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碩 士 学 位 论 文

认罪认罚从宽制度研究

Research on the Leniency System of Guilty Plea

丁倩

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## 摘要

当前，我国刑事案件逐年增加，而案多人少的矛盾依然尖锐。为优化配置司法资源，提高诉讼效率，全国人大授权在多个城市试点运行认罪认罚从宽制度。这项制度体现了恢复性司法理念和“理性经济人”的思维模式，也是刑事速裁程序试点改革的扩大和深化。笔者所在的基层检察院是刑事速裁程序和认罪认罚从宽制度的双重试点单位，笔者将以刑事速裁程序试点运行两年多以来的实务经验为视角和基础，对认罪认罚从宽制度的完善提出建议，这样的建议比单纯的理论研究更具有现实意义，这也是本文的创新点和价值所在。

本文的主文共分为五章。第一章是认罪认罚从宽制度的概述。首先，纵向梳理了认罪认罚制度的历史沿革，其次，依次对“认罪”、“认罚”、“从宽”的涵义进行界定，揭示“认罪认罚”的核心，分析“认罪认罚”与“从宽”的关系。

在第二章中，笔者阐述了认罪认罚从宽制度的观念基础、理论依据和价值追求，说明了完善认罪认罚从宽制度的可行性和必要性。

第三章是认罪认罚从宽制度的域外考察。文章分别对英美法系和大陆法系的六个国家和地区的类似认罪认罚从宽的制度进行介绍和比较，从中得到一些启发，如协商性司法理念、程序多样化、实体从轻的确定性、律师参与的普遍性和对辩诉交易的部分限制。最后着重说明域外制度对我国的参照意义，提出我国不能直接移植美国的辩诉交易制度。

第四章是刑事案件速裁程序试点的实务及问题的展开。第一节是在分析认罪认罚从宽制度和速裁程序的异同点的基础上，介绍速裁程序试点工作的主要做法、总体情况及取得的阶段性成效。第二节主要阐述两方面的问题，既包括在速裁程序试点运行中发现的问题，亦包括由此而展开的在推进认罪认罚从宽制度中需要阐述的基本问题。

第五章是认罪认罚从宽制度的完善思路。结合上一章第二节中的问题，笔者从三个方面提出九点建议：在激励机制上，建议明确认罪认罚应当从宽，明确并加大量刑激励力度；在程序设计方面，建议对于速裁程序公诉人可以不出庭，引入控辩双方量刑协商机制，将委托调查程序前置置于侦查阶段，限制被告人的上诉权；为防范制度风险，建议实现律师参与的常态化、量刑建议精细化和庭审模式

规范化。

**关键词：**认罪认罚从宽；速裁程序；制度完善

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## ABSTRACT

Nowadays the number of criminal cases increased year after year while as the contradiction between more cases and less staff is still sharp. So the NPC authorized a pilot run of the leniency system of guilty plea in 18 cities in order to optimize the allocation of judicial resources and improve litigation efficiency. The leniency system of guilty plea reflects the theory of restorative justice and rational economic man hypothesis, expands and deepens the reform of quick judging procedure of criminal cases. The grass-root procuratorate which the author works in is a dual pilot of quick judging procedure and the leniency system of guilty plea. The innovation point is that the thesis bases on more than two years of pilot practice of quick judging procedure. As a result, the suggestion given in this thesis will be more practical than pure theoretical research.

The main part of thesis is divided into five chapters. The first chapter mainly outlines the leniency system of guilty plea. The article elaborates the concept and meaning of guilty plea, recognition of punishment, leniency, and analyzes the core of guilty plea and the relationship between guilty plea and leniency.

In chapter two the article points out the concept foundation, theory evidence and value pursuits of the leniency system of guilty plea, which explains the necessity and feasibility of the improvement of leniency system of guilty plea.

Chapter three is a foreign investigation and comparison of appropriate leniency system of guilty plea. There is an introduction and comparison within six countries and regions which come from continental law system and the common law system, and from which some inspiration comes out, such as the concept of deliberative justice, diversified procedure, a lighter punishment in entity, universality of lawyers' participation. In the end of this chapter the article explains the reference significance of extraterritorial system to China and gives an opinion that the American plea bargain system cannot be transplanted directly into China.

In chapter four there's an introduction of pilot practice of quick judging

procedure and some problems. In section one the thesis analyzes the relationship between the leniency system of guilty plea and quick judging procedure. Based on the analysis the thesis introduces the main practice, general situation and stage achievement in pilot practice. In the second section, there are two aspects of problems, both from the pilot run of quick judging procedure and the promotion of the leniency system of guilty plea.

