

The Imbalance between “Conviction and Decriminalization” and “Collateral Consequences” in the Governance of Light Offenses and Its Resolution: The Case of Drunk Driving

Yating Chen*

Macau University of Science and Technology, Macao, China

**Corresponding Author*

Abstract: China has entered the era of light offenses, and drunk driving has become a typical case through which to observe light-offense governance. Two problems stand out today. At the front end, conviction has become rigid: judicial practice clings to the blood alcohol reading as the sole criterion, and the substantive review that an abstract-danger offense requires is left idle, so improper convictions follow. At the back end, collateral consequences are out of balance: they last for life and spill over to family members, spreading criminal stigma and institutional disenfranchisement and departing from the principle that punishment should fit the crime and the offender’s culpability. The way out lies in an integrated criminal-law approach. At the front end, substantive construction of the elements of the offense, together with the proviso to Article 13 and the exemption clause in Article 37 of the Criminal Law, should be used to screen out the right cases. The application of conditional non-prosecution can be introduced into community service, and the connection between criminal treatment and administrative punishment can be maintained. The scope of collateral consequences should be narrowed, the lifetime occupational ban no longer applies in a package, and misdemeanor records are processed through elimination or storage mechanisms to provide a channel for offenders to return to society. Together these form a coordinated governance path that balances an active criminal law with the principle of restraint and builds a modern “strict but not severe” system of light-offense governance.

Keywords: Light-Offense Governance; Drunk Driving; Substantive Decriminalization; Collateral Consequences

1. Introduction

Serious violent crime has fallen steadily for years and the share of heavy sentences keeps dropping, while minor offenses led by the crime of dangerous driving have grown explosively. This “double decline, double rise” shift in the structure of crime means Chinese criminal justice has unmistakably entered the era of light offenses [1]. Drunk driving, the most common form of dangerous driving, has long since overtaken theft to become the most prosecuted crime in the country. It is a typical statutory offense whose maximum statutory penalty is no more than criminal detention. Its cases take up about half of grassroots judicial resources, and institutionally it is the clearest, most concentrated specimen of how criminal justice has been reshaped since the proactive approach to criminal legislation took hold [2]. How to deal with massive cases is related to the overall effectiveness and trend of misdemeanor governance in China. After drunk driving was incorporated into the criminal system on a large scale, the severe punishment thinking in the era of felony was in direct conflict with the mitigation of punishment, procedural diversion and social restoration required in the era of misdemeanor. At present, the governance of drunk driving presents a structural dislocation of front-end rigidity and back-end imbalance. Some judicial practices adhere to the theory of alcohol-only numerical value, and the conviction is reduced to the form of numerical comparison, and the substantive examination of legal interest infringement is virtual. The accompanying consequences are also harsh, lifelong and spread to family members. Those who are only sentenced to light punishment also suffer from institutional losses such as loss of qualifications, occupational restrictions, and social exclusion for a long time. The front-end conviction is too urgent and the back-end punishment is too heavy. This mismatch not only violates the principle of compatibility of crime, responsibility and punishment and the principle of proportionality,

but also makes it difficult for a large number of ordinary people with subjective viciousness to return to society, and ultimately drags down the overall effectiveness of misdemeanor governance.

These structural problems exposed by the governance of drunk driving cannot be cured by the dogmatic interpretation of individual provisions. They must be solved under the framework of criminal integration. The substantive limitation of constitutive elements, the diversion of conditional non-prosecution procedures, and the cleaning and elimination of criminal records should be implemented in the substantive law, procedural law and non-criminal fields respectively. This article takes the high-frequency minor illegal act of drunk driving as the entry point. It examines how the imbalance between the conviction-decriminalization mechanism and collateral consequences presents itself, and looks for a coordinated path of reform that balances active legislation against the bottom line of criminal-law restraint. The aim is to offer workable reference points for a modern, "strict but not severe" system of light-offense governance suited to China.

2. The Petty-Offense Position of Drunk Driving Under the Proactive Criminal-Law Approach and the Shift in Governance

Situating drunk driving within China's classification of offenses, against the broader background of active criminal legislation, is the logical starting point for analyzing the light-offense predicament. The proactive approach to criminal legislation was historically unavoidable. Risks in modern society spread widely and often cannot be reversed; the traditional stance of passive restraint and ex-post punishment is plainly inadequate for public risks such as road-traffic safety and cybersecurity. To keep major public legal interests from real harm, criminal law has had to intervene proactively and move its defensive line forward. The core of this legislative turn is to add a large number of misdemeanors and minor crimes to fill the regulatory gap between administrative punishment and traditional heavy punishment, and the national governance toolbox is more refined [2].

