

Mandatory Reporting System for the Protection of Children's Rights and Interests in China

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Abstract: Nowadays, there are abuses children and neglected incidents in China, but due to its hidden, private and individual characteristics, the implementation of mandatory reporting still has certain problems, the long-standing inherent concept that child custody and discipline is an internal family matter, the lack of a dedicated state agency to monitor the rights and interests of children, and the imperfect protection mechanism for minors. Globally, many countries have established mandatory reporting systems for the protection of children's rights and interests to detect and prevent child abuse in a timely manner. Therefore, in order to establish a sound protection of the legitimate rights and interests of minors, it is necessary to break through traditional concepts, clarify the framework and implementation process of the mandatory reporting system, increase the supervisory institutions and supporting facilities of the mandatory reporting system, strengthen legal publicity, raise legal awareness, gradually improve legal norms to achieve state guardianship of minors, implement China's minor protection system and improve China's child welfare protection system.

Keywords: Protection of Minors' Rights and Interests; State Guardianship; Reporting Protection System; Mandatory Reporting System

1. Introduction

In recent years, the number of incidents and cases of child abuse in China has been increasing, showing a clear trend of growth. Whether at home or abroad, the phenomenon of child abuse is widespread and is a social problem with serious implications and of great concern to countries around the world. Due to the imperfection of the system and laws for the

protection of children's rights and interests in China and the low cost of violations by the perpetrators, child abuse cases are repeated, rising from 666 cases in 2013 to 2,479 cases in 2018, an increase of 27 times. The number of prosecutions brought by the prosecutorial authorities for crimes against minors has increased significantly, with 47,500, 50,700 and 62,900 from 2017 to 2019, respectively.[1] Although the number of child assault cases included in the judicial process has increased year by year, the percentage is still small compared to the total number of actual child assaults. Due to the strong concealment and privacy of child injury incidents and the characteristics of children themselves who are afraid or not good at expressing themselves, there are great difficulties in the discovery aspect of child abuse incidents. The lack of timely detection of incidents against children seriously affects the effectiveness of fighting crime and rescuing minors. Even if some cases are later discovered, the passage of time makes it very difficult to investigate and collect evidence and combat crime, and in some cases, the loss of evidence even allows criminals to escape due punishment. For example, the frequent occurrence of several cases of extreme child harm, such as the suicide of four left-behind children in Bijie, Guizhou, the starvation of girls in Nanjing, and the death of a biological daughter abused by her biological mother for years in Guangzhou, has exposed the failure of reporting and detection mechanisms in child protection in China.[2] Therefore, studying how to detect children who have been abused as early as possible and how to build an effective child protection and defense mechanism is the top priority of the current protection of minors' rights and interests, and is also a realistic problem that the government and society urgently need to solve. The amendment to China's Law on the Protection of Minors was voted on October 17,

2020, and the law has been effective since June 1, 2021. The newly revised Law on the Protection of Minors is a comprehensive law in the field of protection of minors. The newly revised Law on the Protection of Minors adds and improves the number of provisions, focusing on addressing social concerns related to abuse of minors, including ineffective guardianship, student bullying, sexual abuse of minors, and minors' addiction to the Internet. The current Law on the Protection of Minors was enacted in 1991 and was substantially revised in 2006.[3] The newly revised Law on the Protection of Minors has increased the number of articles from 72 to 132, to the basis of the existing law. The newly revised Law on the Protection of Minors adds a mandatory reporting system which the rights and interests of minors are found to be violated and an admission system for those who work in close contact with minors; it defines student bullying for the first time and specifies the prevention, control and disposal mechanism for schools in student bullying and school sexual abuse. Despite relevant amendments to the law, the number of child abuse cases in China has shown an increasing trend either between 2017 to 2019,[4] as shown in Table 1

Table 1. Number of Reports of Suspected Child Abuse, and Number of Substantiated Reports, in China (2017-2019).

Criminal cases	2017	2018	2019
Suspected	38800	46080	49790
Substantiated Prosecution	50190	51800	62900

2. Origin of the Mandatory Reporting System for the Protection Children's Rights and Interests

Mandatory Reporting is a system in which teachers, doctors, social workers, etc. who work with children are obliged to report to the relevant authorities when they find signs of child abuse, and the relevant authorities will take measures such as intervention and placement. The institution receiving the report is required to maintain the confidentiality of the person making the report and will be held legally responsible for any failure to report the information. Based on the modern view of children, the mandatory reporting system helps the government detect child abuse in a timely manner, raises the awareness of child protection in the whole society, and promotes the improvement of the child abuse prevention

and treatment system.

