Research Report on the Procedures for Criminal Cases Committed by Minors in China

Ming Liao

The College for Criminal Law Science, B Normal University, CHINA.

liaoming@bnu.edu.cn

ABSTRACT

The Criminal Procedure Law (2012) of China included a new chapter establishing the special procedures for criminal cases committed by minors. With the aim to find out the issues emerged in the implementation of the Special Procedures, to present the suggestions to further perfect the Special Procedures in the legislation, to improve the maneuverability of the Special Procedures in the practice, we investigated and surveyed the implementation of the Special Procedures in the form of interviews and panel discussions in several representative regions. In this paper, the methods of positive research, literature research and history research have been adopted. The research presents that since the Criminal Procedure Law (2012) came into effect, remarkable results have been achieved. However, there are several problems hindered the application of the Special Procedures. According to the results we suggest that the judicial organs shall strictly implement the Criminal Procedure Law (2012) provisions and interpretations through the inspection of law enforcement. And the following systems in the Special Procedures shall be further reformed and perfected: specialization of the judicial organs, professionalization of the judicial personnel, participation of appropriate adults, social investigation, strict application of arrest, conditional non-prosecution, and sealing of the criminal records.

Keywords: Minor; Minor crime; Criminal case; Special procedures; Criminal Procedure Law

INTRODUCTION

Minors are a special group of our society that requires special protection because of their underdeveloped physical and mental characteristics. The Amendment to the Criminal Procedure Law in 2012 included a new chapter providing the Procedures for Criminal Cases Committed by Minors. According to this chapter, procedures that are different from adults shall be applied to minors involved in crime. Since the Criminal Procedure Law (2012) came into effect, remarkable results have been achieved in their application. However, several issues have emerged in the legislation and practice. We investigated and surveyed the implementation of the special procedures in the form of interviews and panel discussions in several representative regions, such as G province, A Province, J province, Y province, S city and B city. We conducted this investigation to improve the maneuverability of the special procedures, to make minor criminal justice more standardized and scientific, to provide better legal protection for minors and to present suggestions to further perfect the special procedures.

THE BASIC SITUATION IN THE RESEARCH REGIONS

The research was mainly launched in W County, the X District of A City in G Province, W City, the Y District of H City in A Province, the K District of C City in J Province, the P

Copyright © 2015

District of K City in Y Province, the P New District and M District in S City, and the H District in B City.

W County in G Province

G Province is located in the southeastern part of southwest China, and W County is situated in the middle of G Province, i.e., the northernmost region of southern G Province. W County, which is located in the midstream region of the Wujiang River, is the transportation junction of the central region of G Province and a shortcut leading to the seaside that connects Sichuan province and Chongqing city with GuangdonG Province and Guangxi province. The county has an area of 1973.8 square kilometers and a population of 480,000. There are 21 towns and 97 villages or communities. Since the 6.28 event1 happened in 2008, W County's juvenile delinquencies have been increasingly serious. From 2008 to 2012, the number of minor criminals in the whole county was on the rise. In 2012, the number of minor criminals was 13,020 percent of who committed more than one crime. In recent years, the characteristics of minor crimes in W County were as follows: first, crimes have been increasingly violent; second, crimes of invasion property have been increasing; third, there have been a large number of joint crimes.

The X District of a City in G Province

A City is a prefecture-level city of G Province, while the X District is under A City's jurisdiction. The X District is the political, economic, science, technological and cultural center of A City. The district has stood for more than 600 years and is a multi-ethnic community, which has a population of more than 800,000. Affected by its characteristics, the X District has a large floating and immigrant population. At the same time, criminal cases involving minors in the X District are mainly concern crimes committed by minors from other areas.

W City in a Province

A Province is located in eastern China and belongs to the Central Economic Zone. W City, which is located in the southeast of A Province and the lower reaches of Yangtze River, is a provincially administered municipality of A Province. There are four districts and four counties under the jurisdiction of W City. With more than 2500 years of written history, W City has a population of more than 4,000,000 and is the second-largest city in A Province. Currently, W City has become the sub center city of A Province for the economy, culture, transportation and politics. It is also the core city of the demonstration area undertaking industry transfer in the Wan-jiang urban belt and is also one of the key cities opening up along Changjiang River following the approval by the Chinese State Council.

The Y District of H City in a Province

The Y District is in the east of H City, which is the provincial capital of A Province. It has an area of 142.9 square kilometers and a population of over 1,000,000. There are two towns, 13 sub districts and one provincial development area in the Y District. The railway station, the coach station, a new port and a number of highways of H City are all located in the Y District, which is the transportation junction of H City. As the old industrial base of H City, the Y District owns ample technical and human resources and has low comprehensive production cost. Due in part to the characteristics noted above, the Y District is a high-crime

[1] On June 28, 2008, because of dissatisfaction with the identification result of the cause of death of Li Shufen who was born in July 1991 and was a female student in W County third middle school, her families gathered in W County government and public security bureau and petitioned. During the process, some people incite an uninformed masses impact W County government and public security bureau, eventually caused serious night's incident.

area, which had the largest number of criminal cases and offenders in H City. Intentional injury, burglary, organized prostitution, aggravated assault and gambling cases are frequent.

