and make themselves believe that false confessions are true, resulting in the so-called "forced internalization" type of false confessions. [21) In the "Nie Shubin", the suspect Nie Shubin once made 13 consecutive guilty statements in the three stages of investigation, prosecution and trial. He did not retract his confession when appealing, and even admitted his guilt to the defense lawyer. Nie Shubin was convinced of his guilt at that time, which was the result of the combined effect of Forced confession, inducing confessions, cheating confessions and other acts, which showed how difficult it brought to the fact finding.

2.1.3. False agreement.

False agreement means that both the prosecution and the defense cover up the illegal purpose in a legal form, and the judicial organ takes the advantage of the confession of guilt and punishment to give up the prosecution of some of the suspect's charges and crimes or to give a larger margin of leniency in sentencing as a condition, in exchange for the accused to admit their own crimes, so as to conclude an "unfair contract". In this situation, judicial authorities intentionally create other evidence to form a mutually corroborating evidence chain, which is

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commonly seen in "one-on-one" evidence forms such as drug trafficking, drug detention, and corruption and bribery cases.

2.2. Suspect's voluntary false confession

The lifeline of confession and punishment lies in the voluntary nature of confession. Therefore, many scholars believe that the voluntary nature of confession and punishment should be the focus of court review and judgment, and even some scholars suggest that "as long as the defendant's confession is voluntary, it should be presumed to be true." In fact, the voluntary nature and authenticity of confession are two different propositions, and the voluntary nature of confession does not equal the authenticity of confession. The voluntariness of a confession is a matter of evidentiary ability, while authenticity is a matter of probative power. Voluntary confessions may not be true, and involuntary confessions may not be false. Academics define "voluntary false confession" as "confession of innocent people to self incriminate without external pressure from the police", that is, voluntary false confession excludes factors such as Forced confession and fatigue interrogation. Voluntary false statements have strong concealment, confuse the investigation line of sight, and interfere with the judgment of judicial personnel. Article 19 of China's National Compensation Law stipulates that if a citizen intentionally makes false statements and causes a wrongful case, the state shall not be liable for compensation. In practice, judicial authorities often equate the voluntary nature of confessions with the authenticity of confessions, and often focus their review on the voluntary nature of confessions, neglecting the review of the authenticity of confessions. Some scholars have summarized the reasons for voluntary false confessions into four aspects, namely practical utilitarian factors, psychological factors, personality and environmental factors, and psychopathological factors. In practice, utilitarian factors are the most common and important type of voluntary false statements made by defendants. Moreover, intentional false statements or even wrongful cases made by defendants under utilitarian factors are often the most difficult for judicial authorities to detect, while false statements under the other three factors are relatively easy to detect. Voluntary false confessions caused by utilitarian factors in reality can be divided into three types based on the purpose of the confession: one is to conceal the true offender, which is a common "scapegoat". The perpetrator often takes responsibility for others for crimes that do not belong to them due to factors such as emotions and interests, which are common in traffic accident cases, dangerous driving cases, and crowd crime cases. In 2012, a case occurred in Jiangyan, Jiangsu where a father took over the responsibility for a traffic accident on behalf of his son. The second is to cover up serious crimes and evade heavier punishments. The suspect often fabricates a minor crime to divert investigators' attention, so as to cover up his or her heavier crime or avoid heavier punishment. The most typical scenario is for drug users to fabricate a lighter charge, such as the crime of accommodating others for drug use or drug trafficking, in order to evade a two-year mandatory quarantine for drug rehabilitation, in order to obtain short-term or non custodial penalties. After the punishment is completed, compulsory isolation and drug rehabilitation will no longer be carried out. The third goal is to escape reality. For example, in some stakeholder type economic crimes, the suspect is unable to repay the huge capital debt and makes false statements in order to be detained to temporarily avoid various pressures frequently imposed by creditors; There are also individual cases where the prison is regarded as a personal refuge due to personal difficulties or pessimism, and voluntary false self blame. In the context of the system of pleading guilty, pleading guilty and punishment and leniency, in addition to the above four practical utilitarian factors, psychological factors, personality environment factors and psychopathological factors, there are two reasons for the emergence of voluntary false confessions: the first is "leniency temptation", which refers to the phenomenon of suspect making false confessions after weighing under the guidance of a series of litigation interests. Article 9 of the Guiding Opinions points out that the initiative, thoroughness, stability and time of the suspect's confession will

