

DEALING WITH JUVENILE OFFENDERS: SUCCESSFUL PRACTICES IN CHINA

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Abstract: China has been making efforts to develop and implement a comprehensive policy stressing the roles of family, school and social organization to deal with juvenile offenders since the early 1980s by taking specific measures such as establishing special chambers for juvenile offenses, conducting pre-trial social investigation to individualize punishment and treatment, providing special measures in interrogating juvenile suspects, sealing criminal records of juvenile offenders, and offering follow-up assistance and education. A number of practices have been proven successful by the continuous decrease in the number of juvenile offenders in recent years, and some have therefore been adopted into the new Criminal Procedure Law of the PRC and Amendment VIII to the Criminal Law of the PRC. Although they have been developed in the Chinese context, these practices might have reference value to other states too as they are based on fundamental international documents regarding child rights and juvenile justice.

I. INTRODUCTION

China saw a rapid increase in juvenile offenders before the year 2008, and therefore took positive steps to analyze its causes and promote and change social, economic and cultural environments that make minors vulnerable to adverse enticements. Long-term efforts have brought China noticeable achievements, which are worthy of being shared for the purpose of preventing juvenile offenses and rehabilitating minor offenders. This article will, based on the statistical data of the China National Bureau of Statistics, make a brief introduction to the developments of juvenile offenses in the past 15 years in China, cite examples to illustrate the reform of juvenile justice in light of existing problems in juvenile legislation and judicial practice, and on this basis, summarize useful experience of China in dealing with juvenile offenses as well as Chinese reforms to juvenile criminal laws and procedural laws.

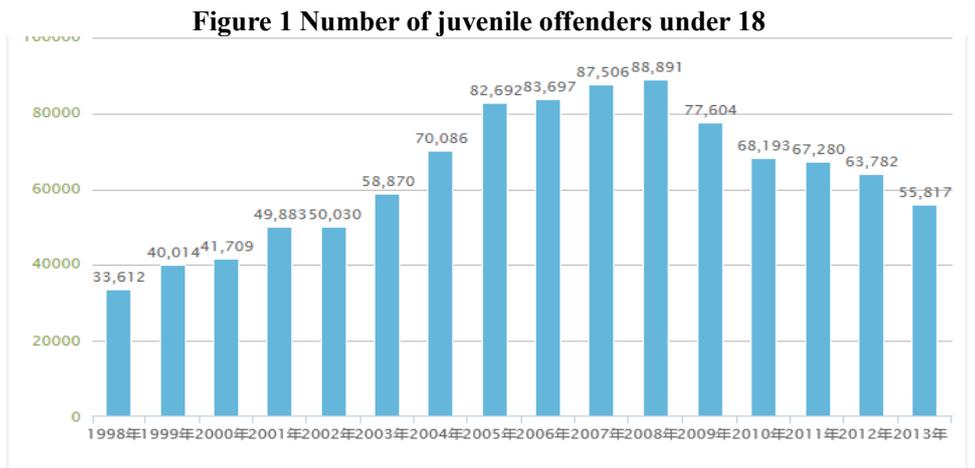
II. THE DEFINITION OF JUVENILE OFFENDER AND ITS INCREASE IN PAST DECADE

According to the UN Convention on the Rights of the Child adopted in 1989 and the *Law of the People's Republic of China on the Protection of Minors* enacted by the Chinese legislature in 1991, a minor is a person who is under the age of 18. Meanwhile, according to provisions of Article 17, the *Criminal Law of the People's Republic of China*, where a person who is over the age of 16 commits a crime, he/she shall be criminally responsible for that; and where a person who is over the age of 14 but under the age of 18 commits a crime, he/she shall be given a lesser or mitigated penalty. According to these provisions, it can be concluded that, in China, a juvenile offender (minor offender) is a minor who is over the age