The K District of C City in J Province

J Province is located in the middle of northeastern China. As the provincial capital of J Province and with the level of vice-provincial, C City is the center of the provincial politics, economy, science, education, culture, finance and transportation and is also one of the central cities of Northeast China. The K District is located in the northern portion of C City and has an area of 29.43 square kilometers and a population of over 420,000. The southern region of the K District is a concentration area of traditional and wholesale trade, while the northern region of the K District is a concentration area for storage. Compared with other districts of C City, the K District is experiencing backward economic development. The economic characteristics of the K District influence the characteristics of juvenile delinquency. First, most minor criminal defendants hold rural household registration. Second, the majority of criminal cases of minors involved crimes against property. For example, among 90 juvenile delinquency cases heard in 2012, there were 60 cases involving property crimes, such as burglary and robbery. Third, 95% of the criminal cases involving minors had clear facts and were tried according to summary procedures with high efficiency.

The P District of K City in Y Province

The Y Province is located in the southwest of China. K City is the capital of Y Province, is also the politics, economy, culture, science and technology, traffic center of Y Province. K City is an important center city of the western region and it is an important hub city open to Southeast Asia, South Asia, and ASEAN in China. The P District is located in the northeast of K urban area. K government headquarters are in the P District. According to the results of the sixth national population census data, the resident population is 809,881 in the P District.

The P New District of S City

Located in eastern China, S City is the most famous industry and commercial city in China and is a major cosmopolitan center. It is the biggest comprehensive industry city and is also the center of the national economy, transportation, science, technology, industry, finance, trade, exhibition and shipping in China. The P New District is a vice-provincial district of S City. With a population of over 5,000,000, the P New District has an area of 518 square kilometers. The P New District is the second-largest administrative district in S City and is an important transportation junction.

The M District of S City

Located in the middle area of S City, the M District plays many roles for S City, serving as the main outbound transportation junction, an important industry base, and a new area of technology and aerospace. As the nearest suburb from the city center, the M District has a high level of urbanization with rapid development speed. There are 1,814,300 people living in this district, including a floating population of 746,100. The M District has been positioned as an important region for minor criminal justice reform in S City. Compared with other districts of S City, the M District has a larger floating population. Crimes committed by immigrants accounted for 98% of all of the crimes committed in this area in 2012, and 100% in 2013. "Three non-personnel"2 took 87% of all of the offenders in the M District, of whom 19% were from Xinjiang Uygur Autonomous Region and 32% from A Province.

[2] "Three non-personnel" means people without identification papers, a normal residence permit and a source of income.

Copyright © 2015

The H District of B City

Located in Northern China, B City is the capital and the political and cultural center in China. The H District is located in the northwest of B City. The H District covers an area of 430.8 square kilometers, accounts for about 2.53% of the total area of B City. There are many universities and famous tourist attractions in the H District. There are 56 ethnic groups in the H District. By the end of 2012, the whole population is 2.307 million, but the resident population is 3.484 million. In 2013, the per capita disposable income of urban households is 45,952.7 yuan, and the per capita consumer spending is 29,429.5 yuan.

In conclusion, these selected regions are very representative. Regarding the geographical location, G and Y are located in Southwestern China, J is located in Northeastern China, A and S are located in Eastern China, and B is located in Northern China. Regarding the urban size, B and S are megacities, C is a large city, K, H, W and A are medium-sized cities, and W is a small city. Regarding economic and social development, B and S are developed regions, C, H, W, K are relatively developed regions, and W and A are relatively underdeveloped areas. The minor crimes in these regions had different characteristics. Regarding the subject of the crime, the majority was the minors in local rural households in W County and the K District of C City. In the P New District and M District of S and the X District of A City, the majority of crime by minors was committed by foreign minors. However, in all of the above areas, crimes against property, such as theft and robbery, accounted for more than a majority, violent crimes were becoming increasingly serious, and a large number of joint crimes were committed.

THE BASIC SITUATION OF THE IMPLEMENTATION OF THE SPECIAL PROCEDURES

Because of the Criminal Procedure Law (2012), the judicial organs began to implement the provisions of the special procedures. However, because of different existing judicial practices and different characteristics of minor crimes, as well as the regional imbalances in the economic and social development in the various areas, the similarities and differences appeared in the implementation of the special procedures in different regions. These similarities and differences were reflected in the systems of the special procedures.