Drunk driving is a typical minor crime in China's current criminal stratification. The statutory maximum penalty is criminal detention and a fine. It does not include heavier penalties such as

fixed-term imprisonment, so it is different from the traditional natural crimes with serious moral malignancy. However, this micro-crime attribute was not fully respected in the early stage of judicial application. After a period of formalistic paranoia of "all punishments", the judiciary realized that all actors who met the threshold of alcohol value were indiscriminately pushed into the criminal sanctions network, which not only consumed a large amount of judicial resources, but also caused serious social problems. In 2023, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice jointly issued the "Opinions on Handling Criminal Cases of Drunken Dangerous Driving" (hereinafter referred to as "New Regulations on Drunken Driving"), replacing the single standard of blood alcohol content with the multiple standard of "drunk driving behavior + blood alcohol content + plot," and the judicial practice then turned to the misdemeanor governance model of tempering justice with mercy and substantial incrimination [3]. The new regulations on drunk driving refine the circumstances of exemption from criminal punishment and non-action crime, which is equal to the adjustment funnel on the over-tight legal net at the judicial operation level. However, this turn encounters the strong inertia of the traditional case handling mode and is not smooth. This difficult policy shift itself shows how far the serious-crime mindset has to travel to meet the precision that light-offense governance requires. The old all-or-nothing habit of answering crime with punishment has proven plainly unsuited to a mass of occasional petty offenders with minimal culpability. Bridging this gap in theory and in institutions, and returning petty offenses to their proper lenient position, is the task that the whole light-offense governance system now faces.

3. The Practical Predicament of Conviction and Decriminalization of Drunk Driving

As proactive criminal legislation advances, clinging to a passive, rigid sanctioning model clearly no longer meets the precision that criminal justice requires in the era of light offenses. For a high-frequency minor offense such as drunk driving, lenient sentencing at the back end or wider use of suspended sentences cannot, by itself, resolve the social conflicts caused by the spread of criminal stigma. To govern light offenses rationally, the center of gravity must move forward to the conviction stage: by

construing the elements of the offense substantively and applying the proviso to Article 13 of the Criminal Law as a matter of routine, the balance between conviction and decriminalization can be rebuilt.

The New Rules already call openly for weighing the circumstances and try to bring more discretionary factors into the conviction stage. Yet the inertia of number-driven case handling remains deeply entrenched in practice. The blood alcohol reading has effectively become the only hard criterion for conviction; no substantive inquiry into danger is made, and the judicial review that an abstract-danger offense calls for is neglected [4]. Drunk driving is a typical abstract-danger offense, but many local judicial organs misread it as a formal offense that needs no examination of harm to legal interests. That misreading departs from the nature of criminal law as the last line of defense for legal interests. An abstract-danger offense is criminalized because the legislature, responding to the prevention needs of a modern risk society, presumes legislatively that conduct of this kind is ordinarily dangerous. That presumption never means the courts may completely abandon substantive review of whether legal interests could actually be harmed in an individual case. If presumed danger is equated with an irrebuttable formal offense, criminal law loses its basic decriminalization filter, and criminal sanctions expand and spread improperly.

At the level of the elements themselves, this formal logic of conviction completely ignores whether the offender, given individual physiological differences, was actually unable to drive safely in the specific circumstances [5]. The blood alcohol concentration is a physical indicator that reflects the fact of drinking relatively objectively. But offenders differ enormously in body weight, in how quickly their bodies process alcohol, and in tolerance, so the same reading means very different things for different people's neuromuscular control and vehicle-handling ability. If the courts refuse to determine the intoxication element substantively, with qualified safe-driving ability as the core, large numbers of acts that created no real danger to public safety in their specific circumstances will be convicted anyway.

The gap between doctrine and practice shows up most sharply in everyday situations: moving a car a short distance, "morning-after" drunk driving, and repositioning a car inside a gated community.

