

# ***Reflection on Lowering the Minimum Age of Criminal Responsibility***

**Shuyuan Zhang<sup>1,a,\*</sup>**

*<sup>1</sup>Yuxi People's Court, Shanyang District People's Court, Jiaozuo City, Henan Province, China  
a. 1211490754@qq.com*

*\*corresponding author*

**Abstract:** The amendment to the Criminal Law (Xi) lowered the lower limit of the age of criminal responsibility for minors by introducing theories such as “flexibility theory” and “reduction theory”. However, regarding the issue of “special cruel means” and “bad circumstances”, there is no specific provision and explanation in the new age of juvenile criminal responsibility in China, which leads to the expansion of the discretion of the legislature and the judiciary. In order to reduce the juvenile crime rate and punish and prevent juvenile delinquents, we should revise the juvenile delinquents in law to fill up the deficiency of compulsory education in prison, perfect the system of special education correction and establish the system of compulsory parental education. Adopting “welfare” protection has the function of “education” and “correction” for juvenile delinquents who are below the lower limit of the age of criminal responsibility.

**Keywords:** age of criminal responsibility, capacity for criminal responsibility, juvenile delinquency

## **1. Introduction**

This paper summarizes the reasons for lowering the age of criminal responsibility rule and different theories of lowering the age of criminal responsibility rule. It compares different theories to reflect on lowering the age of criminal responsibility rule. Lowering the starting age of criminal responsibility will not violate the criminal policy of “education first and punishment second” in the prevention and treatment of juvenile crimes. Finally, preventing and controlling juvenile delinquency is a systematic project; while lowering the starting point of criminal responsibility, we should further improve the supporting system. We should improve the non-criminal punishment methods for juvenile delinquents and strengthen the education and correction of juvenile offenders through diversified punishment methods. At the same time, it is necessary to carry out graded prevention of juvenile deviant behaviour that has not yet constituted a crime.”

## **2. Literature Review**

The reasons for reducing the age of criminal responsibility include factors such as the younger age of criminals and campus violence. Lowering the bottom line of the criminal responsibility age is a method at the legal level which can have positive impacts on preventing juvenile crimes in China. However, this method is not omnipotent in lowering minors' criminal responsibility age. By

summarizing the relevant debates, academic circles propose that there are other measures to promote the prevention process of juvenile delinquency in China. [1] There are three main viewpoints concerning the debate about the lower age of criminal responsibility: maintenance theory, reduction theory and elasticity theory. The “maintenance theory” is against lowering the lower limit of the age of criminal responsibility.

In contrast, the “elasticity theory” is formed by drawing lessons from the maliciously supplementary age rule in the standard law system. The elastic theory draws reference from the case determination mechanism of the malicious supplementary age system. It proposes that legislation should pay attention to the difference in criminal responsibility capacity of different minor offenders when modifying the age of criminal responsibility and, to a large extent, avoid adopting a one-size-fits-all measurement method.

### **3. The Dispute about the Minimum Age of Criminal Responsibility System in China-Controversial Views on the Minimum Age of Criminal Responsibility**

In academic circles, there has been an endless dispute on the adjustment of lowering the minimum age of criminal responsibility. There are three different suggestions for adapting the age of the criminal responsibility system. There are three different views in academic circles: “maintenance theory”, “reduction theory”, and “elasticity theory”.

Many scholars agree with the “lowering theory” because the psychological development of contemporary youth is generally relatively mature, and the traditional minimum age of responsibility for a crime can not meet the needs of their development degree and can not keep pace with The Times. [2] Therefore, the minimum age of criminal responsibility in the past can not objectively match the cognitive and control ability of teenagers in these age groups, and the law should be “lowered” to reduce the age limit of criminal responsibility.

The “maintenance theory” is opposed to the “reduction theory”. Those who advocate the “maintenance theory” believe that the minimum age of criminal responsibility in China’s criminal law is in line with the basic situation of China, matches the level and degree of development of China, and is consistent with the development trend of most countries in the world on the age of criminal responsibility, so there is no need to be lowered.