The Specialization of the Subject Handling of Criminal Cases Involving Minors

According to Paragraph 2, Article 266 of the Criminal Procedure Law (2012), each minor criminal case shall be managed by appropriate specialists. The following functions of criminal cases involving minors shall be exercised by specialized organs or professional staff: investigation, preliminary inquiry, detention, and approval of arrest, execution of arrest, examination before prosecution, public prosecution, and trial. The research found that two modes were mainly adopted regarding the specialization of the subject handling of criminal cases involving minors.

1. Specialized justice agencies were established to be responsible for handling criminal cases involving minors. For example, to handle all types of minor cases, the H District people's procuratorate established a juvenile cases procuratorial office and the people’s court established a juvenile court. Moreover, the Baohe District people’s procuratorate established a juvenile criminal prosecutorial office and the people’s court established a juvenile criminal court to handle all criminal cases involving minors. The P New District public security bureau in S established in June 2013 a juvenile cases office under the criminal investigation detachment that was responsible for the investigation of criminal cases involving minors. The H District

public security bureau in B established a squadron of preliminary inquiry that was responsible beginning on July 1, 2013 for the investigation of criminal cases involving minors. Most of the public security organs throughout the country had not established specialized agencies for handling criminal cases involving minors.

2. Specialized justice agencies had not been established, but there were relatively fixed personnel to handle criminal cases involving minors. For example, there were no specialized agencies established by the public security organs, the people's procuratorates, or the people's courts in the municipal and district levels in W City, but the personnel was relatively fixed in handling the criminal cases involving minors. The same situation occurred in A City except in the X District.

In addition, the research showed that criminal cases involving minors were handled in centralized and designated jurisdictions in some regions. A district court or district procuratorate designated by the municipal court or the municipal procuratorate manages all or part of criminal cases involving minors throughout the city. In W City, for example, all criminal cases involving minors in all of the four urban districts were directed to the Jiujiang District people's procuratorate or the people's court. The public security organs in all four urban districts transferred the criminal cases involving minors to the Jiujiang people's procuratorate with recommendations to initiate prosecutions. Then after examination, the Jiujiang District people's procuratorate initiated public prosecutions in the Jiujiang District people's court. In addition, all criminal cases involving minors in C City were directed to the jurisdictions of the K District and the Chaoyang District. In H City, the approval of arrest and examination before prosecution of all criminal cases involving minors was directed to the Baohe District people's procuratorate; the trials of all minor criminal cases were held in the Baohe District people's court.

The Participation of the Appropriate Adults

Because Article 270 of the Criminal Procedure Law (2012) regulated the participation of the appropriate adults, this system received a nationwide large-scale promotion in some pilot areas, such as Y and S. Currently, most regions have a system of participation of the appropriate adults as the alternative measure to the statutory representative not being present when a minor criminal suspect or defendant is interrogated or tried.

The Source and Composition of the Appropriate Adults

Because of the awareness of the appropriate adults and the regional imbalances in economic and social development, the source and composition of the appropriate adults varied among areas. The P District of K City was the first area to pilot a system of participation of the appropriate adults in China. Currently in P, the appropriate adults consist of Communist Youth League cadres, the retired groups including cadres, veterans, experts, teachers, and model workers that are organized by the Next Generation Working Committee, street community justice workers, teachers, volunteers of the volunteer service station, representatives from the basic-level organizations in domiciles, volunteer lawyers and other personnel enthusiastic in youth affairs that are recognized by the judicial administrative organ.

In regions with a higher degree of socialization, such as the H District of B and the M District of S, the main organizations of appropriate adults were professional social workers. The appropriate adults of the H District involved justice social workers of the B beyond Youth Social Worker Firm. The M District established a group of judicial social workers that consisted of social workers stationed in detention centers, the people's procuratorate, and the

people's court. In the Minghang Distrct, the social workers could participate in criminal cases involving minors through just a phone call.

In the K District of C City, the appropriate adults consisted only of community personnel. Several regions, such as W County of G province, designated the appropriate adults according to whether a minor involved in a crime was a student. If the minor was a student, the appropriate adults consisted of his/her teachers, his/her relatives, the community personnel or the staff he/she appointed. Otherwise, his/her teachers were not included as appropriate adults.

The Participation of the Appropriate Adults

The participation of the appropriate adults in different regions was not balanced. First, except for the P District of K City, the participation of the appropriate adults in undeveloped regions was far behind the developed regions. Appropriate implementation in the P District was a result of support from Save the Children. In the M District of S City, the investigative organs would ask the minor suspect whether his/her parents were in S and could participate in the first interrogation. The investigative organs would notify the school when the minor suspect was a student. If his/her parents and teachers could not participate in the interrogation, the appropriate adults would be notified to participate. In W City and the Y District of H City, the statutory representatives or appropriate adults of local minor criminal suspects were able to participate in the interrogation during the stages of investigation and examination before prosecution. If the minor suspect was a foreigner, the personnel handling the case would notify his/her statutory representative. If his/her statutory representative could not be reached or was unable to be present, the personnel handling the case would entrust the community committee staff to be the appropriate adults. However, in some regions, the personnel handling cases during the stages of investigation and examination before prosecution did not notify the statutory representative or the appropriate adults to participate in most cases.