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directly affect the leniency and term of sentence; Articles 19-23 of the Guiding Opinions regard the confession of suspect as an important basis for assessing their social danger, whether to approve and change arrest measures. In addition, Article 30 of the Guiding Opinions also expands the scope of non prosecution in cases of confession and punishment. This will make those who are in fact innocent intentionally choose to falsely confess their guilt in order to avoid the risk of increased punishment or detention. Especially when the suspect is facing the death sentence, the possibility of choosing false confession due to fear in his heart is greatly increased. The second is cognitive error type, which means that the suspect has a voluntary false confession due to his wrong understanding of the law and facts. For example, the defendant wrongly believes that his behavior has led to the death of the victim, but in fact, the victim was subsequently killed by others; For another example, due to the lack of understanding of the law, the suspect ignored the circumstances of Right of self-defense in his confession and confessed the facts that should be Right of self-defense as intentional injury.

2.3. Duty lawyers have insufficient functions in preventing erroneous cases

Defense lawyers are the "gatekeepers" of the criminal justice system, and their role in preventing criminal errors and safeguarding the rights of the accused is irreplaceable. However, the on duty lawyer system, which was born in conjunction with the lenient system of confession and punishment, has a significant lack of effectiveness in preventing and resolving erroneous cases, mainly reflected in the following aspects. Firstly, the on duty lawyer does not have the legal status and corresponding authority of a "defender". On the one hand, the duty lawyer has no legal basis to exercise the rights of investigation and evidence collection, examination, verification of evidence, and appearance in court; On the other hand, the relationship between the duty lawyer and the client is unclear, especially when the duty lawyer's opinion conflicts with the client's opinion, or when the defendant voluntarily makes a false confession, should they abide by their "loyalty obligation" to the client or maintain their independence in legal services? Secondly, the scope of providing legal assistance is limited. According to Article 36 of the Criminal Procedure Law of China, the duty lawyer's function is only to provide legal assistance to the parties, including providing legal advice, making recommendations on procedure selection, applying for changes in compulsory measures, and providing opinions on sentencing recommendations and case handling. This type of assistance is only limited to procedural assistance, and almost does not involve physical assistance. Article 2 of the "Opinions on Carrying out the Work of Legal Aid Duty Lawyers" issued in 2017 clearly states that "duty lawyers do not provide defense services in court", and neither the Criminal Procedure Law nor the "Guiding Opinions" grant duty lawyers the right to appear in court. In addition, the only rights of duty lawyers also lack necessary remedies. Finally, the situation of the on duty lawyer team is not optimistic. The quality of duty lawyers dispatched by legal aid agencies in various regions varies, and a considerable portion lack necessary case handling experience and ability, making it impossible to expect them to provide high-quality legal services to the parties involved. In addition, the duty lawyer's work mode is a shift system, and their salary is much lower than that of practicing lawyers, so their work enthusiasm and sense of responsibility are also difficult to guarantee. In practice, on duty lawyers have become witnesses of confession and punishment, mainly playing a voluntary role in witnessing confession and punishment, presenting a "platform effect". Scholars have used empirical methods to study the participation of on duty lawyers in cases of confession and punishment. They have found that during the trial stage, there are situations where the participation rate of on duty lawyers is low and the participation effect is poor. Moreover, on duty lawyers only provide opinions from aspects such as the defendant being a first offender, active compensation, and less subjective malignancy, while very few truly provide opinions on substantive issues.

