

# Chapter 3

## Trends in Types and Amount of Crimes Committed by the Elderly in China



Xiangxia Li

### Introduction

According to some news, at the end of 2016 (Money.163.com, 2014), the amount of elderly in China will increase to more than 230 million in 2030, approximately 16.6% of the population of China.<sup>1</sup> The increase of the age of population in China is becoming a serious problem, which brings many problems to our civil society. One of them is the problem of elderly crime. Generally speaking, the elderly crime only takes a small part of the total amount of crimes in Chinese society; it was only under 3% of the total crimes in 2008 (Huang, 2008).

This chapter uses Beijing and Tibet as the research sample for the study of crimes committed by the elderly in China. The situation of elderly crime in both areas is researched for the years between 2012 and 2016. Based on the findings, the problems about how the Chinese law enforcement addresses elderly crime, the laws of the Chinese Criminal Code have been enacted, and others should be enacted are considered.

### The Concept of Elderly Crime in China

In the context of the aged tendency of population in China, before analyzing the trends in types and amount of crimes committed by elderly in China, the concepts of elderly and elderly crime in China are introduced in advance, which is a precondition of this article.

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<sup>1</sup> Retrieved March 31, 2017, from <http://money.163.com/16/0122/14/BDULK61Q00253B0H.html>.

X. Li (✉)

Institute for Science of Health Law, Capital Medical University, Beijing, China

## **The Definition of Elderly**

In 1982, “the International Conference of Elderly’ Issue” was held in Vienna by the United Nations, and a unanimous agreement referred to as the Vienna International Plan of Action on Ageing was adopted. In this document, people aged 60 and older than 60 were categorized as seniors. The Law of the People’s Republic of China on Protection of the Rights and Interests of the Elderly, passed in 1996, uses the same criteria concerning the age of elderly. In the context of this article, the elderly refers to the senior as a person who is 60 years old or older than 60 years.

## **The Concept of Elderly Crime**

Elderly crime is not a new topic in criminological theory and research. In 1899, the problems of elderly crime were brought out and discussed in a criminology conference which was held in Budapest (McCarthy & Langworthy, 1988, p. 15). Since that time, elderly crime was widely studied by many scholars due to the large amount of elderly people and the increase of elderly crime (Wang, Yunfei, & Gu Jingwei, 2012). Schneider (1987) defined elderly crimes as crimes that are committed by offenders who are over 60 years old. A Japanese textbook of criminal policy (Morimoto, Ueda, Segawa, & Miyake, 2004, p. 282) also used the age 60 or 65 and older to define who have committed acts that are in violation of the criminal law as elderly criminals. Even though the age standard of elderly crime is not completely scientific, it provides us a statistical criterion for elderly crime research. In China, there is no official age standard for the concept of elderly crime. However, the majority of Chinese scholars have the perspective that 60 years old should be considered as the dividing line between elderly crime and crime of other age groups.

Some international organizations, such as the United Nations, considered 60 as the start of the elderly. In 1982, the Chinese Law on Protection of the Rights and Interests of the Elderly adopted age 60 as the start of elderly. On the basis of these criteria, in the context of this article, elderly crimes refer to the crimes that are committed by the offenders who are 60 and over 60 years old.

## **The Elderly Crime in Beijing and Tibet Between 2012 and 2016**

The elderly crime statistics for Beijing and Tibet for the years 2012–2016 were chosen as the sample for this study. All the cases about elderly crime were published in the China Judgements Online (<http://wenshu.court.gov.cn/>, Retrieved 06 May, 2017). The two areas selected for the study were chosen as the sample instead of the other Chinese regions for two reasons. One is that Beijing is the biggest political,

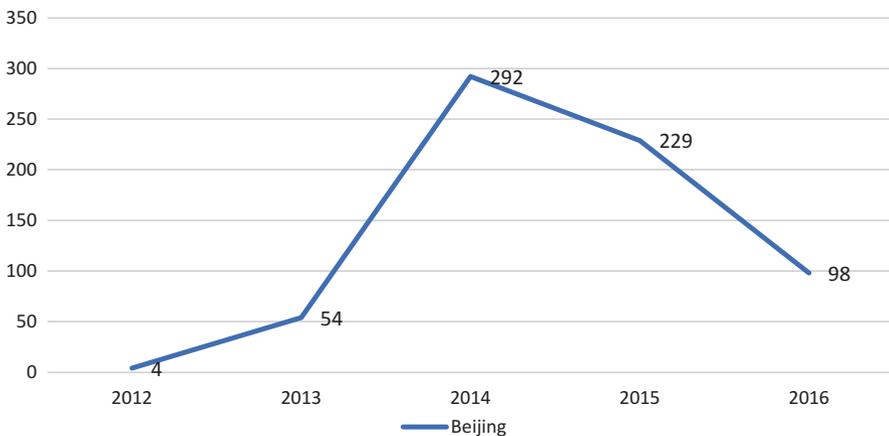
economical, and cultural center of China; and the other reason is Tibet is an economically underdeveloped region in China. To a great extent, these two regions represent the industrialized, modernized, economically developed China and the traditional, rural, underdeveloped regions of China.