Second, even in the same province, the participation of the appropriate adults was also not balanced. In G Province, the participation of the appropriate adults in the X District of A City was far below that in W County. Since the Criminal Procedure Law (2012) was enacted, the judicial organs handling criminal cases involving minors would actively notify the statutory representatives of the minors involved in crime. All of the notified statutory representatives would attend the interrogation and trial. However, in the X District of A City, the personnel handling the cases during the stages of investigation and examination before prosecution did not notify the statutory representatives or the appropriate adults to be present.

The Social Investigation

Article 268 of the Criminal Procedure Law (2012) established the social investigation system. This provision, however, did not stipulate the operational rules, content, or procedure of the social investigation, which has resulted in random application. According to the research, the implementation of the social investigation was inadequate. Most criminal cases involving minors where the facts were clear and the evidence was sufficient were directed to a summary procedure and the time limit for case handling was short. This abbreviated case handling resulted in a time period that was too short for a social investigation that objectively and comprehensively clarified the circumstances of minor criminal suspects or defendants, such as their education and guardianship. Moreover, the research in some regions indicated that the social investigation system was reasonable but had not developed an effective procedure because the implementation period was too short. Despite these limitations, progress had occurred in the course of implementation.

Copyright © 2015

Leena and Luna International, Oyama, Japan.
(株) リナアンドルナインターナショナル, 小山市、日本.
ISSN: 2186-8492, ISSN: 2186-8484 Print
www.ajssh. leena-luna.co.jp

The Entities Conducting the Social Investigation

The selection of the entities conducting the social investigation varied among regions. In the X District of A City in G Province, the social investigation was conducted by the court before a case reached the sentencing phase; once the case entered the sentencing phase, the social investigation was performed by the department of help and education of the judicial administrative organ. In W County of G Province, the center of community correction and the legal aid center were responsible for the social investigation. In W city of A Province, the entities conducting the social investigation included the judges or the staff of the community residences committee or the Next Generation Working Committee consigned by the people's court. In the Y District of H City in A province, the entities conducting the social investigation were the volunteers of the Communist Youth League. In the K District of C City in J province, the social investigation was conducted by the judicial administrative organ. In the P New District of S, the social investigation was conducted by the social workers and the procurators during the examination before prosecution. In the Minghang District of S City, the judicial administrative organ specially established the bureau of social investigation before trial, which was responsible for the social investigation of minor criminal suspects or defendants. In the H District of B, the justice social workers of the B beyond Youth Social Worker Firm performed the social investigation.

The Launch Phase of the Social Investigation

According to the research, in several regions, such as W City in A Province, the social investigation was conducted in the trial stage and was not implemented during the stages of investigation and examination before prosecution. In several other regions, the social investigation began during the investigation stage. For example, in W county in G Province, the social investigation was performed by the center of community correction and the legal aid center during the investigation stage. In the H district of B city, the justice social workers of the B beyond Youth Social Worker Firm began the social investigation during the review and approval of the arrest. In several regions, such as C City in J Province, the social investigation began during the stage of examination before prosecution by the people's procuratorate, but the social investigation report was not delivered to the people's court. Therefore, the people's court would also carry out a social investigation sometimes during the trial stage.

The Object of the Social Investigation

In most regions, whether a social investigation occurred did not depend on whether a minor criminal suspect or defendant was a local or a foreigner. However, whether a minor suspect was a local or a foreigner was a significant factor in some regions, such as the Minghang District of S City and the Y District of H City in A Province. The social investigations in the Y District focused on local minors. Foreigners did not receive a social investigation because their mobility was great and their hometowns were remote, which made it inconvenient to conduct a social investigation. In the Minghang District of S City, if a foreigner had been going to school or working in S for more than six months, they could be investigated. If a foreigner had not been going to school or working in S for six months, the social investigation could be performed depending on the specific circumstances.

The Custody and Non-custodial Compulsory Measures

Although Article 269 of the Criminal Procedure Law (2012) provided that the application of arrest to minor criminal suspects and defendants should be strictly restricted, the research showed that this provision was not seriously implemented. The antiquated idea that arrest

Copyright © 2015

takes the place of an investigation was still thriving in several regions. In the X District of A City in G Province, most of the minor suspects or defendants were under arrest to guarantee the smooth progression of the proceedings. Fewer minor suspects or defendants were under non-custodial compulsory measures such as release on bail pending trial. Moreover, minor suspects or defendants under arrest had not been detained and managed separately from adult suspects or defendants. The same was true in W City in A Province. In W, the people's procuratorates could examine the necessity for detention. However, this examination must be initiated by the application of the defender or the statutory representative or close relatives of the minors. The people's procuratorates did not initiate this examination. Moreover, the judicial organs did not conduct psychological assessments of minor criminal suspects or defendants.

