

Research on China's "Education-Oriented" Criminal Policy on Juvenile Delinquency

Zhaoyang Liu

*College of Criminal Justice, Shanghai University of Political Science and Law, Shanghai, China
976103619@qq.com*

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Abstract: The tendency of retribution reflected in the reduction of the age of Criminal Law amendment (XI) should not shake China's criminal policy on juvenile delinquency, but should continue to adhere to the basic concept of "education as the main, punishment as the auxiliary" for juvenile delinquency. Different from the concept of adult criminal law, "minors should be the subject of education rather than the subject of punishment", which is not only the international consensus, but also determined by the physical and psychological particularity of minors. In fact, the phenomenon that the poor effect of educational correction for wrong minors in China should not be attributed to the "failure" of educational correction measures, but it should be found that the simple practice of "letting go" and "grasping it" long exists in China, and the implementation of educational correction measures. Therefore, only by developing and implementing more precise help and education systems for wrong minors can it be more conducive to reflect the significance of China's policy of "education as the priority and punishment as the auxiliary" for minors.

1. Introduction

As the Amendment to the Criminal Law reduces the legal minimum age for criminal responsibility from 14 to 12, this means that China has expanded the scope of criminal punishment for minors, that is, minors can condemn the circumstances stipulated in Article 17 paragraph 3 of the Criminal Law. For the revision of this article, different scholars will have different opinions from different positions, but most of them will focus on the discussion of legislation. In fact, in the Criminal Law amendment (XI) formally determined before to reduce the age of criminal responsibility, some scholars through empirical research concluded that too much emphasis on "give priority to with education, punishment is complementary" criminal policy, and not for illegal minors to illegal crime rate effectively reduce, so it is necessary to "education" and "punishment" adjust the relationship between rank.[1] This view coincides with the legislation of lowering the age of criminal responsibility, both of which contain the tendency of retribution. Then, does the legislative background of lowering the age of the age of criminal responsibility mean that China's criminal policy concept for juvenile delinquency will also change accordingly? If we want to continue to adhere to the criminal policy of "education as the priority, punishment as the supplement", how can we solve the phenomenon of poor education correction for minors in China? The author will try to answer the above two questions, which will not

only emphasize the necessity of adhering to the criminal policy of "education first, punishment supplemented" under the legislative background of lowering the age of criminal responsibility, but also provide a way to solve the dilemma of improving the correction effect of juvenile delinquency in China.

2. The theoretical basis of the "education-oriented" criminal policy

The amendment to the Criminal Law, changing the criminal responsibility age from 14 to 12, is a foregone conclusion. However, adjusting the legislation to lower the criminal responsibility age does not imply a shift in the concept of prioritizing education for criminal minors. On the contrary, it is crucial to continue prioritizing education in the criminal justice policy for minors. This approach takes into account the unique physical and psychological characteristics of minors and also considers the underlying reasons behind their wrongdoing. The particularity of minors determines the basic position of "education first" in the criminal policy of minors. First of all, the legal maxim that juveniles are insane tells us that minors and mental patients lack control and recognition, and both are not criminal responsibility.[2] The reason why special treatment is given to minors is that with the development of juvenile concept and humanitarian movement, people begin to pay more attention to the difference between juvenile crime and adult criminal behavior. Because minors in the process of its growth vulnerable to living environment, all kinds of pressure, bad behavior, the influence of such factors, especially in the adolescent minors, they generally have rebellious, impulsive characteristics, so that they are not able to clearly realize the nature of their behavior, therefore, the bad behavior of minors and even crime is inevitable, has a natural can forgive. In addition, even in no clear concept of minors in ancient China, the rulers has noticed the particularity of minors, for example, as early as the western zhou dynasty has the law of three amnesty: "a amnesty yue young weak, then forgive yue old, three amnesty yue fool", although the ancient Chinese processing of juvenile crime is not the same, but still formed for the dynasties of the "young" thought. Therefore, the special criminal policy for minors not only depends on the particularity of minors' physiology and psychology, but also depends on the continuation of the traditional Chinese thought of "caring for the young". In addition, no criminal responsibility of minors does not mean indulgence in juvenile crimes, and will be treated in other ways like mental patients. For example, paragraph 5 of Article 17 of the Criminal Law stipulates that minors who are no criminal punishment shall be disciplined by their parents or other guardians; when necessary, special correction education shall be conducted according to law.

