

# Voluntary Surrender System in China's Current Criminal Code and Judicial Practice

Hongyuan Pan, Lu Liu

Oxbridge College, Kunming University of Science and Technology, Kunming, Yunnan, China

**Keywords:** Voluntary Surrender, Criminal Code, Judicial Interpretation, Lighter Punishment, Criminal Policy

**Abstract:** The provisions of the current criminal law of China on the system of voluntary surrender embody a high degree of generality. However, there is a lack of theoretical guidance in judicial practice. The circumstances involving voluntary surrender in criminal cases affects the sentencing. This kind of influence often results in the judgement of some cases “can be lighter punishment” to “should be lighter punishment “, which makes the judge's discretionary range larger, and requires higher professional standards for judges. From the perspective of the whole world, the system of voluntary surrender is widely used in the criminal law of all countries in the world. How the voluntary surrender system actually plays a role in judicial practice is a difficult and hot issue. This paper starts from the provisions of Criminal Code of the People’s Republic of China, combines the relevant provisions of judicial interpretation, and analyzes the existing problems and the status quo of the current voluntary surrender system in China, so as to rethink it and put forward the corresponding suggestions for improvement.

## 1. Introduction

With the establishment of a society ruled by law, the definition of voluntary surrender has made some progress with the development of law. First of all, the Criminal Code of the People’s Republic of China stipulates: “Voluntary surrender refers to the act of the criminal who commits a crime to the judiciary authorities and truthfully confesses the criminal facts. A criminal who surrenders himself may be given a lighter or mitigated punishment. Those who commit lesser crimes are exempted from punishment.”

However, a single legal provision is not enough to resolve the complex and changing circumstances in judicial practice. On this basis, the Supreme Court of China issued *Interpretation of Several Issues Concerning the Specific Application of the Law of Surrender and Merit* and *Opinions on Handling Certain Issues on the Specific Application of the Law of Surrender and Merit* in 1998 and 2010. It not only provides strong legal support for the identification of surrender in judicial practice, but also further clarifies the specific determination of “voluntary surrender”.

## 2. The Identification of Voluntary Surrender

Generally, the identification of voluntary surrender must meet the two major premises that are voluntary and truthful confession. The concept is so clear that there will not be too much detail here. Besides, there are three concepts of “quasi-voluntary surrender”, “special voluntary surrender” and “unit voluntary surrender”.

In actual judicial practice, when it comes to the issue that “other crimes” truthfully stated by the suspect are the same kind of crimes, it is highly controversial whether it can meet the identification criteria for the quasi-voluntary surrender system.

According to the relevant provisions of China's Criminal Code, the following persons may be deemed to quasi-voluntary surrender: The first is the criminal suspect who has been taken coercive measures; The second is the defendant; The third is the criminal who is serving a sentence.

It is important to note here that if the suspect under investigation does not comply with the rules of reconnaissance, his personal freedom will be limited. In this case, if the suspect truthfully

confesses other crimes that the judicial authorities have not yet mastered, he can be regarded as voluntary surrender. Criminals who are fined will not be detained, but are also serving prisoners. If such an offender confesses the crimes of other persons who have not yet been arrested during the execution of the judiciary, the criminal can be regarded as voluntary surrender. Probation is a conditional non-execution of the original judgment, and parole is a conditional release of the offender in advance. During probation or parole period, the criminal can also be deemed to be quasi-voluntary surrender if he confesses other crimes to the public security and judicial authorities. In this case, the behavioral attribute of the criminal is not significantly different from the quasi-voluntary surrender attribute and should be considered as quasi-voluntary surrender. Because the criminal voluntarily acknowledges the crime that he has not been prosecuted, it is tantamount to proactively submitting himself to the country for sanctions. It is obviously unfair not to consider this behavior as voluntary surrender, or It will not be beneficial for the country to comprehensively promote the rule of law.

### **3. Difficulties in Identifying the Voluntary Surrender**

First of all, eliminating the circumstances which can't be identified as voluntary surrender. According to the provisions of China's current criminal code, the following circumstances cannot be considered as voluntary surrender: 1) The criminal suspect who ran away after committing the crime by himself cannot be identified as voluntary surrender; 2) If the criminal suspect meets the requirements for surrender and the case is reversed, he cannot be identified as voluntary surrender; 3) If there is only an intention to commit the case without actual actions, no surrender will be established; 4) When the person is questioned because of "suspicious appearance", if the items he carried could prove that he was suspected of committing a crime, such as stolen goods, drugs, firearms, ammunition, etc., his behavior of making a confession voluntarily doesn't belong to the category of being honest to his crime, and it cannot be regarded as voluntary surrender; 5) Those who do not confess the accomplices to the same case cannot be identified as voluntary surrender.