## The Quantity of Elderly Crime in Beijing and Tibet

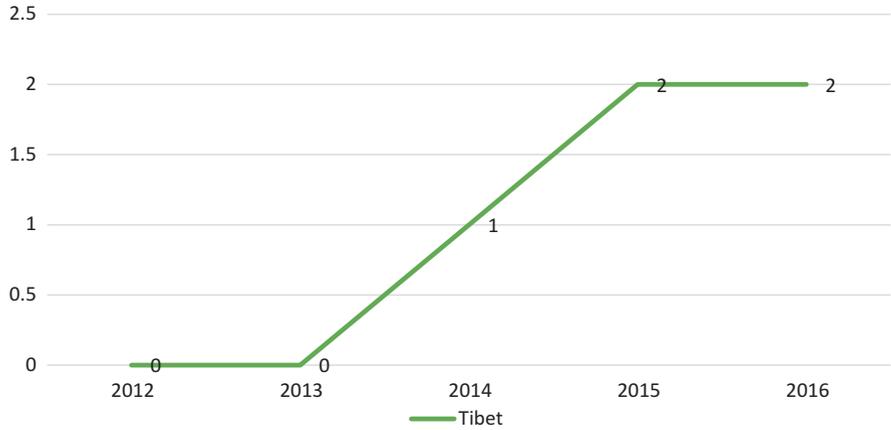
As shown in Chart 3.1, the sum of elderly crime in Beijing and Tibet was 682 cases from 2012 to 2016. The number of elderly crimes recorded for each year was 4 in the year 2012, 54 in the year 2013, 293 in the year 2014, 231 in the year 2015, and 100 in the year 2016. Apparently the quantity of elderly crime had been increasing year by year until the peak year of 2013. Since that year, the number has been declining. It is not certain if this decline in elderly crime will continue or if an increase in elderly crime will occur as predicted. As shown in Chart 3.1, between 2012 and 2016, there were 677 elderly crimes in Beijing, accordingly 4 in the year 2012, 54 in the year 2013, 292 in the year 2014, 229 in the year 2015, and 98 in the year 2016. As shown in Chart 3.2, there were only 5 elderly crimes reported in Tibet from 2012 to 2016, the total in 2012 and 2013 was 0, the total in 2014 was 1, and the total was 2 in both 2015 and 2016 (Chart 3.3).

## The Gender Ratio of Elderly Crime

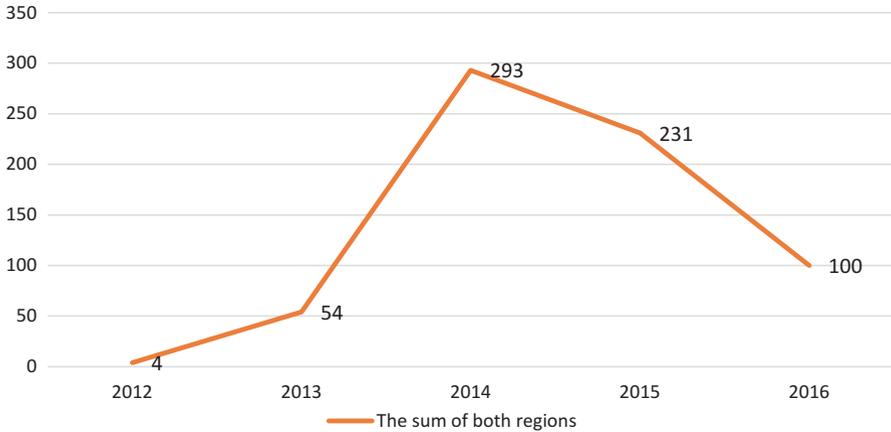
Chart 3.4 reflects the situation of the gender ratio of elderly crime in the two areas of China included in the study. There were 123 female elderly crimes reported from 2012 to 2016, and the proportion of female elderly crime was 18% of the total.



**Chart 3.1** The quantity of elderly crime in Beijing



**Chart 3.2** The quantity of elderly crime in Tibet



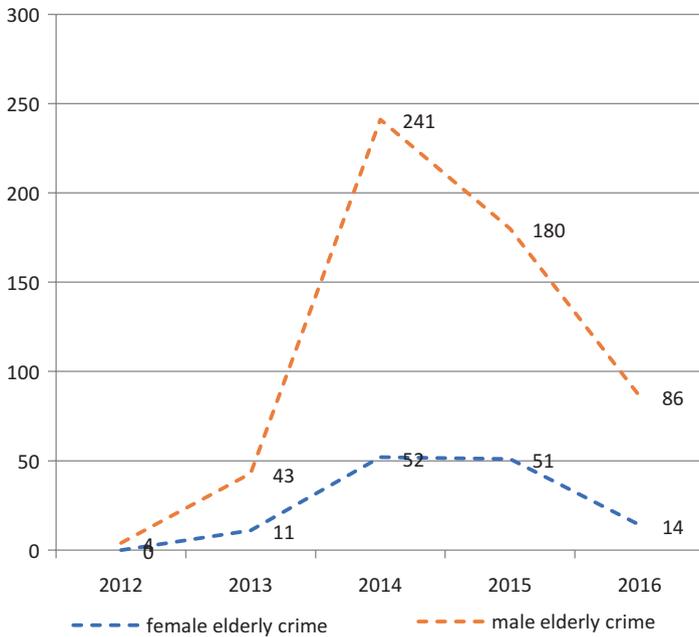
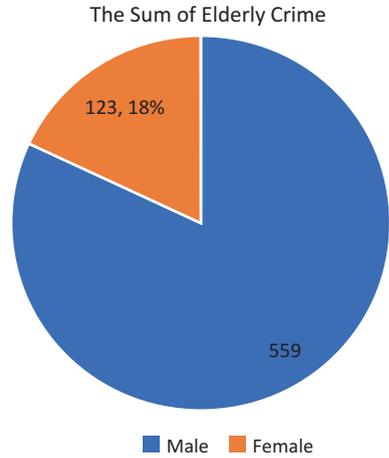
**Chart 3.3** The quantity of elderly crime in Beijing and Tibet

The total of male elderly crimes was 559 (82%) of the total number of elderly crimes reported during the 5-year period. These statistics reveal that the problem of elderly crime is predominately a male problem. Elderly male offenders were dominant, in all categories for all the years included in the research.