Chapter five is some thought and suggestion about the improvement of the leniency system of guilty plea based on the problems mentioned in the previous chapter. The article suggests that legislators should make it clear that the guilty plea should be lenient legally and the motivation of sentence should also be clear in law. The advice in procedure designing is as follows: the procurator don't need to appeal in court in quick judging procedure, putting the commission investigation forward to the investigation stage, the defendant's right of appeal should be limited. On the operation of system, it suggests that duty lawyers' participation needs to be normalized, sentence suggestions should be made precisely and the trial mode should be more standardized.

**Key Words:** Leniency of Guilty Plea; Plea Bargain; Improvement of system



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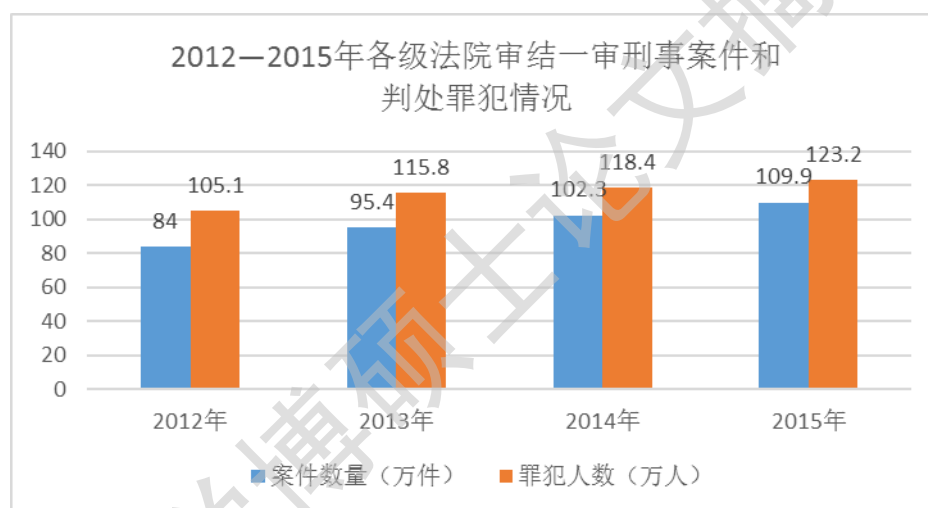
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## 引言

当前司法机关任务繁重且艰巨。一方面，刑事案件数量激增，呈高位运行状态。我国改革开放进入攻坚期和深水区，艰巨性和复杂性前所未有。经济增速放缓，下行压力增大，社会处于转型期，流动人口数量巨大，人财物流动频繁，贫富差距过大、社会矛盾尖锐，2012年以来全国各级法院审结的一审刑事案件每年以7%以上的速度递增。<sup>①</sup>

图 1：2012—2015 年全国各级法院审结一审刑事案件和判处罪犯情况



此外，刑法修正案（八）、（九）中修改、增加了部分罪名，将危险驾驶、扒窃等违法行为入刑，一些常见多发的罪名入罪门槛降低，加上劳教制度的废除，轻微刑事案件数量激增。

另一方面，司法工作人员并没有明显增加，甚至出现人才流失的情况。由于案件数量持续增长，新型、疑难、复杂案件大量增加，办案压力和难度越来越大。一些法官、检察官长期超负荷工作，案发人少的矛盾日益突出。“刑事司法资源的稀缺性与易耗性，决定了国家在行动过程中总是力图以最少的资源投入来产出最大的案件解决数量。”<sup>②</sup>如何利用最少的司法资源解决最多的案件，又保证不失

<sup>①</sup> 最高人民法院工作报告(2012年—2016年).

[http://www.gov.cn/guoqing/2008-03/21/content\\_2618088.htm](http://www.gov.cn/guoqing/2008-03/21/content_2618088.htm),2008-03-21/2017-02-08.

<sup>②</sup> 左卫民.刑事诉讼的经济分析[J].法学研究,2005,(4):123

公平，成为我国法治化进程中亟待解决的一项重要问题。因此，必须实行刑事案件办理的繁简分流、难易分流。完善认罪认罚从宽制度正是在此背景下进行的一次有积极意义、影响深远的改革和尝试。以下笔者将从理论到实务阐述如何完善认罪认罚从宽制度。

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