

Re-examination of Arrest Conditions under the "Fewer Arrests, Cautious Detention, and Prudent Prosecution" Policy : An Observational Perspective on the Crime of Intentional Injury

Ning Sang

Nanjing University Law School, Nanjing, Jiangsu, 210093, China

ABSTRACT

The "Fewer Arrests, Cautious Detention, and Prudent Prosecution" policy has long been a guiding ideology of China's criminal justice system, with its implementation focusing on minimizing the application of arrest measures against the accused. An analysis of China's current normative framework for arrest requirements reveals issues such as the absence of specific standards, ambiguous evidentiary thresholds, and unclear application methods, leading to over-reliance on the subjective discretion of judicial personnel during substantive reviews. The root cause lies in the legal structural defects of arrest conditions, which fail to provide effective normative guidance for restricting arrests. Typical cases issued by the Supreme People's Procuratorate to implement the "Fewer Arrests, Cautious Detention, and Prudent Prosecution" policy offer valuable insights into the logical relationships, evidentiary standards, and application methods for reviewing arrest conditions. In judicial practice, adherence to rules such as "simplified proof for non-arrest, rigorous proof for arrest" and "objectivity over subjectivity, standards over arbitrariness" should be maintained. By adopting a criminal integration mindset, a substantive review model should be constructed, prioritizing the crime condition as the premise, the penalty condition as a supplement, and the social dangerousness condition as the core, thereby advancing the implementation of the "Fewer Arrests, Cautious Detention, and Prudent Prosecution" policy.

KEYWORDS

Fewer arrests; Cautious detention; Prudent prosecution; Review of arrest; Arrest conditions; Crime of intentional injury

1 The raising of the issue

In 2021, the Central Committee for Comprehensive Law-Based Governance put forward for the first time in a relevant document the criminal justice policy of "Fewer Arrests, Cautious Prosecution, and Prudent Detention", requiring appropriate policy adjustments to reduce the arrest rate, prosecution rate, and detention rate in criminal cases (He, 2022). Against the backdrop of the "Integration of Arrest and Prosecution" reform and the trend toward lighter penalties in the crime governance system, the policy's implementation focuses on minimizing the application of arrest to suspects (Nie & Kong, 2023). In China, arrest, as the most severe criminal compulsory measure, is subject to multiple restrictions, including procedural multi-level review mechanisms and strict substantive conditions. Current research has explored mechanisms such as hearing-based arrest reviews, strengthened necessity reviews for detention, and litigation-oriented arrest procedures to enhance procedural filtering of unnecessary arrests. However, due to vague legal norms and broad statutory requirements, studies on correctly applying arrest conditions at the source through substantive reviews to directly reduce detention rates—remain underdeveloped.

Minor offense cases, particularly those punishable by up to three years of imprisonment, are pivotal to reducing arrest rates. The crime of intentional injury is one of the most common minor offenses in practice. Its complex forms, high incidence, wide sentencing ranges, overlaps with other crimes, and high conviction rates often lead to errors, such as misclassifying legitimate self-defense, victim consent, or acts lacking intent as intentional injury. Under the traditional mindset of "arrest upon establishment of a crime" arrest and detention rates remain high. Additionally, intentional injury cases are less influenced by macro-level criminal policies but involve significant sentencing factors, such as statutory circumstances (e. g., voluntary surrender, confession) and discretionary considerations (e. g., compensation, use of weapons), making them exemplary for studying arrest condition reviews (Zhang, 2013). Therefore, this paper adopts the crime of intentional injury as a lens. By analyzing China's current normative framework for arrest conditions and judicial practices in arrest review, and guided by the philosophy of criminal integration, it explores the standards, pathways, and supporting mechanisms for substantive review of arrest conditions, aiming to contribute to the theoretical and practical advancement of the "Fewer Arrests, Prudent Detention, and Cautious Prosecution" policy.

2 Current normative framework and judicial application of arrest conditions in China

2.1 Overview of arrest conditions under the criminal procedure law and related normative systems

Article 81 of China's Criminal Procedure Law (CPL) stipulates three types of arrest: general arrest, direct arrest and modified arrest. Direct arrest is further categorized into arrest for serious crimes, arrest based on prior criminal records, and arrest for unidentified suspects, each with distinct conditions (Li, 2023). Modified arrest applies when a suspect violates obligations under bail pending trial or residential surveillance, with clear statutory prerequisites that rarely pose interpretive challenges. General arrest and direct arrest, however, require meeting three substantive conditions: (1) evidence of a criminal act, (2) likelihood of a qualifying sentence, and (3) social dangerousness. These conditions involve complex intersections of procedural and substantive law, leading to frequent disputes in practice.

