

## On the Application of the "Approved Prosecution" Clause Regarding the Age of Criminal Responsibility

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### Abstract

The Eleventh Amendment to the Criminal Law stipulates that the Supreme People's Procuratorate has the right to approve and prosecute juvenile offenders, which is in line with the trend of juvenile delinquency in China today. The Supreme People's Procuratorate, as the only authority that exercises the right to approve prosecution in this provision, should clarify its value position of concretizing the right of first instance, coordinating judicial fairness, and its prosecution significance in procedural law in order to properly understand and apply this provision in judicial practice. It should recognize the lack of procedural provisions in this provision and extend relevant procedural provisions on this basis, including concretizing the protection system for the litigation rights of minors involved in crimes, improving subsequent relief procedures, and constructing a judicial handling mechanism with independent handling measures, parental education and learning, specialized correction and education for the separation of serious and minor crimes, and subsequent tracking and evaluation as the content.

### Keywords

Age of criminal responsibility; Approval of prosecution; Judicial handling; Tracking evaluation.

### 1. Introduction

The murder case of a middle school student in Handan has caused a huge uproar, and public opinion is still fermenting. Looking back on the past five years, the intentional murder case of a 13-year-old boy in Dalian, the rape and murder case of a junior high school boy in Yichun, and the bullying case of a primary school student in Datong are still vivid in our minds. Most of the victims are forever frozen in the prime of their lives, and the minors involved in the crimes are involved in cold and harsh criminal cases at such an age. Every time I say this, it's heartbreaking. People cannot help but ask themselves: What is the effectiveness of the current criminal law in preventing, punishing, and correcting juvenile delinquency? The Supreme People's Procuratorate released the "White Paper on Juvenile Prosecution Work" in June 2022, which shows that from 2020 to 2022, the number of minors aged 14 to 16 accepted for review and prosecution by the procuratorial organs has been increasing year by year. The trend of juvenile delinquency in China is becoming increasingly evident. The Chief Prosecutor of the Supreme People's Procuratorate, Ying Yong, recently stated that we must attach great importance to the prevention and control of juvenile delinquency. Those who commit serious crimes against minors and meet the conditions for approval for prosecution shall be held criminally responsible in accordance with the law. [1] Actively coordinate and promote the construction of specialized schools, improve the hierarchical intervention mechanism for juvenile delinquents, increase education and correction efforts, and work together with all parties to resolutely curb the high incidence of juvenile delinquency. As early as 2021, the 11th Amendment to the Criminal Law lowered the starting age of criminal responsibility, bringing

the provision of the Supreme People's Procuratorate approving prosecution for juvenile offenders into the public eye. At the same time, it also gave China's criminal responsibility age classification model a certain degree of flexibility. [2]

There is still much debate in the academic community regarding whether the term "approved prosecution" in this clause should be understood as having the meaning of filing a case or prosecution. For example, in the debate over the procedural significance of this clause, the first viewpoint is that it should be understood as having the meaning of filing a case. Zhu Xiaoqing believed that filing a case in criminal proceedings is a prerequisite for prosecution, so "approved prosecution" means "approved filing". Li Zhenlin believes that the approval of the prosecution procedure requires approval from the Supreme People's Procuratorate before it can be initiated, so approval of prosecution means approval of initiation [3]. Another viewpoint is to understand the significance of prosecution. Wang Mu proposed that although prosecution begins with filing a case, the actual meaning of "approved prosecution" should be "no public prosecution shall be initiated without approval", so it has the significance of prosecution. In addition to studying the positioning of the above-mentioned clauses, the academic community also focuses on researching the application difficulties and improvement paths of the clauses. However, the author believes that the true use of this provision has only gradually entered the public eye in the recent case of intentional homicide of a junior high school student in Handan. The Supreme People's Procuratorate's activation of the power to approve prosecution of minors involved in the crime is extremely rare, and therefore lacks factual basis and case basis for analyzing the application dilemma. However, the lack of relevant supporting procedures in the operation process and later stages of the approval and prosecution procedure, as well as in the provisions and relevant judicial interpretations, is a practical problem. Therefore, based on clarifying the value position and procedural significance of the "approved prosecution" clause, this article will improve the understanding of this clause, and provide reference opinions for refining the implementation procedures of various aspects of the approved prosecution stage of the Supreme People's Procuratorate, so that it can better help juvenile offenders reintegrate into society while punishing them, and play a role in protecting the legitimate rights and interests of all parties involved in the litigation, thereby achieving the legislative purpose of the approved prosecution clause for criminal responsibility age.