### The Quantitative Change of Female and Male Elderly Crime

As shown in Chart 3.5, the sum of female elderly crime each year from 2012 to 2016 was 0 in year 2012, 11 in year 2013, 52 in year 2014, 51 in year 2015, and 14 in year 2016. On the other hand, the sum of crimes committed by elderly men

**Chart 3.4** The gender ratio of elderly crime



**Chart 3.5** Quantitative change of female and male elderly crime

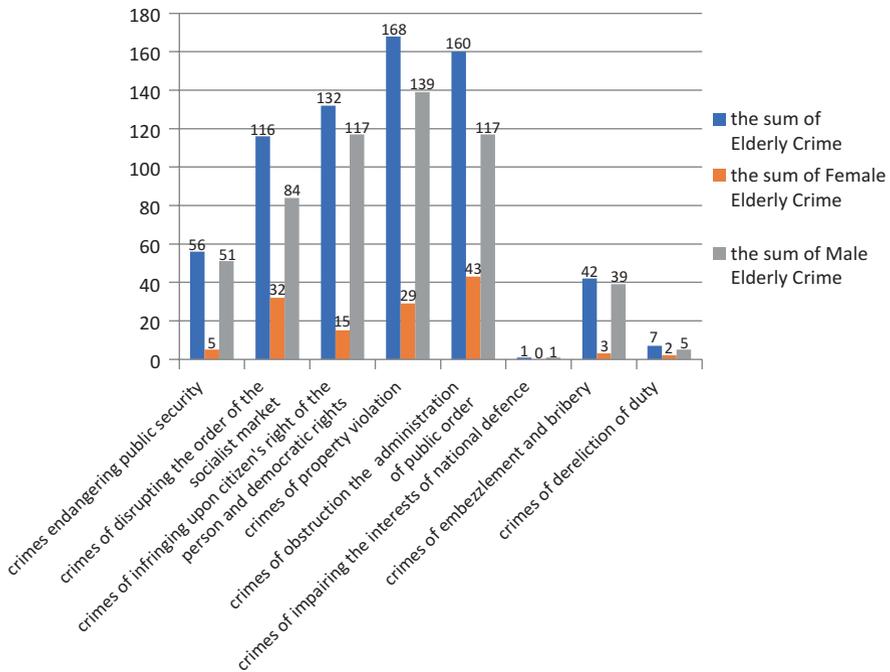
was 4 in year 2012, 43 in year 2013, 242 in year 2014, 180 in year 2015, and 86 in year 2016. Crimes were committed by male elderly per year. Apparently, both female elderly crime and male elderly crime increased from 2012 to 2014, the peak was reached in 2014, and after that year, the number of crimes for both male and female elderly offenders declined.

## The Types of Elderly Crime

As shown in Chart 3.6, from 2012 to 2016, there were eight types of crime committed by elderly offenders during the time period of 2012 to 2016. The types of crime and corresponding number of offenders were the following:

- Endangering public security (56 offenders)
- Disrupting the order of the socialist market (116 offenders)
- Infringing on citizen’s rights of the person and democratic rights (116 offenders)
- Crimes of property violations (132 offenders)
- Crimes of obstruction of the administration of the public order (168 offenders)
- Crimes of impairing the interests of national defense (60 offenders)
- Crimes of embezzlement and bribery (23 offenders)
- Crimes of dereliction of duty (7 offenders)

Chart 3.6 shows the sum of male elderly crime of each of these crimes. The number of elderly male offenders who endangered public safety was 5, disrupted the order of the socialist market was 51, infringed on citizens’ rights and democratic rights was 84, committed property crimes was 117, committed obstruction of the



**Chart 3.6** The type of elderly crime between 2012 and 2016

administration of justice crimes was 139, committed crimes against the interests of national defense was 117, committed bribery and embezzlement was 40, and committed crimes related to dereliction of duty was 5. On the other hand, only 5 females committed crimes of endangering public security, 32 committed crimes of disrupting the order of the socialist market, 15 committed crimes of infringing upon citizen's rights of the person and democratic rights, 29 committed crimes of property violation, 43 committed crimes of obstruction of the administration of public order, 3 committed crimes of embezzlement and bribery, and 2 committed the crime of dereliction of duty.

## **Criminological Analysis on the Causes and Prevention of Chinese Elderly Crime**

Based on the above cases and statistics of the type of crimes committed by the elderly, according to the structure of Chinese society and the age of criminals, this chapter article takes some typical and high-frequency elderly crimes as the study samples, in particular, crimes of endangering public security, crimes of disrupting the order of the socialist market, crimes of infringing upon citizen's rights of the person and democratic rights, crimes of property violation, crimes of obstruction of the administration of public order, and crimes of embezzlement and bribery. For purposes of research, the eight types of crime which older offenders committed between the years 2012 and 2016 were broadly categorized into three crime types. These are:

- Violent crimes
- Seeking avaricious profit crimes (which includes bribery, embezzlement, and property crimes)
- Obstruction of the administration of public order crimes

## **Analysis on the Causes and Prevention of Elderly Violent Crime**

The violent crime committed by the elderly in China means that the crime encroaches on the right of life and health. Particularly, since both crimes of endangering public security and crimes of infringing upon citizen's rights of the person and democratic rights which were carried out violently by elderly infringed the citizens' life, health, and democratic rights, they are both categorized as violent crimes. The key difference between them is the quantities of life, health, and democratic rights which they violate; from the perspective of criminology, analyzing both of them as one type makes sense.