Furthermore, in some regions, minor criminal suspects or defendants were distinguished regarding whether custody or non-custodial compulsory measures was imposed. For example, in the X District of A City in G Province, most of the foreign minor criminal suspects or defendants were under arrest to guarantee the smooth progression of the proceedings. By contrast, local minor criminal suspects or defendants were deemed more appropriate for release on bail under strict conditions pending trial.

The System of Conditional Non-Prosecution

Articles 271, 272 and 273 of the Criminal Procedure Law (2012) established a system of conditional non-prosecution for minor criminal suspects. Although the system codified the experience based on pilot programs of judicial practice in some regions, the research showed the implementation of the system had not achieved the desired effect. The people's procuratorate in the K District of C City in J Province, for example, had not made a conditional non-prosecution decision until the present research was conducted. In W City of A Province, the people's procuratorates suggested that the process of conditional non-prosecution was complicated and its resource consumption was high. In contrast, making a discretional non-prosecution decision directly was more efficient than making a conditional non-prosecution decision. Therefore, the people's procuratorates tended to make a non-prosecution decision directly in most cases. These direct decisions resulted in conditional non-prosecution becoming a mere decoration that was limitedly applied in individual cases to satisfy the justice assessment. For example, in the Minghang District of S City, a minor suspect could apply to non-prosecution directly if he/she could be sentenced to fixed-term of imprisonment of no longer than one year. From January to October 2013, a total of four minor criminal suspects in the M District were given conditional non-prosecution decisions, which accounted for only 3.8% of the total number of minor criminal suspects.

Sealing the Criminal Records

Article 275 of the Criminal Procedure Law(2012) established the sealing of criminal records of a criminal who was under the age of 18 at the time of committing the crime and had been sentenced to a fixed-term imprisonment of no longer than five years. Pursuant to this provision, many regions actively explored specific measures for its implementation through which valuable experiences accumulated and positive social effects were achieved.

First, sealing criminal records has been increasingly perfected. In some regions, specialized agencies were established or specialized personnel were assigned to examine the sealing of criminal records. Moreover, specific procedures for examination and approval were developed. For example, in W County of G Province, a specialized collegial panel that was responsible for reviewing the material to be sealed was established in the criminal tribunal in the people's court. Specialized personnel should be established, be in charge of and manage

Copyright © 2015

Leena and Luna International, Oyama, Japan.
(株) リナアンドルナインターナショナル, 小山市、日本.
ISSN: 2186-8492, ISSN: 2186-8484 Print
www.ajssh. leena-luna.co.jp

the criminal records of minor criminals. A minor criminal should be examined regarding whether he/she corresponded to the requirements of the sealing of the criminal records by the specialized collegial panel. The conclusion made by the specialized collegial panel should be submitted to the president or vice-presidents to issue after their reexamination. In the Minghang District of S City, the people's court initiated the system of sealing criminal records in early 2012. Access to the sealed criminal records in accordance with the law or State provisions, such as for case handling, should be examined and approved by the judge handling the case and the president of the juvenile court.

In addition, criminal records have been more thoroughly sealed. For example, in W City of A Province criminal records were sealed by the judicial organs in the stages of investigation, examination before prosecution and trial. Entities did not require a minor to provide a certificate of non-criminal record when he/she went back to school or applied for a job. The judicial organs would refuse to issue the certificate if any entity applied for one. If the minor chose to join the army, his/her criminal record would not be questioned during the political examination procedure except for several special corps.

In addition, sealing the criminal records achieved significant social effects. For example, in W County, the criminal records of sixteen minor criminals had been sealed until August 2013. None of these sixteen minor criminals had committed new crimes.

THE PROBLEMS TO BE SOLVED IN THE IMPLEMENTATION OF THE SPECIAL PROCEDURES

The research found that some problems regarding the specific systems of the special procedures needed a solution.

The Specialization of the Subject Handling Criminal Cases Involving Minors

Pursuant to the minors' physical and mental characteristics, the most scientific approach is to handle criminal cases involving minors by specialized organizations and professional personnel. The process of specialization has been slow in some areas. Although there was a relatively fixed staff to handle criminal cases involving minors, specialized organizations had not been established in these areas. Less specialized agencies have been established to address criminal cases involving minors in the public security organs.

The Participation of the Appropriate Adults

Several problems exist in the participation of the appropriate adults.

1. The provisions of the Criminal Procedure Law（2012） use "shall" when informing the statutory representative while using "also can" when informing the appropriate adults. Because of different understandings of the provisions, in several regions, when the statutory representative could not be reached, was unable to be present, or was an accomplice him/herself, informing the appropriate adults was decided by the personnel handling the case.
2. Because of a lack of safeguards or procedural sanctions, the lack of a statutory representative or the appropriate adults did not affect the validity of the interrogation, the trial or the admissibility of the interrogation or court records. Hence, the statutory representative and the appropriate adults were not informed to be present in several regions.
3. The main purpose for the participation of the statutory representative and the appropriate adults is judicial rights-defending. However, in several regions,

inappropriate persons were appointed as the appropriate adults, who could not effectively perform their function. Thus, the legitimate rights and interests of the minors could not be effectively protected during the interrogation or trial.