## **2. The Basic Positioning of The "Approved Prosecution" Clause for The Age of Criminal Responsibility**

### **2.1. The value position of this clause**

The approved prosecution clause, as an important provision in the age of criminal responsibility system, has significant value in terms of specific deliberation, balancing procedural fairness and substantive fairness. On the one hand, the right of first instance originated from the juvenile court system in the Anglo American legal system, and compared to this, China lacks the background and experience in the operation of the right of first instance. But as an important form of power in the juvenile justice system, it is of great significance in distinguishing juvenile offenders from adult litigation procedures, and it is also in line with China's juvenile criminal policy of "education as the mainstay, punishment as the supplement". Therefore, the establishment of the "approved prosecution" clause for the age of criminal responsibility enables the Supreme People's Procuratorate to conduct preliminary review of cases involving juvenile offenders to determine whether they enter the next stage, which can be seen as the integration of the system of preliminary review and China's national conditions. On the other hand, due to the 11th Amendment to the Criminal Law lowering the age of criminal responsibility to 12 years old, it indicates a procedural justice tendency that legally presumes minors aged 12 to 14 to have the ability to identify and control serious violent crimes. However,

in judicial practice, there are inevitably exceptional circumstances where juvenile offenders in this age group do not actually possess the ability as prescribed by law, which creates a tense relationship between procedural justice and substantive justice. The provision of "approved prosecution" for the age of criminal responsibility has actually changed the rigid mode of dividing the age of criminal responsibility in China. The existence of the Supreme People's Procuratorate's power to approve prosecution has made the determination of whether a juvenile involved in a crime should bear criminal responsibility in a case flexible, which is conducive to the Supreme People's Procuratorate fully exerting its subjective initiative in discretion, and measuring the above exceptional circumstances to achieve the organic unity of procedural justice and substantive justice.

## 2.2. The procedural significance of this clause

Before the final publication of the Eleventh Amendment to the Criminal Law, the wording regarding the approval of prosecution in the second draft was "approved by the Supreme People's Procuratorate and shall bear criminal responsibility". However, in the final version of the amendment, the legislative body made a change to this wording, which is "approved by the Supreme People's Procuratorate for prosecution, shall bear criminal responsibility". It is not difficult to see that with the addition of the word "prosecution", the procedural legal significance of the former and the latter is vastly different: the former can be understood as the Supreme People's Procuratorate playing a decisive role in determining whether the defendant should bear criminal responsibility, which is tantamount to advancing the trial procedure. This not only does not conform to the functions of the procuratorial organs, but also causes conflicts of power between the procuratorial organs and the judicial organs, and makes it difficult to achieve the ultimate value of procedural justice. The latter regulation effectively solves this problem and meets the requirements of judicial centrism. But at the same time, it brings us a new question, that is, how should the procedural significance of the approved prosecution clause be positioned? Or, does the approved prosecution clause have filing significance or prosecution significance in procedural law?

If this provision is considered to have filing significance, it indicates that the criminal proceedings have not yet begun at this time, which also means that the actions of filing investigations and taking compulsory measures against underage suspects before this lack legitimacy. Some scholars believe that from the perspective of filing a case, using it as the starting point of criminal proceedings can effectively connect the approval clause with the specialized education or corrective education provisions on serious misconduct cases in the Prevention of Juvenile Delinquency Law. That is, "the implementation of serious misconduct by minors who are over 12 years old but under 14 years old should be treated as a protective punishment case and the measures stipulated in the Prevention of Juvenile Delinquency Law should be applied. Only intentional homicide or intentional injury with special harm should be treated as a criminal case after special approval procedures" [6]. If this provision is considered to have prosecutorial significance, it means that the criminal procedure has already been initiated before, and the approval of the Supreme People's Procuratorate is only one of the components of the entire criminal procedure. Its role is to determine whether there is a legal and reasonable basis for prosecuting young minors involved in crimes.

Based on the perspective of system interpretation, the determination of the procedural significance of this clause should adopt the theory of prosecution significance. The reasons are as follows: First of all, Article 4 of the Provisions on Several Issues Concerning the Handling of Cases for Verification and Prosecution issued by the Supreme People's Procuratorate stipulates that for cases that must be reported to the Supreme People's Procuratorate for verification and prosecution, the investigation organ may take compulsory measures against suspect according to law before approval. Therefore, understanding the approval of the Supreme People's