In such acts, which carry no real public danger, the actor either had no intent to endanger public safety at all, as in the morning-after case, or, objectively speaking, the spatial environment and the vehicle's momentum made harm to persons or a major traffic accident practically impossible, as with slow repositioning inside a gated community. These situations should not be considered as constitutive elements due to the lack of substantive danger in jurisprudence, or should be diverted by proviso. Article 12 of the new regulations on drunk driving follows this logic and lists it as a legal reason for exemption from criminal punishment and omission. However, grass-roots practice still ignores these decriminalization clauses and mechanically convicts. The proviso of Article 13 of the Criminal Law - the regulation mechanism for not treating acts with significantly minor circumstances and little harm as crimes - has been overhead, and the practical level has paid an unbearable social cost. The stubborn illness of formal conviction directly causes the waste of judicial resources and the different judgments of the same case, and the public's trust in the judiciary is damaged. A large number of minor drunk driving cases have flooded into the main channel of criminal proceedings, crowding out the already tight handling resources, and the judicial system is stretched in the face of real felony. There is a lack of unified and implemented substantive examination standards in various places. Different regions, courts and even case handlers often swing between sticking to the value and flexible decriminalization in similar cases of trace drunk driving. Discretionary scales are different, and it is difficult for ordinary people to feel fairness and justice in individual cases, and doubts about the legitimacy of criminal law follow. A large number of ordinary citizens with very low social harm and no obvious moral malice, after carrying the label of lifelong crime and losing their basic professional qualifications, criminal justice has not only failed to achieve the original intention of crime prevention, but has invisibly created new social exclusion and instability.

4. The Social Governance Predicament of the Collateral Consequences of Light Offenses

One painful reality must be faced directly: the spread of criminal stigma from light offenses quietly damages ordinary social relations. Discrimination, exclusion, and isolation follow

the label, make it hard for offenders to return to society, and in the end tear social ties and create adversaries of society [6]. The direct penalty a drunk driver bears under substantive law is usually no more than light criminal detention or a suspended sentence. But because China lacks a supporting mechanism for eliminating the records of light offenses, the collateral legal consequences that follow in non-criminal fields are strikingly severe. Dismissal from public office, lifetime bans from specific occupations, and effects that reach family members taking civil-service exams or joining the military leave large numbers of ordinary, occasional offenders with minimal culpability facing long-term institutional disenfranchisement and social exclusion [7]. When indirect consequences weigh far more heavily than the direct sentence, the principle that punishment should fit the crime and the offender is set aside, and in effect offenders are cast out of normal society without limit of time, the opposite of what modern criminal justice, which exists to help offenders return to society, is supposed to do.

The life-long and generalization of the label effect is turning the criminal law tool of maintaining social stability into a catalyst for creating social opposition. Under the traditional felony governance model, the legitimacy of severe collateral consequences lies in isolating social risks and maintaining public purity. Serious criminals are often subjectively vicious and dangerous. However, after misdemeanors such as dangerous driving occupy the absolute majority of criminal trials, the structure of governance objects has been fundamentally reversed. The vast majority of drunk driving perpetrators have no anti-social moral malice. They are law-abiding citizens, corporate backbones or family pillars in all walks of life. They often violate the law only because of a fluke or cognitive bias against vague concepts such as overnight alcohol. The judicial system continues to follow the logic of criminal record control in the era of felony. A minor negligence carries a lifelong label and joint family loss of power, and the spillover effect of criminal punishment is completely out of control. This kind of excessive defense governance model can not prevent misdemeanor recidivism, but block the path of the perpetrator to clean the stain with legal labor and return to the mainstream society. The deeper crisis lies in the intertwining of the harshness of the collateral consequences and the institutional loss of power, which can easily

spawn large-scale new marginal groups and erode the social basis of social governance. The essence of modern misdemeanor governance is diversion and educational correction, awakening normative consciousness with light punishment, and then helping actors return to society through multiple mechanisms such as civil and administrative mechanisms. The generalized collateral punishment is contrary to it. The prohibition of employment, the restriction of social participation and even the impact on the development opportunities of the next generation constitute an invisible but insurmountable barrier of social isolation. A large number of ordinary people who have no significant moral stains face career interruption and family reputation damage only because of short-distance car lifting or slight drunk driving. The legitimacy of criminal justice has been questioned in the public mind. Institutional exclusion cuts off the trust bond between the actor and the mainstream society, and the sense of abandonment and injustice continues to accumulate. The actor often goes to the opposite of the normative society, laying a deep hidden danger and unstable factors for social governance.

5. The Coordinated Path to Overcoming the Imbalance Between Conviction-Decriminalization and Collateral Consequences

To overcome the double imbalance at the conviction stage and in collateral consequences, we should work within an integrated criminal-law framework and rely on the precise connection between judicial doctrine and existing institutions. Grand legislative redesign is costly and slow, and it risks upsetting the relative stability of the current legal system. The most effective and feasible path is substantive interpretation of existing norms in the spirit of modern light-offense governance, together with smooth channels between criminal justice, administrative bodies, and social policy.