4. The participation of the appropriate adults in different regions was imbalanced. These imbalances were reflected in the source, composition, allowances and subsidies of the appropriate adults. These problems are rooted in the different levels of social and economic development and require the relevant government agencies to create a comprehensive plan to resolve these problems as a whole.

The Social Investigation

The implementation of the social investigation in the research regions reflected several problems.

1. Because of inaccurate understandings of the provisions of the Criminal Procedure Law (2012), such as "may investigate into .....depending on the circumstances", some judicial organs thought initiating the social investigation was based on their discretion.
2. Professional social investigators were lacking. Social investigation is highly professionalized work. Social investigators should have experience and knowledge related to minors. Professional judicial social workers are more appropriate to be social investigators. However, there was a shortage of professional social investigators in many regions. The social investigators in these regions did not possess professional knowledge and were not well trained. Thus, current social investigation cannot meet the demand of handling criminal cases involving minors.
3. The social investigation content had no clear standard. Social investigation in the research regions did not adhere to a complete and systematic standard, and resulted in the fragmentation of social investigation. What needed to be investigated and what proportion each item accounted for were capricious and beyond the uniform standard. Therefore, to be educated, reformed and rehabilitated was difficult to have a substantive effect for minor criminals.
4. Some methods of social investigation were improper and resulted in the diffusion of negative information. Because the social investigators lacked professional competence in some regions, they might take inappropriate measures during the investigation. These measures resulted in the disclosure of information that should be kept confidential.
5. The cohesive and transferring mechanism of social investigation among the different organs was nonexistent in some regions. In C City of JG Province, for example, the people's procuratorates began the social investigation during the stage of examination before prosecution but the social investigation report was not placed in the files and transferred to the people's court. Therefore, the people's court would often initiate the social investigation again. The repetitive investigation wasted judicial resources, which also might make the respondents feel inconvenienced and provide deviations or omissions.

The Application of the Custody and Non-custodial Compulsory Measures

Article 269 of the Criminal Procedure Law (2012) provided that the application of arrest to minor criminal suspects and defendants should be strictly restricted. However, the applicable rate of non-custodial compulsory measures to minor criminal suspects or defendants, such as

release on bail pending trial, was still very low in practice. There were several reasons resulting in this situation. First, in most regions, because of the lack of guarantees and supervision conditions, the application of the non-custodial compulsory measures to the foreigners was objectively hampered. Second, the judicial organs in some regions tended to arrest the minor criminal suspects or defendants for the following reasons: the pressure from victims; the emphasis on the fight against crime; the influence from the performance assessment of the judicial personnel; and the convenience in handling the cases.

Conditional Non-Prosecution

The applicable rate of the conditional non-prosecution system was too low. In some regions, the people's procuratorates had not made a conditional non-prosecution decision until the present research. The research found that the application of conditional non-prosecution had encountered several obstacles. First, the probation period imposed by conditional non-prosecution is at least six months. Some of the suspects and their statutory representatives were not willing to accept the probation. Second, because of the tedious procedure and formalities required in the following probation, the personnel handling the case were not willing to make a conditional non-prosecution decision. Third, in practice before the Amendment, discretional non-prosecution was applied to some minor criminal suspects who were punishable by a fixed-term imprisonment of no longer than one year. Judicial inertia resulted in the conditional non-prosecution provisions being abandoned. Fourth, the personnel handling the cases found it difficult to apply whether conditional or discretional non-prosecution in some cases; thus, they chose not to make a conditional non-prosecution decision. Finally, the application of conditional non-prosecution was limited because the people’s procuratorates worried that the people did not understand the system.

Sealing Criminal Records

Sealing criminal records has important practical significance for minor criminals to go back to school, obtain employment and ensure a smooth return to society, which is one of the objectives of the minor criminal justice system. These issues are of primary concern to minor criminals and their statutory representatives. However, the research revealed several problems in the implementation of the system.

1. Management of the monitored population hindered the effect of sealing the criminal records. Persons who are suspected of hazardous activities are monitored and controlled by the public security organs in accordance with relevant regulations. Minor criminals were regarded as a part of the monitored population, which was likely to reduce the effect of sealing the criminal records.
2. Many occupations request qualifications, and information regarding criminal records can be requested in accordance with the law, which weakens the function of sealing criminal records. For example, when a minor wants to join the army or apply for civil service, the political examination procedure is necessary. The minor is required to provide a certificate of non-criminal record. There is controversy regarding whether the judicial organs sealing the criminal records should provide the certificate. If the judicial organs provide the certificate faithfully, the effectiveness of sealing criminal records would be greatly discounted.
3. When several suspects or defendants in a joint crime were not treated in divisional processing, verdicts of adults and minors would appear in the same written judgment. Therefore, when the written judgment was served on the parties, the

defender and the agent ad litem, the criminal records of the minors in the written judgment were inevitably made public.