Procuratorate as a prosecution requirement can provide legal legitimacy for the initiation of investigations and the adoption of compulsory measures against juvenile offenders, which is conducive to placing suspects of serious crimes under the sight of public security organs and avoiding the possibility of recidivism. Secondly, if "approval for prosecution" is taken as the starting point for a case to enter the criminal procedure, it will result in the public security organs not being able to initiate an investigation before the approval decision is made, which poses a risk of missing the opportunity for investigation. Finally, based on the full text of Article 17, Paragraph 3 of the current Criminal Law, it can be seen that before "prosecution with the approval of the Supreme People's Procuratorate", there are elements of the crime of "intentional homicide or intentional injury", "causing death or serious disability by particularly cruel means", and "aggravating circumstances". [3] Therefore, the approval of the Supreme People's Procuratorate is regarded as an element of prosecution, and it is the final step in judging the necessity of prosecution, which together with the first three elements, constitutes the prosecution, thus playing a role in strictly controlling the prosecution of minors involved in crimes and protecting the interests of minors. At the same time, this understanding is consistent with the spirit of China's criminal policy of "education as the mainstay and punishment as the supplement" for juvenile offenders. In summary, "approval for prosecution" should only serve as a "valve" to determine whether a case can proceed to the review and prosecution stage, without affecting the public security organs, and cannot guarantee the outcome of subsequent cases. Therefore, adopting the theory of prosecution has more practical judicial significance and is more in line with the legislative intent.

### **3. The Procedural Deficiency of The "Approved Prosecution" Clause for The Age of Criminal Responsibility**

Due to the limitations of physiological and psychological development, minors not only have different cognitive and control abilities compared to adults, but also lack expression skills. Therefore, providing legal aid to juvenile offenders and involving professional personnel to help them understand the procedural significance of their words and actions at various stages of litigation is not only beneficial for safeguarding their legitimate litigation interests, but also a necessary requirement for achieving procedural justice. Regarding legal aid for minors, it can be found through a search of current laws that legislation only makes principled provisions in Article 104 of the Law on the Protection of Minors and Article 9 of the Supreme People's Procuratorate's Regulations on Legal Aid in Criminal Procedure, which only clarify the right of minors to receive legal aid. However, practical issues such as how to provide legal aid to minors involved in crimes, including the procedural participation system of legal aid lawyers for minors and the professionalization of legal aid teams for minors, have not been considered.

Lack of relief procedures. As the saying goes, 'without relief, there is no right'. Without protection of rights, rights are like castles in the air. The necessity of the relief procedure as one of the means to protect the rights of both parties involved in the case and the victim is self-evident. Article 17 of the Criminal Law only provides provisions on the name, means, circumstances, and approved prosecution authorities of crimes committed by underage minors involved, but does not provide for relief measures for all parties after the approval process is completed. For minors involved in crimes, if the Supreme People's Procuratorate approves prosecution after examination, does it have the rationality to prevent the procedure from advancing to the trial stage through certain relief measures? If it is reasonable, what kind of relief procedure should be used? How should the victim and their close relatives seek relief if the Supreme People's Procuratorate does not approve prosecution after examination? Such issues have become legislative gaps in the current criminal law, which is not conducive to all

parties involved in litigation fully asserting their rights and expressing their demands, nor is it conducive to the realization of the value pursuit of procedural justice.

The approval stage and subsequent measures for prosecution are unclear. First of all, as far as the stage of approval and prosecution is concerned, the previous article has discussed that "approval and prosecution" should have the significance of prosecution rather than filing, that is, before this time, the suspect can be registered for investigation and take compulsory measures. However, in judicial practice, due to the special nature of the subject of juvenile delinquency, taking criminal coercive measures against them seems to contradict the criminal policy of "education as the main focus, punishment as a supplement", and also does not meet the requirements of today's "less arrest, cautious prosecution, and cautious detention" policy. Therefore, what measures should be taken for juvenile offenders at this stage has become a major challenge in the judicial practice of juvenile delinquency. [4]

Secondly, if the Supreme People's Procuratorate makes a decision not to approve prosecution, what measures should be taken for juvenile offenders involved in the crime? Article 17 of the current Criminal Law only provides two general measures for this, namely guardian discipline and specialized corrective education. In terms of guardian discipline, many people believe that this measure has obvious logical problems: the commission of criminal behavior by minors is closely related to their family environment to a certain extent. If guardian discipline is used as one of the rehabilitation plans for juvenile offenders, it is inevitable that there will be the suspicion of changing the soup without changing the medicine, and it is difficult to achieve the expected rehabilitation effect. In terms of specialized correctional education, the current Criminal Law and the Prevention of Juvenile Delinquency Law have overly vague and formalistic provisions, making it difficult to operate in judicial practice.