The principle of maximum interests of children determines the basic position of "education first" in China's criminal policy on minors. The principle of the greatest interests of the Child was first recognized by the 1959 Declaration on the Rights of the Child as an international guideline for the protection of the rights of the child, and the implementation of the Convention on the Rights of the Child (hereinafter referred to as the Convention) was a milestone in the establishment of the principle of the best interests of children^[3] The basic meaning of this principle is that all things and behaviors involving children should first consider the best interests of children as the starting point.

Under the guidance of this principle, the criminal policy of juvenile delinquency should of course follow this principle. First, the legal age of criminal responsibility should be set in legislation. In order to achieve the goal of maximizing the interests of children, China has set the legal age of criminal responsibility in legislation, for minors who do not reach the age of criminal responsibility. This is in conflict with social interests, but it is the embodiment of the priority of children's interests. Second, special procedures are set up for criminal cases involving juvenile crimes. These special procedures can not only avoid harm to the physical and mental health of minors, can also in the program education of minors, such as the people's procuratorate to handle minor criminal case provisions in article 6, the people's procuratorate in handling minor criminal cases, should pay attention to the

education of minors, probation, save the work. These criminal procedures, which are very different from adult criminal cases, may sometimes be more complicated and require more energy and resources, but they are still upheld, which reflects the priority to the interests of children. Third, the lenient sentencing and punishment mechanism for minors. China established a sentencing individualized mechanism according to the characteristics of minors, such as the Supreme People's Court on juvenile criminal cases of specific application of law interpretation, the sentencing of juvenile criminal cases after considering criminal performance, personal growth experience and consistent performance factors. Compared with adult criminals, the execution of punishment for minors in China also reflects the characteristics of reprieve, which is a vivid embodiment of the principle of the greatest interests of children.

Empirical school put forward the criminal legislation dualization, the juvenile crime and adult crime difference, advocates juvenile criminal law and common criminal law binary separation, dragon, filly, galo empirical school of giant, in the empirical study will distinguish juvenile crime and adult crime, juvenile crime and adult crime and reason of prevention and control countermeasures. The empirical school put forward the criminal legislation dualization of the classical school of "people are rational" impact, under the assumption of the classical school: the criminal personality and personality is erased, criminal behavior is the result of rational man free will choice, the essence of criminal responsibility is moral, the essence of punishment is retribution. However, although some criminal scholars of classical school have realized that both minors and mental patients are irrational, or people without free will or incomplete free will, this also sowed the seeds for the theory from retribution of punishment to education of punishment.

The theory of educational punishment is put forward on the basis of the purposeful punishment doctrine of the empirical school, which advocates that the essence of punishment should be education rather than punishment, not an instinctive or original revenge, and punishment education should be used to improve the criminal and prevent their re-crime. With the development of society, the birth and development of modern juvenile criminal law are mostly characterized by removing retribution doctrine and determining educational criminal doctrine. For example, the purpose of the German juvenile criminal law is education, which is a goal that has been emphasized by the Federal Supreme Court and stipulated in Article 2 of the Juvenile Court Law: the goal of the juvenile criminal law is to educate those juvenile offenders so that they become law-abiding citizens again.[4] Therefore, although China has no special criminal law for juvenile delinquency, from the standpoint of educational criminal theory, China's criminal policy on juvenile delinquency should also take the basic characteristics of educational criminal doctrine.

3. The real dilemma of the "education-oriented" criminal policy

China's criminal policy for juvenile crime can be summarized as "the policy of education, probation, and rehabilitation, adhering to the principle of prioritizing education over punishment." This approach is supported by both substantive and procedural laws in China. However, the adjustment in legislation to reduce the age of criminal responsibility has created a dilemma for China's criminal policy regarding juvenile crime. The age of criminal responsibility is essentially a line of benevolence, which is based on neither human science nor biological evidence, but based on legal mercy and forgiveness. Before this legislative adjustment, it should be said that China has not only established a higher starting point for the age of minors, but also made segmented punishment provisions for the age of the criminal responsibility of minors. This is in line with the United Nations minimum Standard Rules for Juvenile Justice (i. e. Beijing Rules) that "in the legal system recognizing the concept of age for juvenile criminal responsibility, the starting point of that age should not be stipulated too low, and the situation of emotion and mental maturity should be considered.