Elasticity theory is created by maliciously supplementing the age rules of the Anglo-American legal system. Some scholars believe that the criminal system of combining leniency with severity provides a theoretical basis for the “elasticity theory”. The maliciously supplementary age system means that a minor under a certain age cannot be held criminally liable unless there is sufficient evidence to prove his guilt, that he could distinguish right from wrong at the time of the crime, and that he is maliciously excluded.

### **4. The Dilemma after Lowering the Minimum Age of Criminal Responsibility for Minors**

#### **4.1. Shake the Modesty of Criminal Law**

Although in our real life, there are cases of vicious crimes under the age of 14 being prosecuted, the probability of such cases is very low. However, universality and comprehensiveness are the necessary characteristics of criminal law regulation. The overall situation is not considered if a few minor crimes are regulated as crimes in criminal law. Before the revision of the minimum age of criminal responsibility, it is necessary to have a large amount of information to determine whether there are sufficient numbers of minors involved in crimes rather than just serious crimes against minors. Do not change the laws or laws for the group because of individual cases.

So, is the lowering of the minimum age of criminal responsibility an impulsive revision of the intense public discussion of juvenile delinquency cases in recent years? The lowering of the

minimum age of criminal responsibility has weakened the state's care for minors to some extent. There has been a long debate in academic circles about lowering or maintaining the age of criminal responsibility or introducing a malicious supplementary age. Due to their shortcomings and uncertainties, there is not yet a unified discussion. However, there is growing concern about crimes committed by young children. The State has responded to social concerns through criminal legislation and has established disputes over the age of criminal responsibility. Although the scope of the application is limited, some say that it is more symbolic than practical. [3]

#### **4.2. The Dire Circumstances, Ambiguous Meaning or Inconsistent Application Standards of Cruel**

Under the composition of this element, there is no absolute method to measure the ability level of the criminal subject, but according to the physical and psychological condition of the young person in a specific case, according to the principle of "one case, one discussion". In China's judicial practice, procuratorial organs have the right to decide whether to approve or not, and whether to approve or not depends on careful consideration of factors such as cognitive ability, psychological factors, behaviour patterns, degree of repentance, and the facts in each case show that the degree of criminal responsibility is also different, from the public security who initially accepted the public prosecution to the procuratorate who finally approved it. Their knowledge and mastery of the law are also very different. Therefore, determining the age of criminal responsibility can not reflect stability to a large extent and will show some uncertainty in the end.

#### **4.3. The Lack of Supporting Measures of Juvenile Criminal Responsibility Age System**

##### **4.3.1. The Lack of Treatment for Juvenile Offenders**

There are imperfections in correcting juvenile delinquents' behaviour and protecting their rights and interests in the relevant system and measures in the juvenile delinquents' reformatory. In China, the minors reformed in juvenile correctional institutions and the adults reformed in prison are the practices of militarized management according to rules of behaviour for prison personnel to serve sentences. Because these minor offenders who need to serve their sentences cannot be given average education, when minors come out of prison, they still lack education. There is still the possibility of breeding crimes. This way not only can not reduce the number of juvenile crime cases but will create soil for the formation of new crimes by these minors, which can not solve any problem of how to prevent and reduce the occurrence of juvenile crime. Therefore, putting juvenile offenders in prison on the premise that education is the primary means of crime prevention and reduction is logically unreasonable. The existing juvenile correctional centres should pay attention to the education of these children in order to reduce the juvenile crime rate.

Community correction system plays an important role in the correction of juvenile offenders. At present, the work of juvenile community correction in China is mainly completed by judicial organs. There is a lack of professionals in specific community correction work, the personnel involved in community correction work lack professional knowledge, and the knowledge of law, psychology and pedagogy is relatively insufficient, so it is difficult to effectively communicate with minors. Not to mention education. At present, there is no correction project specifically for the physical and mental characteristics of minors in China, and the form and content of existing correction projects are relatively simple, mainly in form, only theoretical education, and not combined with practice. In some areas, due to the small number of practitioners in community correction, the ability of uneven, resulting in poor management of juvenile offenders, causing juvenile offenders to linger in bars, nightclubs and other places unsuitable for minors, so they still maintain bad habits, once found,

only to warn minors. This is also the main reason for the rising juvenile crime rate in recent years [4].