Finally, due to the fact that minors' mental development is still in the process of shaping, their cognitive and control abilities have not yet taken shape. Compared to adults, their moral concepts and mental abilities still have great plasticity. Relying solely on a limited period of transformation cannot achieve a permanent effect. Juvenile offenders may still be negatively influenced by their surrounding environment after returning to society, making it difficult for criminal law to effectively play its role in preventing crime. It is worth noting that although courts in various parts of China have also established a post judgment follow-up system, due to the special nature of juvenile cases involving crimes, simple post judgment follow-up is difficult to ensure dynamic evaluation of them. So, after the program is terminated and the renovation work is completed, the system of tracking and investigating juvenile offenders for a certain period of time has its rationality, but this aspect is still blank in China's legislation.

#### **4. The Procedural Deficiency of The "Approved Prosecution" Clause for The Age of Criminal Responsibility**

Concrete protection system for the litigation rights of minors involved in crimes. Although the identity of the juvenile involved in the crime is still undecided during the stage of approval for prosecution by the Supreme People's Procuratorate, allowing them to hire a lawyer is beneficial for safeguarding their litigation rights. For criminal proceedings involving serious crimes, minors, due to their immature mental development, naturally have a higher risk of being convicted compared to adult offenders. Therefore, allowing juvenile offenders to hire lawyers to provide professional legal services and psychological guidance is not only beneficial for safeguarding their litigation rights, but also greatly improves the efficiency of the entire litigation process.

On the one hand, it is necessary to improve the mechanism for lawyers to participate in the procedure and formulate relevant regulations, including the right of minors involved in crimes to hire lawyers, the rights and obligations of lawyers in the approval of prosecution procedures,

and the supervision of lawyers' behavior. Its purpose is to reduce the resistance of lawyers to participate in the approval of prosecution procedures, ensure communication between lawyers and parties, and listen to their legal opinions, in order to achieve the ultimate goal of safeguarding the litigation rights of minors. On the other hand, a specialized legal aid team for juvenile delinquency should be established, and the classification of legal aid teams should be further subdivided to improve the level of specialization in dealing with such cases. Specific reference can be made to the "Juvenile Prosecution Work Office" established by China's procuratorial organs: by 2023, all levels of people's procuratorates in China have successively established "Juvenile Prosecution Work Offices" to be specifically responsible for conducting prosecution work on juvenile suspects. In addition to legal professionals, the Office for the Prosecution of Minors also extensively attracts professional talents from fields such as sociology, psychology, and pediatrics, breaking away from the previous shortcomings of a single talent structure for handling cases. Based on this, the legal aid team for juvenile offenders can fully refer to the professional composition model of the juvenile prosecution office, thereby effectively promoting the improvement of the quality of legal services and defense for each juvenile criminal case.

Construct a relief procedure for both parties in the stage of "approved prosecution". Article 17 of the Criminal Law does not specify whether it is reasonable for minors involved in crimes to have certain relief measures to prevent the procedure from advancing to the trial stage after being reviewed and approved for prosecution by the Supreme People's Procuratorate, and if it is reasonable, it is also unclear what kind of relief procedure should be used. For victims and their close relatives, if the Supreme People's Procuratorate does not approve prosecution after examination, how to provide relief for victims and their close relatives has become a legislative gap, which is not conducive to all parties involved in the litigation to fully claim their rights, express their demands, and realize the value of procedural justice. This article discusses the construction of relief procedures in the "approval of prosecution" stage from the perspective of the subject, and the specific path is as follows:

On the one hand, for minors involved in crimes, after the Supreme People's Procuratorate approves the prosecution, they should have the rationality to file an appeal. If a party disagrees with the court's judgment or ruling after the first instance procedure in the appeal process of the benchmark trial stage, they have the right to file an appeal. The right to appeal, as an important litigation right of the parties, plays a crucial role in the entire litigation process. It is not only an important weapon to safeguard the legitimate rights of the parties, but also an indispensable part to promote the realization of procedural justice. It is worth noting that some opinions may argue that allowing the juvenile involved in the crime to appeal the approval result during the prosecution stage of the Supreme People's Procuratorate results in overly complicated procedures and reduces judicial efficiency. This is essentially a conflict between the values of justice and efficiency in law. However, in cases involving minors, due to the special nature of the parties involved, when there is a conflict between the values of justice and efficiency, taking justice and sacrificing some efficiency is more in line with the original intention of protecting and educating minors, and is also in line with the criminal policy spirit of "education as the mainstay, punishment as the supplement" in China. Therefore, during the stage of approval and prosecution by the Supreme People's Procuratorate, if the juvenile involved in the crime is dissatisfied with the approval result, they should have the right to file an appeal within a certain period of time and request the Supreme People's Procuratorate to conduct a review to protect their legitimate rights and interests from infringement. However, for the sake of litigation efficiency, the right to appeal can only be exercised once during this stage.