"However, the sudden adjustment in legislation to reduce the age of criminal responsibility to twelve years old is indeed a significant change. Prior to this adjustment, both in 1979 and 1997, the starting point for criminal responsibility was set at the age of fourteen. The recent legislation adjustment represents a breakthrough from the previous provisions of the criminal code. As we all know, the most direct reason for this major legislative adjustment is the 2019 13-year-old boy in Dalian who raped and killed a 10-year-old girl. The boy used cruel methods to kill the young victims, and the outrageous remarks make people think that the forgiveness of the minors who committed such evil is actually indulgent crime. For a while, the call for "lowering the legal age of criminal responsibility" is rampant. Although many legal experts said that they do not advocate lowering the age of criminal responsibility, because the determination of the age of criminal responsibility is not a window for the public to vent extreme cases, the definition of the age of 14 has been tested by history and is in line with the laws of China's national conditions. In the end, under the pressure of all parties, the educational concept of juvenile criminal law has to give in to the traditional imprisonment punishment of short-term and superficial effective defense of the society, thus falling into the trap of retribution. This also means that the "education-based" criminal policy is in trouble, because the rise of retribution in juvenile delinquency represents a severe punishment for criminal minors, which is contrary to the "education-based" stance on minors.

Now, China's criminal policy regarding juvenile crime will not undergo significant changes. 'Education' continues to be the primary approach towards addressing juvenile crime. However, the reduction in the criminal responsibility age highlights the concept of retribution, which will inevitably prioritize the 'education' criminal policy, while also potentially introducing retributive elements in handling juvenile crime cases. For example, in the procedural law, China has established a number of criminal litigation mechanisms of kinship, inspiring, and lenient. In addition, it has also established an individualized sentencing mechanism and a whole-process education mechanism for the particularity of minors. These systems are based on the basic concept of "education as the priority", but with the increased priority of "punishment", does the vicious cases implemented by some minors mean that these systems do not need to be applied to such minors? Secondly, from the perspective of the relationship between China's adherence to the criminal policy of "killing less and killing less and killing less" and the legislative adjustment, the continuous reduction of the death penalty in China in recent years is the best embodiment of the criminal policy of "killing less and killing less". However, adhering to the criminal policy of "education as the main, punishment as the supplement" should of course continue to emphasize the education and correction of minors, and the legislative adjustment of lowering the age of legal criminal responsibility obviously expands the scope of punishment, which deviates from the basic concept of criminal policy. Finally, as early as 1966, American sociologist Robert Martinson conducted a study on the effectiveness of correction. Martinson made an important conclusion from the study: "Although there are rare and occasional exceptions, the corrective effects reported so far have no valuable effect on reoffending." But another scholar, Ted Palmer, after reviewing Martinson's study, argued that 48 percent of the studies had demonstrated positive or partially positive results. In response to the confrontation, the National Research Council appointed another panel to review Martinson's study, and the conclusion that the correction scheme was "useless" was affirmed.[6] Thus, questioning the effectiveness of education of correction is not new, although there is a low correction scheme effectiveness of research conclusion, however, the juvenile criminal law still by "vote with their feet" in the way of choosing the education punishment theory, this not only shows that education punishment theory won the practice, and prove that education punishment theory is more suitable to help crime minors return to society. Even so, the relationship between 'education' and 'punishment' for juvenile offenders is still a topic of debate. Chinese scholars, through empirical investigations, have pointed out significant shortcomings in China's correctional mechanism for delinquent minors. They believe that China's criminal policy for delinquent minors

should shift from 'educational correction' to 'punishment'.^[5] Under the legislative background of the reduction of the age of criminal responsibility, the competition between "education" and "punishment" in China's criminal juvenile criminal policy will continue.

As the saying goes, the law is not enough to act alone. The one-sided emphasis on the criminal policy of "education first, punishment supplemented" is not conducive to the education and correction of criminal minors, which also leads many scholars to question the effectiveness of the criminal policy. Some scholars point out that the failure of correction is only the inadequacy of the punishment of education, and that the denial of the educational punishment theory by the failure of correction is only to provide comfort and escape responsibility for the failure of correction.[7] The reason why the education and correction of criminal minors is not ideal, the problem is not the concept of criminal policy, but should first focus on the practice of the wrong minors in Chinese practice, the practice will of course affect the effectiveness of criminal policy. For example, in China's practice, there has long been a problem of "letting go" and "grasping" the wrong minors, which leads to the failure of the wrong minors to obtain accurate help and education, and naturally produces the phenomenon of unsatisfactory educational correction effect.