## The Causes of Elderly Violent Crime

In accordance with Chart 3.7, the elderly violent crimes per year between 2012 and 2016 were 0, 10, 77, 63, and 38. We also see that the sum of elderly violent crime was 188 (while the crimes endangering public security and the crimes of infringing upon citizen’s rights of the person and democratic rights were, respectively, 56 and 132), and its ratio was 28%. The sums of crimes endangering public security each year were 0, 1, 26, 19, and 10. And the quantity of crimes of infringing upon citizen’s rights of the person and democratic rights was 0, 9, 51, 44, and 28 every year. The trend of elderly violent crime can be deduced as the elderly violent crimes had been increasing from 2012 to 2016; probably it will continue to rise up as the amount of elderly population continues to increase in China.

Combined with the statistics of elderly violent crime, psychological factors are the main reasons for elderly violent crime. The gradual natural process of aging can escape from. As persons age and reach the elderly category, their spirit and body functions are gradually fading; especially the function of their sensory organs are weakened; they are not as capable of reasoning as in the past and often cannot control themselves as when they were younger. All of these factors impact their personality and psychological functioning; they often become irritable, extreme in reaction when they do not get what they ask for from others, and even aggressive, even toward the immediate members of the family. Such kinds of personalities bring communication problems. For example, even the smallest incident can result in assaultive behavior, and if a complaint is made, the behavior becomes a crime. Based on the statistics, the elderly violent crime usually happened among acquaintances and even relatives, since the disputes were generally between the offenders and the victims. On the one hand, this reflects that the elderly were not able to get along well with their families, friends, and neighbors; they even

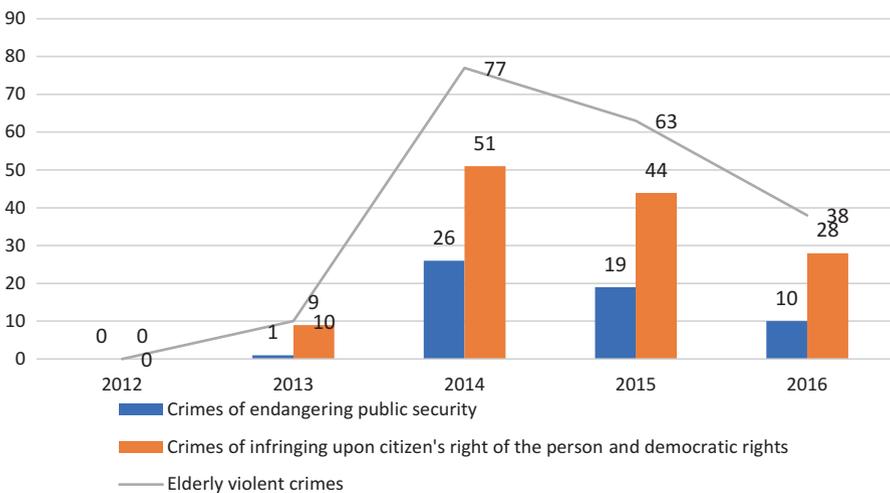


Chart 3.7 Elderly violent crime

cannot solve the relationship problems with those people who they interact with on a daily basis. However, another factor to consider is the majority of these elderly violent criminals were not educated, so they usually tended to use simple or violent resolutions to cope with problems. In other words, due to lack of education, they did not learn to cope with frustrations and conflicts in ways other than through violence.

Analyzing the gender ratio of elderly violent crime, there were 188 such crimes from 2012 to 2016, and only 21 crimes (11%) were committed by females. This fact shows that females either because of their emotions or the way they have learned to respond to conflict situations as a result of their cultural conditioning were more likely to be victims of violent crime than perpetrators of violent crime. For the older women of China, family life is their focus point. They spent more time with their families rather than with other people, and most of them have good stable personalities. These factors help explain why the number of violent crimes committed by elderly women is so small in China.

## Prevention Policy of Elderly Violent Crime

According to the analysis of the causes of elderly violent crime, some recommendations for prevention are proposed. They are:

- The legislation on the protection of elderly rights should be improved.
- The social community should spend more attention on the elderly, finding the clues about the problems of elderly in advance, and it should help the elderly solve their social relationship issues.
- Social and community agencies should work with the elderly to help them gain self-confidence, self-satisfaction, and feelings of worth and happiness to reduce the probability of elderly violent crime. These community agencies should organize more social events for the elderly, inviting them to join such social activities, and help them find confidence and satisfaction from their social life.

## The Causes and Prevention of Crime of Seeking Avaricious Profits

Crime of seeking avaricious profits is not a classification of criminal legislation in the Chinese Criminal Code; it is an academic criterion in line with whether the criminals intend to carry out crimes with gaining illegal benefits (Kuang & Zhangjing, 2016). In accordance with this standard, crimes of disrupting the order of the socialist market, crimes of property violation, and crimes of embezzlement and bribery were categorized into *crimes of seeking avaricious profits* in this chapter. As shown in the statistics previously presented, there were 326 cases in the category of *crimes of seeking avaricious profits*. These crimes constituted 48 percent of the total elderly crimes.