Regarding the evidentiary condition, both general and direct arrests require "evidence proving the existence of a criminal act." Key concepts include "evidence proving" and "criminal act." While evidence standards vary across procedural stages, current arrest provisions lack specificity on required evidence types or proof thresholds. According to the People's Procuratorate Rules of Criminal Procedure, "criminal act" need not encompass all facts of the crime; it may refer to one among multiple acts or charges, determined by the prosecutor's subjective conviction. However, the law provides no objective criteria for "subjective conviction," leading to inconsistent interpretations (Yang & Guo, 2020). Taking the crime of intentional injury as an example, establishing a "criminal act" minimally requires proof of "unlawful intentional harm causing bodily injury." (Jia, 2019). Yet in practice, subjective intent, injury severity, and contextual factors (e.g., provocation) may influence this determination. Current law offers no clarity on whether arrest requires mere objective proof of harm or a comprehensive assessment of punishability under criminal law.

The sentencing condition for general arrest, prior-record-based direct arrest, and unidentified-suspect direct arrest requires that the suspect "may be sentenced to fixed-term imprisonment or heavier punishment." For serious-crime direct arrest, the threshold is "likely to be sentenced to over ten years of imprisonment." While terms like "fixed-term imprisonment" and "intentional crime" are objectively defined in substantive criminal law, their application during the arrest stage remains ambiguous. Under the principle of "presumption of innocence", requiring prosecutors to predict sentencing outcomes during investigations—without quantifiable standards—poses operational challenges. For instance, the first-tier sentencing range for intentional injury spans from detention to two years' imprisonment (Yu, 2019), with "minor injury" as a key factor. However, "minor injury" is broadly defined, and final sentencing depends on subjective culpability, injury context, and other factors. Current norms provide no guidance on whether to uniformly approve/deny arrest for such cases or apply nuanced sentencing-based evaluations.

The social dangerousness condition refers to circumstances where "bail pending trial is insufficient to prevent risks." General arrest lists five criteria: (1) risk of new crimes, (2) endangerment of national/public security or social order, (3) evidence tampering or witness interference, (4) retaliation against victims or informants, and (5) suicide or flight attempts. These are assessed alongside the "nature, circumstances, and plea status of the alleged crime." Serious-crime direct arrest merges sentencing and dangerousness conditions, presuming social danger for suspects facing over ten years' imprisonment. Prior-record and unidentified-suspect arrests presume danger based on criminal history or anonymity. Social dangerousness is the most contentious condition due to its case-specific nature. While the Supreme People's Procuratorate (SPP) has issued judicial interpretations to standardize assessments, overly broad criteria—covering "It covers almost any situation that may be committed by a suspect or defendant in criminal proceedings that disrupts criminal proceedings, endangers society or infringes on the rights of others" (Chen, 2013)—render practical application difficult. The conditions of social dangerousness pertain to the evidentiary status of the case and the comprehensive conduct of the perpetrator. These determinations remain heavily reliant on the prosecutor's free evaluation of evidence, thereby entailing substantial subjective discretionary latitude. Still taking the crime of intentional injury as an example, in judicial practice, some perpetrators of unlawful acts act impulsively (temporary intent), some harm arises from trivial disputes among relatives, neighbors, or colleagues, while others stem from the victim's prior misconduct. Some acts of intentional injury are egregious in nature, causing severe harm, whereas others intersect with group-related affray or provocation, or are even linked to gang-related or organized crime. For the former category, the social dangerousness of suspects or defendants is undoubtedly minimal; for the latter, the necessity of arrest significantly increases. However, these nuanced judgmental factors often only "fully emerge" during subsequent trials or final sentencing. This illustrates the complexity and contentiousness inherent in reviewing the social dangerousness condition.

