

# Determination of Accomplice of Network Pyramid Selling Crime

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## Abstract

Due to the particularity of the network itself, the form of the accomplice of the network pyramid selling crime is more complex, showing new characteristics of stronger concealment, faster spreading speed and lower crime cost. The initial organizer and leader of the establishment of the network pyramid selling organization and the expanded organizer and leader of the new level after joining the network pyramid selling organization should bear the corresponding criminal responsibility according to their position and role in the network pyramid selling organization; As for the behavior of network service providers and network technology supporters providing network services and technical support for network pyramid selling crimes, the joint Crime of Organizing or Leading the Pyramid Selling Activities or the Crime of Illegally Using Information Networks and other information network crimes shall be distinguished according to the specific circumstances.

**Keywords:** network pyramid selling, determination of accomplice, Crime of Organizing or Leading the Pyramid Selling Activities

## 1. Problem Raising

Under the background of "Internet +" era, online pyramid selling crimes have gradually replaced traditional pyramid selling crimes and become the mainstream form of pyramid selling crimes. Related cases are also increasing. For example, the operator of social e-commerce platform "Today Explosion Group" is suspected of pyramid selling, and the cases of Zhang Ting and her husband's holding company "TST Court Secret" suspected of online pyramid selling have been exposed by the media. In the name of developing innovative e-commerce, these

e-commerce platforms take advantage of national policies to support the e-commerce industry and develop underling by means of applications, programs, websites, communication software, etc. They charge entry fees under the name of "consumption investment" and "virtual currency" and lure members with high rebates.

The rapid development of online pyramid selling shows new characteristics different from the traditional pyramid selling mode. It is mainly manifested in the following aspects. First of all, better concealment makes online pyramid

selling no longer restricted by space and geographical scope, pyramid selling personnel can develop underling without face to face. Secondly, the transmission speed is faster. With the support of the Internet platform, online pyramid selling can spread rapidly through various social software. Finally, crime costs less. Network pyramid selling does not need to control the personal freedom of pyramid selling participants and no need to cost manpower and material resources, also no longer need to prepare for pyramid selling activities, only through WeChat, Weibo, QQ and other social software to establish groups, release WeChat circle of friends and other ways to develop underling activities. Therefore, network pyramid selling also shows a trend of expanding the number of participants and the amount involved, causing greater social harm and more far-reaching negative social impact (Han Ling, 2019).

Although the organizers, leaders and internal members of the network pyramid selling organization in accord with the basic characteristics of joint crime, there are still controversies worth further discussion: how should the organizers and leaders of the network pyramid selling crime be determined? In addition to the network pyramid selling organization of the initial level of organizers, leaders, how should the after joining the new level of organizers, leaders be determined? How to define the behavior of providing network services and technical support for network pyramid selling crimes? What charges may be committed by the perpetrator of network pyramid selling crime besides the Crime of Organizing and Leading Pyramid Selling Activities?

## **2. Determination of the Accomplice Forms of Organizers and Leaders**

Network pyramid selling crime is a pyramid selling crime carried out with the help of Internet technology. The network pyramid selling organization through the establishment of Internet companies, build Internet platform development underling, through WeChat, Weibo, QQ and other platforms advertising and other forms of publicity, lure victims to join the network pyramid selling organization, and then by charging entry fees or membership fees to defraud victims of property. It conforms to the basic criminal constitution of the Crime of Organizing and Leading Pyramid Selling

Activities. Therefore, it is necessary to rely on the theory of accomplice in the Crime of Organizing and Leading Pyramid Selling Activities. This paper believes that the crime of network pyramid selling is a requisite joint crime, and the establishment of network pyramid selling organizations not only requires the participation of organizers and leaders, but also requires the participation of participants in pyramid selling activities to form a complete network pyramid selling organization system (Yuan Bin, 2020). Among them, the organizers and leaders of pyramid selling organizations can be subdivided into initial organizers, leaders and expanded organizers and leaders.