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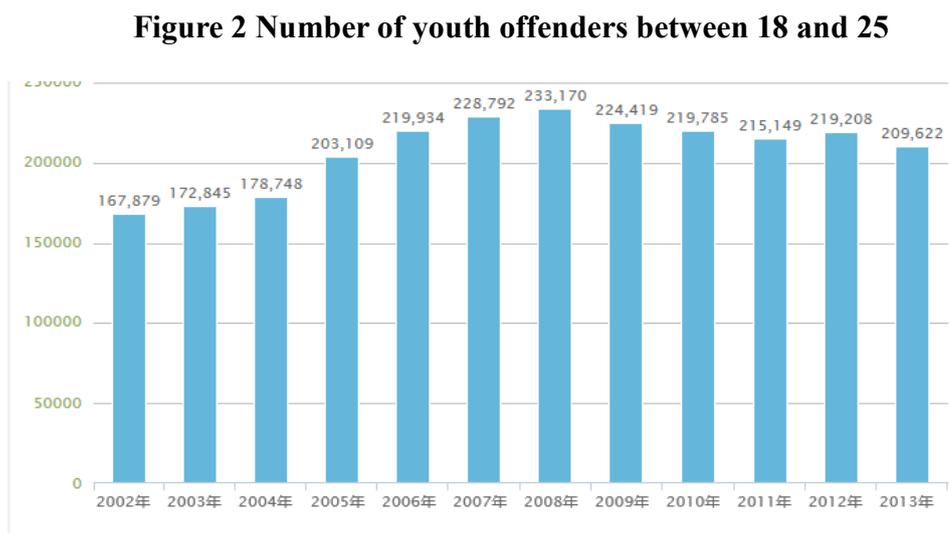
of 14 but under the age of 18 and who is found guilty by the people’s court in a criminal procedure for reason of committing an act prohibited by the criminal law.

According to the China Statistical Yearbook 2014 of the National Bureau of Statistics, as shown in Figure 1 below, the number of juvenile offenders under the age of 18 who were tried by Chinese courts across the country first increased and then decreased rapidly in the 15-year period from 1998 to 2013. To be specific, in the decade from 1998 to 2008, it increased at the rate of 5,000 people or so per year, from more than 33,000 in 1998 to more than 88,000 in 2008; in the 5 years from 2008 to 2013; however, it decreased at the rate of 6,000 people or so per year, to no more than 56,000 in 2013.



Source: Statistical Yearbook 2014

As shown in Figure 2 below, the number of youth offenders in the age bracket of 18-25 exhibited almost the same tendency in the 11-year period from 2002 to 2013. It increased year by year from 2002 to 2008 from 167,879 in 2002 to 233,170 in 2008 and then decreased year by year thereafter to 209,622 in 2013.



Source: Statistical Yearbook 2014

III. CAUSES OF THE INCREASE AND REFORMS

The increase in the number of juvenile offenders in China is due to quite complicated social and economic causes, such as the lack of education on the part of their parents who are migrant workers, the influence of bad associations due to early dropout from school, etc. However, the legislative and judicial reasons are not to be neglected, either. In the early 1980s, juvenile offenders have already caught the public attention across the country, but corresponding legislation still has the following problems now in the early 21st century. Firstly, the criminal law of China has only 2 particular provisions for the minor offenders, namely, an offender under the age of 18 shall be given a lesser or mitigated penalty (Paragraph 2, Article 17) and an offender who is under 18 shall not be sentenced to death. In other circumstances, the juvenile offenders are subject to the same criminal provisions as the adult offenders are. Secondly, the criminal procedural law of China fails to provide for any special procedures for minor offenders,. Thirdly, the laws and regulations aimed to protect the rights of minors are scattered, hard to operate and, in some areas, still found wanting. For such legislative reasons, the judicial practice also gives rise to many problems. For example, imprisonment is given too much, while penal servitude and surveillance, too little; the application of fines greatly deviates from the distribution of the offenses to which the penalty is applicable; probation is used too little and sees a wide regional disparity; supervision is poor in community corrections and therefore impairs the effect of punishment, etc. For all these reasons, the effect of criminal punishment is not satisfying, hence the quite high level of recidivism.