The mandatory reporting system originated in the U.S., mainly in response to the problem of serious child abuse, with the aim of rescuing children from the problematic families and communities in which they live and from continuing to suffer from their own families or the unfavorable environment around them. 1962, the U.S. Children's Bureau established the Model Reporting Law (Model Reporting Law) to guide states to establish mandatory reporting systems. 1974, the U.S. Congress passed the Child Abuse Prevention and Treatment Act (CAPTA), which required states to establish Child Protective Services (CPS) and set up child helplines with nationwide coverage.[5] This practice was soon recognized and followed by other countries, and legislation was passed in Canada, Australia, South Africa, the Philippines, India, Saudi Arabia, and Ireland to establish mandatory reporting systems, which quickly developed into a powerful weapon to protect children's rights and reduce child abuse. According to the International Society for the Prevention of Child Abuse and Neglect (ISPCAN), mandatory reporting has reached 86% coverage in Europe, 90% in the Americas, and 72% in Africa and Asia; some countries have mandatory reporting systems not only for child abuse or neglect, but also for the elderly and other incapacitated persons who are suspected of abuse or neglect.

3. Practice of the Mandatory Reporting System for the Protection Children's Rights and Interests in China

3.1 Policy Analysis of Minor Protection and Discovery Mechanisms

After the founding of New China in 1949, China legally established the legitimate rights and interests of minors. For example, the Marriage Law of 1950 abolished the feudal system that disregarded the interests of children, stipulated parents and children had mutual obligations to raise and educate and support each other, that neither party should abuse or abandon, and strictly prohibited infant drowning or other similar criminal acts. Subsequent amendments to the Marriage Law in 1980 and 2001 not only continued the above provisions, but also further clarified the protection of the legitimate rights and interests

of children. The earliest specific law to prevent and control child injuries was the Law on the Protection of Minors, passed in 1991, which explicitly requires that any organization or individual has the right to discourage, stop, or file a report or complaint with the relevant authorities for violations of the legitimate rights and interests of minors. An earlier single law dealing with the reporting of injuries to children is the 1998 Law on Medical Practitioners, which requires physicians to report patient-related injuries or wrongful deaths. Although this law is not specific to child assault, it does include situations where a child is injured or killed by result of an assault that needs to be reported.

As China has paid more attention to the protection of minors and children's rights, some exploration and pilot projects on the protection of minors have been conducted in the field of practice. The Law on the Protection of Minors was revised in October 2020, which stipulates from the legal level that the responsible subjects for reporting are state organs, residents' committees, villagers' committees, units in close contact with minors and their staff, and the matters to be reported are minors found in the work. The matter to be reported is that in the course of work, minors are found to be physically and mentally infringed, suspected of being infringed or facing other dangerous situations, and the reporting departments are public security, civil affairs and education.[6] The above documents and amendments to the law are milestones, marking the full implementation of the mandatory reporting system for child protection in China. In the same year, Xiao Shan District People's Procurator in Hangzhou City, Zhejiang Province, together with relevant departments, issued the "Opinions on the Establishment of a Mandatory Reporting System for Cases against Minors", which is an earlier county in China to introduce a mandatory reporting system for cases against minors. Subsequently, Hangzhou in Zhejiang, Wu Xi in Jiangsu, Yangzhou and Guan Chang in Jiangxi, and Mao Yang County in Henan Province have established corresponding systems. According to statistics, the mandatory reporting system has gained a high degree of attention from civil affairs, education, justice and public security departments, with a social concern of about 500,000 in 2020. The level of

attention to mandatory reporting is closely related to the introduction of policies, such as 2020 and 2016 which have the highest increase in attention, both of which have important policies.

3.2 The Operation Mechanism of Our Mandatory Reporting

After exploration and pilot, China's mandatory reporting system has taken initial shape and formed two different but complementary types judicial and administrative practice. Judicially, the Supreme People's Procurator has taken the lead in establishing a mandatory reporting system for cases against minors, focusing on the political and legal systems of public security, procurators and courts, and using juvenile courts as a carrier to build a judicial protection system through judicial trials and legal aid. Administratively, the civil affairs department launched a children's rescue and protection hotline (later incorporated into the government service convenience hotline), with the minors' protection center as the main body, and built a service system with children's rescue, protection and care through joint meetings. These two types are related to the setting of our administrative departments, their main responsibilities and the way they collaborate with each other. There are some similarities between the two in terms of basic principles, reporting subjects, reporting matters and intervention processes, but there are also some differences.

4. Problems of China's Mandatory Reporting System of Children's Rights and Interests

The establishment of a mandatory reporting system for the protection of minors is an important way to prevent child abuse. However, as China's mandatory reporting has been established not long ago and is still immature, there are still some problems and hindrances in the areas of participatory, operational, mandatory and systematic.