### *2.1 Analysis of the Accomplice Forms of the Initial Organizer and Leader*

One of the forms of accomplice of the Network pyramid selling crime is the initial organizers, leaders constitute a co-principal, refers to the pyramid selling organization as the launch, planning, operator of the organizers, leaders each other or with the underlining jointly plan pyramid selling activities, and actively develop the underling, in order to lure victims to participate in pyramid selling organization activities. The Opinions on Several Issues Concerning the Application of Law to Criminal Cases Involving the Organization and Leadership of Pyramid Selling Activities jointly issued (Hereinafter referred to as "Opinions on Criminal Cases of Pyramid Selling Activities") by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security define the scope of organizers and leaders, who shall organize, plan and control pyramid selling institutions in pyramid selling activities, and the staff responsible for management, publicity, training and other key roles<sup>1</sup>. All them are within the scope of being recognized as organizers and leaders. The identities of organizers and leaders are not completely contradictory. They can be both organizers and leaders at the same time, or they may change from organizers to leaders or from leaders to organizers (Zhang Xiaohu, 2004).

"Opinions on Criminal Cases of Pyramid Selling Activities" also made clear the pyramid selling organization number and level of the scope, pyramid selling organization in the pyramid selling activities of more than 30 people and the level of more than three layers, the organizer, the leader should be investigated for criminal responsibility.<sup>2</sup> "Opinions on Criminal Cases of

pyramid Selling Activities” on the application of charges also pointed out that if the perpetrator to illegal possession for the purpose of organizing, leading pyramid selling activities, at the same time constitute the Crime of Fund Fraud and the Crime of Organizing or Leading the Pyramid Selling Activities may be punished with the Crime of Fund Fraud<sup>3</sup>. In practice, the level of organization and the number of people in network pyramid schemes do not reach the standard of “third level” + “30 people”. If the implementation behavior of the organizers and leaders is in line with the criminal constitution of Crime of Fund Fraud, they should also be punished as the Crime of Fund Fraud (Yin Bo, 2022).

Whether the participants existing at the beginning of the establishment of the network pyramid selling organization can become a member of the joint crime of organizing and leading pyramid selling activities needs to be discussed separately. Only engaged in general labor activities, such as provide logistics labor security work to the pyramid selling organization members, do not know, and do not understand, and did not participate in the pyramid selling activities themselves; People who provide auxiliary work for pyramid selling activities, mistakenly regard pyramid selling as direct selling or multi-level marketing behavior or other normal business behavior and promote it, but do not actively participate in or develop underling, should not be regarded as an accomplice to the Crime of Organizing and Leading Pyramid Selling Activities, even if the behavior of these personnel does not reach the extent of the need to be controlled by criminal law. As can be seen from the positioning of the specific provisions of criminal law, the Crime of Organizing and Leading Pyramid Selling Activities belongs to the chapter of the Crime of Undermining the Order of the Socialist Market Economy, and the behavior of the above-mentioned participants will not cause danger or actual harm to the social and economic order, even will not lead to the strengthening of the social harm and criminal consequences of pyramid selling organizations. Therefore, the above personnel cannot be treated as accomplices of the Crime of Organizing and Leading Pyramid Selling Activities (He Lanbo, 2020).

## *2.2 Analysis of the Accomplice Forms of Extended Organizers and Leaders*

Another form of accomplice of network pyramid selling crime is the successive accomplice composed of extended organizers and leaders. According to the theory of “successive accomplice”, the extended organizer and leader are the actors who actively or passively join the pyramid selling organization and actively participate in the network pyramid selling activities after the establishment of the network pyramid selling organization. At this time, the behavior of the prior perpetrator is not finished yet. The later perpetrator takes the behavior and result of the prior perpetrator as the means to realize his crime, makes use of the network pyramid selling organization established by the initial organizer and leader, actively participates in the pyramid selling activities with the intention of joint crime, and plays an important role in the development and growth of the network pyramid selling organization (Yin Bo, 2022; Zheng Zeshan, 2014).