2.2 Issues in the substantive review model for arrest in judicial practice

Empirical studies reveal that pre-trial detention rates in judicial practice, particularly for the crime of intentional injury, remain high. For example, in 2020, the pre-trial detention rate for intentional injury cases in a local procuratorate reached 42.16%, significantly deviating from the proportion of minor offense cases ultimately resulting in conviction and sentencing. Severe issues such as "no prosecution post-arrest," "no investigation post-arrest," and "prolonged detention" persist. Further empirical studies confirm that pre-trial detention and arrest-prosecution rates remained consistently high between 2015 and 2021, with rebounds in 2017 and 2020. Additionally, arrest approval rates remain elevated. For instance, in 2017, a regional procuratorate received 3,309 arrest applications, approved 2,495, yielding an approval rate of 75.4%, with non-approval rates accounting for only 17% (Wang, 2021).

From the above analysis, it is evident that the persistently high pre-prosecution detention rates stem not only from external factors such as unscientific performance evaluation mechanisms, external interference in judicial processes, and inadequacies in alternative coercive measures like bail and residential surveillance, but also—and most critically—from inherent legal structural defects in arrest application conditions. The author reviewed publicly available arrest approval decisions from procuratorates and courts, as well as model formats for such decisions, and found that the reasoning for arrest approvals is often simplistic and illogical, with vague or omitted explanations of how arrest requirements are met. For example, in the Arrest Decision for Xiong Mou 1 in an Intentional Injury Case, the arrest rationale merely cites "Article 80 of the Criminal Procedure Law of the People's Republic of China" without detailing specific criminal acts, circumstances, or the suspect's personal situation, raising suspicions of "reverse reasoning." The root cause lies in the absence of a substantive review model for arrest requirements due to normative gaps and ambiguities. For instance, regarding the social dangerousness condition, research shows that both public security organs and procuratorates struggle to apply its standards accurately. Investigation files submitted by public security organs for arrest approval primarily focus on basic evidence of guilt, with insufficient collection of social dangerousness evidence. For subjective judgments of terms like "may," "attempt," or "realistic danger," due to the lack of clear normative guidance, authorities often append brief "case descriptions" asserting the suspect's social dangerousness (Wang, 2021). Procuratorates, unable to conduct objective and clear reviews under existing arrest requirement norms, rely on subjective judgments and cursory case evaluations when not substantively involved in early-stage investigations. Influenced by China's judicial traditions, they are likely to lower arrest thresholds and favor approving arrest applications from investigative authorities.

3 Exploration of pathways for substantive review of arrest in China under the "fewer arrests, cautious prosecution, and prudent detention" policy

3.1 Practical analysis: application of arrest conditions in typical cases of intentional injury under the "fewer arrests, cautious prosecution, and prudent detention" policy

In 2021, the Supreme People's Procuratorate issued the first batch of typical cases implementing the "Fewer Arrests, Cautious Prosecution, and Prudent Detention" criminal justice policy. Among these, two cases involving opposing decisions to approve and disapprove arrest in intentional injury cases provide critical insights into China's exploration of substantive review models for arrest. In Case 1, Jiang and the victim had long-standing disputes over the use of an adjacent passage. On the day of the incident, after verbal provocation by the victim, Jiang struck the victim with the back of an axe, causing minor injuries. Forensic examination identified two injuries: one classified as "minor injury level II" and the other as "slight injury." The investigative authority imposed bail on Jiang. In Case 2, Xu, while concealing his marital status and history of domestic violence, stabbed his cohabiting victim multiple times in the chest, back, hands, and legs with a knife, resulting in three minor injuries. Despite conclusive evidence, Xu refused to confess or compensate the victim. The procuratorate ultimately approved his arrest.

The application of the conditions of arrest in the above two cases was complete and appropriate, with sufficient evidence and clear facts, as well as a complete chain of logic and a focused review of the links. For the conditions of the offense, in both cases, the unlawful acts were supported by conclusive evidence. Procuratorates relied primarily on injury assessments, integrating subjective and objective elements of the crime while applying the "minor injury" threshold for intentional injury. They distinguished criminal acts from general violations and excluded justifications such as victim consent, legitimate defense, or necessity, confirming basic culpability. For penal conditions, Procuratorates moved beyond statutory sentencing standards (e.g., "minor injury," "serious injury," or "causing death") to conduct quasi-judicial substantive reviews. They evaluated contextual factors like motive, means, victim characteristics, and crime scene severity,

alongside post-crime conduct (e.g., refusal to confess or compensate). This approach aligned with mechanisms such as criminal reconciliation, leniency for guilty pleas, and compensation, establishing a holistic sentencing framework spanning pre-, during, and post-crime phases. For socially dangerous conditions, building on the above criteria, procuratorates expanded their review beyond case facts to societal contexts. They abandoned traditional document-based reviews, investigated root causes of conflicts, and leveraged grassroots organizations and hearings to assess the suspect's social reputation, occupation, and psychological state. This led to bail for Jiang (Case 1) and arrest for Xu (Case 2).