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3. Comparative Analysis of Extraterritorial Institutions

3.1. Plea bargaining system in the United States

The reason why the negotiation system exists and prevails in the United States is entirely because it provides certain benefits to the parties involved in the case. From the perspective of the prosecutor, if the defendant is found innocent after trial, it will have a negative impact on the prosecutor's political career, so choosing Plea bargain can avoid the risk of uncertainty. The same risk also exists on the part of the defendant and defense lawyer. If they do not accept negotiation, the defendant may be sentenced to heavier crimes and punishments. If they accept the conditions of the prosecutor, they will only be punished with lighter crimes and punishments. In summary, in the United States, the legitimate rights and interests of the defendant are in an extremely unsafe position, which leads to the defendant's comprehensive reality, weighing the pros and cons, and making a confession, leading to the possibility of wrongful cases. To ensure the rights of the defendant, the federal court must clarify the following matters before accepting negotiations: (1) Is the defendant's declaration voluntary? Before accepting a statement of guilt, the court must first investigate whether the statement was voluntary? Before accepting the defendant's statement of guilt, the court must first investigate whether the statement was made out of free will and whether it was a product of rape, coercion, or improper commitment. (2) The court must ensure that the defendant is aware of the crime, sentence, and rights they have waived. Before accepting the defendant's confession statement, in accordance with federal law, the court must personally inform the defendant of the following matters, and must ensure that the defendant understands their significance: the nature of the crime they have pleaded guilty to, and the sentence, including the principal and subordinate sentences; If the defendant does not appoint a lawyer, inform the defendant that he has the right to hire a lawyer or have a Public defender to defend; The defendant has the right to declare innocence, to accept a jury trial, to hire a lawyer during the trial, to question and confront witnesses; Declaring guilty is equivalent to relinquishing the right to trial. Is there a basis for the defendant's admission of guilt? According to federal law, after the court accepts the confession statement, before the trial, it is necessary to investigate whether there is a factual basis sufficient to support the defendant's confession statement.

3.2. Japan's Criminal Consultation System

In 2015, the Japanese parliament passed an amendment bill to the Criminal Procedure Law, officially incorporating a consultative panel system. The negotiation in the amendment bill refers to the agreement to provide relevant assistance in evidence collection and prosecution in terms of grammar, which is actually a plea bargaining in the review and prosecution stage. There are two types of plea bargaining in Japan, one is plea bargaining based on confession, and the other is plea bargaining based on information provision. To avoid the occurrence of unjust, false, and erroneous cases, Japan has established a relevant safety valve system. By providing evidence for others' cases in exchange for the interests of suspect and defendants, the system of consensus through consultation will lead to the risk of making false statements about others' cases. Legislators believe that the above risks can be avoided through the following institutional design. First, the prosecutor should conduct thorough investigation and verify the content of the agreement with the suspect and the defendant according to the agreement reached with them. Secondly, in the trial of others' cases, it is necessary to investigate the content of the agreement, and defense lawyers can conduct sufficient cross examination to carefully examine the credibility of the confession. Thirdly, the defender needs to participate in the process of negotiating a consensus, which also requires the defender's consent. The professional ethics of lawyers requires that they cannot be accomplices in the crime of confession, so the participation of defenders can prevent suspect and defendants from making false statements.

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Fourth, if a suspect or defendant makes a false statement, he or she can be sentenced to imprisonment of less than five years.

3.3. German Criminal Consultation System

The negotiation in criminal proceedings in Germany has a long history and has been in judicial practice since the 1970s. It refers to the negotiation conducted by the defense, prosecutor, and judge in a certain case on not prosecuting or revoking charges, determining the severity of the crime, and sentencing. In the context of the rapid increase of criminal cases, the increasing difficulty of detection, and the increasing pressure on the judicial system, Germany, a representative country of the continental law system, has also begun to learn from and imitate the plea bargaining system of the Common law. The German consultation follows the principle of suiting punishment to crime, the principle of court ascertaining the truth, the principle of openness and the principle of unlimited Legal remedy. In the principle of unlimited Legal remedy, the plea bargaining in Common law often contains a content that is to give up appealing against the negotiated judgment or seek further judicial relief. This content is from the perspective of procedural economy, with the intention of making the process of handling cases brief. However, it also provides the possibility of escaping supervision for the possible grievances suffered by the defendant. Article 302 (1) of the German Criminal Procedure Law emphasizes that once negotiations are conducted before the judgment, the voluntary waiver of the right of appeal by the parties is excluded. Both the defendant and the victim must be clearly informed by the court that the negotiated judgment is comprehensive and reviewable. For the unsuccessful outcome of the negotiation, the German Criminal Procedure Law also stipulates that when the defendant's subsequent litigation behavior does not match the situation on which the court made the promise, that is, the defendant violates the promise to overturn the confession after the negotiation, the court can deviate from its promise to make a judgment, but must inform the defendant in a timely manner. The guilty confession made by the defendant before will not be evaluated in this situation to ensure the fairness of the procedure and prevent the defendant from accepting negotiations under pressure from the court and the procuratorate and not daring to retract. In order to further protect the legitimate rights and interests of the defendant and avoid the inability to correct wrongful cases.