In order to be different from the co-principal of initial organizers and leaders, the co-principal of extended organizers and leaders has the following two characteristics: First, the extended of the organizers and leaders are in the network pyramid selling organization after the establishment of the join, they are generally passive to get in the network pyramid selling organization, after “brainwashing” began to actively participate in the network pyramid selling organization, constantly develop their own underling. Such organizers and leaders are the perpetrators who join later and are the successive accomplices, while the initial organizers and leaders are the initiators of network pyramid selling organizations and the makers of the internal rules of network pyramid selling organizations, and are the co-principal criminals. Second, the expanded organizers and leaders have stronger will to develop underling, and their intention to cheat underling’s property and obtain illegal benefits is also stronger. In order to get promotion opportunities in the network pyramid selling organization, only actively develop underling, to sell the “products” of network pyramid selling organization, reach the sales volume stipulated by the network pyramid selling organization, in order to get the corresponding position, so as to get more sales share. Therefore, the subjective willingness of the expanded organizers and leaders to develop underling and gain illegal profits is stronger than the initial organizers and

leaders.

The following two points should be paid attention to in identifying the successive accomplice of the extended organizer and leader: First, the expended organizer and leader can only be investigated for criminal responsibility if they develop more than three layers of their own underling level and the number of underlings exceeds 30. "The implementation of pyramid selling activities, the establishment and expansion of pyramid selling organizations who plays the key role" in "Opinions on Criminal Cases of pyramid Selling Activities" is aimed at the expanded organizers and leaders of the cover clause. The clause means that the expanded organizers and leaders in the network pyramid selling crime must not only meet the standards of the development of the number and level of underling, but also to achieve the "key role" of the identity requirements, so that they might be investigated for criminal responsibility. <sup>4</sup>Therefore, it can reflect the modesty of criminal law in judicial practice. But at the same time, it should be noted that compared with the pyramid structure under the traditional pyramid selling mode, the network pyramid selling organization has more varied forms of expression and more complex organizational structure. Therefore, the traditional pyramid scheme model of "three levels" + "30 people" as the standards organizers and leaders to develop the underling's level and number, must not be too rigid or a one-size-fits-all. It must be analyzed according to the actual situation of specific cases and identified in combination with the complete structure of the network pyramid selling organization, so as to avoid excessive scope of striking crimes and avoid allowing offenders to go unpunished (Cheng Xiamin, 2021).

Second, after the expanded organizers and leaders to join in the pyramid selling activities, they use the convenience of the network pyramid selling organization which established by the initial organizers and leaders, actively develop the underling, through a variety of fraudulent properties to expand the pyramid selling organization. All these behaviors up to the determination standard of accomplice of the Crime of Organizing and Leading Pyramid Selling Activities. Just as the initial organizers and leaders play an indispensable guiding role in the network pyramid selling organization, the extended organizers and leaders also play an

indispensable guiding role in the development of their own underling. Thus, the accomplice in the new pyramid structure is reached. When the extended organizers and leaders of the lower underling have reached the conviction standard of criminal jurisdiction, these extended organizers and leaders have become the successive accomplices of the Crime of Organizing and Leading Pyramid Selling Activities.

The general participants who join the network pyramid selling organization after that are the same as the general participants under the management of the initial organizers and leaders, and do not belong to the criminal subject. Therefore, general participants may not be punished as accomplices to the Crime of Organizing and Leading Pyramid Selling Activities even if they provide some help in the promotion of pyramid selling activities that does not have practical effect on pyramid selling organizations (He Lanbo, 2020).

### **3. Determination of the Accomplice Forms of Internet Service Providers**

In recent years, the rapid development of the Internet has brought a lot of convenience to our national life, which has also greatly promoted the prosperity of the Internet economy in our country. However, while people feel that the development of the Internet has promoted the economic growth of all walks of life, traditional crimes have also taken the "free ride" of the Internet, and traditional pyramid selling crimes have developed a new mode of network pyramid selling crimes with the support of Internet technology. The organizers and leaders of network pyramid selling often hide the illegal purpose of organizing and leading pyramid selling activities with the legal facade of virtual currency, block chain technology and so on. The problem of network pyramid selling has become an urgent problem to be solved in the context of the Internet era, which has seriously disturbed the social and economic order of our country, infringed on citizens' property rights and undermined social stability (Zhang Xueyong & Li Chunhua, 2019).

To crack down on the crime of pyramid selling on the Internet, we should start from the network platform providers and network technology supporters. As for the determination of help behavior of network platform providers and network technology supporters, based on



the basic theory of accomplices in the general provisions of Criminal Law, this paper combined with the positioning of the perpetrator in the network pyramid selling organization and the role of the perpetrator's helping behavior in pyramid selling activities, to conduct a case-by-case analysis.