The Supreme People's Procuratorate emphasized that the policy aims to implement the "combining leniency with severity" principle, reduce over-reliance on detention, safeguard human rights, conserve judicial resources, and maintain social stability. The policy seeks to "Reversing the purpose of the application of arrest and returning it to its original character as a measure of procedural preservation and social defense." In practice, this requires strict adherence to the principles of legality and proportionality, rigorous scrutiny of arrest necessity, and mechanisms to decriminalize minor offenses (Wang & Li, 2023). These cases implicitly outline the logical relationships, evidentiary standards, and application methods for arrest review, which will be abstracted and elaborated below.

3.2 Model exploration: constructing a progressive review model prioritizing the crime condition, supplemented by the penalty condition, and centered on the social dangerousness condition

The three arrest requirements—crime, penalty, and social dangerousness—have different status and roles in the review of arrest, and have an inherent logical relationship. The "criminal facts" requirement pertains to the core nature of the crime, determining whether and what crime the accused committed. As the foundational prerequisite for initiating criminal proceedings, the absence of criminal facts negates the application of coercive measures, making it the precondition. The penalty condition, closely tied to the crime condition, resembles the relationship between conviction and sentencing in trials. Sentencing primarily involves legal application rather than fact-finding (Zhang, 2018). Since arrest occurs early in the judicial process (the fact-finding stage), prosecutors need not meet the stringent evidentiary standards required for trial when assessing penalties. Instead, the penalty condition serves as a supplement to the crime condition, though it must still align with the baseline thresholds of sentencing ranges for specific crimes. The social dangerousness condition, under China's entrenched judicial traditions, relates to the essential purpose of coercive measures: ensuring smooth criminal proceedings, preventing suspects from evading liability, and safeguarding public order and security. It inherently encompasses the normative objectives of the preceding two conditions (Yang, 2018), thus constituting the core requirement. Accordingly, a progressive review model should be established, prioritizing the crime condition as the premise, supplementing with the penalty condition, and centering on the social dangerousness condition. This model ensures rational allocation of review resources, clarifies the depth of pre-trial procedural intervention, and scientifically identifies the necessity of detention for each suspect.

After clarifying the logical relationships among the three requirements, the next step is to operationalize the vague statutory criteria, particularly the complex social dangerousness condition. Guided by the criminal integration mindset (integrating substantive and procedural criminal law), the provisions of substantive criminal law should be embedded into arrest requirements under the Criminal Procedure Law. Operationally, rules such as "no simplification in disproving, rigorous proof in affirming" and "objectivity over subjectivity, standards over arbitrariness" (Liu, 2023) must be applied to establish a higher evidentiary threshold for restricting arrests. Specifically speaking, for crime condition, focus on analyzing the perpetrator's *actus reus* and the constituent elements of the specific crime. Proof must extend beyond establishing unlawful acts to confirming the specific (crime designation), aligning with the statutory elements of the offense. For penalty condition, based on the crime designation, assess whether sentencing thresholds are met by integrating statutory sentencing standards (e.g., baseline penalties for specific sentencing ranges) with case-specific factors. While the evidentiary standard need not match trial-level rigor, it must at least satisfy the baseline proof requirements for the applicable sentencing range. For social dangerousness condition: combine risk assessments with evidentiary proof (Shi, 2019). Review authorities must anchor their analysis in factual circumstances (e.g., crime severity, suspect's personal circumstances) and refer to the static perspective and the dynamic extension in order to apply the Provisions on Social Dangerousness Conditions for Arrest by the Supreme People's Procuratorate and Ministry of Public Security. Subjective assumptions are prohibited; instead, evaluations must incorporate social hearings, community investigations, and the suspect's social reputation to determine arrest necessity.

About the Author

Ning Sang (2004.4.14--), female, Han nationality, Nantong, Jiangsu, Nanjing University Law School, Research interest: law, Class of 2022, Undergraduate.

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