

# A Study on the Prevention of the Crime of Unsupported Minor Children of Prisoners in China: From the Perspective of the Protection of Human Rights of Minors

Xiang Li<sup>1</sup>, Zheng Yang<sup>1</sup>, Chichuan Wang<sup>1</sup>, Tingyun Ma<sup>1</sup> & Xiao Yuan<sup>1</sup>

<sup>1</sup> China University of Political Science and Law, Beijing, China

Correspondence: Xiang Li, No. 27, Fuxue Road, Chengbei Street, Changping District, Beijing, China. E-mail: lx1078633006@163.com

Received: February 5, 2022

Accepted: March 1, 2022

Online Published: March 28, 2022

doi:10.20849/ajsss.v7i3.1038

URL: <https://doi.org/10.20849/ajsss.v7i3.1038>

*Supported by the Fund: The National Innovation and Entrepreneurship Training Project for College Students: A Study on the Legal Issues of the Predicament of Unsupported Minor Children of Prisoners: Sun Village Welfare Home in Shunyi District, Beijing for Example (Project Number: 202110053001).*

## Abstract

Minors are the future of every family, society, country, and even all mankind. Among minors, there is a group of minors who have been left unattended for a long time when they are most in need of guardianship because of their parents serving sentences. Such a group with a difficult living condition and an easily neglected situation has naturally become a high incidence of juvenile delinquency. In order to effectively solve the plight of this group, China's legislative and judicial circles and governments at all levels have tried and explored. This paper explores the relationship between the protection of human rights and crime prevention of this group. At the same time, it reviews the progress in the protection of human rights of this group in recent years and puts forward constructive suggestions.

**Keywords:** juvenile children of prisoners, crime prevention, human rights protection

## 1. An Overview of the Living Conditions of Unsupported Minor Children of Prisoners in China

### 1.1 Improvement Is Needed in the Guarantee of Material Rights

Among all kinds of vulnerable groups, bereaved children are one of the most typical groups. As a special type of bereaved children, the unsupported minor children of prisoners have been dissociated from the edge of society for a long time and receive little attention. This group has a huge number of members, but its legal and social protection received is far lower than its demands. Since both parents are in custody, or only one is in prison, and the other is dead, missing or in other circumstances, these children always find it difficult to obtain effective guardianship and thus lack healthy food, necessary clothing and suitable accommodation. In the same way, it is also difficult for them to get effective treatment after illness.

So why is this happening? The reason could be that the guardianship methods of minor children of prisoners are not mentioned in the laws focusing on the protection of minors, and they are not included in the scope of adoption by child welfare institutions according to the policy. Therefore, this group is also vividly called "legal orphans".

In 2013, the starvation case of two kids occurred in Nanjing, shocking the whole country. In this case, the father was arrested for taking drugs and the mother ignored the obligation to raise their kids deliberately. However, due to the loopholes in the policy, no one has the right to interfere. Without the consent of the parents, orphanages have no right and obligation to adopt the kids no matter how miserable the children are. As for the neighbors and the police, in spite of their willingness to help, they are unable to take care of the lives of the two children for a long time. In this circumstance, the relevant policy did not play its due role, but became an obstacle for the two children to get care from orphanages and the society. There are many similar cases. According to a report in People's Daily, nearly half of prisoners with children said that their children had no living security. Even if the state and society have carried out various kinds of assistance, the children of prisoners who have received social

assistance account for only 5.2% of the total (Song Wei, 2007). What's more, it is even more rare to revoke the qualification of a guardian because the guardian is lazy or unable to perform his guardianship duties. It was not until 2015 that the first case of a guardian appointed by the court appeared in Jiangsu Xuzhou.

