

Between Protection and Punishment: The Adjustment and Balance of China's Criminal Policy on Juvenile Delinquency

Lirong Guo, Yulin Dong

Law School of Beijing Normal University, Beijing 100875, China

Abstract: Since the Amendment XI to the Criminal Law was passed, debates on China's juvenile delinquency governance have kept going on, with the juvenile homicide case in Handan being a prime example. China's current criminal policies face a value conflict between “the best interests of the child” and “social defense necessity”, evident in contradictions in normative logic, social perception, and institutional functions, which stem from the modern transformation dilemma of the governance paradigm. Penalties, as a means of discipline and an educational tool that strengthen norm-effectiveness via the “crime-liability” link, are essential for deterring and preventing serious juvenile crimes. But they should be an auxiliary and last-resort measure, aligned with the criminal policy of temper justice with mercy. For the approval-prosecution provisions for low-age minors, it is supposed to adhere to the “age-behavior-circumstances” three-stage review framework, clarify the criteria for “execrable circumstances”, enhance the “quasi-litigation” structure of the approval-prosecution procedure, and ensure power restraint and rights protection. Also, it is necessary to better coordinate education-correction and penalty-deterrence to promote the shift from “juvenile evil” to “juvenile redemption”.

Keywords: Juvenile delinquency; Criminal policy; Penalty; Approval prosecution; Correctional education

1 Introduction

The Amendment XI to China's Criminal Law, passed in December 2020, introduced provisions for the prosecution of minors below the statutory age of criminal responsibility under exceptional circumstances¹. This amendment redefined the framework of the age-based criminal responsibility system, partially addressing public concerns and temporarily resolving academic debates over lowering the age of criminal responsibility. Some people said that this reflects a “reconfiguration of the relationship between safeguarding juvenile offenders and upholding social justice, seeking a renewed societal equilibrium, with legal systems for minors evolving to align with social development trends”.^[1]

However, a recent extremely execrable case of juvenile crime has reignited controversies. On March 10, 2024, a shocking incident occurred in Handan City, Hebei Province: three middle school students under

the age of 14 brutally murdered a classmate for trivial disputes and buried the body. On December 30, 2024, the Handan Intermediate People's Court issued its first-instance verdict: the defendant Zhang was sentenced to life imprisonment for intentional homicide and deprived of political rights for life; the defendant Li received a 12-year prison term for the same charge; the defendant Ma, due to his age, was exempted from criminal punishment and subjected to specialized correctional education.^[2] This ruling thrust China's juvenile criminal policy into intense public scrutiny. Public discontent shifted from earlier criticisms of “age-based impunity” to debates over “lenient penalties for low-age offenders” and “juvenile exemption from the capital punishment”.^[3] This case reveals deeper dilemmas in addressing juvenile delinquency: how to balance the principle of “the best interests of the child” with the “necessity of societal defense”? The current policy exhibits contradictions

¹ This is the third paragraph of Article 17 of the Criminal Law of the People's Republic of China, which stipulates that “where a person who has attained the age of 12 but under the age of 14 commits a crime of intentional homicide or intentional infliction of bodily harm, which has resulted in the death of another person or the serious disability of another person for the serious injury inflicted by especially cruel means, and the circumstances are execrable, the person shall assume criminal liability with the Supreme People's Procuratorate's review and approval of prosecution”.

in normative logic, fragmented social perceptions, and institutional dysfunction. While the approval-prosecution clause in the Criminal Law restricts juvenile punishment as an “exception within exceptions”, its open-ended interpretation of “execrable circumstances” risks judicial discretion overreach. Public demands for harsh penalties based on retributive justice clash with academic emphasis on rehabilitation and punitive justice. The graded intervention system set in the Law on Prevention of Juvenile Delinquency is disjointedly integrated with criminal prosecution mechanisms, and the failure of educational measures in extreme cases exposes institutional inadequacies. Fundamentally, these conflicts stem from the modern transformation dilemma of juvenile crime governance paradigm, namely, value conflicts between criminal paternalism and child welfare principles, functional games between penalty deterrence and educational correction, and procedural dilemmas between formal equality and substantive justice.

Amid the trend of juvenile delinquency at younger ages,^[4] juvenile delinquency issues have become a focal point in both criminal jurisprudence and public discourse. The case in Handan is not isolated; rather, its significance lies in posing sharp questions to China’s juvenile criminal policy: How should the law respond when minors commit extreme violence that breaches the boundaries of “child privilege”? Should it adhere to a welfare-oriented “education-first” approach or pivot toward a “necessary punishment” stance? The answers concern not only case-specific justice but also the rational reconstruction of juvenile crime governance. This paper seeks to transcend the superficial dichotomy of “protection versus punishment”, exploring pathways to improve China’s juvenile criminal policy through normative interpretation, procedural regulation, and value balancing.

2 Dialectical Examination of China’s Criminal Policy on Juvenile Delinquency: Punishment is also “Education”

Juvenile criminal policy inherently involves balancing

the principle of special protection for minors with societal defense needs. China’s policy has long emphasized “education as the mainstay, punishment as a supplement”. It is the consistent stand of China’s juvenile criminal policy to treat juvenile delinquency leniently. In recent years, advocacy for lenient sentencing and non-penal measures has grown, particularly for juveniles, with “non-penalization” gaining traction. However, the overemphasis on education and protection and the excessive praise of “non-penalization” reflects a cognitive bias of juvenile crime governance paradigm—equating “education-first” with “penalty negation”, thereby undermining the systemic function of criminal policy. If “education” is not narrowly confined to gentle persuasion or stern warnings, punishment itself can serve as a form of education, even a necessary one in certain contexts. Penalty, as the ultimate form of legal accountability, has irreplaceable value in juvenile crime governance, rooted in both the principle of accountability and the protection of legal interests.

2.1 The necessity of penalties

Criminal policy choices must adhere to the proportionality principle of “means-ends”. From a macro perspective, criminal policy measures fall into two categories: social interventions and penal sanctions. While social interventions address the root causes of the crimes through soft interventions, their non-coercive nature makes it difficult to deal with the significant infringement of legal interests that has occurred, and the long periodicity of its effectiveness conflicts with the urgency of social security needs. Penal sanctions fill this gap through rigid deterrence, achieving a “balance of hardness and softness” by affirming normative authority through accountability and reinforcing normative recognition through painful experience. Thus, penalty acts as the last line of defense in crime governance and an indispensable part of the criminal preventive systems.

For juvenile delinquency, the existence of penalties is necessary. From the perspective of social justice, the exercise of individual rights and freedoms must

not infringe upon the interests of others or public, which constitutes the fundamental rule and baseline for societal existence and continuity. Everyone must bear responsibility for their unlawful acts, and minors are no exception—they are first and foremost “individuals” before being “minors”. Depending on the severity and nature of the unlawful act, responsibility manifests in multiple levels and forms, with penalties serving as the accountability mechanism for the most severe violations. When minors with criminal responsibility capacity intentionally or negligently commit crimes that seriously harm others’ rights or societal interests, it is imperative for them to legally assume criminal responsibility and endure penalties. On the other hand, as the most severe punitive measure, penalties are also essential for crime prevention. Through penal sanctions, juvenile offenders gain a clearer understanding of the illegal nature of their actions, compelling them to take responsibility for what they did. In this sense, penalties function as a form of compulsory education. The severity of penalties endows criminal law with unparalleled deterrence, which can not only guide and regulate societal behavior and curb criminal impulses, but also drive the juveniles from “normative cognition” to “normative internalization” by virtue of the painful experience brought to criminals by the application of penalty, thus reducing criminal behavior at its source. Judicial cases of “multiple ineffective corrections transferred to criminal proceedings”² [5] exemplifies the practical necessity of penalties.

Throughout history, penalties have always held a place in addressing juvenile delinquency. However, in recent years, there has been a growing emphasis on non-penalization for juvenile crimes. For example, some argue that non-penal treatment for juvenile offenders inherently

embodies social justice, claiming that juvenile justice systems should tolerate irrationality and prioritize minors’ rights over societal interests.^[6] This view, however, we cannot endorse. While leniency for juvenile offenders is indeed a principle to uphold, leniency must not equate to indulgence. The aforementioned opinion simplistically attributes juvenile criminal behavior to societal factors, framing accused minors as “victims” while neglecting actual victims, which is difficult to call justice. In recent years, with the frequent exposure of juvenile execrable crime, penalties not only provide solace to victims and their families but also align with public outrage, helping to restore disrupted legal order. The Resolutions of the Congresses of the International Association of Penal Law, adopted in September 2004, explicitly emphasized the need to “Special attention should be given to safeguarding the interests of victims”. Non-penalization of grave crimes like homicide or sexual assault risks inflicting “secondary harm” on victims and their families. If victim compensation mechanism fails due to excessive leniency or non-penalization, it deviates from the original intent of the “best interests of the child” principle. In addition, unrelenting pursuit of leniency makes it difficult for some juvenile offenders to feel the negative evaluation of their behavior by the state and society, and thus unable to establish correct outlook on life and values, which is not conducive to the establishment and cultivation of juvenile civic consciousness and responsibility consciousness.^[7] In reality, many juvenile offenders lack civic and responsible consciousness: some are oblivious to their legal obligations they have to bear for their actions; others harbor illusions of getting away with accountability; a few even consciously and systematically exploit their age to escape punishment. For example, a 13-year-old boy

² For example, four minors in Jingxi, Guangxi Province, committed more than a dozen cases of theft in a row. Since they were under the age of 16, they were exempted from criminal liability. However, they repeatedly refused to repent despite repeated admonition, and were finally arrested and brought to justice.