### The Causes of Elderly Crimes of Seeking Avaricious Profits

As shown in Chart 3.7, between 2012 and 2016, there were 3 in 2012, 40 in 2013, 138 in 2014, 100 in 2015, and 45 in 2016 elderly crimes of seeking avaricious profits, with the sum of these crimes being 326. The first type of crime of seeking avaricious profit, crimes of disrupting the order of the socialist market, had 0 offenders in 2012, 6 offenders in 2013, 58 offenders in 2014, 37 offenders in 2015, and 15 offenders in 2016. The second subclassification, crimes of property violation, had 2 offenders in 2012, 21 offenders in 2013, 70 offenders in 2014, 53 offenders in 2015, and 22 offenders in 2016 from 2012 to 2016. Crimes of embezzlement and bribery are the third subcategory of elderly crimes of seeking avaricious profits. There was 1 offender in this subcategory in 2012, 13 in 2013, 10 in 2014, and 10 in 2015, and there were 8 cases of elderly criminals in this category in 2016. Based on the statistics presented, a trend of the number of elderly crimes of seeking avaricious profits seems to increase up to the year 2014 and then decline for the following years. There may be explanations for the decline. Perhaps a change in laws, better enforcement of laws, harsher punishments for violators of the laws, and less opportunities for the elderly to commit these crimes might account for the decline (Chart 3.8).

In recent years, the majority of elderly were victims of the crime of property violation and some other economic crimes in the public media. But one fact should not be ignored, that is, the elderly as the offenders of crime of seeking profits increased during the past years; only a few of the elderly crimes of seeking avaricious profits were motivated by not having enough living materials; on the contrary, most of these crimes were committed because the elderly criminals were greedy for money or for other material profits. Since the majority of elderly did not have good healthy condition, most of such elderly crimes were not violent; the elderly committed these kinds of crimes secretly with their social status and intelligence. Based on the statistics and analysis on these cases of such type of crimes, the causes can be concluded as the following:

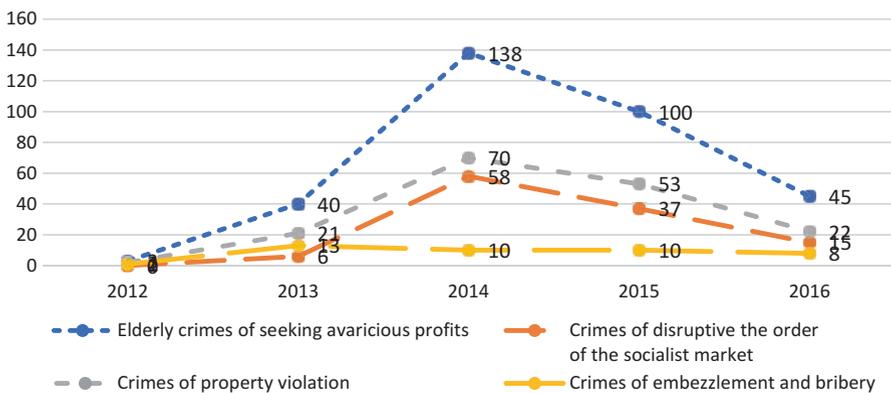


Chart 3.8 Elderly crime of seeking avaricious profits

- a. Poor living conditions: Some elderly had low incomes after retirement, they do not have as much income as they had before retirement, and for the sake of improving their living conditions, they carried out such crimes to gain more material benefits.
- b. Striving for material profits: Greediness is a common characteristic among human beings, even among the elderly who are keen on money and material benefits. Thus gaining more material profits drives the elderly to commit crimes, particularly in the area of crimes relating to disrupting the order of the socialist market.
- c. Elderly criminals often had the occupational status of a national civil servant. In particular, this is true for carrying out the crimes of embezzlement and bribery as national civil servants; they had the opportunity to commit these crimes to obtain more material profits.

### **Prevention Strategy Crimes of Seeking Avaricious Profits**

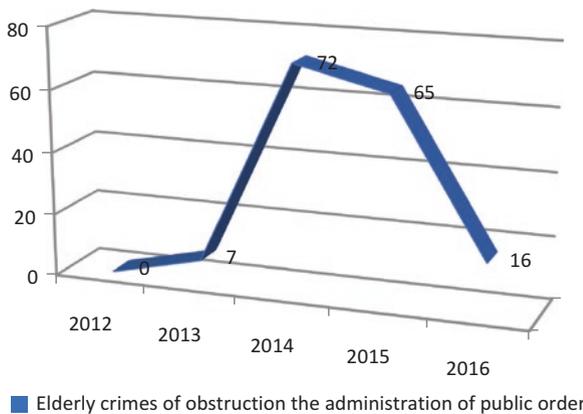
Since the motivations of elderly crimes of seeking avaricious profits are different than that for violent crimes, the prevention strategy should be set in line with the elderly motivations for committing such crimes. Several recommendations are given below:

- a. To prevent the elderly of committing crimes of seeking avaricious profits due to their poor living conditions, relative legislation and regulations should be improved or established to protect or guarantee that the living conditions of elderly who live in poverty will be sufficient for the elderly.
- b. Prevention strategy of the elderly crimes of seeking avaricious profits for gaining more material benefits should include education to assure that the elderly's consciousness of abiding law and moral compass will be enhanced.

Also official organs and organizations should regularly hold some legal knowledge lectures or activities and promote elderly participation in these activities to improve their self-consciousness of abiding law and ethical standards. Improving and establishing the regulations concerning elderly crime in the Chinese Criminal Code, to some extent, enhance the fear of punishment and thus serve as a deterrence to keep the elderly from committing crimes.

### **The Causes and Prevention of Elderly Crime of Obstruction of the Administration of Public Order**

In the Chinese Criminal Code, the crime of obstruction of the administration of public order is defined as violating the administrative activities of state organs and jeopardizing the public order, public sanitary order and public health, historical and cultural heritage, environmental and natural resources, and good social customs.