With such warnings, the state began to introduce policies to change the status quo. In June 2019, twelve departments, including the Ministry of Civil Affairs, jointly issued "The Opinions on Further Strengthening the Guarantee of De Facto Unsupported Children" (hereinafter referred to as "The Opinions") for the first time at the national level, including "legal orphans". Assistance shall be provided by means of monthly payment of basic living allowances and inclusion in the scope of education and medical subsidies. After the gradual implementation of this policy, the living situation of "legal orphans" has been alleviated, and the basic rights to health have been guaranteed, but there are still great problems in their mental health. Due to the serious lack of family education and normal parental care in the course of their growth, they are extremely prone to mental health problems such as autism and depression. The resulting poor emotional control ability and low self-management ability make it difficult for them to form good values and sound personality in today's Internet era. For example, "legal orphans" are often brought up by their grandparents, and there is a large communication gap between generations. They are also prone to be discriminated in interpersonal communication, and it is difficult to get the experience of being respected. So on and so forth (Zhang Shuqin, 2005). So it can be seen that at present that the unsupported minor children of prisoners are still facing the situation that the right to life can not be fully guaranteed, and they are in urgent need of assistance in terms of mental health.

### *1.2 The Right to Development Is Limited*

The direct manifestation of the limitation of the right to development of the prisoners' children is their educational dilemma. The family is one of the main places for minors to receive education, the damage of family structure and the absence of parents' roles will lead to the absence of family education, and even the bad behavior of parents will become the subconscious identity of their children, which is not conducive to the development of children. The absence of upbringing is not only reflected in family education, there are also many problems in the allocation of resources for the children's development. For example, families who help raise these prisoners' children may only pay attention to their children's food and drink, but turn a blind eye to their children's spiritual and cultural needs, with almost zero investment. This makes them lose important development opportunities and even go astray at the most precious moment of their lives.

At the same time, the right to education of unsupported minor children of prisoners cannot be fully guaranteed in schools. Empirical studies show that 75% of the minor children of prisoners drop out of school after their parents are sent to prison (Xia Yubo and Jiang Zhirong, 2010). Even if they do not drop out of school, these children are more likely to do some deviant behavior because of psychological problems, thus being discriminated against by individual teachers, and it is becoming more and more difficult to integrate into the school environment and learn homework knowledge (Yang Fan, 2018). As Zhang Shuqin, head of Sun Village in Beijing, said: "Our children are all students who jump into classes and perform poorly in academic, so the school will find all kinds of excuses to refuse to admit them, so we try our best to have a good relationship with them. Last year, we donated a batch of moon cakes, and we gave the best to primary and secondary school teachers, that is, to have a good relationship with neighboring schools." In addition, as these minors grow up, the expenses for further studies will become more and more expensive, and the families and institutions that support them may not be able to afford them. According to the investigation of the basic situation of prison inmates in Fujian Province by Yuanhua Ou, Jian Huang and Fajie Huang in 2018, it is found that 66.1% of the minor children of prisoners in Fujian Province are in primary school and 31.5% are in middle school. The total dropout rate of this group is 26.9% (Ou Yuanhua, et al., 2018). When investigating this group in Taiyang Village in Beijing, the author also found that only some students with excellent academic performance can be subsidized to go to university, and there is no fixed source of funding, and there is even a model of "looking for star funding". Therefore, to solve the development dilemma of prisoners' children is not simply to issue subsidies or seek social assistance, which is integrated into all aspects of improvement, and there is a long way to go.

## **2. The Causes of the Crime of Unsupported Minor Children of Prisoners**

In recent years, social support theory has gradually replaced the traditional social control theory in the field of crime prevention theory, having been verified by many empirical studies, it has become a new research tool for analyzing the causes of a group crime and building a crime prevention mechanism. Karen, founder of the theory of social support in criminology, believes: "the individual has the criminal impulse to infringe upon the rights and interests of others, so he needs to be punished and intervened by external social forces; the individual is also beneficial to him and the potential to accept and give support. So we need to guide and give full play to this

function." As for how to guide, he believes: "Social support is the material and spiritual help that communities, social networks and trusted others may actually provide." (Cullen, et al., 1999) At the same time, Karen and Colvin divided social support into positive social support and negative social support. Positive social support refers to popular and legal social support, such as support from family, friends and neighbors. Negative social support refers to the support to deviant behaviors and even illegal behaviors from specific subgroups or subcultures including, such as support among members of criminal gangs. Next, I will explore the causes of the crime of unsupported minor children from the national, social and family levels.