Improve the stage of "approved prosecution" and subsequent handling measures. This article proposes the following four optimization paths to address the issue of unclear judicial

measures taken against juvenile offenders involved in the current criminal law and related laws and regulations during the "approval for prosecution" stage and subsequent procedures:

Firstly, establish independent measures for handling cases during the prosecution period. In judicial practice, due to the special nature of the subject of juvenile delinquency, taking criminal coercive measures against them seems to contradict the criminal policy of "education as the main focus, punishment as a supplement", and also does not meet the requirements of today's "less arrest, cautious prosecution, and cautious detention" policy. However, due to the fact that minors under the approved prosecution clause are involved in more serious crimes with heinous circumstances, they still pose a certain degree of danger to society, and if certain compulsory measures are not taken against them, it is difficult to guarantee the right to education and subsequent living conditions of the minors in some extreme cases such as the murder of their guardians by the minors involved in the crime. [5] Therefore, independent measures should be established during the approval of prosecution, and the Supreme People's Procuratorate should be responsible for compulsory supervision of juvenile offenders. However, in terms of supervision intensity and environment, it should be different from the criminal compulsory measures taken against adult offenders. For compulsory supervision of juvenile offenders, the supervision intensity should be reduced to alleviate their psychological pressure. Create a relatively relaxed and juvenile specific regulatory environment, including living and educational environments, to ensure the living conditions and right to education of juvenile offenders. At this stage, professional personnel can provide legal education to minors involved in crimes, with a focus on the significance of their participation in various stages of the process, so that they can make true and effective expressions and correctly exercise their litigation rights in subsequent procedures.

Then, carry out closed parenting education and learning. Article 17 of the current Criminal Law only vaguely lists two measures for handling cases after the Supreme People's Procuratorate makes a decision not to approve prosecution, namely guardian discipline and specialized corrective education. In terms of guardian discipline, many people believe that this measure has obvious logical problems: the commission of criminal behavior by minors is closely related to their family environment to a certain extent. If guardian discipline is used as one of the rehabilitation plans for juvenile offenders, it is inevitable that there will be the suspicion of changing the soup without changing the medicine, and it is difficult to achieve the expected rehabilitation effect. In terms of specialized correctional education, the current Criminal Law and the Prevention of Juvenile Delinquency Law have overly vague and formalistic provisions, making it difficult to operate in judicial practice. [6] There are already examples in China's judicial practice of applying closed parenting education and learning to critical prevention, and for the prevention of recidivism of minors involved in crimes, carrying out closed parenting education and learning is also a feasible strategy to optimize the irrational disciplinary measures for guardians discussed earlier. Given that juvenile offenders are inevitably influenced by their family environment during their upbringing, the Supreme People's Procuratorate, after making a decision not to approve prosecution, should combine the investigation of the family environment situation in the previous social investigation report of the juvenile offender to decide whether to carry out closed parenting education and learning for the juvenile and their guardians. The closed parenting education class requires that during the learning period, parents of children who have committed crimes temporarily put down their work, electronic devices such as mobile phones, and live and eat with their children's classmates, providing high-quality and wholehearted companionship, improving and strengthening parent-child relationships, and jointly accepting the reform of the procuratorial organs and related professionals, in order to achieve the goal of reforming "problematic guardians" and "problematic minors".

## 5. Conclusion

In the face of juvenile delinquency in our country, blindly lowering the age standard for criminal responsibility is only a temporary solution. The lack of understanding and specific procedural deficiencies in the "approved prosecution" clause in Article 17 not only makes it difficult for juvenile offenders, victims, and their close relatives to fully exercise their litigation rights, but also hinders the achievement of the goal of "making the people feel fairness and justice in every judicial case". Based on the policy requirements of "education as the main focus, punishment as a supplement" for juvenile crimes in China and the value goal of procedural justice, the author urges the optimization of the application of the current "approval clause" in the Criminal Law. On the basis of understanding the basic positioning of this clause, a phased application procedure should be constructed to provide judicial organs with choices for the application of this clause in the approval and prosecution stage and before and after, to ensure that young minors involved in crimes can fully exercise their rights and effectively reform, to alleviate conflicts and disputes among parties involved in litigation, and to use the law to control the last hurdle and timely stop losses, in order to ease the public's concerns about such juvenile serious crimes.

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