³ The Resolutions of the Congresses of the International Association of Penal Law adopted by the 17th International Congress of Penal Law in September 2004 clearly states: “...the protection of young persons, their harmonious development and socialization should be of particular importance, while at the same time ensuring the protection of society and taking account of the interest of victims of offences”.

in Dalian attempted to sexually assault a 10-year-old girl and murdered her after being rejected. Later, he fabricated evidence to clear suspicion and boasted to classmates that his age would exempt him from punishment.^[8] Such cases reflect a distorted understanding of legal norms. Only through penalties can the authority of criminal law be reaffirmed. Moreover, without imposing penalties to teach profound lessons and evoke remorse, but with blind tolerance, how can we expect serious juvenile offenders to reform into law-abiding, responsible adults? Penalties affirm the intrinsic link between “act and responsibility”, dispelling the fallacy of “juvenile immunity”, while indiscriminate leniency, akin to unprincipled indulgence, only leads minors further down the path of crime.

Whether the penalty is necessary in juvenile criminal policy is essentially a question concerning the value orientations of “the best interests of the child” and “societal defense”. While non-penalization advocates ground their arguments in special protections for minors, their theoretical foundation is flawed—reducing “protection” to “exemption from responsibility” overlooks criminal law’s role as the last resort for safeguarding legal interests. It should be clear that the modern juvenile justice does not demand an either-or choice between protection and punishment but seeks dynamic equilibrium through normative rationality. Italian criminologist Enrico Ferri’s Social Defense Theory, rooted in societal responsibility, emphasizes balancing offender rehabilitation with public safety. With the evolution of human rights concepts, the “New Social Defense Theory” (advocated by Marc Ancel) has emerged, prioritizing crime prevention, educational correction, healthy personality development, and non-penal alternatives to achieve the goal of reintegrating delinquent youth.^[9] Though differing in mechanisms, both theories account for societal interests.^[10] The notion of social defense in this paper aligns with the “New Social Defense Theory” perspective. The U.S. juvenile diversion system exemplifies this logic: minor offenders are diverted from judicial processes, while severe cases are transferred

to adult courts, ensuring accountability while maintaining public safety.^[11] Data showed a significant decline in youth crime since the 1990s when stricter sanctions were applied to juvenile offenders, validating this approach.^[12] Germany’s juvenile justice system similarly balances education and correction—specialized juvenile courts and educational measures coexist with security dispositions or juvenile penalties for serious crimes, ensuring societal order.^[13] Internationally, the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985) state that juvenile justice should “contribute to the protection of the young and the maintenance of a peaceful order in society”, and “the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence”. While it is a challenge to balance these values, failure to do so will disrupt equilibrium of legal order and undermines justice, thus reducing the dual protection principle to unilateralism.^[14] Overemphasizing one aspect at the expense of the other is fundamentally misguided.

2.2 The preventive efficacy and role of penalties in juvenile delinquency

The preventive value of penalties lies primarily in offenders’ subjective assessment of penal risks before committing crimes. However, juveniles’ cognitive biases toward penalties may undermine their deterrent effect. Empirical studies confirm that juvenile offenders, like other criminal groups, perceive the deterrence of penalties similarly, demonstrating that penalties also hold preventive value for youth crime.^[15]

2.2.1 General prevention of penalties in juvenile delinquency

Criminal law, as a social behavioral norm, regulates conduct by prohibiting specific acts. On one hand, criminal law prescribes penalties for offenses, and individuals can recognize prohibited behaviors and their legal consequences through the “crime-penalty” regulations, thereby deterring criminal acts. As the most

severe consequence of lawbreaking, penalties always entail the deprivation or restriction of certain rights that are often the critical parts of civil rights. Hence, those who intend to commit criminal acts may consider the price they may have to pay for that act, that is, the penalty. This consideration of cost or the so-called “cost-benefit balance” in criminal economics constitutes a psychological pressure or contradiction for the offenders, affecting their choices of behavior. On the other hand, penalties reflect societal condemnation of certain acts, establishing and reinforcing social moral norms. German criminal law scholar Günther Jakobs’ “Positive General Prevention Theory” emphasizes that penalties cultivate citizens’ legal loyalty by affirming normative validity.^[16] Specifically, the “crime-penalty” regulation in criminal law is not merely pure behavioral norm, which simply define what is not allowed (prohibited) to do, but more importantly, it embodies a value consensus, clarifies the negative evaluation and condemnation attitude of the society towards the criminal behavior, reminds people the harm of the offences or further strengthens this understanding, and guides people to internalize this external prohibition into a behavior norm that is recognized and obeyed by individuals in their hearts, thus guiding individuals to consciously refrain from harmful acts. This has a more positive significance for establishing and maintaining the concept of good and evil, right and wrong and justice, and for preventing the occurrence of crime. In some cases, the deterrent effect of punishment “is less about restraining human behavior with fear and more about opening people’s eyes to the social dangers of their actions, awakening their conscience, and making them more sensitive”.^[17](P.92) Additionally, penalties mitigate victim and their family’s desire for retaliation, prevent secondary crimes caused by self-help remedies, and especially in extreme cases, penalties undertake the core function of restoring societal trust and ensuring equilibrium of legal order and avoiding vicious cycles of “an eye for an eye”.

The general preventive role of penalties for juveniles is undeniable, which guides and regulates juvenile behavior, curbing impulsive crimes. Juvenile delinquency is often attributed to “legal ignorance” or “recklessness”, where offenders disregard the nature or consequences of their acts. The National Research Report on Six Key Adolescent Groups in China 2014 revealed that weak legal awareness is a key factor in juvenile crime: 65% of surveyed juvenile offenders cited “ignorance of the law” as their motive; 58.1% were unaware that their acts constituted crimes or they would be punished; 64.7% did not realize they were violating the law; and 60.5% stated they would have refrained from crime had they understood the “heavy cost” of penalties.^[18] A questionnaire survey of incarcerated juvenile offenders in Beijing, Hubei Province, and Guizhou Province (2008-2009), in which the author participated, further illustrated the same:

The Interviewed Juvenile Offenders’ Awareness of Legal Consequences Prior to Committing Crimes	Percentage
“I knew it was a crime but I did not consider the consequences”	28.3%
“I knew it was a crime but I believed consequences were irrelevant”	6.8%
“I knew it was a crime but I assumed my age would exempt punishment”	6.8%
“I anticipated severe consequences but I lacked self-control”	7.6%
“I anticipated severe consequences but I believed I would evade capture”	8.0%
“I underestimated the severity of potential consequences”	22.1%
“I thought the act as harmless with no adverse outcomes”	16.6%

This survey reveals that while most of the interviewed juvenile offenders knew the nature of their acts before committing crimes (though not necessarily the specific charges, they broadly knew their actions were illegal), their awareness of the penal consequences was obviously inadequate: Some failed to foresee penalty consequences, with the perceived “consequences” limited to direct harm rather than penal sanctions; some thought they would be lucky enough to escape the penalty punishment; and some underestimated the severity of legal outcomes despite recognizing potential risks. This cognitive gap in

understanding penal consequences significantly influences the juveniles' decisions to commit crimes. If the juvenile offenders have a full understanding of the crime consequences (including harmful consequences and legal consequences), their behavior choices may be different. Therefore, enhancing legal education to improve their comprehension of both harm and legal repercussions can amplify the general preventive effect of the penalties.

2.2.2 Special prevention of penalties in juvenile delinquency

Special prevention refers to preventing the convicted offenders committing crimes again, by imposing penalties to make them personally experience the adverse legal consequences of the offences. This process instills a belief in the inevitability of “crime-penalty” linkages, particularly deterring recidivism among those driven by a “gambler’s mindset”.

For juvenile offenders, on one hand, the application and execution of penalties deprives or restricts certain rights of the juvenile delinquents, and physically isolates them from the opportunities and conditions to reoffend. On the other hand, the process of penalty application and execution is a process of education and reform for juvenile offenders. The criminal trial process itself—with conviction and sentencing as its main content—acts as a profound education. Evidence presentation and court education force them to re-recognize and re-evaluate the harm and illegality of their offences. This process has a more prominent educational significance, especially for those previously ignorant of the law. During penalty execution, labor exercise, strict control and supervision, in-depth legal education, and self-reflection—all these urge juvenile offenders to reshape their values and attitudes, and improve their psychological frameworks, and eradicate criminal inclinations.