### *2.1 At the National Level: Complementary Human Rights Guarantees Can Not Provide Sufficient Positive Support*

As mentioned above, there is a lack of specialized protection for the minor children of prisoners in our country, and only the Law on the Protection of Minors, the Law on the Prevention of Juvenile Delinquency and other general laws and regulations can provide protection in principle. However, the assistance for minors in our country is far from reaching the stage of universal benefit, and it is still in the stage of replenishment. The group of unsupported minor children of prisoners is difficult to be guided by the special positive guidance of the state. Only when they go astray and make mistakes can they be controlled by means of punishment. Therefore, in practice, the judicial organs will either punish them or let them go when confronted with these minors, and the principle of education first and punishment second won't work by the short education cycle. In the end it can only result in a light sentence - or punishment is at work. Some scholars describe this phenomenon as a "teasing dilemma" (Yao Jianlong, 2019).

In recent years, due to the emphasis on the policy of leniency for juvenile delinquency, more and more juveniles who violate the criminal law are often not investigated for criminal responsibility, but there is no perfect measure of substituting education for punishment. Many people who have committed illegal acts in their minors have not been effectively intervened or deterred by the law, resulting in the continuation of crimes in adulthood. Many people who have committed illegal acts in their minors have not been effectively intervened or deterred by the law, resulting in the continuation of crimes in adulthood. Because the defendant's multiple murder and wounding incidents before the age of 14 have not been prosecuted by law, and there are no corresponding control and education measures, he has not been properly guided. So, his legal awareness is still weak as an adult. Lawyer Ziyin Zheng, the defendant's defender, said that the defendant was ugly, introverted, and lacked the careful care of his parents. Lack of care is a microcosm of what ultimately leads to crime.

Therefore, complementary laws and policies may play some roles, but it is still not enough to build an effective social support network to protect the rights of survival and development of unsupported minor children of prisoners. The right to subsistence and development of this group is not guaranteed, and at the same time, there is no parental care, coupled with social discrimination, it is easy to give birth to more sense of inferiority. In order to overcome the sense of inferiority, they are likely to commit deviant behavior or even criminal behavior to satisfy their desire for attention. As the German sociologist Mannheim concluded: "for many people, this may be his only chance to be the center of attention in his life, and they are extremely eager to support their self-esteem with such actions." (Hermann Mannheim, 1965). And when they do something illegal, the law cannot effectively guide them on the right path. Using only limited punishment to stop their temporary behavior may make them more rebellious, and thus make them more conform to subcultural norms in adverse social environments in the long run.

### *2.2 At the Social Level: The Dilemma of Responsibility Dilution in Human Rights Protection*

From the perspective of social support theory, if we want to have an effective crime prevention effect on a group, it is necessary to build a social support system composed of welfare relief, community service, employment guidance, psychological counseling, legal popularization, medical security and neighborhood mutual assistance. However, in the laws, regulations and policies of our country, these contents have become the common responsibility of a series of departments, rather than led by a certain department, resulting in the dilemma of responsibility dilution in the actual operation.

For example, Article 6 of the "Law on the Protection of Minors" stipulates: "The protection of minors is the responsibility of state organs, armed forces, political parties, social groups, enterprises and institutions, urban and rural grassroots mass autonomous organizations, guardians of minors, and others adult citizens." However, in the case of starvation of girls in Nanjing in 2013, the long-term lack of effective guardianship of the two girls has long been known to the subdistrict offices, community, civil affairs, police, and other departments, but these departments failed to take effective intervention measures. In the end, no department was to be blamed. At this time, more than 20 years have passed since the promulgation of the Law on the Protection of Minors, but this

tragedy still occurred in the actual operation.