4.1 Insufficient Participation in the Mandatory Reporting System

At present, China's mandatory reporting of social forces involved in less, not many cases of reporting. On the one hand, mandatory reporting system publicity is insufficient, public awareness of reporting is not strong; on

the other hand, the mandatory reporting system lacks support system and environment, the reporting subject is quite worried about their own safety after reporting. Without sound protection measures, reporters may be reluctant to report voluntarily for fear of retaliation. For example, a survey of some elementary school teachers in Hangzhou found that 26% of the respondents would choose to report to the police if they found that minors were subjected to domestic violence, abuse, or sexual assault, and 33.3% chose to report to higher authorities; as for the consequences of reporting, 80% of the teachers thought that reporting to higher authorities and the police would expand the seriousness of the situation and bring adverse effects.[6] It can be seen which some concepts and awareness of the subjects responsible for reporting are not conducive to the promotion of the mandatory reporting system.

4.2 Lack of Mandatory Reporting Authority

Since a unified mandatory reporting system has not yet been established, different ways of working exist in China, making it difficult to achieve effective integration in the prevention and treatment of child abuse. Therefore, in practice, it is difficult for relevant agencies to coordinate and coordinate, and the resource and reporting sharing mechanisms between various departments is weak. For example, at present, the main receiving unit for mandatory reporting of abuse of left-behind children in rural areas is the public security department, but the strength of public security cadres in vast rural areas is relatively weak, and they cannot directly interface with each rural left-behind child.

4.3 The Reward and Punishment Mechanism Imperfection

Although China's law involves the compulsory reporting system, but there are no unified provisions for the reporting time limit, reporting methods, receiving departments, and the legal consequences of not fulfilling the compulsory reporting obligations are relatively principled, so the "mandatory" compulsory reporting system is not reflected. Many punitive measures are not strictly enforced, and even if they are, they are only simple criticism, education or admonition, which may

not play the role.

4.4 The System is not Complete

China has not developed a mandatory reporting process and standards, the relevant provisions are scattered in different regulations and policy documents, coordination is difficult, the implementation is weak. In recent years, although some institutionalized exploration has been carried out around the world, the departments that accept it are not unify and their responsibilities are not clear. For example, the "Opinions on Establishing a Compulsory Reporting System for Cases of Infringement on Minors (for Trial Implementation)" promulgated by the Supreme People's Procurator and nine other departments in 2020 does not explain the scope of responsibilities of the collaborating departments and lacks provisions on notification procedures, making it difficult to provide strong support for a compulsory reporting system for child protection.[6]

5. Countermeasures to Improve the Mandatory Reporting System for Children in China

In Western countries, it took more than a century for the problem of child abuse to go from being a concern to being addressed. For example, in the late 19th century, the U.S. started a major discussion only after the frequent occurrence of child abuse, realized the lack of child protection, and established a mandatory reporting and feedback mechanism in the second half of the 20th century based on the clarification of the government's unsinkable main responsibility in protecting children in distress.[7] Therefore, building a mandatory reporting system is a long-term, systematic and holistic process, which requires not only building a theoretical foundation, updating concepts and improving laws and regulations, but also optimizing the operation mechanism, process and standards of mandatory reporting based on the full use of modern information technology.

5.1 Changing Traditional Concepts and Reaching Consensus on the Priority of Children

Mandatory reporting is based on a modern view of children, which holds that children have the right to be independent subjects and

enjoy the same basic human rights and dignity as adults. However, unlike other groups, children are immature and in a vulnerable position, and have special needs in physical, life, emotional and psychological aspects, and should be given special care and protection. Modern Western countries have established the principle of the best interests of the child and the concept of "national parental authority," and generally believe that the growth and health of children are closely related to the fate of the nation, and that the government is as responsible for children as their parents. For example, as the crisis of child rearing deepened, the Japanese government began to proactively take responsibility for children care. The establishment of a mandatory reporting system to prevent child abuse is a concrete manifestation of the state's responsibility for children by giving professionals in close contact with children the right and duty to monitor and report to the state when parents fail in their parenting duties, intervene when parents are misbehaving with children, or even deprive parents of custody and provide alternative care services.[8] As can be seen, the government intervenes in the parent-child relationship when a child is abused and assumes the responsibility of protecting the child and supervising the family.[9] Based on the above theory and logic, would prevent and detect child abuse and ensure timely and effective government and social intervention .it is necessary to change the traditional concept and determine the government-led concept, which is a prerequisite for the effective operation of the mandatory reporting system.