Special prevention, achieved through the offenders' firsthand experience of penal suffering, exhibits more observable and comparable effects than general prevention. Thus, it receives more attention and is more emphasized. Empirical data confirm its efficacy, especially

the immediate deterrent effect: 28.9% of juvenile offenders strongly fear being punished again, and 39.2% somewhat fear it—a rate 5 percentage points higher than that of adult offenders.^[19]

3 The Position and Orientation of Penalties in China's Juvenile Criminal Policy

The juvenile homicide case in Handan sparked intense public demands for retributive justice, influencing legislative and judicial processes. However, the formulation and implementation of criminal policies should not be entirely driven by the public sentiment. Excessive deference to public opinion risks emotional legislation, while excessive deviation from public opinion may result in “arrogance and prejudice” towards it.^[20] Admittedly, public attitudes may expose the flaws in juvenile criminal policy. Even so, the position and basic stance of penalties still need to be clear.

3.1 The position of penalties in the juvenile criminal policy system

Penalties, while necessary, are neither the most important nor central component of China's juvenile criminal policy system.

First, in the juvenile criminal policy system, penalties are auxiliary means. “Education as the mainstay, punishment as a supplement” is China's longstanding criminal policy towards juvenile delinquency. This policy was first proposed in 1954 by the Supreme People's Court and the Ministry of Justice in a policy document. Since then, this policy has been reiterated and emphasized in several government documents and codified in two important legislations on the minors. Article 38 of the Law on the Protection of Minors, promulgated in 1991, clearly stipulates: “In respect of delinquent minors, the policy of education, persuasion and redemption shall be implemented and the principle of taking education as the main method and punishment as the supplement shall be upheld.” Article 44 of the Law on the Prevention of Juvenile Delinquency in 1999 stipulates: “When imposing the criminal liabilities on the minors who commit crimes,

the policy of education, persuasion and redemption shall be implemented and the principle of taking education as the main method and punishment as the subsidiary shall be followed.” Criminal policy at this stage emphasized the redemption of delinquent minors through education and persuasion, reducing their likelihood of recidivism. China has always attached importance to the special protection of minors in criminal justice. According to the Criminal Law of China in 1979, the death penalty is not applicable to individuals who were under the age of 18 at the time of the crime. In 2011, The Amendment VIII to the Criminal Law further clarified the principle of lenient treatment for juvenile crimes, and stipulated that the juvenile offenders, who commit minor offenses, show remorse, and have no risk of reoffending, should be sentenced to probation. In 2012, the Criminal Procedure Law added a special chapter on Procedures for Juvenile Criminal Cases, formally give expression to the principle of “education as the mainstay, punishment as a supplement” in the procedural law. Although the Law on the Prevention of Juvenile Delinquency revised in 2020 does not directly show the expression of “education as the mainstay, punishment as a supplement”, from the overall legal spirit and specific provisions, it aims to strengthen the comprehensive protection of minors and still implements this principle. For example, Article 45 stipulates that “Where a juvenile commits behavior as prescribed in the Criminal Law and is not subject to criminal penalties as he is under the statutory age for criminal liability, the administrative department of education, in conjunction with the public security organ, may, after the steering committee for special education conducts assessment and grants approval, decide to provide special correctional education for the juvenile”. This article adds a new correctional education system for the correction of serious misconduct by minors, emphasizing the education and correction of minors with serious misconduct through special schools and special education, rather than relying solely on penal means.

Some scholars argue that China’s juvenile policy reversed the primary and secondary positions of correctional education and punishment, and should be changed from “excessive emphasis on education and correction” to “emphasis on punishment”.^[21] This view is untenable. Because the establishment of the “education as the mainstay, punishment as a supplement” principle is mainly based on the physiological and psychological characteristics of juvenile offenders and their criminal causes. Minors are not yet mature physiologically and psychologically. Due to their young age, minors have immature cognition, weak capacities to distinguish the right from the wrong, and insufficient self - control. Moreover, they are curious, rebellious, and easily influenced by negative external temptations, which may lead to the formation of bad behavior habits. And the lack or omission of correct education and guidance makes them behave deviously and even commit crimes. A multitude of facts indicate that the primary cause of juvenile delinquency is educational issues. The absence of family education functions and flaws in school education are factors that affect the juvenile delinquency. As someone summed it up: “Expelled by family, rejected from school, lured by criminals, and walked into the prison”.^{[22](P.562)} Compared with adult crimes, objective factors have more significant influence on juvenile delinquency, and family, school and society are all responsible for it. Since the problem lies mainly in education, it must be addressed through the reflection, remedy, and improvement of education, which is the root solution. Overreliance on penalties fails to address root causes, and the effects are limited. Minors are still in the growth phase, their thoughts have not yet been solidified, and they are highly malleable, making them susceptible to being persuaded and reshaped. Compared with cold-blooded penalties, educational persuasion is more likely to touch the hearts of juvenile offenders, shock them, enabling them to have genuine introspection and repentance for their criminal behaviors. They can then feel warmth,

cheer up from depression and despair, and actively reshape their lives. Thus, the policy of “education as the mainstay, punishment as a supplement” aligns with the characteristics and realities of minors and is scientifically grounded.

Secondly, penalties are positioned as the last-resort measures in juvenile criminal policy. On one hand, it is based on the characteristics of minors and the complexity of their crime causes, on the other hand, it is also determined by the nature of penalties. As a “double-edged sword”, penalties can achieve social justice and crime prevention but also carry significant adverse effects. Especially for minors who are physiologically and psychologically immature, these negative effects of penalties are more magnified than for adults. Due to minors’ physiologically and psychologically immature development, they have limited capacity to adapt to penal sanctions, heightened sensitivity to punitive suffering. Moreover, because of minor’s young age, their socialization has not been completed, and the application of penalties interrupts or changes the normal growth and socialization process of minors. Although Article 113 of the Law on the Protection of Minors stipulates that “after minor delinquents are punished in accordance with the law, they shall not be discriminated against in education, employment, or any other respect”, the “labeling effect” of penalties cannot be erased thoroughly, it may undermine juveniles’ prospects in life, family, and employment. Therefore, the application of penalties to minors should be avoided as far as possible when alternative preventive measures are available or sufficient to achieve a preventive effect.

From the global legislative and judicial practice, it is a consensus to restrict penalties to the last-resort measures

of juvenile delinquency. For example, according to the Juvenile Justice and Delinquency Prevention Act of the United States, juvenile offenders are usually tried by juvenile courts, with an emphasis on rehabilitation and education; serious offenders can be transferred to adult courts and adult penalties can be applied.^[11] In Germany, Section 5 of the Youth Court Act stipulates that for a juvenile who commits a criminal offence, supervisory measures may be ordered; where supervisory measures do not suffice, disciplinary measures or youth penalty may be imposed; disciplinary measures or youth penalty shall be dispensed with if placement in a psychiatric hospital or institution for withdrawal treatment renders punishment by the judge dispensable. The imposition of penalties on juvenile offenders by the juvenile judge is only an exception. That is, the juvenile judge can impose penalties on juvenile offenders only when juvenile protection measures are not sufficient to correct them due to the seriousness of the criminal act or the juvenile offender's criminal tendency.^[23] In accordance with the Juvenile Act of Japan, family courts hold the first jurisdiction over juvenile delinquency cases. That means, prosecutors are obliged to refer all cases to family courts after completing investigations and are not allowed to directly file charges with criminal courts. Even if prosecutors consider that protective measures and penalties are unnecessary, they are not at liberty to refrain from sending the case to the family court based on their own judgment. This system is referred to as the doctrine of “transferring the entire case”.⁴ Its objective is to endow the principle of “protection first” with procedural significance. When the family court determines that criminal punishment is more appropriate, it remands the case back to the prosecutor (“reverse”), and then the prosecutor initiates prosecution at the criminal

⁴ This is significantly different from the criminal procedure for adults. In Japan, regarding criminal cases involving adults, prosecutors have the right to waive prosecution (termed “prosecutorial hesitation” in Japanese), that is, even when there is sufficient evidence of a crime, if prosecutors, from the perspectives of general prevention and special prevention, consider that there is no need to pursue criminal liability, they can exercise their discretion and not initiate a public prosecution. However, in the juvenile procedure, prosecutors are deprived of this discretion and are required to refer all cases to the family court.

court. Nevertheless, cases of juveniles under 14 years old shall not be remanded to the prosecutor. In practice, the number of cases remanded by family courts to prosecutors is quite small, amounting to only a few hundred cases per year (The handling of traffic cases is another matter).^[24] The Juvenile Offenders Ordinance of Hong Kong, China also provides that no young person shall be sentenced to imprisonment if he can be suitably treated in any other way. Most countries and regions regard penalties as an exceptional measure imposed on juveniles, and clearly stipulate the conditions for penalties intervention in legislation—penalties can be applied only when juveniles commit serious crimes, and the scope of the application of penalties is restricted to a relatively narrow range. From juvenile justice practice, most juvenile delinquency cases are handled through protective measures, and the proportion of juvenile punishment is very small.^{[25](P.228-229)} In addition, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice emphasizes the last-resort measures of penalties and require States to respect this principle in the administration of juvenile justice.