In addition, Article 4, paragraph 2, of the Law on the Prevention of Juvenile Delinquency stipulates: "State organs, people's organizations, social organizations, enterprises and institutions, neighborhood committees, villagers' committees, schools and families shall bear their own responsibilities and cooperate with each other, work together to prevent juvenile delinquency and eliminate all negative factors that breed juvenile delinquency in a timely manner. Create a good social environment for the development of minors' physical and mental health." However, in practice, law popularization, psychological care, and investigation of the mental health of minors within the jurisdiction have not become and normalized work because there is no specific performance appraisal system. Most of the related care activities are jointly held by various departments and some social organizations and enterprises, which have the characteristics of spontaneity and cannot form a continuous and integrated service. In addition, the community is extremely short of professional staff, and the counseling and services provided by non-professionals to young people are limited. Therefore, it is difficult for the current social support system to provide long-term and effective positive support to vulnerable minors, including minor children of prisoners.

### *2.3 Family Level: Positive Social Support Gaps Lead to Crime*

Family is an important link in the positive guidance of minors. The development of a minor's behavior, the construction of values, the formation of life attitudes, the identification of social norms, and the cultivation of social skills are all done in the family at first. Therefore, a harmonious family growth environment and orderly family education and guidance play an important role in the healthy growth of minors. But in fact, the minor children of prisoners are often raised in the homes of other relatives or adopted by child welfare institutions, so it is difficult to make up for the regret caused by the lack of family care. According to a survey of juvenile delinquents conducted by the China Association for the Prevention of Juvenile Delinquency, 14.6% of minors think that their parents are not responsible enough, and in the survey of "Have you ever hated your parents?", 41% of the minors chose to hate them. Therefore, when minors' attachment to the family decreases to a certain extent, and they cannot obtain positive social information from the family, they are prone to show deformed characteristics in material desire and control desire. Long-term free and laissez-faire growth will also make some of their wrongdoings and deviant behaviors not corrected in time, resulting in a gap of positive social support. These minors are easily affected by bad influences and embark on the road of crime.

According to the data of the people's court network, from January 1, 2016 to December 30, 2017, among the juvenile delinquency cases concluded by courts across the country, minors from migrant families, divorced families, left-behind children's families, single-parent families and remarried families ranked in the top five (Luo Shuzhen, 2018). These data fully shows that the stability of the family has a great impact on the healthy growth of minors and is the focus of family prevention of juvenile delinquency. As is known to all, for the minor children of prisoners, the integrity of the family can sometimes not be guaranteed. Children's lack of family bound can only be alleviated by regular visits, caring actions and home letter transmission, which can make them feel the warmth from the family and society at the same time. However, due to poor material conditions and the above-mentioned "responsibility dilution dilemma", few people really care about and spend events and energy to help them realize their long-cherished wishes for a long time, which further exacerbates the estrangement between them and their original families.

## **3. Preventive Measures for Crime Committed by Unsupported Minor Children of Prisoners**

### *3.1 Improve the Top-Level Design for the Protection of Minors' Human Rights*

Since the case of starvation of two girls in Nanjing in 2013, China has begun to issue various policies to solve the "responsibility dilution dilemma". In December 2014, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Civil Affairs jointly issued the "Opinions on Several Issues Concerning Handling of Guardians' Infringement on the Rights and Interests of Minors in accordance with the Law", which clarified the basic responsibility of the civil affairs department in the lawsuit for deprivation of guardianship, the responsibility for guardianship of minors during litigation and the responsibility for placement and security of minors after deprivation of guardianship, forming the prototype of the national guardianship system. Since then, the General principles of Civil Law formally established the national guardianship system, and the Civil Code also inherited this system, which not only confirmed the guardianship principle of "most beneficial to the guardian" in written law, but also added guardianship intervention in specific situations and provisions on the restoration of guardianship qualifications. However, the current civil law system adopts the concept of "grand guardianship", which is mixed with parental rights. When guardians other than parents who are not linked by blood are granted guardianship, how to protect the basic

rights of minors remains to be considered.