Unfortunately, in addition to the reduction of the legal age of criminal responsibility, the legislation has not made improvements in other aspects, leading to the stubborn disease has not been improved after "scraping the bone". First, before the Amendment to the Criminal Law (XI), the Criminal Law of China lacked effective measures to deal with minors under the age of 14. However, after the Criminal Law amendment (XI) experienced the murder of a 14-year-old boy in Dalian, the legislators only adopted a simple and crude method of reducing the age of criminal responsibility, but still failed to improve the disposal measures for minors who did not reach the age of criminal responsibility. Moreover, this simple and crude treatment method has little effect, because since the legislative adjustment, there are still occasional reports on the malignant criminal cases of young minors, so it is difficult to say that the number of malignant criminal cases of the implementation of young minors is effectively reduced after the adjustment of the legislation. Second, China still lacks perfect measures to deal with crimes under other circumstances as stipulated in paragraph 5 of Article 17 of the Criminal Law, or against minors under the age of 12. So it is foreseeable that public opinion will continue to call for another reduction of the legal age of criminal responsibility or demand the death penalty for criminal minors. Third, before the amendment of the Criminal Law amendment (XI), paragraph 3 of Article 17 of the Criminal Law stipulates that criminal punishment not under the age of 16 may be taken up by the government when necessary. However, this regulation is too general. Even the Law on the Prevention of Juvenile Crime revised in 2012 does not specify what is "necessary", nor does it clarify how the government conducts detention for such minors, which makes it very difficult to operate in judicial practice.

Thus, today, China's handling of juvenile crime is still in the "adult criminal law" as the basis, the day for minors carefully designed juvenile criminal law in contrast, more worse, Criminal Law amendment (XI) will also have originally higher starting point of criminal responsibility age, which leads to China's criminal entity law increasingly present unable to carry the juvenile crime "education is given priority to with" wishes. In view of this, in order to truly realize the criminal policy concept of "education first" for juvenile crimes, it is more necessary to implement it into practice, otherwise China's treatment of juvenile crimes will go astray and gradually go far away from the criminal policy of "education first".

4. Break the bureau: truly implement the "education-based" criminal policy

Truly implementing the criminal policy of 'prioritizing education' requires first clarifying the relationship between 'education' and 'punishment'. Additionally, it is necessary to improve the legal

system, ensuring its effectiveness, and exploring measures such as personality screening and accurate classification to enhance the educational system for juvenile offenders. By implementing a comprehensive approach that prioritizes education and views punishment as a complementary aspect, the concept of criminal policy can truly embody the underlying role of education. First of all, "education first" does not mean no punishment, and do not confuse the meaning of "punishment" for wrong minors and "punishment" for adults. Although both are "punishment", but the specific meaning has the very big difference, for example, the starting point of "punishment", the same tattoo, smoking behavior, for adults is not need to be law, but for minors, the law must have such behavior take corresponding measures, therefore, the legal intervention for minors is not limited to the crime. Most importantly, the form of "punishment" is also different. Many people believe that sending a wrong minor to a special school is not a punishment, and the punishment must be put in prison. This is also the view that China's criminal policy on criminal minors places too much emphasis on protection. In fact, specialized schools also have the nature of depriving personal freedom, which are different from prisons as places for education and reform of criminals, only for different subjects and thus different names. Like ibuprofen, which was recently sold out, it is a common antipyretic for adults, and Merrill Lynch is also a common antipyretic, only for children, but both work the same. Therefore, in the past, to adhere to the "education is given priority to, punishment is" the criminal policy, not completely abandoned the punishment, but use a more moderate, more targeted penalties, but cut the legal criminal responsibility age pursuit is to minors more violent, give priority to retribution punishment, such to the pursuit of the existing criminal policy concept.

Secondly, punishment is not equal to lowering the threshold of punishment, but to discipline the criminal minors as far as possible. Mr. Yan Jingyao has long questioned whether the punishment can play an "influence", "bullying" and "unity", so the imprisonment of many minors who are only temporarily neglected, and whether it can really play the expected role? As is known to all, jail or prison terrible atmosphere will cause great impact on the psychology of minors, many crimes involving minors in the detention center do psychological evaluation results and leave the detention center after psychological evaluation results have obvious difference, most of the crime of minors in the detention center of psychological evaluation results show that it has a certain degree of anxiety and depression, imprisonment for crime of minors psychological brought significant influence. Moreover, putting minors in prison will not only lose them the chance to receive a better education, but also greatly increase their chances of acquiring more vice. This is like someone said: "Hold a high alert prison for years, tell him when to go to bed, get up and what to do every minute every day, and then throw it into the street. And expect him to be a model citizen, that is incredible!" As a result, it is hard to expect an incarcerated minor to integrate as smoothly as the rest of his peers.

Unfortunately, the inadequacy of the system is the key problem that troubles the judicial organs to discipline the crime of minors, so to truly implement the criminal policy of "education oriented" for juvenile crimes, we must first solve the inadequacy of the system.