3.2 The orientation of penalty for juvenile offenders: more severe, or more lenient?

As to penal punishment for juvenile delinquency, two primary stances dominate penal policy debates: “severe punishment doctrine” and “leniency doctrine”. The former emphasizes traditional punitive measures, treating penalties as a universal tool to combat all crimes—including juvenile offenses—by maximizing deterrence and retribution. The latter advocates lenient sentencing and non-penal measures for juvenile offenders.^[26]

Firstly, the tendency towards severe punishment is contrary to the criminal policy of juvenile delinquency. China has always adhered to and implemented the principle of “education as the mainstay, punishment as a supplement” in dealing with juvenile delinquency, emphasizing that juvenile delinquency should be treated differently from adult delinquency in terms

of criminal policies, with education, persuasion, and redemption prior. This is due to the particularity of minors (immature physiological and psychological development, weak cognitive and self-control capacities, and high rehabilitative potential, etc.) and the complexity of juvenile crime causes. Many empirical studies underscore that juvenile delinquency arises from multifaceted causes, with educational failures being paramount. In other words, adults who bear the responsibility for education cannot evade their responsibility for the occurrence of juvenile delinquency. If the responsibility for the crime is entirely attributed to the individual minor, it is unfair to impose severe punishment on him/her, which is tantamount to adults shirking their responsibility. As mentioned above, within the juvenile crime prevention system, penalties should be in an auxiliary and last-resort position, which reflects the passive and restrictive stance of punishment, while severe punishment is just the opposite, demonstrating a proactive and expansive stance. Apart from the applicable object of penalty (adults or minors), when it comes to the concept of penalty, the proactive intervention, and the expansion of penalties’ tentacles in social life are contrary to the spirit of modesty in modern criminal law. Moreover, in today’s world, the tendency towards lenient penalties is increasingly widely affirmed and has become the trend of criminal reform in various countries. Implementing severe punishment for juvenile crimes is not only anachronistic but also runs counter to the historical trend of criminal development. Furthermore, punishment itself has certain limitations and is not a panacea for crime. Historical and realistic experiences and lessons have repeatedly shown that relying on severe punishment to prevent and control crime cannot achieve the expected results and often has the opposite effect. Also, the negative impact of punishment on juvenile offenders is more prominent. Whether considering the individual development of juvenile offenders or the overall social benefits, the disadvantages of severe punishment far outweigh any perceived advantages.

Secondly, simple adopting lenient sentencing and non-penal measures is also not conducive to the correctional education for juvenile offenders. Indiscriminate application of lenient sentencing and non-penal measures will undermine social justice. China's criminal law mandates lighter or mitigated penalties for minors, but leniency must not equate to indulgence. Juvenile crimes vary widely in terms of motive, method, and severity. And the subjective understanding of criminal behavior and the degree of viciousness also differ. Some offenses, characterized by extreme cruelty, mean motive, or catastrophic harm, rival or exceed adult crimes in gravity. Applying lenient sentencing and non-penal measures to such offenders obviously violates the principle of proportionality between crime and punishment. Therefore, the application of penalties for juvenile delinquency requires specific analysis and differential treatment for specific situations. Additionally, as mentioned above, blindly implementing lenient sentencing and non-penal measures is not conducive to the establishment and cultivation of minors' civic consciousness and sense of responsibility, which is more harmful than beneficial to the future life development of minors.

Thirdly, in terms of empirical evidence, neither severe punitive measures nor humanized lenient sentencing or non-penal measures have effectively curbed the escalating severity of juvenile delinquency.^[24] Consequently, regarding the juvenile crime policy, it is necessary to emphasize case-specific analysis and differentiated treatment. Since the 21st century, particularly in the past decade, China's criminal policy has increasingly emphasized tempering justice with mercy, requiring tailored responses based on the specifics of each crime, including juveniles. In the new era, China's criminal policy of juvenile delinquency adheres to the principle of "education as the mainstay, punishment as a supplement", and is integrated with the criminal policy of "combining leniency with severity" to implement hierarchical prevention and correctional education measures for

juvenile delinquency. For example, the Amendment XI to Criminal Law has lowered the criminal responsibility age for certain serious offenses while restricting prosecutable charges for minors, ensuring stringent handling of egregious cases without over-penalization. For juvenile delinquency, relying solely on either strict punishment or leniency is insufficient. Instead, it is necessary to combine non-penal measures or lenient sentencing for minor offenses with proportionate penalties for severe crimes, and in this way, the function of penalties can be better fulfilled and preventive efficacy can be optimized. Specifically, on one hand, for minor offenses committed by juveniles, it is essential to adhere to the basic stance of "lenient treatment" in the application of penalties. Under the principle of education, persuasion and redemption, lenient penalties and non-penalization measures should be applied as possible, and more non-custodial sentences, non-prosecutions or exemptions from punishment should be implemented. On the other hand, for severe crimes of juveniles, penalty measures should be appropriately applied, ensuring that the punishment fits the crime while giving full play to the preventive function of penalties.

Some scholars advocate "enhanced penalties for serious juvenile crimes".^[24] This viewpoint is worth discussing. Leniency for juvenile offenders is a globally recognized principle. Under this premise, it is unreasonable to impose more severe punishment for juvenile crimes, even for serious ones. In fact, for serious crimes committed by minors, consideration should be given to reducing the leniency. That is to say, the juvenile committing serious offences should still be punished more leniently than the adult committing the same offences. However, the juvenile committing serious offences should be punished more severe than the juvenile committing minor offences. In short, penalties for juvenile crimes should be applied differently from those for adult crimes. And for different circumstances of juvenile crimes, penalties should be applied differently as well, combining leniency with severity, and considering the two-way

protection of social interests and juvenile interests.

4 How to Understand and Apply the Approval-prosecution Clause for Low-Age Juveniles

The approval-prosecution clause for minors under the age of 14 in Criminal Law Amendment XI has sparked extensive public debate. Following the juvenile homicide case in Handan, controversies over the application of this clause have intensified, involving not only legal interpretation but also the foundational issues of China's juvenile criminal policy, with critical implications for future reforms.

4.1 Jurisprudential logic and functional positioning of the approval-prosecution clause

In the traditional criminal law theory, the age of criminal responsibility system takes “age presumes responsibility ability” as its logical starting point, which is the typical embodiment of culpability principle. However, the inclusion of the approval-prosecution clause disrupts the “age-exclusive” mode^[3], and essentially establishes a dual criterion of “age + substantive harm”. This system reflects the dynamic balance of two value orientations: paternalism in criminal law emphasizes the necessary intervention of the state based on the purpose of protecting the interests of minors; juvenile welfarism focuses on safeguarding the welfare and rights of the minors, with education and correction as the main orientations. The clause is not a negation of the culpability principle, but a dual restriction of “execrable circumstances” and “the Supreme People's Procuratorate's review and approval of prosecution”, forming an “exception among exceptions” clause, which strictly limits penalties to extreme cases with substantial punishability. Such a design averts the risk of overgeneralization and is distinct from simplistic approaches of lowering the criminal responsibility age,

embodying a stance of “leniency without indulgence” for juvenile crime.

The approval-prosecution clause for low-age minors marks the modern transformation of juvenile crime governance paradigm in China. Within the welfare-punishment dichotomy framework, China adopts a balanced approach of “education as the mainstay, punishment as a supplement”. On one hand, it follows the principle of being “treated in a manner consistent with the promotion of the child's sense of dignity and worth” required by Article 40 of the Convention on the Rights of the Child. On the other hand, it forms institutional convergence through the graded intervention system stipulated in Article 45 of the Law on the Prevention of Juvenile Delinquency. The case in Handan being approved prosecution was justified not only by the crime's severe harm but also by the perpetrators' persistent dangerousness, rendering educational measures ineffective. This substantive review is analogous to the “maturity assessment” under Section 3 of the German Youth Court Act⁵, addressing loop holes in penalties from formalistic age thresholds.