In this regard, the state has also issued a series of policies for vulnerable minors to make up for the deficiencies that may be caused by the lack of parental rights, and promote the transformation of children's welfare policy from supplement to universal benefit. In June 2019, the Ministry of Civil Affairs and other 12 departments jointly issued the "Opinions on Further Strengthening the Security of Unsupported Children in Fact". For the first time at the national level, de facto unsupported children, including minor children of prisoners, are included in the scope of protection, and assistance is provided by monthly payment of basic living allowances. The Opinions start from four aspects: clarifying the objects of protection, standardizing the identification process, highlighting the key points of protection, and strengthening the protection measures. It outlines the territory and points out the spirit of the relief work for unsupported children in the future. The specific implementation measures are intended to effectively protect the rights and interests of de facto unsupported children such as "legal orphans". Within a year of the implementation of this policy, the Ministry of Civil Affairs has sent research teams to various places to conduct research and listen to the opinions of grass-roots staff and assisted families. At the end of 2020, the Ministry of Civil Affairs issued the "Guidelines on Further Implementing the Work Related to the Protection of Unsupported Children", adding several requirements for good supervision work. The civil affairs department should not only strengthen guardianship guidance and conduct guardianship intervention when necessary, but also undertake the responsibility of guaranteeing the bottom line, that is, for children whose parents have no guardianship ability and no one else can serve as guardian, or whose guardian has lost the guardianship ability and no one else can serve as guardian, shall be under the long-term guardianship of the civil affairs department in accordance with the law. These all echo the relevant provisions in the Minor Protection Law. Whether it is guardianship guidance or full-fledged guardianship, it can play a good role in improving the problems of poor guardianship ability and effect of unsupported children's families that were previously ignored. So far, de facto unsupported children, including "legal orphans", have begun to step out of the situation of being ignored by laws, regulations and policies.

Of course, these are not enough. At present, China only relies on various government departments to implement corresponding policies and regulations in accordance with the State Council's Children's Development Outline. There is no special legislation on the welfare of minors, and only in other relevant legislations can children's rights and obligations be mentioned. The lack of high-level legislation on child welfare legal protection makes it difficult to form a long-term and stable welfare guarantee for children in need of care. For example, the current state's financial support for child welfare is still insufficient: in 2018, the country spent 4.96 billion yuan on child welfare at all levels, accounting for 0.021% of the announced fiscal expenditure and 0.006% of GDP. Compared with the United Kingdom, the United States and other countries where child welfare expenditure accounts for about 3% of GDP, the gap is obvious. Moreover, the internal distribution of capital investment in China is not balanced. For example, according to the "2018 National Education Fund Statistics Express", the investment in preschool education is far lower than that in other stages of education. However, for prisoners who have no one to support their minor children, preschool education can play an important role in shaping their outlook on life and values. In addition, there are still problems such as the fragmentation of the child welfare management system and the imperfect child welfare testing service system (Wang Haotian, 2020).

Therefore, it is necessary to formulate a special child welfare law as soon as possible to stipulate the protection object, fund distribution, protection method and protection level, and at the same time, distinguish it from the Law on the Protection of Minors and the Law on the Prevention of Juvenile Delinquency. Only in this way can a more scientific social support network be constructed to do a good job in the crime prevention work of inmates who have no children to support their minors.

### *3.2 Jointly Build an Effective Social Support Network for Young People by Relevant Departments*

As analyzed above, at present, the prevention of juvenile crime in China emphasizes punishment after the event, while the prevention before the event and supervision during the event are neglected, and the corrective function for minors is seriously insufficient. In terms of child welfare protection, economic assistance is emphasized, but emotional care and psychological counseling are neglected. The guardianship and placement of children emphasizes stability, and it is easy to ignore the lack of education and lack of family affection. In this regard, China learns from the child welfare management service system of developed countries, and starts from the institutional mechanism to establish a child welfare management service organization with Chinese characteristics: In December 2018, the Child Welfare Department of the Ministry of Civil Affairs was established to be responsible for child welfare work. The "Opinions on Further Strengthening the Protection of Factually Unsupported Children", implemented under its leadership, prescribe the right remedy, some of which provide a blueprint for building a social support network for adolescents.