4. The mode of dispersion correction produced negative impacts on the sealing of the criminal records. Currently, subject to the troubled development of the economy and the social security system, minor criminals could not be intensively corrected in most regions in China. The dispersion of corrections relied on communities and other organizations. Therefore, if the correction was improper, the criminal records would be known by the wider population and it was difficult to achieve the goal of the system of sealing the criminal records.
5. If a criminal was under the age of 18 at the time of committing the crime first, and he/her was still under the age of 18 when committing another crime, whether the criminal records of the first offense should be reflected in the written judgment of the second offense is an issue. If reflected, this information was bound to make the criminal records public; if not, it was likely to weaken the rationality of the punishment for the second offense.

SUGGESTIONS ON FURTHER IMPLEMENTING THE SPECIAL PROCEDURE

The Judicial Organs Should be urged to Strictly Implement the Provisions of the Criminal Procedure Law (2012) and the relevant Interpretations through the Law Enforcement Inspection

The research showed that the judicial organs failed to strictly enforce the provisions of the special procedures in some regions. The personnel of the basic-level judicial organs in individual regions did not even know or understand correctly the provisions of the special procedures and the relevant interpretations. It is recommended that the law enforcement inspections and the law enforcement trainings led by the CPC's Politics and Law Committee and charged by the Politics and Law Committee of each province (or autonomous region, or municipality directly under the Central Government) were conducted to urge the basic-level judicial organs strictly implement the provisions of the Criminal Procedure Law and the relevant interpretations.

To Further Promote the Reform of the Specialization of the Judicial Organs and the Professionalization of the Judicial Personnel

The organizational system is the core of the minor justice structure. 3The specialization of the judicial organs and the professionalization of the judicial personnel handling criminal cases involving minors are necessary for the judicial protection of minors and the prevention, correction and reduction of crimes among minors.

The reform of the specialization of the judicial organs handling criminal cases involving minors should be further promoted. Regarding the people's courts, comprehensive juvenile tribunals should be the trend of the development of China's juvenile courts. Regarding the people's procuratorates, it is ideal to establish independent institutional juvenile procuratorial organs step by step that follow the integrated working model including detention, prosecution, supervision and prevention. Compared with the people's courts and the people' procuratorates, the reform of the public security organs in the specialization lagged behind. However, specialized investigation departments established in the public security organs and responsible only for criminal cases involving minors should be the trend.

[3] Jianlong Yao, 2003

Regarding the professionalization of the personnel handling of criminal cases involving minors, it is necessary and urgent to perfect the professional qualification systems of the personnel and to improve their professional skills and the quality of handling cases by strengthening the professional training.

To Further Perfect and Implement the System of the Participation of the Appropriate Adults

Pursuant to the problems found in the research, it is necessary to further enhance the participation of the appropriate adults. The Legislation should make it clear that if the statutory representative or the appropriate adults are not present without being notified in accordance with the law, the interrogation records and court records shall be identified as defective and be subject to correction or be excluded under the provisions of defective evidence.

In addition, the system of the participation of appropriate adults should be further refined in practice, including but not limited to the following: to clearly outline the qualifications of the appropriate adults; to compile the appropriate adults' handbook; to train the appropriate adults; to establish a specialized appropriate adult service station outside or nearby a detention house; and to improve the mechanism for ensuring adequate funding for the participation of the appropriate adults.

To Further Perfect and Implement the System of Social Investigation

Based on the problems found in the research, it is necessary to further perfect the social investigation in the following aspects. First, the social investigation should be launched when necessary in handling a criminal case involving minors. To conduct a social investigation is the rule and to not conduct one is the exception. Moreover, the professionalization of the social investigation should be improved. Improvement means that the social investigators should be trained on investigation methods, investigation targets, risk assessment, privacy protection and other methods. In addition, a collaboration mechanism in different areas should be established. Specifically, regarding the cross-regional social investigation, the cooperation among the relevant agencies and departments from different regions should be further improved. The public security organs should strengthen the management of household registration, such as entering age and other data accurately to facilitate the social investigation conducted in different regions. In addition, although a social investigation report is not a category of evidence stipulated in the Criminal Procedure Law, the judicial organs should pay more attention to and seriously consider the content of the social investigation report when dealing with a criminal case involving minors. Finally, the transferring and filing a social investigation report shall be perfected. In particular, a social investigation report should be seamlessly transferred between different departments, and a social investigation report should be carefully placed on file.