From the perspective of criminal policy, the clause reflects three governance logics of juvenile crime. First, it embodies a procedural checks-and-balances mechanism. Through the pre-procedure of “the Supreme People's Procuratorate's approval”, the activation of penalty-imposing is limited to extreme circumstances where the necessity of social defense significantly outweighs the priority of protection. This special mode of “administrative review + procedural control” differs from both the judicial-discretion path of “malice-supplementing age rule” in the common law system and the expert-driven culpability assessments in the civil law system. Second, it represents a structural response strategy. Facing the

⁵ This Section 3 of the German Youth Court Act states: “A juvenile shall bear criminal liability if, at the time of the act, he or she has reached a level of moral and intellectual maturity sufficient to enable him or her to understand the wrongfulness of the act and to conduct himself or herself in accordance with such understanding. For the purposes of bettering a juvenile who bears no criminal liability due to a lack of maturity the judge may order the same measures as the judge responsible for family and guardianship matters.” This content is sourced from the official website of the German Federal Ministry of Justice's legal database, https://www.gesetze-im-internet.de/englisch_jgg/englisch_jgg.html#p0021.

public's demands for safety in juvenile criminal cases and the pressure of calls to "lower the age of criminal responsibility", China's legislature chose a "minimally invasive" reform approach—retaining the age threshold while creating "exceptions within exceptions" clause to eliminate the possible paradox of punishment resulting from normative rigidity within the overall framework of the "education as the mainstay, punishment as a supplement" criminal policy. Third, it shows a restorative justice orientation. For minors aged 12–14 who forfeit "protection privileges" through extreme violence, penalties are necessary to intervene to deter the risk of recidivism and restore social order. However, it must be clear that societal defense must not override the "best interests of the child" principle. Therefore, the legislature establishes a filtering mechanism through the approval-prosecution procedure, preventing excessive penal encroachment on juvenile justice.

4.2 Three-tiered substantive review: dynamic adjustment between normative interpretation and value balancing

The substantive elements system of juvenile approval-prosecution represents a dialectical synthesis of substantive criminal law interpretation and the principle of special protection for the minors. Through a progressive review framework of "age-behavior-circumstances", this system ensures cautious application of penalties while providing a normative pathway for assessing legal-interest infringement and culpability. However, the open-textured nature of these requirements has led to interpretative ambiguities in theory and practice, necessitating doctrinal clarification to align with the legislative intent.

4.2.1 Evidentiary principles for age requirements: from formal presumption to substantive proof

The approval-prosecution clause is applied to the juveniles aged 12 to 14. So the first step is to check the age of the perpetrator. Age determination should follow "dual evidentiary rules". First, legal documents such as household registration certificates and birth

certificates have priority probative effect, but when conflicting with evidence such as bone age assessments and witness testimonies, the criminal presumption principle of "in dubio pro reo" (ambiguity benefits the accused) should be followed. According to the Supreme People's Procuratorate's Reply on Whether "Bone Age Assessment" Can Be Used as Evidence to Determine the Age of Criminal Responsibility, "if the appraisal conclusion cannot accurately determine the age of the criminal suspect when he committed the criminal act, and the appraisal conclusion shows that the criminal suspect's age is near the statutory threshold, it shall be handled carefully in accordance with the law". Given ± 1.5 -year margin of error in bone age testing, it serves only as corroborative evidence, never as standalone grounds to negate statutory age. Second, when the contradiction in evidence cannot exclude reasonable doubt, a comprehensive judgment shall be made by combining the evidence of life scene, such as school enrollment records, vaccination histories, etc. For marginalized groups like homeless children, social investigations supplement age verification to ensure substantive fairness.

4.2.2 Normative Interpretation of Behavioral Requirements: From Textual Disputes to Systemic Coherence

The behavioral requirements of "intentional homicide or intentional infliction of bodily harm, which has resulted in the death of another person or the serious disability of another person for the serious injury inflicted by especially cruel means" need to be normatively integrated through a "charge-behavior-outcome" tripartite interpretation.

The first is the doctrinal clarification of charge interpretation. There are two views on how to understand "intentional homicide or intentional infliction of bodily harm", the "Charge-Based Theory" and the "Conduct-Based Theory". The former advocates a restrictive interpretation of the law from the perspective of protecting the rights and interests of the minors, limiting prosecution to cases meeting specific crime requirements.

^[27] The latter viewpoint holds that the nature of the

behavior itself should be the basis, rather than being limited to specific charges. Scholars who hold this view make up the majority in the academic community.^[28, 29] In addition, some scholars have put forward “Conduct + Dual Charges Theory” on the basis of the above two viewpoints, arguing that “the determination of criminal behavior should be based on the intentional killing and injurious act committed by the perpetrator, meanwhile the application of specific charges and statutory penalties should be limited to the crimes of intentional homicide and intentional injury”.^[30] On one hand, it is required to break through the shackles of the formal charges and take whether the act substantially conforms to the constitutive requirements of intentional homicide and intentional injury as the standard. For example, 13-year-old A intentionally killed B during the kidnapping process, and A will be charged with the crime of intentional homicide (according to the Criminal Law, a 13-year-old person is not an eligible subject for the crime of kidnapping). On the other hand, starting from the principle of legality, penalties are confined to the statutory ranges under Criminal Law Articles 232 (intentional homicide) and Articles 234 (intentional injury), preventing improper expansion of the penalty power caused by judging on the act. For the mentioned example, based solely on behavior, A may be convicted and sentenced for kidnapping, which will expand the scope of criminal charges that low-age minors are held criminally responsible for. Compared with the former two views, this approach tries to find a balance between juvenile protection and harm deterrence, respecting legislative intent while curbing judicial arbitrariness.

The second is the criterion for “especially cruel means”. In judicial practice, the assessment is usually carried out from four dimensions: presumption from criminal consequences, evaluation of the tools used, the victim’s suffering and general societal evaluation.^[29] This criterion requires a comprehensive case-specific analysis aligned with societal norms, especially in cases

of juvenile delinquency. On one hand, it is necessary to comprehensively examine the specific process of juvenile offenders committing violations, including the choice of tools, premeditation, the cruelty of the methods of infringement, and the duration of the violation. On the other hand, the degree of suffering endured by the victim cannot be ignored, including physical and psychological trauma, and whether irreversible damage consequences are caused, such as permanent organ dysfunction. For example, in the case in Handan, the perpetrator used farming tools to repeatedly strike the victim’s vital areas, employing tools that unnecessarily prolonged the victim’s suffering. Coupled with a subjective intent rooted in abnormal psychological motives such as “sadistic pleasure” and “vengeful motives”, surpassing ordinary injurious intent, the act unequivocally met the “particularly cruel means” threshold.

The third is the systematic interpretation of the result requirements. Regarding the correspondence between result requirements and charges, scholars and practitioners debate whether it should be “selective correspondence” or “singular correspondence”. Both views hold a positive position on the culpability of “intentional homicide + resulting in death” and “intentional injury + resulting in serious disability or injury inflicted by especially cruel means”, and the core dispute lies in whether to include “intentional injury + resulting in death” and “intentional homicide + resulting in serious disability or injury inflicted by especially cruel means”. For “intentional injury + resulting in death”, although it falls within the category of intentional injury along with “intentional injury + resulting in serious disability or injury inflicted by especially cruel means”, the former directly leads to the extinction of life interests, making its harm more severe than severe disability. Thus, it must entail equivalent culpability. As an attempted form of intentional homicide, “intentional homicide + resulting in serious disability or injury inflicted by especially cruel means” represents a situation where the actual result of death has

not been achieved, but the perpetrator's intent to destroy other people's life has been fully demonstrated, combined with extreme cruelty and irreversible harm of the criminal means, rendering its societal danger comparable to that of completed homicide. From the assessment of legal interest perspective, the probable endangerment to life and the real serious harm to body jointly exceed the gravity of completed intentional injury. Notably, the Amendment XI (Second Review Draft) to Criminal Law initially restricted prosecution to the singular result requirement of "death results". This provision overemphasizes the consequences of causing death, which is not only logically inconsistent but also contradicts public perceptions of justice.^[31] The final version of the amendment indicates that the norm does not adhere to a "result-oriented" stance, and the attempted intentional homicide should be included. Therefore, the correspondence between the result requirements and the scope of crime charges should adopt the "selective correspondence theory", and all four behavior-result combinations should be incorporated into the behavior category of the approval-prosecution for low-age juveniles.

4.2.3 Substantive determination of execrable circumstances: from objective attribution to subjective-objective integration

This is the core controversy in determining whether a juvenile's conduct meets the threshold of criminal liability. Scholars and practitioners generally agree on a holistic assessment integrating subjective and objective factors, and the author takes a positive stance towards this approach. However, considering the particularity of juvenile psychological development, there should naturally be differences between juvenile and adult in the criteria for determining "execrable circumstances" of criminal behavior. This section focuses on these differences and attempts to construct a three-tiered review model of "behavioral aberration-psychological maturity-

correction potential".

In behavior patterns, juvenile criminal behavior should display an "aberration" characterized by imitating adult criminal behavior. Its essence lies in revealing the "adult-like" tendency of juvenile criminal psychology through behavior characteristics that deviate from age-typical cognitive and behavioral norms. By this the prosecutor or the judge can deduce that the juvenile "possess" culpability.^{6 [36]} This aberration is defined not by mere violence or harmfulness but by a marked deviation between the behavior pattern and the minor's developmental stage, manifested in the following aspects: (1) Abnormality of Behavior Complexity. Juvenile crime usually has impulsive and sporadic characteristics, but if the behavior demonstrates adult-like premeditation, technical means or anti-detection consciousness, it indicates maturity beyond the cognitive level of peers, such as a 13-year-old teenager scouting locations, planning escape routes and preparing dress tools for intentional injury. (2) Distortion of Criminal Motives. For example, the motives of juvenile crime present the common profit-driven nature of adult crime, such as seeking material gain, taking revenge on society, or the emergence of value distortions like pursuing criminal pleasure and embracing violence as a solution to problems.