Secondly, in judicial practice, what is the standard for determining the "time of establishment of voluntary surrender"?

According to the *Opinions of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Circumstances of Sentencing Such as Voluntary Surrender and Merit in Handling Cases of Duty-related Crime* (hereinafter referred to as "Opinions"), "The voluntary surrender can be affirmed when the facts of the crime or the criminal has not been in the possession of being known by the authorities, or when the criminal has not been investigated, interviewed or questioned, or has not been declared to have taken investigation measures or compulsory measures, the person submits himself or herself to the authorities."

According to this regulation, the compulsory measures taken by the case handling authorities are all compulsory, targeted and specific in order to control the behavior of criminal suspects. And the behavior that the criminal suspect submits a case to the handling authorities under the above circumstances doesn't belong to voluntary surrender. Therefore, the key to the establishment of voluntary surrender should be whether the behavior of the criminal suspect voluntarily surrenders before being controlled by the public security authorities. Only when it happened before being controlled by the public security authorities can be identified as voluntary surrender.

Finally, in judicial practice and daily life, not only the public lack of knowledge and understanding of the system of voluntary surrender, even the officers working in the judicial departments and lawyers also have misunderstanding in the recognition of the system of voluntary surrender. As a result, judges and prosecutors may have different opinions on the result of judgment on the case. For example, the famous "Ma Changkui case" in Yunnan Province. It is because of the misjudgment of the circumstances of the voluntary surrender, the second instance changed the result of "immediate death" made by the first instance court to "death sentence with a two-year reprieve". After a retrial, the sentence was finally changed to "immediate death". Finally, the Supreme People's Court's death penalty review procedure found that the application of the law of voluntary surrender system was wrong, remanded for retrial, and finally changed the sentence to "death

immediately”. But this mistake in the case didn’t end in remanding for retrial, it also aroused public anger. It can be seen that different people have different understandings of the system of voluntary surrender, resulting in a chaotic situation in the application of the system of voluntary surrender.

#### **4. How to Improve the Voluntary Surrender System in China**

The legislature should unify the understanding of the system of voluntary surrender, so as to solve once and for all the difficulties in distinguishing and applying the circumstances within the system of voluntary surrender in judicial practice. However, it is not a universal solution. After all, in practice, a case is complex, and the legislation still have certain hysteresis. This requires judicial authorities combine various controversial cases, refer to relevant laws and regulations, establish and improve legal mechanisms, maintain the fairness and justice of laws, strive to seek the balance between law and judicial practice, and indeed let the guiding cases play the role.

For the public, the relevant departments need to increase publicity on the voluntary surrender system, lower the “threshold” of the voluntary surrender system, and implement the “principle of leniency and strictness”. The implementation of the principle of strictness and leniency in China's criminal policy is intended to encourage criminals to reform, return to society, and regain self-worth. It is also conducive to impel offenders who have not yet committed crimes to proactively and truthfully submit their own criminal facts, confess their guilt, and improve the appeal and education function of the voluntary surrender system for crimes. At the same time, it can greatly improve the efficiency of criminal case detection and effectively reduce the country's judicial investment.

#### **5. Conclusion**

The voluntary surrender system is a very important legal system in China, not only because China does not have a “Miranda Warning”, but also because it is the requirement for advancing the rule of law. Throughout the regulations of Penal Law of China about the system of voluntary surrender, it is imperative to improve the current system of voluntary surrender.

#### **References**

- [1] Jiahai Zhou. Exploration of the System of Voluntary Surrender [M]. Beijing: Chinese People's Public Security University Press, 1993.50.
- [2] Mingkai Zhang. Criminal Law [M]. Beijing: China Renmin University Press, 2007.
- [3] Xiaoxia Deng. Reflections on the Theory and Practice of Voluntary Surrender System [M]. Beijing: China University of Political Science and Law Press, 2016.
- [4] Mingxuan Gao. Selection of Chinese Criminal Law Legislative Documents [M]. Beijing: Law Press·China, 2007.