#### **4.3.2. The Shortcomings of the Supervision System for Juvenile Offenders Who Are Not Subject to Criminal Punishment**

Minors breaking the law is mainly caused by family environment, but there is no compulsory parental education in the laws of China; the criminal law and laws and regulations concerning minors stipulate that if minors break the law but can not be punished, their parents or guardians are ordered to discipline severely. The education system of special correction has yet to be implemented so far, and the concrete effect of its implementation needs further research. The new special corrective education system can play a specific role in correcting minors under 14 and should be considered at the appropriate time to reduce it to a minimum. Lowering the minimum age of criminal responsibility is still challenging to solve the problem of juvenile delinquency. In addition, adolescents in this period completed correction work in the institution. They returned to their original life status, and there is still a lack of supervision and tracking of them. [5] It is, therefore, not time to individually lower the lower limit of the age of criminal responsibility.

### **5. The Improvement of the Relevant System after the Age of Juvenile Criminal Responsibility Is Lowered**

#### **5.1. Cruel and Precise Meaning of Dire Circumstances Through Legislative Interpretation or Promulgation of Judicial Interpretation**

In order to better guide the judicial staff to solve the problem of juvenile delinquency, it is necessary to explain the recent legal provisions or legal uncertainties about criminal responsibility. The new criminal law provisions lower the age of criminal responsibility for some crimes and broaden the scope of sentencing, while the “bad circumstances” are to protect the interests of minors. Therefore, in determining the “bad circumstances”, one should be careful and should be based on the subjective and objective unified point of view to conduct a comprehensive evaluation; the focus is:

- (1) In the juvenile offenders before, during and after the implementation of the performance;
- (2) We should consider the number, scope and influence of victims and judge whether the crime has harmed a large number of victims or caused terrible social consequences;
- (3) The severity of the crime, the method of killing and wounding.

#### **5.2. Measures to Improve the Age System of Juvenile Criminal Responsibility**

##### **5.2.1. Perfect the Treatment of Minor Offenders in China**

China should always adhere to the concept of “prevention first, punishment as a supplement”, which is determined by the particularity of minors. On the one hand, delinquent minors are in the process from ignorance to maturity; in this process, the minor knowledge accumulation is not much, involvement in the world is not deep, right and wrong is not clear, and plasticity is strong. Therefore, at this stage, it is necessary to guide minors to distinguish right from wrong and form a correct outlook on life, values and world outlook to shape, educate, cultivate and protect minors. On the other hand, the delinquent behaviour of minors is not borne by minors, and the family, school and society are all responsible. Therefore, from the objective point of view, education and reform of minors should follow the “prevention first, punishment as a supplement” thought.

(2) In modern society, many countries have established a set of corrective measures in line with the law of juvenile delinquency, and its system of measures has the characteristics of different severity and gradual progress, that is, the implementation of the graded intervention. Establishing a graded intervention system for juvenile delinquency and improving the corrective measures has become a trend. Specifically, it refers to: based on existing measures, setting up a hierarchical application model by the relevant departments promptly to the degree and nature of juvenile crime targeted intervention. Based on maintaining the age of criminal responsibility for minors, it is necessary to improve the corrective measures for minors to achieve the balance between protection and punishment.