In judicial practice, it is necessary to strictly follow the dual proof standard of "behavioral aberration + psychological maturity", and form the linkage analysis framework of "behavior-psychology", being vigilant of the tendency of "objective attribution bias" when identifying "abnormality". The identification of behavior can be carried out from the following three aspects. First, the meticulousness of crime preparation, such as preparing professional tools in advance, and testing the feasibility of the scheme through repeated rehearsals. Second, the technical nature of criminal means, such as employing technological methods (e.g. using hacker

⁶ Professor Li Meijin pointed out in her study of criminal responsibility that premeditation, secretive implementation, concealment, escape, and other self-serving behaviors are all evidences of responsible behavior. The "adult-like" behavior bears similarities to the self-serving behaviors.

techniques to intrude or utilizing the dark web for communication), coercing accomplices to commit crimes, and fabricating alibi evidence. Third, the consistency of behavior continuation, that is, the long-term and repeated commission of similar crimes, or post-crime cover-up actions, such as intimidating witnesses and destroying the evidence chain. Regarding the assessment of psychological maturity, Article 51 of the Law on the Prevention of Juvenile Delinquency stipulates that it should be conducted from two perspectives: social investigation and psychological evaluation. Psychological Evaluation should be conducted by professional accredited institutions to gauge cognitive and emotional development, and social Investigation should examine deviations from normative socialization, such as prolonged parental neglect or recurrent serious misconduct. As for the case in Handan, the reasons for identifying the perpetrator's behavior as "abnormal" are as follows: firstly, the behavior has obvious premeditation, including preparing shovels in advance and selecting a secluded crime scene; secondly, the psychological state shows composure beyond his age, including normal school attendance and deceptive online discussions in class groups; thirdly, the motive appears to be alienated, except bullying and taking money, there is an adult-like psychological motive of "asserting dominance through violence".

Obviously, given the auxiliary and last-resort nature of penalties, the identification of "execrable circumstances" should take "the ineffectiveness of educational measures" as a prerequisite, so it is necessary to conduct dynamic verification of correction potential. This verification is based on evidence of behavioral aberration and psychological maturity, such as the

minors who have received specialized correctional education but have committed serious violence again; intact family guardianship is still unable to curb their dangerous tendencies; psychological evaluation shows that their antisocial personality traits have formed a stable structure. The correction potential should be evaluated by a steering committee for special education under the Law on the Prevention of Juvenile Delinquency, comprising experts in the fields of education, law, psychology, and correction education who are familiar with minors.^[34] To sum up, the three-tiered "behavioral aberration-psychological maturity-correction potential" model thus avoids both objective attribution bias and overprotectionism, providing a pragmatic paradigm for judicial practice. In addition, some scholars have pointed out that the positioning of "execrable circumstances" in the criminal theory system should be an objective punitive condition, and its legislative purpose is to exclude those minors with low possibility of recidivism; only when the positive elements are met and the negative elements are not met, the behavior of low-age minors can be recognized as "execrable circumstances".^{7 [37]} This view is not contradictory to the viewpoint of this article in the core, both aligns with the emphasis on minors' particularity, but it erroneously divorces *actus reus* from culpability, overemphasizing protection at the expense of accountability. In fact, "execrable circumstances" should be positioned as a comprehensive evaluation element with both unlawfulness and culpability. Prosecution requires proof that the act both exceeds normative juvenile behavior and demonstrates criminal responsibility capacity.^{8 [32]} As for the determination of "execrable circumstances", it cannot be simply considered

⁷ The scholars point out that the specific content of "execrable circumstances" includes two parts: positive and negative elements. The former refers to the elements that reflect a higher likelihood of recidivism among young minors, while the latter refers to the elements that reflect a lower likelihood of recidivism among young minors, including forgivable situational criminal motives, criminal cessation based on remorse, and other circumstances that can reflect a lower likelihood of recidivism among young minors.

⁸ Some scholars point out that if people within this age group clearly know what kind of behavior they have carried out, and they realize that the behavior they have carried out is not just a prank, but also wrong and morally reprehensible, then the actor has the corresponding cognitive and control abilities, thus meeting the requirement of "execrable circumstances".

that meeting the negative elements will prevent the determination of “execrable circumstances”. The minor should not be negated culpability merely for his act of repentance; rather, it would be more reasonable to mitigate penalties proportionally in accordance with the degree of repentance. Crucially, the approval-prosecution clause targets malicious crimes by low-age juveniles. For this kind of crimes, excessive leniency risks undermining rehabilitation and even facing backlash. For “the evil of youth”, heavy punishment should also be applied for the heavy crimes.^[38]

4.3 Dual logic of procedural regulation: power restraint and rights protection

Through the procedural design of “exceptionality” and “legal formalism”, the approval-prosecution procedure for low-age juveniles institutionalizes penalties as a last resort, being activated only when correctional education utterly fails. In essence, it is an institutional balance between prudent control of the expansion of penal authority and special protection of juveniles. This procedure realizes two-way transmission of substantive law value through procedural mechanisms—not only to safeguard the minors from state overreach, but also to reconcile societal defense needs with special protection principles. Its logic of regulation presents the dual orientation of power restraint and rights protection, reflecting the transformation of procedural rationality in juvenile justice field.

4.3.1 The power-balancing function of approval-prosecution procedures: paradigm shift from administrative control to quasi-judicial review

The Supreme People’s Procuratorate’s approval-prosecution process transcends a mere administrative

review and evolves into a “quasi-litigation” procedural framework that integrates judicial adjudication.^{9 [33]}

This procedural transformation serves three rule-of-law functions: first, a tiered review mechanism realizes vertical restriction, leveraging the Supreme People’s Procuratorate’s expertise to insulate local judiciary from populist interference; second, horizontal checks by introducing procedural participation elements prevent the approval power from devolving into opaque administrative decision-making; third, the formation of social supervision through reasoning disclosure ensures the transparency of power operation.

Specifically speaking, firstly, there must be rigid constraints on evidentiary standards. The approval procedure requires the criminal proof standard of “the facts are clear and the evidences are indeed sufficient” (Article 200, Criminal Procedure Law of China), which not only limits the approval prosecution strictly to extremely serious cases at the substantive level, eliminates the possibility of “dubious charges”, but also establishes judicial proof rules different from ordinary administrative review at the procedural level. In practice, it is necessary to pay special attention to the strict scrutiny of “age evidence”. In addition to household registrations, it is also necessary to combine the bone-age assessments and the witness testimonies to form an unbroken evidence chain to prevent systemic distortion caused by age-identification deviation.¹⁰ Secondly, substantive hearing procedures should be established. Hearings involving psychology and education experts operationalize the “best interests of the child” principle. There are three core rules to be followed in the hearing procedure: one is the independence guarantee of expert opinions to avoid experts becoming

⁹ As the program resembles litigation procedures but is not essentially a litigation procedure, the author refers to it as a “quasi-litigation” procedure. It should be noted that the confirmation of the prosecutorial power of the Supreme People’s Procuratorate is merely procedural, not substantive. Compliance with this provision merely means that judicial authorities have obtained the power to pursue criminal responsibility for minors under the age of criminal responsibility. However, whether the act constitutes a crime and what criminal responsibility should be borne still need to be ultimately determined by the people’s courts through the trial process, after fully considering the specific identity of the minors and ensuring their litigation rights.

¹⁰ The approach when the relationship between pieces of evidence and contradictions cannot eliminate reasonable doubt is detailed above.

the “rubber stamps” of prosecution organs; the second is the mandatory adoption obligation of hearing conclusions, and the professional evaluation of the minors’ cognitive capacity and correction potential should be regarded as the prerequisites for approval; the third is the adversarial structure of the hearing process, allowing the defense party to cross-examine expert opinions and apply for re-appraisal. Thirdly, the standardization of judgment reasoning shall be improved. The approval decision should contain in details the evaluation conclusions of the culpability, penal necessity, and correction potential. This requirement is essentially an extension of the adjudication rules in the approval procedure. The fulfillment of reasoning obligation should meet corresponding standards, proving that “ineffectiveness of educational measures” needs to be dynamically evaluated in combination with objective indicators such as the juvenile’s prior correctional records and family guardianship; demonstrating “penal necessity” should be examined by applying the principle of proportionality to justify penalties as irreplaceable compared with protective measures; evaluating “correction potential”^{11 [39]} needs to rely on “evidence-based correctional model” to avoid subjective judgments.

4.3.2 Special rights protection for the accused: from formal equality to substantive justice

The rights protection mechanism in the approval-prosecution procedure must transcend the “formal equality” framework of ordinary criminal litigation and establish special protective rules tailored to the

minors’ physical and psychological characteristics. This particularity does not deviate from the principle of procedural equality but achieves substantive fairness through “differentiated procedural justice”.