First, we need to optimize the care service mechanism and improve the child welfare management service system. For legal aid institutions, the protection of the rights and interests of prisoners' children should be strengthened; For child welfare institutions, minors rescue and protection institutions, rehabilitation and special education service institutions, they should give full play to their platform role and provide policy consultation, rehabilitation, special education and other care services. For mass organizations such as the Communist Youth League and the Women's Federation, family visits should be strengthened to assist in supporting activities such as guardianship and guidance, and at the same time, professionals should be introduced to provide them with professional psychological services through government purchases, so as to cultivate healthy psychology and sound personality, etc. Taking Changping district of Beijing as an example, with the continuous efforts of the civil affairs department, in recent years, various projects using special funds for social construction to purchase services from social organizations have been carried out smoothly. At the same time, professional ability improvement workshops will be held regularly to support the contractors to effectively solve practical problems encountered in the process of project operation and implementation, and the actual operation is very effective.

Second, we need to strengthen safeguard measures, especially strengthening departmental collaboration and supervision. Through information sharing among courts, procuratorates, public security departments, local governments, and mass organizations, the accurate identification and assistance of minor children of prisoners will be gradually realized. At the same time, follow-up visits are made to the guardian's guardianship to ensure that the subsidy is used for the survival and development of minors. We also need to improve the credit evaluation and joint punishment mechanism for untrustworthy behavior. Untrustworthy behavior of guardians who have malicious abandonment or fraudulently obtain security funds, materials or services by means of false reporting, concealment, forgery should be recorded and be included in the national credit information sharing platform implement so as to implement joint punishment for dishonesty. Only in this way can we partially make up for the series of problems caused by the lack of parental authority, and maximize the important role of guardianship in preventing juvenile delinquency.

### References

- Cullen, F. T., Wright, J. P., & Chamlin, M. B. (1999). Social support and social reform: A progressive crime control agenda. *Crime and Delinquency*, (45), 188-190. <https://doi.org/10.1177/001128799045002002>
- Luo, S.-Z. (2018). Judicial Big Data "Uncovers" the Trial of Cases Involving Minors. *People's Court Website*, June 2, 2018. Retrieved from <https://www.chinacourt.org/article/detail/2018/06/id/3325642.html>
- Mannheim, H. (1965). *Comparative Criminology, A Text Book* (Volume one). London: Routledge & Kegan Paul, p. 330.
- Ou, Y.-H., Huang, J., & Huang, F.-J. (2018). A Study on the Basic Situation of Minor Children of Imprisoned Prisoners in Fujian Province. *Crime and Rehabilitation Research*, (9).
- Song, W. (2007). Support "special orphans" need to fill the legal gap. *People's Daily*, February 7, (015).
- Wang, H.-T. (2020). Improving the Inclusive Child Welfare System. *Macroeconomic Management*, (4).
- Xia, Y.-B., & Jiang, Z.-R. (2010). Research on the Current Situation and Countermeasures of Education for Minor Children of Prisoners Serving Sentences in Qingdao. *Journal of Teachers College of Qingdao University*, (3).
- Yang, F. (2018). Research on the Ideological Education of Minor Children of Prisoners Served by Civil Public Welfare Organizations - Taking Sun Village in Chaoyang City as an Example. *Master's Thesis*, Liaoning Normal University.
- Yao, J.-L. (2019). The dilemma and the way out of minors' law - On the revision of *Minors' Protection Law* and *Minors' Crime Prevention Law*. *Youth Studies*, (1).
- Zhang, S.-Q. (2005). Psychological Characteristics and Reasons for the Formation of Minor Children of Prisoners. *Proceedings of the First National Seminar on the Psychology of Children of Prisoners*.

### Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).