In view of the abovementioned problems, China began to conduct reforms and experiments of high relevance, for example, to set up teen courts within the people's courts. In fact, the history of teen courts in China dates back to 1984, when the people's court of Changning District, Shanghai established the first collegiate bench for criminal cases involving minors and took the first step of historical importance. So far, all four levels of the people's courts in China have set up special trial organizations for juvenile offenders or had designated personnel to handle juvenile offenses. Moreover, some grassroots and intermediary people's courts have, taking into account the reality of their trial work and their local conditions, innovatively established a cross-district/county model where jurisdiction is designated and offenders are tried in a centralized manner, in order to optimize and scientifically deploy trial resources for teen courts. By November 2014, 2,253 teen courts, 1,246 collegiate benches, 405 juvenile criminal tribunals and 598 comprehensive tribunals have been put in place across China, forming a pattern of diversified trial organizations for juvenile offenders.

The teen courts adopt trial systems and working mechanisms that are dedicated to the cases involving minor offenders, such as roundtable trials, social investigation, sealing the records of minor offenses, in-trial education, psychological evaluation and intervention, extended assistance, and protection of minor offenders in appearance and testifying, etc. In practice, some distinctive trial models have taken shape in various regions, such as the collegiate bench model created by the people's court of Changning District, Shanghai, the comprehensive trial model originated by the people's court of Tianning District, Changzhou City, Jiangsu Province, and the designated jurisdiction and centralized trial model launched by Lianyungang City, Jiangsu Province, etc.

Over the past three decades, the juvenile courts across the country have accumulatively tried more than 1.5 million minor offenders. Through correction of the teen courts, most of

the juvenile offenders have showed repentance and been able to reintegrate into the society as law-abiding, self-supporting citizens. In addition, a considerable proportion of them have successfully gone off into the universities or vocational schools of various kinds and become useful people in society. Since 2002, the rate of recidivism among juvenile offenders has stayed at 2% or so, far lower than that of all offenders.

For another example, Save the Children of the UK and the People's Government of Panlong District, Kunming City, Yunnan Province jointly launched a judicial diversion initiative for juvenile offenders in 2002. According to the principle of "centering on education while supplementing it with punishment", that initiative strove to avoid putting minor offenders in prison in applying both the procedural rules and the substantive laws and to use non-custodial approaches in the proceedings and the non-imprisonment penalties in punishment with conditions attached and to the highest extent possible, thus diverting juvenile offenders from the custodial judicial procedures. In environments such as communities, families and schools, the minor offenders are subject to surveillance (probationers), correction (persons who are given non-custodial penalties), and assistance and education (persons who are given non-criminal penalties), etc. that help them get back to the right course of life.

The judicial diversion project has scored an eye-catching achievement so far. According to statistics, the project successfully dealt with more than 700 juvenile offenders in Panlong District, Kunming City from 2002 to 2006. Of the 53 minor offenders who were followed up by "appropriate adults", 2 are now attending colleges and 20 more are continuing their study in middle schools. It can be said that judicial diversion is not only effective prevention of minor offenses, but also an effective probe into the perfection of minors' judicial protection in China.

The procedures for judicial diversion are detailed as follows:

1. In the stage of investigation, the police shall, before interrogating the minor offenders for the first time, advise the appropriate adults to appear, find out the truth and provide social investigation reports and opinions on how to deal with the case. In the case that an offender is released on bail, if the offender is not involved in a new criminal act but the original criminal act indeed constitutes a criminal offense, the police shall shorten the length of proceedings and as soon as possible refer the case to the prosecutor's office for review so that the latter can make a decision to prosecute or not to prosecute the offender in question, or the police may directly enter into a decision to deregister the case and urge the offender's parents to tighten control and education of the offender. In the case that an offender is under the age of criminal responsibility and his/her act is too petty to be criminalized, the police shall release the offender immediately after giving him/her education and at the same time notify the appropriate adults and the community concerned to educate the offender or help in such efforts.