“Welfare” measures should be taken to combat this underage crime. The absence of criminal sanctions or the application of criminal justice procedures does not mean indifference to such crimes committed by minors but rather the adoption of welfare measures in response. Welfare measures protect children’s rights to the greatest extent and conform to the principle of maximizing children’s interests. In other words, these measures for crimes against children are “welfare” for children, not punishment. These measures align with the UN Committee on the Rights of the Child’s recommendation that “if necessary, these children may be subject to special protection measures where it is in their best interests.” “Welfare” protection plays the role of “treatment” and “correction”. “The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which provide care, custody, community service, fines, compensation, restitution and other treatment, function as an alternative to punishment and as treatment and correction for better social outcomes. Developed countries worldwide have established such systems and implemented the spirit of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

### **5.2.2. The Improvement of the Supervision System of Juvenile Delinquents Who Are Not Subject to Criminal Punishment**

(1) Implementing a compulsory parental education system. In China, the first step to correcting delinquent minors is to instruct parents and guardians to discipline them. Foreign experience can be used for reference; for example, the British correctional order provides that the guardian of a guilty juvenile can be sentenced to attend a minor guardianship training course or enforce specific prohibition orders, and if there is a penalty violation, such as a fine. Germany specifically educates parents through relevant schools. Such measures play a very positive guiding role in implementing compulsory parental education in China.

(2) Improve the system of specialized corrective education. First of all, we must strictly distinguish between specialized education and professional corrective education, separate the two, and it is best to establish two independent schools to prevent cross-infection. Judicial organs should manage special corrective schools, mainly for minors with severe violent criminal tendencies. Therefore, it should be based on compulsory management, supplemented by a certain degree of ideological and cultural education, the implementation of closed management, allowing minors to go home once during the holidays, and allowing parents or guardians to visit minors every week; Special correction education is aimed at minors with less subjective malice and minor circumstances, which should be carried out by education departments and special schools, with education rescue as the primary educational concept and strict management.

## **6. Conclusion**

China has a long way to go to rectify the problem of juvenile delinquency and the individual lowering of the age of criminal responsibility in the Criminal Law Amendment. However, in general, the provisions resulting from lowering the age of criminal responsibility lead to substantial

rigidity, and fixing the minimum age of criminal responsibility does not measure the criminal responsibility of minors of different ages, which also violates the intention of punishing and protecting minors. If the malicious supplementary age system can be fully implemented, it will significantly impact our current legal system. Due to each country's different historical and cultural backgrounds, the legal system will inevitably oppose the complete introduction of the maliciously supplementary age system. After the birth of the criminal responsibility legislation in China, the way of lowering the age was modified. The advantage theory of the criminal responsibility age and the path of the rule of "maliciously making up age" was flexibly combined to promote China to solve the problem of juvenile crime in the long-term stability.

Regarding rules, the malevolent age theory of common law countries has nearly a hundred years of history. With different national conditions in China, the introduction of a mature reference blueprint can scientifically and effectively see the side of juvenile delinquency, which positively affects the suppression and social effects and is very important to correct juvenile delinquency.[6]

## References

- [1] Jia Zhanxu: *Revision of Criminal Law on Juvenile Crimes from the Perspective of Preventive Criminal Law*, *Journal of Gansu University of Political Science and Law*, No. 4, 2021, p. 40.
- [2] Li Meijin, "Rethinking the judgment basis of Criminal responsibility ability from the Dispute over the age of Criminal Responsibility -- Reflections triggered by the vicious case of Dalian Teenagers", *China Youth Social Science*, No. 1, 2020, p. 14.
- [3] Deng Xilian, *Legal Thoughts on Juvenile Criminal Responsibility Governance and System Improvement*, *Social Scientist*, April 4, 2021, p. 114.
- [4] Yu Jiarui, *A Study on the Improvement of Community Correction System for Juvenile Offenders*, *Criminal Law Forum*, p. 114.
- [5] Yu Yang and Zhou Lining, "A Comparative Study on Criminal Regulation of Age of Criminal Responsibility," *Police Research*, April 2, 2021, p. 86.
- [6] Ma Songjian and Pan Zhaodong, "Malevolent Age Supplement Rule and its Application in China," *Journal of Nanjing Normal University (Social Sciences Edition)*, July 2020, No. 4, p. 128.