4. The Construction of a Criminal Misjudgment Prevention Mechanism under the Background of the Implementation of the System of Confessing Crime, Admitting Punishment and leniency

4.1. The Introduction of Evidence Standard: Resolving the Risk of Misjudged Cases under the Presumption of guilt and the Doctrine of Confession Centralism

Given that China's standards of proof are relatively abstract and difficult to control, especially under the implementation of the lenient system of confession and punishment aimed at improving litigation efficiency, the inherent standards of proof have put judicial practice in a dilemma. In recent years, the concept of evidence standards has gradually entered the perspective of litigation theory, providing another path and solution to prevent the occurrence of wrongful cases under the lenient system of confession and punishment. The standard of evidence is a subordinate concept of the standard of proof, which exists in specific cases. It closely revolves around the constituent elements and sentencing circumstances of a certain type of crime, sets regulations and requirements for the type, form, and quantity of evidence, providing clearer and more actionable guidance for each stage of litigation. Although the standard of evidence cannot solve the issues of legality and authenticity of evidence itself, its greatest significance lies in achieving "standardization" in the handling of the same type of cases.

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It can solve the quality inconsistency or defects caused by subjectivity in case handling, compensate for the differences in the handling ability of investigators, and prevent the negligence and negligence of investigators in handling cases of confession and punishment. Whether in the investigation stage, the review and prosecution stage or the trial stage, the responsibility of the judicial organ to collect evidence cannot be reduced because the suspect or the defendant voluntarily pleads guilty and pleads guilty, nor can the quality of case handling be reduced because the suspect pleads guilty and pleads guilty, thus forcing the investigation organ to collect fixed evidence objectively and comprehensively, and effectively defusing the risk of investigation centralism and confession centralism, Effectively counter the thinking tendency of Presumption of guilt. For example, in the wrongful case that the author is investigating, if the evidence standards for traffic accident cases are established, and the investigation agency should collect evidence such as video surveillance, witness testimony, and detailed phone calls, then this wrongful case can be avoided. Even if the suspect and the defendant repent of their guilty plea and punishment and withdraw their confession, they can still achieve the goal of conviction and sentencing through evidence.

4.2. Improve the duty lawyer system

The duty lawyer system is the "twin brother" of the lenient system of confession and punishment, but in the face of this foreign and new thing, its role in preventing erroneous cases has not yet been fully realized. Firstly, the duty lawyer should be granted the status of a "quasi defender" and be equipped with the necessary investigative and evidence collection rights, examination rights, and interview rights to perform their duties. To smooth the transition channel between duty lawyers and defenders, and improve the work enthusiasm and sense of responsibility of duty lawyers. Secondly, improve the system for judges and prosecutors to listen to the opinions of lawyers on duty. We can explore a "face-to-face hearing" involving the procuratorial organs, defendants, and duty lawyers to listen to and record the opinions of duty lawyers. After the hearing of opinions, the procuratorial organ or court shall make a "record of listening to the opinions of the on duty lawyer" with the signature of the on duty lawyer and attach it to the file. At the same time, the duty lawyer should be granted the right to relief. If the procuratorial organ fails to record and explain the opinions of the duty lawyer, the duty lawyer has the right to appeal to the higher-level procuratorial organ. Once again, explore the establishment of a joint and several liability system for duty lawyers. The prevention of wrongful cases not only depends on the experience and ability of the lawyer on duty, but also on their sense of responsibility. Therefore, under the concept of a legal professional community, the author believes that it is possible to consider constructing a system where duty lawyers bear joint and several liability for cases they participate in. If the on duty lawyer intentionally or grossly negligently causes an error in the case or the error is not discovered, the judicial administrative organ or bar association shall, depending on the situation, give the on duty lawyer a warning, fine, order to stop practicing, or even revoke the practicing certificate. Again, the legal aid provided by the on duty lawyer should be advanced to the investigation stage. Our law only stipulates that lawyers on duty should be stationed in courts and Detention center, but the collection of confessions is mainly in the investigation stage, and misjudged cases are also mainly formed in the investigation stage. Therefore, the setting of the lawyer on duty should be moved forward to the investigation stage. In the investigation stage, if the suspect voluntarily pleads guilty, the lawyer on duty should be present. Finally, improve the quality of duty lawyers. It is necessary for legal aid institutions to establish a relatively stable team of on duty lawyers or full-time lawyers who are proficient in business, experienced, and responsible, and correspondingly increase the salaries of on duty lawyers.