Specifically speaking, the first is the two-dimensional reinforcement of defense rights. Defense lawyers should be required to be familiar with juvenile justice to counter the “token defense” dilemma caused by the minors’ limited litigation capacity. Defense rights are substantiated through two aspects: in the negative defense dimension, it should focus on examining the legality of the investigation organ’s evidence collection procedure, especially the application of the “beyond a reasonable doubt” standard to verify the voluntariness of juvenile confessions; in the positive construction dimension, actionable correction alternatives should be proposed, such as diversion measures under Article 41 of the Law on the Prevention of Juvenile Delinquency. Defense lawyers must participate in psychological evaluations and hearings, translating “correction potential” into contestable legal claims.

The second is comprehensive privacy protection. From sealing investigative records to post-trial criminal record expungement, it is necessary to construct a full-cycle privacy protection system of the minors. In practice, the key safeguards include: one is the de-identification of indirect disclosures, anonymizing data linked to the minors’ family members, educational backgrounds, and other identifiers; the other is dual-review mechanism for media disclosure, mandating media self-regulation and empowering the courts to issue takedown orders

¹¹ Evidence-based correction, centered on evidence-based practice techniques, refers to a series of correctional activities that are carried out efficiently within the field of correction. These activities are based on the principle of best evidence, combined with the individual correctional experience of practitioners, and with the cooperation of the correctional subjects, targeting the criminogenic characteristics of these subjects. Evidence-based correction still follows the basic concepts and models of evidence-based medicine: treating inmates as “patients” for treatment, conducting risk assessments on inmates through evidence-based methods and implementing correctional plans (usually psychological interventions), and then reassessing and cycling through corrections until the standards are met. According to the basic model of evidence-based practice, correctional work must follow the “risk-needs-responsivity principles” consisting of three sub-principles: the risk principle requires that the recidivism risk level of the assessed individual should match the correctional level through longitudinal research; the criminogenic needs principle requires that dynamic risk factors such as the antisocial and criminal tendencies of the assessed individual should be considered in the assessment; the responsivity principle requires that correctional plans should be tailored to the individual based on cognitive patterns, cognitive styles, emotional arousal, and other criminogenic needs.

for improper reporting. This measure forms a normative interface with the “special protection of the right to privacy” requirement established in article 40(2) of the Convention on the Rights of the Child. The third is the rigid implementation of sentencing leniency. Even if prosecution is approved, the rule of “lighter or mitigated penalties” for the minors must still be strictly adhered to in sentencing, excluding life imprisonment except in extreme cases. This provision reflects the juvenile justice adaptation of the principle of culpability—minors’ diminished blameworthiness due to incomplete responsibility capacity necessitates proportional penalty reduction. However, there are two tendencies to be avoided in judicial practice: on one hand, it is necessary to avoid equating approval-prosecution with adult culpability, thereby neglecting mandatory mitigation; on the other hand, it is necessary to prevent mechanically applying “sentencing discounts” without individualized consideration of re-socialization needs. For example, non-custodial sentences such as control and probation are given priority in the selection of punishment types, and “community correction assessments” are incorporated into sentencing reference factor when determining the sentence.

4.3.3 Unifying dual logics: procedural justice as the nexus of value balancing

The dual procedural logic of power restraint and rights protection is finally integrated through “litigation transformation” of the approval system. This reform establishes a three-party procedural framework: the Supreme People’s Procuratorate maintains an objective and neutral position as the approval authority, the investigating organ bears the burden of proof, and the defense party exercises full cross-examination rights. Within this structure, social defense needs are cautiously met via strict evidentiary standards, and the juvenile rights are fully safeguarded through specialized procedural mechanisms. This procedure design not only avoids the excessive judicial discretion inherent in “malice-

supplementing age rule” in the common law system, but also overcomes the technical rigidity of relying solely on judicial expertise in the civil law system, offering a Chinese approach that balances legitimacy and practicality in the prosecution of low-age juveniles.

5 Conclusion

The evolution of China’s juvenile criminal policy is essentially the epitome of societal progress and legal maturity. The approval-prosecution mechanism under the Amendment XI to Criminal Law, with its “age-behavior-circumstances” three-tiered review framework, seeks equilibrium between rigid age thresholds and substantive justice demands. While this innovation responds to severe juvenile crimes and codifies the principle of “leniency without indulgence”, the controversies on the case in Handan reveal that technical refinements alone cannot resolve deeper value conflicts. Future reforms should be promoted in three directions. At the normative level, new judicial interpretations should define “execrable circumstances” and establish a linked assessment model of “behavioral aberration-psychological maturity-correction potential”, preventing objective attribution or subjective speculation. At the procedural level, the “quasi-litigation” structure of approval prosecution should be enhanced, to curb power abuse through hearings, expert participation, and reasoned decisions, while improving the special rights protection system for the juvenile defendants. At the policy level, it is necessary to harmonize the Law on the Prevention of Juvenile Delinquency with the criminal law, establish a graded response mechanism of “education correction → protective measures → penalty deterrence”, and realize the dynamic balance between “protection priority” and “necessary punishment”.

For minors below the criminal responsibility age or exempt from liability, non-penal measures should play a structural role. The Law on the Prevention of Juvenile Delinquency categorizes such acts as “serious

misbehaviors”¹² and regulates it with twelve specific provisions in Chapter IV. Judging from the contents of the articles of the law, articles 41 to 45 show a progressive relationship in terms of the seriousness of the act, the degree of violation of the law and the difficulty of discipline. Therefore, there are corresponding changes in the measures and procedures, from allowing the minors to receive correctional education in families and schools, to guardians and schools applying to be sent to special schools, to education administration and public security organs taking the initiative to decide to take special educational measures, until they are sent to special places in special schools to carry out special correctional education. It also reflects the progressive nature of punishment.^[40] Among them, the measures other than penalties include correctional education measures, special education measures and special correctional education. Under this “special education system”, such minors can be re-socialized through the model of “special schools + social support”. On one hand, a compound correction system of “family custody repair + psychological intervention” shall be constructed to carry out targeted intervention for the minors’ family custody failure, anti-social personality traits and other problems. On the other hand, “vocational education” shall be carried out appropriately to provide substantial help for such minors to return to society. Shanghai’s juvenile justice practices demonstrate that the positive interaction effect between the specialization of juvenile procuratorial work and the socialization of help and education is remarkable. Since 2009, 99.4% of juvenile offenders under non-penal measures have successfully reintegrated without

recidivism.^[41] Such approaches are not indulgence to juvenile delinquency, but replacing punitive logic with restorative justice, and disrupt intergenerational crime cycles through targeted educational investments.

The ultimate challenge of juvenile delinquency governance lies not in choosing between “protection or punishment”, but in transforming penal deterrence into rehabilitative force through institutional design. Only under the framework of procedural justice, supported by scientific culpability assessments, individualized treatments, and societal support system, can the paradigm shift from “juvenile evil” to “juvenile redemption” be realized.

Reference

- [1] Yuqi Yang, “Punishing or Rescuing: The Social Cognitive Dissonance and Negotiation in a Juvenile Crime”, *Contemporary Youth Research*, 2022, Iss.2, pp.73-101.
- [2] Xue Wang, “The First - instance Judgment of the Intentional Homicide Case Involving the Defendants Zhang XX, Li X, and Ma XX”, *Xinhuanet*, <https://www.news.cn/20241230/1ecf15da96a847f9a63f7fb161cf3d39/c.html>, December 30, 2024, accessed January 8, 2025.
- [3] Min Jiang, Xuehan Shi, “The minimum age of criminal responsibility: Dilemmas and solution in addressing juvenile delinquency”, *Journal of Chongqing University (Social Science Edition)*, 2024, Vol. 30, Iss.4, pp.237-251.
- [4] Jun Zhang, “Report on the Work of the People’s Procuratorates in Carrying out the Prosecutorial Work for Minors by the Supreme People’s Procuratorate”, the Online Release Hall of the Supreme People’s Procuratorate, https://www.spp.gov.cn/spp/xwfbh/wsfbh/202210/t20221029_591185.shtml, October 29, 2022, accessed

¹² Article 38 of Law on the Prevention of Juvenile Delinquency stipulates: For the purpose of this Law, “serious misbehaviors” means behaviors prescribed in the Criminal Law and committed by juveniles that are not subject to criminal penalties as they are under the statutory age for criminal liability, as well as the following behaviors that seriously endanger the society: (1) Engaging in gang-fighting, chasing and intercepting others, taking or demanding forcibly or vandalizing or occupying at will public or private property, and committing other acts of picking quarrels and making troubles. (2) Illegally carrying guns, ammunition, or crossbows, daggers, and other state-controlled equipment. (3) Beating, insulting, intimidating, or intentionally injuring another person. (4) Stealing, assembling a crowd to seize, forcibly seizing, or deliberately destroying public and private property. (5) Disseminating obscene reading materials, audio and video recordings or information. (6) Engaging in prostitution, or whoring, or conducting obscene performance. (7) Taking or injecting drugs, or providing drugs for others. (8) Participating in gambling with relatively large amount of gamble funds. (9) Other acts that seriously endanger society.