### *3.1 Analysis of the Accomplice Forms of Network Platform Providers*

In the first case, if the network platform is set up and promoted by the network pyramid selling organization into the market, it can be considered that the platform is the core of the entire network pyramid selling activities, laying the foundation for the development and expansion of the pyramid selling organization. In this case, the organizer and leader of the network pyramid selling organization are the actual controller of the network platform. At this time, the network platform is the tool for the organizer and leader to carry out the network pyramid selling activities. Building the network platform is a necessary part of the Crime of Organizing and Leading Pyramid Selling Activities, so there is no need to evaluate the behavior of building the network platform separately.

In the second case, the network platform for the organizer and leader of the network pyramid selling organization to implement the criminal activities of the network pyramid selling has existed since the establishment of the network pyramid selling organization, and are needed by People's Daily life and work, such as WeChat, Weibo, etc. In view of this situation, the network platform should become the supervisor of network pyramid selling, the partner of relevant departments in investigating pyramid selling, and the bearer of legal responsibilities (Lin Hongchao & Tan Jufang, 2018). In order to effectively combat the development of network pyramid selling activities, the first is to strengthen the management of the network platform. If the network platform identifies the information of pyramid selling activities, the network service provider takes technical means such as shielding or deleting the information of pyramid selling activities in the first time, timely fulfill the obligations stipulated by law, and protect the rights and interests of platform users, the network service provider and the network platform can be exempted from the liability related to pyramid selling activities.

If the network platform timely monitors the information of pyramid selling activities, such as the network pyramid selling organization through the platform to release relevant advertisements, promote pyramid selling products, etc., the network service provider of the network platform fails to fulfill the relevant obligations in time, it may constitute the Crime of "Refusing to Perform Information Network Security Management Obligations" in Article 268 of the Criminal Law of the People's Republic of China (Hereinafter referred to as the Criminal Law)<sup>5</sup>.

Network service providers objectively refuse to perform the obligations of information network security management, promoting the spread of information of network pyramid selling activities, and the judgment of this crime is the key to judge whether the network service providers constitute the accomplice of the Crime of Organizing and Leading Pyramid Selling Activities. As for the subjective form of the crime, this paper holds that the information network security management obligation belongs to the professional obligation. The doer's defense of failing to foresee the damage consequences lacks practical basis, so the possibility of negligent crime is excluded. "Refusal to perform" includes both the direct intention of actively pursuing harmful consequences and the indirect intention of indulging. The behavior of Internet service providers refusing to fulfill their obligations may be subjectively manifested as an indulging attitude towards harmful consequences or a positive attitude of pursuing harmful consequences. Therefore, refusing to fulfill their obligations actually opens a "channel" for the dissemination of information of pyramid selling activities.

According to the theory of accomplice in the general provisions of Criminal Law, if the Internet service provider constitutes an accomplice in the crime of organizing and leading pyramid selling activities, on the one hand, it is required that the helping behavior of the Internet service provider itself has a psychological or physical promoting effect on organizing and leading pyramid selling criminal activities, on the other hand, it is required that such qualified helping behavior has a causal relationship with the harmful result. At the same time, its helping behavior should be able to promote the principal offender of the Crime of Organizing and Leading Pyramid Selling

Activities to produce corresponding harmful results. According to the above points in this paper, Internet service providers refuse to fulfill their obligations and deliberately allow the information of network pyramid selling activities to spread in a way of inaction, which promotes the development of network pyramid selling organizations. Therefore, there is a causal relationship between the inaction of Internet service providers and the behavior of principal offenders of the Crime of Organizing and Leading Pyramid Selling Activities, which constitutes a help offender to the Crime of Organizing and Leading Pyramid Selling Activities.