2. In the stage of prosecution, where a minor suspect put on bail by the prosecutor's office is not involved in any new criminal acts during that period, his/her offense is petty, and he/she pleads guilty of his/her own accord, the prosecutor's office may decide not to prosecute him/her, or where the case indeed needs to be referred to the court for trial, the prosecutor's office may prosecute the offender without taking him/her into custody and advise the court to give a lesser penalty; where the prosecutor's office decides not to prosecute the offender, it shall notify the offender's appropriate adult and community in

writing for assistance and education purposes.

3. In the stage of trial, where a minor defendant can or should be exempted from criminal penalty according to law, the court shall enter into a decision not to give him/her a criminal penalty; where the defendant is already in custody during the proceedings and shows so much repentance as to plead guilty voluntarily, the court shall put him/her on probation on conditions attached thereto.

4. In the stage of community supervision, assistance and education, which is particularly important to divert minor offenders from the judicial process, Panlong District provided clearly and concretely for the roles and responsibility in community supervision, assistance and education so that all minor offenders are provided with timely and rigorous community supervision, assistance and education, whether they are diverted from the police, the prosecutor's office or the court.

The Swedish Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) has also had a long history of cooperating with the prosecutor's offices in China to promote juvenile judicial reform. For example, RWI signed a partnership agreement on the theme of "reducing pre-trial detention" with the People's Procuratorat in Haidian District, Beijing in 2007, with a view to ensuring the rights protection for criminal suspects by decreasing the cases and shortening the length of pre-trial detention and with the reduction of minor suspects detained as a starting point. In the period of 2011-2013, RWI again entered into cooperation with the People's Procuratorat in Haidian District with respect to the juvenile offenders' trial procedures under the new criminal law. According to the memorandum of understanding on cooperation 2014-2016 between RWI and the Department of International Cooperation, the Supreme People's Procuratorat, the People's Procuratorat of Haidian District has already launched the juvenile judicial reform program in partnership with RWI. The program places emphasis on the implementation of the conditional non-prosecution system and the perfection of social support systems. All these projects have made important contributions to the reform of the juvenile justice system in China.

IV. SUCCESSFUL EXPERIENCES AND THEIR CODIFICATION

It can be said that the judicial reforms in practice have achieved a considerably ideal effect, which finds direct expression in the ongoing decrease in the number of juvenile offenders since 2008. From a macro perspective, the beneficial experience of China in addressing the juvenile offenses can be summarized into four points as follows:

1. Maximizing the rights of the teenagers, that is, maximizing the interest of the children, including giving top priority to the interest of children in making national policies and dealing with concrete children's affairs, etc;
2. Giving priority to the protection of children's rights, that is, giving preference to the protection of children's rights where legal rights conflict or concurrence arises;
3. Centering on education while supplementing it with punishment, that is, giving the juvenile offenders the lesser or mitigated penalty or putting them on probation where possible in an effort to enhance the effect of correction, avoid the negative effect of penalties and promote reintegration into society;

4. Coordinating efforts of the competent government departments, judicial organs, social groups, schools, families, urban residents' committees and villagers' committees shall all take part in and have responsibility for the prevention of juvenile offenses and the correction of juvenile offenders, with a view to creating a sound social environment for the growth and correction of minor offenders.

Meanwhile, the legislature shall gradually incorporate the useful practices into the legislation. For instance, the legislature of China made the following revisions to the Criminal Law's Amendment VIII, which was put into effect on May 1, 2012:

1. According to the provisions of Paragraph 1, Article 100 of the Criminal Law of China, "a person who has been given a criminal penalty according to law shall report, and shall not conceal, his/her criminal record at the time of being enlisted into the army or being employed." This is the so-called "obligation of reporting criminal records". To the contrary, Amendment VIII added a second paragraph which goes to the effect that a person who is under the age of 18 and is given a penalty lesser than a prison term of 5 years can be exempted from the reporting obligation stated in the preceding paragraph, that is, a minor who has committed a petty crime is exempted from reporting his/her criminal record on the occasions aforesaid.
2. Amendment VIII revises the recidivism rules by providing in Article 6 that "where an offender who has been given imprisonment or more severe penalty again commits a crime that is subject to a penalty of imprisonment or a more severe one within 5 years after serving the sentence given to him/her for the previous offense or after being pardoned for the previous offense, he/she shall be deemed to be a recidivist that shall be given an aggravated penalty, except in the case the offender commits the crime involuntarily or is under the age of 18 when committing the crime."
3. With respect to the conditions of probation, Article 72 of the Criminal Law of China provided, before promulgation of the Amendment VIII, that "where an offender is given a sentence of penal servitude or a prison term of no more than 3 years, if, in view of the circumstances of his/her crime and the level of his/her repentance, the application of probation to him/her will not result in his/her doing harm to society again, the offender may be given a probation." Amendment VIII, furthermore, provides in Article 81 that "where an offender is given a sentence of penal servitude or a prison term of no more than 3 years, if he/she meets the following conditions concurrently, he/she may be given a probation: (1) the circumstances of his/her offense are relatively minor; (2) he/she shows signs of repentance; (3) he/she will not generate risks of recidivism; (4) the application of probation will not have significant adverse effect on the community in question...and, in particular, if the offender is under the age of 18, is a pregnant woman or is over the age of 75, he/she shall be given a probation without conditions attached thereto." Amendment VIII further revises Article 76 of the original Criminal Law of China, providing that probationers shall be subject to community correction.
4. There are still some other useful practices that have been incorporated into the judicial interpretations, instead of the legislation. For example, with the criminalization of juvenile offenders, the *Interpretations for Several Issues on the Application of Specific Laws in Trying Criminal Cases Involving Minors* issued by the Supreme People's

Court on December 12, 2005 provides in Article 6 that, where a person who is over the age of 14 but under the age of 16 occasionally have sex with an underage girl in minor circumstances and without incurring severe consequences, he/she may not be deemed to have committed a crime; in Article 7 that, where a person who is over the age of 14 but under the age of 16 uses mild violence or threat to exact a small amount of money or property without incurring harm to the victim, he/she may not be deemed to have committed a crime; and in Article 9 that, where a person who is over the age of 16 but under the age of 18 attempts or discontinues to commit theft, he/she may not be deemed to have committed a crime.

5. With respect to the sentencing of minor offenders, Amendment VIII provides in Article 13 that life imprisonment can be given only to a minor offender who has committed an extremely severe crime, and shall in principle not be given to a minor offender who is more than 14 years old but less than 16 years old. In Article 18, Amendment VIII provides that, with respect to the commutation and parole of minor offenders, the criteria may be moderately eased in comparison with those for adult offenders.
6. The *Criminal Procedural Law of the People's Republic of China* as amended in 2012 and put into effect on January 1, 2013 provides for the criminal procedures for juvenile offenders in Chapter I, Volume 5. Firstly, it solidifies and perfects the original legal provisions concerning minor offenders, such as the compulsory defense throughout the proceedings, the practice of jailing, managing and educating minor offenders separately and the in camera trial system, etc.
7. Secondly, it codifies the criminal policies concerning minor offenders, including mainly the guidelines of “education, reforming and redemption”, the principle of centering on education and supplementing it with punishment and the strict restrictions on the application of custodial measures, etc.
8. And finally, it adds some new content, such as social investigation, participation of appropriate adults, conditional non-prosecution and sealing of criminal records, etc.

V. CONCLUDING REMARKS

Mr. Liang Qichao, a forerunner of democracy in China, once said that, if the youths are intelligent, affluent and powerful, then the country will be intelligent, affluent and powerful accordingly. Youths are indeed the future of a nation. So in dealing with minor offenses, we shall always adhere to the concept of “education, reforming and redemption” and strive to create the most favorable conditions for them to express their remorse and reintegrate into society. That’s the end of my speech. Thank you!

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