**Chart 3.9** Elderly crimes of obstruction of the administration of public order

As shown in graph 3.6, 160 (24%) of the crimes of obstruction of the administration of public order were committed by the elderly from 2012 to 2016 inclusively. These were 24% of all of the crimes committed by the elderly in that time span. This was the second category of elderly crimes. A more detailed analysis reveals that there were 0 crimes in this category committed in 2012, 7 in 2013, 72 in 2014, 65 in 2015, and 16 in 2016. Combining with the economic situation and reality of Chinese society, all aspects of Chinese society are experiencing profound and enormous reform; the trend of this type of elderly crimes can be inferred that they will keep rising in the following years.

As shown in Chart 3.9, the majority of the cases of elderly crimes of obstruction of the administration of public order were crimes of endangering public affairs, crimes of disturbing order at public places, and crimes of picking quarrels and provoking troubles; these three types of crime are categorized as subcategories of the crimes of obstruction of the administration of public order in the Chinese Criminal Code. The possible motivations for older offenders to commit the crimes in this category include:

- a. The weakness of body function results in the change of mentality and personality of elderly, so the elderly could not well control themselves when they had problems with official organs; once they carried out some serious behavior that interferes the public functions of official organs, that means they committed crimes of endangering public affairs.
- b. Dissatisfaction with the results that were handled by official organs or organizations about their problems with other citizens. It is well known that the majority of Chinese families have only one child since the 1980s. The parents at that time now are becoming elderly, which means each young couple should support four elderly people. As a matter of fact, the young couples do not have enough time to care for their parents. A sense of loneliness is a common feeling among the elderly. When the elderly had problems with the outside and they could not

handle them by themselves or get help from their children, the obvious answer was to try to get help or resolutions from some relative, official organ, or other organizations as the last resort to solve their problems. But if their problems were not resolved in a way that satisfied them, these elderly would blame the officials and organizations, and they even disturbed orders at the public place or picked quarrels or provoked troubles in public to try to find a way of solving their problems.

- c. Reform of economy and society in China. As we know, even though China should still improve its varieties of social problems, it cannot be denied that China has made great improvements in all aspects of life, particularly in the economy. However, economic and social reform is a double-edged sword. The negative side is that it creates conflicts and problems among citizens, all sorts of social organizations, and official organs. When there were no well-balanced resolutions to solve these conflicts, some other substitutes, such as crimes against official organs or organizations, will be conducted. So it can be said that elderly crime of obstruction of the administration of public order was an alternative way to handle the issues between the elderly and public organs.

## **The Prevention of Elderly Crime of Obstruction of the Administration of Public Order**

On the basis of the cause of elderly crime of obstruction of the administration of public order, the prevention policies and several suggestions can be proposed. They are:

- a. Encouraging and educating elderly to participate more social or communicative activities. By this way, the negative side of changes in the elderly mentality and personality can be avoided to some extent. More contacts and communications with the outside and the others would exert more positive influences on the mentality and personality of elderly. Even those who had problems with public organs could find some legal ways to resolve their rights issue without committing crimes of obstruction of the administration of public order.
- b. Establishing and improving all sorts of regulations and legislations to protect the legal rights of elderly. Considering that the majority of Chinese families are one-child families, the pension and medical system should be vigorously improved. This protection mechanism can promote the satisfaction of elderly when they resort on official organs to help them solve the problems related to quality of life such as food, housing, and medical care.
- c. Reducing the violations of the legal rights of elderly during the process of reforming the economy and the society. As analyzed, the phenomenon of infringing the legal rights of citizens is perhaps normal in times of reform. However, the public organs and governmental agencies themselves should not violate the legal rights of elderly; as they deal with the issues between elderly and the others, they should try to find some tender and well-balanced resolutions to avoid stimulating the elderly to anger and despair.

## The Causes and Prevention of Female Elderly Crime

As shown in part 2 categories of crime, the increasing number of crimes by elderly females is a noticeable phenomenon. Female criminals committed seven types of crimes, and there were five of these types that had meaningful statistics, namely, female crimes of disrupting the order of the socialist market, female crimes of infringing upon citizen’s rights of the person and democratic rights, female crimes of property violation, female crimes of obstruction of the administrative of public order, and female duty crimes. During the years from 2012 to 2016, the sums of female crimes of disrupting the order of the socialist market per year were 0 in 2012, 3 in 2013, 13 in 2014, 13 in 2015, and 3 in 2016. The number of female crimes of infringing upon citizen’s rights of the person and democratic rights was 3 in 2012, 0 in 2013, 2 in 2014, 11 in 2015, and 10 in 2016. Crimes of property violation committed by elderly females were 0 in 2012, 2 in 2013, 11 in 2014, 10 in 2015, and 6 in 2016. And elderly female crimes of obstruction of the administrative of public order were 0 in 2012, 2 in 2013, 21 in 2014, 19 in 2015, and 1 in 2016. There were five crimes related to female duty committed during the 5 years of analysis. As shown in Chart 3.10, the trends in the types of female crimes are illustrated.