In the third case, the network platform itself releases guiding information, sets up websites for expanding the scale of pyramid selling organizations, teaching criminal methods and other illegal and criminal activities, but fails to provide sufficient evidence to prove the joint crime between the network platform and the organizers and leaders of pyramid selling activities. According to the Crime of Illegal Use of Information Network in Article 287 of the Criminal Law, the network service provider of the network platform can be convicted and punished<sup>6</sup>. In the Interpretation of the Criminal Law of the People's Republic of China<sup>7</sup>, Article 1, Item 3 of the crime of illegally using information networks includes "publishing information for the purpose of committing fraud and other criminal activities," which includes "attracting others to buy goods and then committing fraud, pyramid selling and other criminal acts." If it can be proved that the behavior of information release on the platform helps promote the development of pyramid selling organization, and the network service provider commits a joint crime with the organizer and leader of pyramid selling organization, it can be convicted as a help offender to the Crime of Organizing and Leading Pyramid Selling Activities, and also commit the Crime of Illegal Use of Information Network. To measure the severity of punishment between the help offender of the Crime of Organizing and Leading Pyramid Selling Activities and the principal criminal of the Crime of Illegal Use of Information Network, imagine competing and cooperating to choose one felony to be punished.

### *3.2 Analysis of the Accomplice Forms of Network Technology Supporters*

The network technical help provided by the

network technology supporters for the crime of network pyramid selling mainly refers to that a natural person or unit, knowing that others use the information network to commit criminal acts, still provides relevant information network technical support or other help for the criminal acts. If the circumstances are serious, it constitutes the "Crime of Helping Information Network Criminal Activities" in Article 287 bis of the Criminal Law<sup>8</sup>. Among them, it is necessary to analyze the problem of subjective knowing in detail. First, for daily neutral helping behaviors, network technology supporters are required to have a relatively specific understanding of their helping behavior, but it does not need to be really clear (Yu Haisong, 2019). If a network operator provides Internet access services, it is possible for the network operator to subjectively perceive that others use its technology to carry out network pyramid selling activities, but it cannot require the network operator to stop all network access services in order to prevent others from committing crimes. However, if the network operator is relatively clearly aware that others are using the services it provides to carry out network pyramid selling crimes, it may be considered that the network operator meets the "knowing" requirement for the crime of assisting information network crime (Chen Xingliang, 2022). Second, for non-daily help behaviors, it is directly presumed that the network technology supporters are subjectively "knowingly" committing crimes against the objects they help (Yu Haisong, 2019). With the gradual refinement of the division of labor in information network crimes, a criminal chain similar to the "assembly line" operation is gradually formed, thus spawning a variety of technical support specifically used for crimes, such as the production of virtual payment links, the production of fake base stations, the production of number change software, etc. These non-daily technical help behaviors usually only provide help for illegal and criminal behaviors, so it is directly presumed that network technology supporters are subjectively "knowingly". It can be seen that the difference between daily neutral helping behaviors and non-daily helping behaviors is that the activities involved in the former have normal purposes and are needed by the society, but are objectively used for illegal crimes, while the activities involved in the latter are not

required by normal social life, and their existence is usually used for illegal crimes.

For the technical help behavior provided by network technology supporters in network pyramid selling criminal activities, whether the Crime of Organizing and Leading Pyramid Selling Activities is more consistent with the principle of statutory punishment or the Crime of Helping Information Network Criminal Activities is more accurate, divided into the following situations:

First, the behavior of network technology supporters conforms to the constituent elements of the Crime of Organizing and Leading Pyramid Selling Activities, and should be directly identified as the joint principal criminal of the Crime of Organizing and Leading Pyramid Selling Activities. Joint principal offender refers to two or more persons who intentionally commit a joint crime for the same criminal act and objectively directly commit the criminal act together. If the technical help provided by the network technology supporters includes the organization and leadership behavior of the network pyramid selling crime, it has essentially met the constitutive requirements of the Crime of Organizing and Leading Pyramid Selling Activities. In addition, the behavior of network technology supporters may also constitute a conspiracy co-principal. The conspiracy co-principal refers to that two or more people plan to commit a crime together, but only part of people commit a crime based on the intention of accomplice, and the conspirator who does not directly commit the crime and the perpetrator who directly commits the crime jointly constitute the crime of conspiracy. In terms of network pyramid selling crime, if Party A and Party B conspire in advance and cooperate in division of labor, Party A is responsible for providing network technical support and Party B is responsible for developing pyramid selling organizations. In this case, although A did not directly organize and lead pyramid selling, it played a key role in the development of the network pyramid selling organization and reached the standard of conspiracy co-principal. At this time, the network technology supporters played a dominant role in the Crime of Organizing and Leading Pyramid Selling Activities, which should be identified according to the principal offender of the Crime of Organizing and Leading Pyramid Selling Activities. If the

network technology supporters only echo and approve the arrangement of the organizers and leaders or do not make key proposals in the conspiracy of joint crimes, and do not play a key role in promoting the development of the network pyramid selling organization, they should only be identified as the accomplice of the Crime of Organizing and Leading Pyramid Selling Activities.