On the conviction-decriminalization side, the first point of optimization is to admit, moderately, a rebuttable exception to abstract danger at trial. Whether the offender should be allowed to rebut abstract danger case by case is still debated in doctrine. But if we proceed on the substantive justice that petty-offense governance requires, allowing rebuttal in extreme cases is the necessary way to narrow the elements at the front end through substantive interpretation of specific

behavioral elements. Concretely, the judicial organs should not treat the blood alcohol concentration of 80 mg per 100 ml as an absolute, unshakable standard of conviction. Defendants should be allowed to rebut it with evidence about the actual driving environment. For those special situations where subjective culpability is extremely low and objective danger is negligible, the two core elements - intoxication and driving - can be construed substantively and the matter resolved directly. The driving element, for example, can be read narrowly: controlling and manipulating a motor vehicle by means of its internal driving force so that it moves, with enough momentum and in a spatial environment to pose a real threat to public safety. On this logic, very short, slow repositioning or car-moving in enclosed parking lots or inside private communities, off public roads, or briefly moving a vehicle to make way for an emergency vehicle or to cooperate with property management, carries too little momentum and takes place in too closed a space to have any realistic probability of harming public safety. Such acts should be found not to satisfy the elements for lack of real abstract danger, and should be kept out of criminal proceedings from the start [8].

Beyond substantive narrowing at the level of the elements, routinely activating the proviso to Article 13 and the exemption clause in Article 37 of the General Part of the Criminal Law is the core normative mechanism for diverting cases from conviction. Many case-handlers today are reluctant to apply the proviso in petty-offense cases, and not very good at it, partly because of performance targets and partly because of serious-crime habits of thought. To change this, the proviso must be established in judicial operations as a hard decriminalization channel. Where the blood alcohol concentration is relatively low - say, below 150 mg per 100 ml - and no statutory aggravating circumstance exists, and the offender cooperated with the check and showed a sincere attitude of admitting guilt and repenting, the judicial organ should apply the proviso directly and hold that the circumstances are clearly minor, the harm is not great, and the act is not treated as a crime. For occasional light offenders whose conduct does carry some harm and who should not simply be declared non-criminal, but whose subjective culpability is extremely low, Article 37 should be applied actively to exempt them from criminal punishment. The substantive limitation of the

constitutive elements, the standard decriminalization of the proviso, and the exemption from punishment constitute a hierarchical filter, which is enough to change the previous rigid conviction mode of black and white, so that judicial discretion can restore its due flexibility. The front-end decriminalization also needs to synchronize the diversion of supporting procedures and the connection of execution, and the diversion path of 'conditional non-prosecution + community service' can be implemented. The procuratorial organ sets an investigation period when reviewing minor cases such as drunk driving, and requires the perpetrator to voluntarily complete certain hours of public welfare activities such as traffic civilization persuasion and community volunteer service. The perpetrators who are qualified in the assessment and have good performance in confession and repentance shall be treated as conditional non-prosecution according to law. This flexible diversion maintains the basic criminal deterrence and urges the perpetrator to repair the damaged social relations through actual behavior. Just as important, decriminalization at the criminal front end is not abandonment. The criminal-administrative interface has to work: criminal decriminalization, then administrative takeover. Where an offender is spared criminal sanctions through the proviso, exemption, or conditional non-prosecution, the case should be transferred promptly to the public security organs, which should revoke the driver's license or impose administrative detention, fines, or other administrative penalties in accordance with law. That preserves the continuity of legal responsibility, leaves no regulatory vacuum, and effectively avoids the misuse of criminal labels [9].

On the collateral-consequences side, the starting point for improvement should likewise not be the wholesale abolition of administrative regulations. A pragmatic approach that narrows how judicial and non-criminal norms are applied is better, cutting off as far as possible the endless extension of the light-offense label into unrelated fields. Another workable path for easing the harshness of collateral consequences is to eliminate the blanket lifetime bans now common in many fields [10]. When applying norms in non-criminal fields, the competent authority of the industry concerned should construe the scope of collateral consequences purposively in compliance review, strictly limiting them to specific industries with a