### The Cause of Female Elderly Crimes

In analyzing the female elderly crimes, the causes can be concluded as:

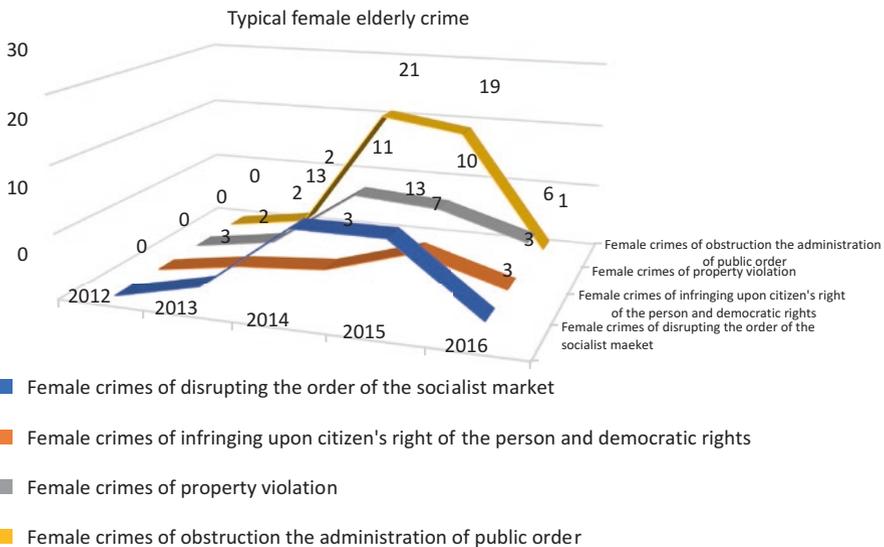


Chart 3.10 Crimes by elderly females (2012–2016)

- a. Older females are easily tempted to commit crimes because of material profits or external factors. Most of the female elderly criminals had low levels of education and low awareness of legal matters.
- b. Females tend to be more emotional than males. The emotional problems played a large part in the daily lives of the older female offenders. When the females had emotional problems and could not solve them in a proper way, they engaged in extreme behaviors to complete their aims, such as murder, willful and malicious injury, slander, theft, and drug-related crimes.
- c. The enhanced social status of females is related to crime. Compared with decades ago, the social status of female had been enormously improved due to their well-educated backgrounds; they go out and run businesses or establish careers as well as men in the present society. A few of them even get to the top positions of their professions. The social status and professional position provided them with chance to commit crimes that were not available to them when they were confined predominantly to the home, in particular in the areas of financial crimes, economic crimes, crimes of property violation, and duty crimes. According to a survey, between 1997 and 2002, the female criminals with postgraduate degrees have increased 56.3% (Xiaoxiu & Hui, 2012). In accordance with the statistics of this article, the female elderly crime in these seven types, especially in the five types, female crimes of disrupting the order of the socialist market, female crimes of infringing upon citizen's rights of the person and democratic rights, female crimes of property violation, female crimes of obstruction of the administrative of public order, and female duty crimes, has increased significantly as illustrated in this survey.

## The Prevention of Female Elderly Crime

In order to effectively prevent female elderly crimes, some measures from the following perspectives were proposed:

- a. Improving females' sense of value, especially the female elderly who have lower education level. They should be taught how to recognize right and wrong.
- b. Emphasizing the legal rights of female elderly in some particular laws which aim to protect the rights of women. The relative public organs should conduct propaganda about these laws and regulations among the female elderly; this can help them to utilize law to protect their legal rights rather than committing crimes.
- c. Creating more well-beings and fair living atmosphere for the retired elderly females. Especially the primary organizations should know the recent living situation and thoughts of the female elderly who live in their community and then help the female elderly to solve their problems with their families or with others.
- d. Improving the whole social environment. The economic and social reform of China is an enormous incentive for all of the crimes, both of male elderly crimes and female elderly crimes. A fair social environment with favorable sense of values and sound laws and regulations can help to prevent crimes. Particularly,

elderly females commonly commit crimes since they are easily affected by the outside environment and psychological factors. Thus a fair social environment is important to prevent female elderly crimes.

## The Elderly Crime in Chinese Criminal Code

Just as with the juvenile delinquency, the elderly crime code takes age as a consideration. The features of crimes were revealed by the age standard of such crimes' concept; in light of the age criteria, the Germany Criminal and Criminology (Kang & Shi Fang, 2004) calls these crimes as developing crimes (die Entwicklungskriminalität). Generally speaking, in the past centuries, the number of crimes has gradually decreased with older age. However, in recent years, the fact about elderly crime is being changed by the aged tendency of population in China. In the media we hear and watch that more and more elderly carry out crimes; it is also proved by the change of the quantity of elderly crime between 2012 and 2016. Compared with the scale of crimes that were committed by the other ages, the elderly crime is not at the same level at the aspect of quantity and the harmfulness. According to this factor, the criminal legislation of many countries has the provisions that elderly offenders should be sentenced with mitigated punishment. In 2011 the 8th Criminal Amendment of the Chinese Criminal Code was passed, and the punishment about the penalty of elderly crime was added (Chinese Criminal Codes 17, 49, and 72). The supplements are:

- a. The third item of article 17 "if a criminal is 75 or elder than 75 years old, with guilt intent who can be given a lesser punishment or a mitigated punishment, with negligence who should be given a lesser punishment or a mitigated punishment."
- b. The item 2 of article 49 "the elderly criminals should be not sentenced to death when they were bring to trial except that they murder someone with extremely cruel methods."
- c. Article 72, the conditions of probation, sets "if the criminals were 75 years old or even elder should be declared with probation, when they would be sentenced to a detention or a fixed-term imprisonment of no more than 3 years, meanwhile, some requirements should be fulfilled as well, namely: (1) slender criminal context; (2) with demonstration of repentance; (3) No risk of recidivism;(4) would not seriously influence the community where the criminal lives when he/she be declared with probation."
- d. There are no provisions on the concept of elderly crime in the Chinese Criminal Code. Except the above three articles on the punishment of elderly criminals who are 75 years old or older than 75, no further provisions clarify the exact definition of elderly crime in the Chinese Criminal Code. And obviously, the criterion about the punishment of elderly criminals is different from this article (60 years old or older than 60 years).

Actually, on the one hand, these provisions about the penalty of elderly criminals in the Chinese Criminal Law were adjusted to meet the trend of mitigated penalty on elderly crimes worldwide. On the other hand, they are in line with the Chinese traditional culture and international trend.