Second, when the behavior of network technology supporters conforms to the constitutive elements of the Crime of Organizing and Leading Pyramid Selling Activities and the constitutive elements of the Crime of Helping Information Network Criminal Activities, a more detailed step is needed to distinguish. If they are co-principal offenders of the Crime of Organizing and Leading Pyramid Selling Activities, they will be convicted and punished as principal offenders of the Crime of Organizing and Leading Pyramid Selling Activities according to the way of condemn them as a serious case because of ideal concurrence. If they only constitute the accomplice of the Crime of Organizing and Leading Pyramid Selling Activities, it is necessary to measure the severity of the punishment of the principal offender of the Crime of Helping Information Network Criminal Activities and the accomplice of the Crime of Organizing and Leading Pyramid Selling Activities. If the punishment of the latter is still heavier than that of the former, the accomplice of the Crime of Organizing and Leading Pyramid Selling Activities shall be convicted and punished according to the provisions of punishing the accomplice in the General Theory of Criminal Law; If the former punishment is more severe, the principal offender of the Crime of Helping Information Network Criminal Activities should be convicted and punished.

#### **4. Conclusion**

In recent years, the development momentum of the network pyramid selling crime is fierce, quite by the trend of the development of the Internet to expand the scale of the signs, its strong concealment, fast transmission speed, low crime cost characteristics make it develop rapidly. In the face of the new characteristics of pyramid selling crimes in the network environment, the judicial practice for the existence of accomplices in such cases is not clear, which is easy to lead to disputes in the

trial of such cases. Therefore, in order to accurately characterize the joint crime in the network pyramid selling crime, it is necessary to study the determination of the accomplice of the network pyramid selling crime. Only in this way can effective judgment be made, related sentencing disputes can be reduced in judicial practice, and case handling efficiency can be improved.

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<sup>1</sup> The Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security "The Opinions on Several Issues Concerning the Application of Law to Criminal Cases Involving the Organization and Leadership of Pyramid Selling Activities", November 28(th), 2013.

<sup>2</sup> Same as note 2 before, "The Opinions on Several Issues Concerning the Application of Law to Criminal Cases Involving the Organization and Leadership of Pyramid Selling Activities".

<sup>3</sup> Same as note 2 before, "The Opinions on Several Issues Concerning the Application of Law to Criminal Cases Involving the Organization and Leadership of Pyramid Selling Activities".



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<sup>4</sup> Same as note 2 before, “The Opinions on Several Issues Concerning the Application of Law to Criminal Cases Involving the Organization and Leadership of Pyramid Selling Activities”.

<sup>5</sup> Article 268, Section 1 of the Criminal Law of the People’s Republic of China stipulates: “An Internet service provider who fails to perform the information network security management obligations prescribed by laws and administrative regulations and refuses to correct after being ordered by the regulatory department to take corrective measures shall, under any of the following circumstances, be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined: (1) causing the mass spread of illegal information; (2) causing the disclosure of user information, resulting in serious consequences; (3) causing the loss of criminal case evidence, with serious circumstances; (4) other serious circumstances.”

<sup>6</sup> One of Article 287 of the Criminal Law of the People’s Republic of China.

<sup>7</sup> Wang Aili (Ed.), Interpretation of Criminal Law of the People’s Republic of China, 2021 Edition, pp. 628-632.

<sup>8</sup> Article 287 bis, paragraph 1, of the Criminal Law of the People’s Republic of China stipulates: “Whoever knowingly provides Internet access, server hosting, network storage, communication transmission and other technical support for another person to commit a crime through information networks, or provides advertising promotion, payment and settlement and other assistance, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.”