January 27, 2025.

- [5] Hui Liu, "Relying on the Immunity from Criminal Responsibility for Being Under Sixteen Years Old, Four Criminal Suspects Committed Crimes Repeatedly", CCTV.com, <https://news.cctv.com/2019/08/12/ARTILMV9GdhKrG5E32HkPODE190812.shtml>, August 12, 2019, accessed January 16, 2025.
- [6] Guoxiang Zhang, "The Juvenile Justice System and the Protection of Minors' Rights", *People's Court Daily*, September 8, 2004.
- [7] Lirong Guo, Lingwei Zhang, "The Value of the Criminal Procedure Law in Improving the Juvenile Justice System", *Juvenile Delinquency Prevention Research*, 2012, Iss.5, pp.48-53.
- [8] Muwei Hou, "The Father of the Girl Murdered in Dalian: The Suspect Emphasized in the Class Group That He Was Under 14 Years Old", CCTV.com, <https://baijiahao.baidu.com/s?id=1648342306690316837&wfr=spider&for=pc>, October 25, 2019, accessed January 8, 2025.
- [9] Shuhua Kang, "An Analysis of the New Social Defense Theory", *Contemporary Law Review*, 1991, Iss.4, pp.66-72.
- [10] Xuemei Wang, "Understanding and Application of Children's Best Interests in the Perspective of Conflicts of Rights", *Tribune of Political Science and Law*, 2022, Vol. 40, Iss.6, pp.125-135.
- [11] Peixin Yu, "The Diversion System of American Juvenile Justice and Its Enlightenment to China", *Academic Journal of Zhongzhou*, 2017, Iss.6, pp.53-56.
- [12] Yuhao Yang, "A Brief Comment on the Transfer System of Minors in American Juvenile Justice", *China Youth Study*, 2020, Iss.3, pp.106-112.
- [13] Jianlong Yao, "The Trends of Recent Juvenile Justice Reforms Abroad and the Juvenile Justice Reform in China", *Social Scientist*, 2023, Iss.8, pp.9-23.
- [14] Binggui Zhao, "A Few Ideas Established on Juvenile Delinquents' Judicial Protection", *Journal of Liaoning University (Philosophy and Social Sciences)*, 2005, Vol. 33, Iss.4, pp.147-151.
- [15] Baoyi Zhang, "An Investigation and Analysis of the Value of Penalties in the Prevention of Juvenile Delinquency—A Study with Tianjin as the Background", *Criminal Science*, 2008, Iss.4, pp.95-98.
- [16] Jinlin Chen, "From Equivalent Retribution to Positive General Prevention—A New Interpretation of Hegel's Theory of Punishment and Its Enlightenment", *Tsinghua University Law Journal*, 2014, Vol. 8, Iss.5, pp.142-161.
- [17] [Norway] Johannes Andenaes, *Punishment, and the Prevention of Crime*, translated by Daneng Zhong, Beijing: Law Press, 1983, p. 92.
- [18] Chunyan Lü, Lu Lin, "Survey Shows: Sixty Percent of Minors Did Not Know They Had Violated the Law When Committing Crimes", *People's Daily Online*, <http://edu.people.com.cn/n/2014/1202/c1053-26134226.html>, December 2, 2014, accessed January 16, 2025.
- [19] Xueyun Zhang, "Reasonably Utilize the Deterrence of Penalties to Prevent Juvenile Delinquency", *Issues on Juvenile Crimes and Delinquency*, 2000, Iss.3, pp.44-47.
- [20] Qiangjun Wang, "Amending the Criminal law VS the Public Opinion: Obey and Transcend", *Journal of Political Science and Law*, 2014, Iss.3, pp.104-111.
- [21] Zhiyuan Wang, Shengshi Cui, "The Failure of the Sanction and Correction Mechanism for Delinquent Minors and Its Countermeasures", *Journal of National Prosecutors College*, 2013, Vol. 21, Iss.4, pp.98-110.
- [22] Jian Xu, *New Horizons of Juvenile Law (Volume II)*, Beijing: China People's Public Security University Press, 2005, p.562.
- [23] [Germany] Hans-Heinrich Jescheck, Thomas Weigend, *German Criminal Law Textbook*, translated by Jiusheng Xu, Beijing: China Legal System Press, 2001, p.13.
- [24] Guangxu Jin, "The Basic Characteristics and Recent Trends of the Japanese Juvenile Justice System", <http://www.criminallaw.com.cn/article/default.asp?id=1853>, accessed December 6, 2008.
- [25] Jianlong Yao, "Juvenile Criminal Law and the Reform of Criminal Law", Beijing: China People's Public Security University Press, 2005, pp.228-229.
- [26] Guoxiang Sun, "Protection and Punishment: Choice of the Criminal Policies against Juvenile Crimes", *Journal of Jiangsu Administration Institute*, 2005, Iss.3, pp.103-107.
- [27] Ying Chen, "The Judicial Application of the 'Approval for Prosecution' of Crimes Committed by Young Minors",

-
- Social Sciences Review, 2022, Vol. 37, Iss.3, pp.91-97.
- [28] Wenhua Peng, Liang Fu, "On the Provisions of the Criminal Law Amendment XI Concerning the Age of Criminal Responsibility", *Issues on Juvenile Crimes and Delinquency*, 2021, Iss.1, pp.20-32.
- [29] Yixuan Wang, Yao Zhang, "Legislative Review and Scope Determination on the Approval and Prosecution of Young Juveniles: Discuss on Article 1 of Criminal Law Amendment Act (XI)", *Journal of Shandong Youth University of Political Science*, 2022, Vol. 38, Iss.1, pp.65-72.
- [30] Renwen Liu, "The Judicial Application of the Provisions on the Criminal Responsibility of Young Minors", *Law Science*, 2023, Vol. 500, Iss.7, pp.59-76.
- [31] Denghui Wang, "Justification and Judicial Application of the Downward Adjustment of the Minimum age of Criminal Responsibility under the Amendment to the Criminal Law (XI)", *Journal of Southwest University of Political Science & Law*, 2021, Vol. 23, Iss.4, pp.107-122.
- [32] Haoming Chen, "Comments on Article 17 of the Criminal Law (Age of Criminal Responsibility for the Minors)", *The Jurist*, 2023, Iss.1, pp.176-196.
- [33] Jiyao Tang, "Application of the Criminal Liability Clause for Young Minors", *Journal of Sichuan Normal University (Social Sciences Edition)*, 2022, Vol. 49, Iss.2, pp.50-58.
- [34] Zijian Zhou, Zhenyu Lang, "Research on Some Issues of the Approval of Prosecuting Criminal Liability of Minors", *Issues on Juvenile Crimes and Delinquency*, 2022, Iss.3, pp.122-132.
- [35] Xianquan Liu, Xiong Shi, "Interpretation and Reflection on the Eleventh Amendment of Criminal Law", *Issues on Juvenile Crimes and Delinquency*, 2021, Iss.1, pp.12-19.
- [36] Meijin Li, "Reflections on the Judgment Basis of Criminal Responsibility Capacity from the Dispute over the Age of Criminal Responsibility—Thoughts Triggered by the Vicious Case of a Juvenile in Dalian", *Journal of China Youth College for Political Sciences*, 2020, Vol. 39, Iss.1, pp.10-21.
- [37] Yongsheng Li, Junyu An, "A Jurisprudential Exploration of the 'Abominable Circumstances' of Crimes Committed by Young Minors", *Journal of China Youth College for Political Sciences*, 2022, Vol. 41, Iss.4, pp.133-140.
- [38] Tao Yu, "Child or Criminal: Between Clemency and Punishment—A Review of Juvenile Justice Practice: Making a Difference", *WeChat Official Account of Rule of Law Weekend News*, <https://mp.weixin.qq.com/s/jhTigKERVnYYdcgchn-Gkg>, June 30, 2024, accessed February 11, 2025.
- [39] Zexin Liu, "Reflection and Perfection Against the Situation of Criminal Juveniles Under the Misdemeanors Criminal Policy", *Journal of Henan University (Social Science)*, 2021, Vol. 61, Iss.5, pp.36-40.
- [40] Haiqing Tong, "Extracts from the Procuratorial Q&A Network | How to Distinguish and Apply Special Education and Special Correctional Education", *Official Website of the Supreme People's Procuratorate*, https://www.spp.gov.cn/spp/zdgz/202207/t20220718_564708.shtml, July 18, 2022, accessed February 13, 2025.
- [41] Zhongming Lin, "Shanghai: 99.4% of Delinquent Minors Successfully Returned to Society", *Official Website of the Supreme People's Procuratorate*, https://www.spp.gov.cn/spp/dfjcdt/201911/t20191110_437707.shtml, November 10, 2019, accessed February 14, 2025.