## **Analysis on the Principle of Mitigated Penalty on Elderly Crimes**

There are no particular elderly crimes in the Chinese Criminal Code; the *actus reus* of elderly would be convicted as the other offenders. However, how to punish elderly criminals is a matter of the traditional views of criminal law, criminal policies, punishment of provisions in criminal code, and law enforcement. The Chinese society has the views of respecting the elderly since ancient time. This traditional value has affected the Chinese society for thousands of years, which is reflected by the third item of article 17 in the Chinese Criminal Code.

## **Different Sentencing Principles for Elderly Criminals**

According to the third item of article 17 “if a criminal is 75 or elder than 75 years old, with guilt intent who can be given a lesser punishment or a mitigated punishment, with negligence who should be given a lesser punishment or a mitigated punishment.” Article 17 is the provision about the age of criminal responsibility. Criminals between four age groups are set special sentence criteria, and the criminals who were 75 years old or older than 75 are one group of them. This item separates this age group with the aim of mitigating the punishment of elderly criminals. Secondly, according to different subjective factors related to elderly crimes, intention or negligence, the extent of mitigation is different. That reflects the different attitudes on elderly crimes with criminal intention or negligence. Normally, elderly crimes with intention are more harmful than those with negligence.

## **Restriction on Death Penalty**

Item 2 of article 49 provision on the punishment of elderly criminals pertains to restriction on the death penalty which can be applied on elderly criminals. As well-known death penalty is one kind of principal penalty in China, it has not been abolished from the Chinese Criminal Code. However, the legislative branch is devoting itself to reduce the types of crimes that would make a convicted criminal eligible for the death penalty. This item can be said a reflection of the restriction on death penalty. However, there is an exception about the restriction on death penalty of elderly criminals, namely, the elderly criminal may be sentenced to a death penalty if he/she murders someone using a very cruel method. But the exact standard of what is cruel should be determined by the judicial organs according to the detail of each individual case.

## The Application of Probation

Article 72 states the conditions of probation on elderly criminals who are 75 years old or older than 75. According to part 4 of the Code, five conditions are set on how to apply probation to elderly criminals. Only if all these five conditions were fulfilled at the same time would elderly criminals be declared eligible for probation. In fact, these five conditions can be divided into two categories, one is classification of criminal penalties and term of imprisonment and another is personal danger of elderly criminals to the community. Compared with the probation of the other criminals in other age groups (the application of probation on criminals under 18 years old and pregnant women is same as on elderly criminals in the Chinese Criminal Code, so both of these two types of criminals are excluded), when all these five conditions were fulfilled, they may be declared with probation. In other words, the elderly criminals must be declared with probation when these five conditions were fulfilled. This difference reflects the value of mitigation on elderly criminals. Since majority of elderly criminals who are 75 years old or beyond 75 have no ability to continue working in prison, as a matter of fact, granting probation saves judicial resources as well as resources in the prisons.

## Conclusion

According to the above analysis, the increasing trend of elderly crime in China has been shown by the statistics presented in the chapter. There are several reasons for the increase, particularly the increase in the older population of China. In other words, there are more elderly in Chinese society. Their ratio among Chinese population is becoming higher year by year.

At the end of this article, there were two conclusions worth repeating. They are:

Effective prevention of elderly crimes requires a collaboration and cooperation of justice and political and community organizations. Almost half of the entire elderly criminals committed crimes related to seeking avaricious profits. It means that material benefits were the incentive for almost half of the elderly committing crimes.

In accordance with these causes of elderly crimes, it is impossible to get rid of the phenomenon of elderly crimes. However, we can prevent some crimes and gradually slow down the pace of the aging tendency of the population in China (China has adjusted the one-child policy), by through legislation granting the rights of elderly to a decent standard of living, educating the elderly on how to improve their morality, enhancing the elderly legal sense of morality, and clarifying the bottom age line of mitigation of punishment on elderly criminals. This chapter used age 60 as the bottom age line of elderly crimes. In the Chinese Criminal Code, the bottom age line of mitigation of punishment on elderly criminals was set as 75 years old and older than 75 years old. Obviously, these are different criteria: it means the Chinese

legislative agency did not consider 60 years old, the bottom age line of elderly crimes, as the bottom age line of mitigation of punishment on elderly criminals in the Chinese Criminal Code. Actually, the gap between these two standards reveals a deliberation, which tried to find a balance between the mitigation of punishment on elderly criminals and the criminal responsibility of elderly criminals.

Some Chinese scholars (Wang et al., 2012) doubted that 75 years old is a reasonable age for the bottom line of mitigation of punishment on elderly criminals since it means that the principle of mitigation of punishment on elderly criminals makes no sense for the prevention of elderly crimes. The age of mitigation of punishment on elderly criminals needs further study.

## Discussion Questions

1. Discuss the reasons for the increase in crime among the elderly in China.
2. Discuss the age standard of elderly crime in China.
3. Discuss the quantity gap of elderly crime in reality and official statistics in China.
4. Since there is a difference in the “dark side of elderly crime” (existence of quantity gap) and the official statistics on elderly crime in China, how should legislators and policy planners proceed in determining the real situation of elderly crime in China?
5. How should we consider the differences of elderly crime in rural area and cities in China?
6. Discuss the differences of the types of elderly crime and the other crimes in China.
7. Discuss the reasons of elderly crime in China.
8. Discuss why the female elderly crimes have increased in China in recent years.
9. Discuss why the age of mitigated punishment of elderly criminals in the Chinese Criminal Code was set as 75 and older than 75.
10. Discuss the prevention strategies on elderly crimes in China.

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