real, necessary connection to the nature of the drunk-driving offense, such as transportation and school-bus driving, which bear on public safety. Ordinary commercial and civil industries, and general occupational entry qualifications, with no direct connection to public safety should not be uniformly banned. In concrete institutional terms, absolute lifetime bans could be changed into relative, time-limited disqualifications. This means that after a period of social review in which no serious violation occurs, the offender should be allowed to regain the relevant occupational qualification through a restoration procedure outside the criminal law. The scheme of limiting the scope and adding the period does not break the existing administrative framework, but leaves a legal space for the survival and development of ordinary people who want to reform. The most urgent and effective institutional guarantee to open up the chain from the rule of law to social repair is to explore the establishment of a system for the elimination or storage of misdemeanor criminal records on the premise of a certain period of social investigation. China already has mature judicial experience in sealing the criminal records of minors, and that experience can be drawn on for a pilot in high-frequency, negligence-type petty offenses such as drunk driving. In practice, judicial administrative organs or grassroots communities could set a social review period for drunk drivers sentenced to criminal detention, given suspended sentences, or exempted from criminal punishment. If, within a fixed period after the judgment is fully executed, the offender shows good compliance, the subjective culpability has clearly disappeared, and no new illegal or criminal act occurs, the court or the relevant authority should seal the record or declare it eliminated in accordance with law. Once the record is eliminated, no unit or individual may access or disclose it, except that judicial organs may consult it on their own authority when recruiting for specific national-security and confidential posts; and when filling in résumés or moving within society, the offender is no longer legally obliged to report the record proactively to employers. This social return mechanism built by institutional cohesion can fundamentally break the lifelong bondage of criminal labels and enable minor offenders to return to normal social citizenship. The diversion of the conviction stage and the loosening of the consequential stage make China's micro-crime governance really bid farewell to the traditional

inertia of blind and severe punishment. While ensuring public safety, it highlights the restraint, rationality and moderation that modern rule of law should have.

6. Conclusion

The core of perfecting the misdemeanor governance system is to optimize the filtering mechanism of front-end conviction and decriminalization with substantive interpretation, and to dredge the governance export by standardizing the collateral consequences and constructing the system of elimination of criminal record. The micro-crime of drunk driving has long been dragged down by the rigidity of front-end convictions and the lifelong deprivation of back-end qualifications, which has caused substantial losses to social order and social relations. To get out of the dilemma, we must base ourselves on the perspective of criminal integration, limit the substantive elements of the front-end, shunt the proviso procedures, and connect them with the regulation of the collateral consequences of the back-end and the storage of criminal records. Accurate diversion of convictions and pragmatic relaxation of accompanying consequences, high-risk minor crimes can return to their minor attributes. Criminal justice should not blindly exclude perpetrators, but should leave an equal channel for social return through institutional cohesion while preventing and controlling risks, and seek a rational balance between active legislation and modesty of criminal law, so as to truly realize the goal of "strict but not severe" modernization of criminal rule of law in the era of misdemeanors.

References

- [1] Lu Jianping. Why China Has Entered the Era of Light Offenses. *China Journal of Applied Jurisprudence*, 2022(3): 132–142.
- [2] Zhou Guangquan. The Establishment of the Proactive Criminal Legislation Approach in China. *Chinese Journal of Law*, 2016(4): 23–40.
- [3] Miao Shengming. Conviction and Governance of Drunk Driving: On Improving China's Light-Offense Governance System. *Criminal Science*, 2024(1): 3–16.
- [4] Zhou Guangquan. On the Crime of Dangerous Driving from the Perspective of Integrated Criminal Law. *Political Science and Law*, 2022(1): 14–30.

- [5] Xia Lang. From Severe Punishment to Leniency: The Turn of Drunk Driving from Formal Conviction to Substantive Decriminalization. *Contemporary Law Review*, 2025(6): 40–51.
- [6] Liang Yunbao. China Should Establish a Criminal-Record Elimination System Commensurate with the Punishment of High-Frequency Petty Offenses. *Tribune of Political Science and Law*, 2021(4): 30–43.
- [7] Cui Zhiwei. On the Construction of a Criminal-Record Elimination System Against the Background of Proactive Criminal Legislation. *Modern Law Science*, 2021(6): 162–179.
- [8] Zhang Mingkai. Basic Issues of the Crime of Dangerous Driving: A Discussion with Professor Feng Jun. *Tribune of Political Science and Law*, 2012(6): 123–140.
- [9] Wang Lirong, Li Yonghui. On China's Petty-Offense Governance System: An Analysis from the Handling of Drunk Driving. *Journal of Henan Judicial Police Vocational College*, 2025(3): 54–61.
- [10] Zhang Mingkai. The Advancement of Light-Offense Legislation and the Change of Collateral Consequences. *Journal of Comparative Law*, 2023(4): 1–17.