First, to solve the institutional defects of "letting it go". In fact, the public calls for a lower age of criminal responsibility. Most people believe that minors below the criminal responsibility age should not undergo legal processing. As some scholars suggest, imposing a simplistic and "broad" punishment may lead to the indulgence or tolerance of crimes. The resulting consequences could be detrimental to social stability and human rights protection, which is unacceptable.^[8] Therefore, the key to solve the institutional defects of "one release" is to establish a perfect juvenile justice system, so that many difficult problems can be solved easily. Apart from special education, other protective disciplinary measures can also be implemented. For example, in the German juvenile court law, articles 10, 14, and 15 outline various types of instructions, warning measures, and disciplinary requirements. These measures can be used to impose different levels of punishment on minors based on the severity of their behavior. In China's minors protection system, judicial protection is usually at

the last end, minors in the front because of inadequate protection problems, will gradually accumulate, spread and deterioration, only when the seriousness of the problem to a certain degree, minors are in the form of crime into the procuratorial organs^[7]. However, if we can intervene in advance, it will be able to avoid their development into criminal minors. For example, for minors who are smoking, drinking, staying at night and addicted to the Internet, in addition to the relevant social subjects should stop them in time and urge their parents or other guardians to perform their duties of guardianship according to law, necessary punishments may also be given to the minors. In this way, we can avoid the dilemma of releasing minors who have not reached the age of criminal responsibility. Moreover, we can teach instead of punishment through these different levels of protection punishments, so that they can realize their mistakes and help juvenile offenders become legal citizens in the future.

Second, to solve the practical dilemma of "grasping it once". Adhering to the criminal policy of "education first" determines that minors should not be "caught". Because China has been lacking effective supervision and corresponding social support system for the discipline minors, which makes the judicial organs face huge judicial risks, and therefore have to "prefer left over right". However, China has actually explored a lot of valuable juvenile justice systems. For example, the 2018 Procuratorial Reform Plan 2022 proposes: "Explore the establishment of a system of critical prevention, family education, hierarchical treatment and protection of wrong minors. For instance, the Huzhou Nanxun District People's Procuratorate conducts personality screening in juvenile criminal cases involving minors. This screening, combined with conditional non-prosecution, not only fully utilizes the function of conditional non-prosecution but also provides an objective basis for determining the eligibility of minors for conditional non-prosecution in criminal cases. This reduces the risk associated with conditional non-prosecution and, with the assistance of accurate identification of educational needs based on personality assessment, helps reintegrate minors involved in criminal activities smoothly back into society. Therefore, in the case of the juvenile justice system taking shape, how to make the system better play a role in the judicial practice, and how to make the system connected, so as to form a perfect juvenile justice system will become an important problem that the theoretical and practical circles need to face.

5. Conclusion

On September 1, 2023, the fifth session of the Standing Committee of the 14th National People's Congress deliberated the Punishment Law for Public Security Administration (Revised Draft) for the first time. Some amendments of the draft attracted wide attention of public opinion, but the revision of the draft on paragraph 2 of Article 22 also attracted special attention. The revised draft has added a new paragraph after the original Article 22, saying, "A person who violates the administration of public security as stipulated in items 1 and 3 of the preceding paragraph and violates the administration of public security for more than twice within a year may be subject to administrative detention punishment." Some scholars pointed out: "Punishment is not only punishment, but also education. The necessary punishment for the illegal acts of minors who have reached the age of 14 and under the age of 16 is an important institutional arrangement to make them correct their mistakes and avoid sliding from the law into the abyss of crime."^[9] It can be seen that the impact of the Criminal Law Amendment (XI) lowering the age of criminal responsibility is spreading to other legal systems, and the Public Security Administration Punishment Law as a "small criminal law" is the first to be affected. Therefore, it is more necessary for China to continue to adhere to the principle of "education first", and on the basis of grasping the key problems of education correction, so as to curb the tendency of "punishment". At the present stage, we need to change the connection between the Criminal Law, the Law on the Protection of Minors, and the Law on the Prevention of Juvenile Crime, so as to avoid the situation that there is no "law" to serve the wrong minors, and truly extend the law.

On this basis, the judicial practice also needs to improve all kinds of judicial systems for the wrong minors, so as to avoid the system floating on paper, lack of operability, so as to be effective. In the future, China should also explore to establish independent juvenile justice system, like children's hospital, for sick children with special doctors and children medicine, to adapt to the particularity of the children's body, and independent juvenile justice system is the particularity of the crime of the judicial system, to improve the crime of minors education correction pertinence and effectiveness.

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