



# High rates of prosecution and conviction in China: The use of passive coping strategies

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## Abstract

This article demonstrates that the passive coping strategies utilized among Chinese police, prosecutors and judges could partly account for the high rates of prosecution and conviction in China. Passive coping strategies are defined as inactive tactics employed to avoid disagreements and conflicts among people or institutions. After a brief introduction, a review of the relevant statistic rates is offered, which indicates that both the prosecution and conviction rates remain persistently high. Next, an outline and evaluation of the formal intra-institutional relationships between the criminal authorities are offered. After that, a detailed account of the application of case dismissal tactics, a type of passive coping strategy, to the legal decision-making process is demonstrated. Finally, this article concludes with a discussion of the pros and cons of the use of passive coping strategies in the decisions to prosecute and convict, and offers some legislative recommendations.

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*Keywords:* Case dismissal tactics; Prosecution rate; Conviction rate; Passive coping strategy; Criminal procedure

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## 1. Introduction

The Chinese people are widely considered to be orientated toward collectivism, more concerned with harmonious interpersonal relationships and the attainment of community interests than individual pursuits. In the event of a conflict, they are inclined to rely on passive

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coping strategies to avoid confrontation, reduce animosity and continue relationships with other disputants.<sup>1</sup> Passive coping strategies are defined as inactive tactics employed to avoid disagreements and conflicts among people or institutions. This is true not only among private parties, but also in the ranks of the criminal procedure authorities: i.e. police, prosecutors and judges. These offices share complimentary and sometimes overlapping zones of authority, are organizationally interdependent and have reasons to prefer an efficient criminal process. Nonetheless, disagreements and conflicts between the offices are unavoidable. To handle those conflicts, passive coping strategies are likely to be brought into play. A series of formal decisions which show strong agreement among procedural authorities will probably be made, such as the decision to prosecute or convict.

This article demonstrates that passive coping strategies could partly account for the high rates of prosecution and conviction in China. It begins with a brief review of the relevant statistic rates, which shows that both the prosecution and conviction rates remain persistently high. Next, a review and an evaluation of the formal intra-institutional relationships are offered, which describe the organizational background against which the passive coping strategies are utilized. After that, a detailed account of the application of passive coping strategies to the legal decision-making process is demonstrated. Finally, this article concludes with a discussion of the pros and cons on the use of passive coping strategies in the decisions to prosecute and convict, and provides some legislative suggestions.<sup>2</sup>

## 2. High rates of prosecution and conviction

### 2.1. High prosecution rate

Prosecution rate refers to the rate of those prosecuted versus all who have been prosecuted and not prosecuted.<sup>3</sup> It is an indicator valued by both police and prosecutors because it represents the quality of police investigation work and the ability of prosecutors to combat crime.<sup>4</sup> The rate of prosecution in China has remained continuously high over the years. [Table 1](#) shows the prosecution rates across China during a discontinuous seven-year period in 2000 and from

<sup>1</sup>See, e.g., Randy K. Chiu & Frederick A. Kosinski Jr., *Is Chinese Conflict-Handling Behavior Influenced by Chinese Values?*, 22 *Soc. Behav. & Pers.* 81, 82 (1994).

<sup>2</sup>As the data in this paper were all collected from the years before the 2012 Criminal Procedure Law (CPL) comes into force and all of the articles of the 1996 CPL that are referenced below have remained almost unchanged in the 2012 CPL, this paper will cite from the 1996 version of the CPL instead of the 2012 version as the statutory basis for discussion. Even if there are some changes in the relevant articles of the 2012 CPL, these changes are all too minor to influence the issues under discussion.

<sup>3</sup>Li Sha, *Woguo xingshi susong zhong buqisuli wenti yanjiu: jianyu deguo de bijiao* [Study on the nonprosecution rate in Chinese criminal proceedings: a comparative study with Germany], 20 *Sichuan jingcha xueyuan xuebao* [Journal of Sichuan Police College] 90, 92 (2008).

<sup>4</sup>Prosecution rate calculated by the police is slightly different from the rate calculated by prosecutors. Prosecution rate (by police) = number of suspects prosecuted/number of suspects transferred from the police for prosecution. Liaoningsheng gong'an jiguan zhifa kaohe pingyi guiding [Provisions on Examination and Appraisal of Law Enforcement Quality of Public Security Organ of Liaoning Province] (promulgated by the Public Security Department of Liaoning Province, 2006, effective 2006), art. 8.2 (5), (P.R.C.), [www.ga.dl.gov.cn/down/zsfjjgzfzlkx.doc](http://www.ga.dl.gov.cn/down/zsfjjgzfzlkx.doc). Prosecution rate (by prosecutors) = number of suspects prosecuted/(number of suspects prosecuted + number of suspects not prosecuted). Li, *supra* note 3, at 92. The latter takes the number of suspects who are investigated by prosecutors into account but the former does not. As suspects investigated by prosecutors only make up a very small proportion of all suspects who are prosecuted and not prosecuted, prosecution rate calculated by prosecutors is viewed to be approximately equal to the rate calculated by the police.

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