Stricter Application of Arrest

Compulsory measures should not be applied to a minor suspect or defendant. Unless absolutely necessary, the judicial organs shall adopt non-custodial compulsory measures as much as possible. Specifically, the application of arrest shall be severely restricted. First, it is necessary to further refine the conditions for arrest and perfect the examination mechanism on the necessity for detention. The comprehensive utilization of social investigation, psychological tests, and risk assessments should be improved as to whether there is the necessity for arrest and detention to reduce the risk of the application of non-custody measures to a minor criminal suspect or defendant. Moreover, probation institutions should

Copyright © 2015

be established to solve the problem of lack of guarantors and accommodations of the foreigners relying on communities, schools, enterprises and other organizations. In addition, when the people's procuratorate examines the necessity for detention and decides to arrest a minor suspect or defendant, the channels of hearing the opinions of the defense lawyer should be further improved. Legal consequences should be made clear if the people's procuratorate do not hear the opinions of the defense lawyer in their examination on the necessity for detention.

To Improve the Application Mechanism of Conditional Non-Prosecution

The application of conditional non-prosecution should be perfected to improve the low applicable rate. First, the personnel handling a criminal case involving minors should be encouraged to make a conditional non-prosecution decision. Moreover, the probation institutions should be established to help, educate, supervise and inspect the foreigners. This work by the probation institutions would reduce the difficulties in the application of conditional non-prosecution to floating foreigners and dispel the psychological barriers that the people's procuratorate do not dare and are not willing to impose conditional non-prosecution on a floating foreigner. In addition, the probation period should be shortened appropriately in cases where the circumstances of the crime are minor and the minor suspect behaves well before prosecution. Finally, some unnecessary formalities should be cut down to reduce the workload of making a conditional non-prosecution.

To Further Promote the Reform of the System of Sealing the Criminal Records

The reform shall be further promoted to resolve the problems exposed in the system of sealing criminal records. First, for a joint crime involving both minors and adults, the judicial organs shall adhere to the principle of divisional handling to prevent information regarding the minors from leaking during the adults' processing. Second, the system should protect the relevant information of minor criminals in community correction. Third, the personnel violating the system should be investigated for legal responsibility and the minor whose criminal record is leaked shall be entitled to file a petition or bring a complaint. For example, in issuing a certificate of non-criminal record, the public security organ should strictly follow the Criminal Procedure law and not establish artificial barriers or conditions that conflict with the law. As long as the people's procuratorate and the people's court make a decision on sealing the criminal records, the public security organ should issue a certificate of no-criminal record according to the application of a minor and his/her statutory representative. If the public security organ does not issue a certificate of no-criminal record, the minor and his/her statutory representative can file a petition or bring a complaint to the people's procuratorate or the people's court for the correction of the illegal activities and the relief of the infringed rights. Finally, the relevant regulations of professional qualification should be amended to reduce the scope of inquiries into past criminal records. The criminal records and other records cannot be required except in the case of very specialized employment.

ACKNOWLEDGEMENTS

This article is supported by "The Fundamental Research Funds for the Central Universities" and supported by Beijing philosophy and social sciences planning project (Grant No. 12FXC029).

REFERENCES

[1] Liao, M. (2014). The Specialization of Justice Organs and Professionalization of Justice Personnel in Chinese Juvenile Criminal Cases. *Frontiers of Law in China, 9*, 403-424.

[2] He, T. (2012). Empirical Study on the Paticipation into Criminal Procedures with Minor Defendants by Appropriate Adult. *China Legal Science, 6*, 146-165.

[3] Liao, M. (2013). *Criminal Judiciary System of Minor.* Beijing: University of International Business and Economic Press.

[4] Song et al. (2013). *Research on the Reformation of Criminal Justice with minor defendant.* Beijing: Beijing Normal University Press.

[5] Lu, Q., & Xi, X. H. (2013). *Theory and Practice of Social Investigation of Minor Criminal Cases.* Beijing: People's Public Security University of China Press.

[6] Wu, Z. X. (2012). *Study on Minor Defendants Correction.* Beijing: University of International Business and Economic Press.

[7] Zhang, H. W. (2011). *On Juvenile Justice (The second edition).* Beijing: People's Press.

[8] Song, Y. H., & Zhen, Z. (2011). *Study on Minor Criminal Procedure.* Beijing: Beijing Normal University Press.

[9] Yao, J.L. (2010). *Care for the Rights: Transplantation and Localization of Participation into Minor Criminal Procedure by Appropriate Adults.* Beijing: Beijing University Press.

[10] Wen, Y. Q., & Lei, X. Z. (2010). *Study on Minor Criminal Judicial Procedure.* Beijing: China Procurator ate Press.

[11] Xu, M. J. (2007). *Study on Special Minor Criminal Procedures.* Beijing: Legal Press.

[12] Yao, J. L. (2010). *Grown up: The Establishment of Juvenile Justice System.* Beijing: Chinese People's Public Security University Press.

Copyright © 2015