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4.3. Strengthening the protection of the rights of the accused

Firstly, the parties involved should have full right to know. The right to know is the basis for suspect and defendants to exercise all other rights in the procedure of pleading guilty, accepting punishment and granting leniency. The lack of the right to know will leave a huge space for the public and procuratorial organs to abuse their advantageous position and engage in concealment and deception. The public security and procuratorial organs should clearly and detailedly inform the suspect of the nature of pleading guilty and punishment, the rights he enjoys, the similarities and differences in the selection of procedures, and the legal consequences. In the court trial, the judges should confirm whether the defendant accurately knows the relevant provisions by verbal means. Secondly, endow the parties with the substantive right to know and establish an evidence disclosure system. The establishment of the evidence disclosure system can achieve information equality between the prosecution and the defense, enabling the defendant to make more rational procedural choices, admit guilt and punishment, and sign a statement. At the same time, it can also replace some functions of the court investigation procedure to a certain extent, and make up for the shortcomings of the court procedure's virtualization. Finally, the accused should be granted the right of estoppel in both procedural and substantive senses. The granting of the right of estoppel is to provide the accused with the opportunity for self relief, which can be said to be the last line of defense against wrongful cases. Articles 51-53 of the Guiding Opinions only grant the defendant the right of estoppel in the procedural sense. Although the accused may retract their previous confession, punishment, and procedural choices, they cannot retract their guilty confession. The previous guilty confession can still be used as evidence, but this is not enough to prevent misjudgment. Therefore, the defendant should be granted the right to withdraw their previous guilty confession.

4.4. Strengthen the judgment of evidence, especially confessions

All wrongful cases can be traced back to the root of the evidence, and the authenticity of the confession directly determines the authenticity of the case of leniency in confession and punishment. The first is to judge the confession of the suspected criminal population through logic, experience, feeling and intuition. The whole process of interrogation should be recorded and videotaped, and the truth of the suspect's statement should be judged by the changes in his expression, language and manner. If necessary, the lie detector can be used to help judge. The second is to review the continuity and stability of the oral confession. In cases of leniency in confession and punishment, defendants who make false confessions due to utilitarian or psychological factors, or who are lured and deceived by investigators, will show great concern, sometimes confessing, sometimes retracting, and wavering. Therefore, the examiners need to examine whether their confession is stable and coherent, identify the reasons for their retraction, examine whether the content of their confession is consistent, and exclude situations where they have been instructed or induced to confess by investigators, as well as situations where improper agreements have been signed. The third is to repeatedly interrogate from multiple perspectives, focusing on reviewing their statements on detailed issues and statements on hidden information. It is possible for a suspect to tell a lie without being identified, but if he lies every time he confesses, he will definitely reveal his flaws. The fourth is to examine and determine the voluntary confession motivation and personal situation of the accused. Prevent people from pleading guilty out of the motive of taking the place of others, covering up other serious Corpus delicti or shielding others. In addition, the personal situation of the suspect should also be investigated. Some people with mental disorders and post drug addicts may have "false confessions", and some people with low intelligence, cognitive impairment, and teenagers are vulnerable to other people's hints or obedience, resulting in false confessions. The fifth is to adhere to the principle of "substantial truth" and legal proof

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standards. The leniency procedure for confession and punishment essentially grants the accused the procedural power of punishment rather than the substantive power of punishment, which is also the fundamental difference between it and plea bargaining in the United States. Examiners should adhere to the bottom line of "simplifying procedures, entities cannot be simplified" and the proof standard of "excluding reasonable doubts".

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