5.2 Strengthen the Coordination and Linkage of the Operation of Mandatory Reporting

Promote the mandatory reporting system and play an effective role, can be separated from the collaboration of departments and the smooth operation of the links. At present, China's mandatory reporting agencies are mainly public security departments, civil affairs departments and education departments, so in the practice of child protection work formed a variety of reporting channels. First, clearly establish the competent unit, content, subject, reward and punishment and

collaboration mechanism of mandatory reporting. Make it clear in the law that child abuse includes not only physical and sexual abuse, but also mental abuse and neglect to be included in the scope of harming children. Second, to clarify the responsibility of child protection institutions (Responsibility of Child Protection), through legislation to authorize the necessary responsibilities, sufficient power, corresponding resources and management capacity of the institutions responsible for child protection to help children who have been mistreated. Third, effective linkage between the judicial and administrative systems to coordinate and harmonize actions. Coordination and cooperation as the practice of most countries, such as the U.S. Child Abuse Prevention and Treatment Act, which stipulates that the law enforcement department and the child protection agency are the receiving departments for reports that require the police, child welfare agencies, or child social workers to coordinate a joint presence for on-site assessment.[9] Taiwan, China, emphasizes the protection of children's rights and interests through an integrated welfare mechanism.[8] Therefore, unified collaboration is needed for report registration, assessment regulation, and classification assistance, and joint on-site inspection and assessment and joint intervention on basis of preliminary judgment of report acceptance, in order to give full play to the discovery and prevention function of mandatory reporting.

5.3 Expanding Social Participation and Clarifying the Subject and Responsibility of Mandatory Reporting

Child abuse is not only an internal affair of families, but also a social issue that requires extensive involvement and participation of government, child welfare agencies, social organizations, grassroots organizations and other institutions and personnel. Only by mobilizing and encouraging people who are in close contact with children to report to relevant institutions in a timely manner can children be detected in a timely manner as suffering or likely to suffer from abuse from families, schools or society. Therefore, the scope of the subject of mandatory reporting abroad has undergone a process of continuous expansion. For example, in the early regulations of the United States, only medical

personnel were the subject of mandatory reporting, and later, professionals who have close contact with children, such as early childhood educators, police officers, and social service workers, were also included in the scope of obligatory subjects, and some states even stipulate that employee of commercial photography, production, and other industries are also responsible for reporting. In Japan, the Child Abuse Prevention and Control Act also imposes a duty to report on those who have knowledge of child abuse cases, such as neighbors.[10] Considering the fact that the awareness of child protection is still weak in our society and the public is not familiar with the mandatory reporting system, a distinction is made between mandatory reporting and voluntary reporting. On the one hand, the staff of institutions such as doctors, teachers, and children's social workers are listed as subjects of mandatory reporting and will be punished accordingly if they fail to do their duty to report; on the other hand, neighbors, friends, and shopkeepers are listed as subjects of voluntary reporting to encourage them to take the obligation to report.[11] For example, most U.S. states make failure to report and intentional false reporting a misdemeanor, and some states even make failure to report that results in serious consequences, repeated violations of reporting obligations, or intentional false reporting a felony. In addition, those responsible for failing to report are also liable for civil damages in some states. Reporting subjects are not liable if they can prove that they are not at fault. By emphasizing the responsibility of the reporting subject and expanding social participation, it is a guarantee for the benign operation of the mandatory reporting system.

5.4 Refine the Operation Process and Clarify the Enforcement Mechanism of the Mandatory Reporting System

The mandatory reporting system is the first step in the protection of minors, and it is important to establish procedures for handling cases specifically for child protection order to give full play to the role of mandatory reporting. The mandatory reporting system should be integrated with child protection, and it should be clear that reporting, acceptance of the case, investigation, assessment, confirmation, and intervention (case

management) are integral parts of it. For example, in the UK, in the event of a lawsuit involving a child, the children's social welfare agency must intervene, not only to provide services to the child, but also to provide the family court with relevant consultation and data for later visits, combined with the judge's personal visits to the child to ensure the protection of the child's rights. The mandatory reporting system in both the U.S.[12] and other countries is not just about reporting child abuse when it occurs, but also includes the process of investigation, evidence collection, treatment and entrusting of custody after the abuse has occurred. The mandatory reporting system has a complete organizational structure established by law, with corresponding staff and its activities are financed by the government budget, and these conditions guarantee the smooth operation of the mandatory reporting system. In the construction of China's mandatory reporting system, the Supreme Procurator takes the lead and emphasizes the judicial part of child protection, but those that enter justice are after all a minority, and most of child protection needs to be addressed before entering justice, and this requires the establishment of family and community support policies. Through project funding, government purchase of services, etc., professional children's agencies or social workers to provide services.[13] For example, through their close relationships with community committees and schools, they can identify children in distress in a timely manner and provide them with targeted personal and family services, and ultimately protect the rights and interests of children by enhancing their family capacity.

6. Conclusions

In the past cases of infringement of the rights of minors, we found that there are several factors that bother the obliged to report: one is the concept, that is, more is better than less, the deep-rooted traditional concept; the second is the fear that the report will lead to the disclosure of the child's privacy, the absolute privacy of the child may be publicized by society, after all, the general public, including the current judicial procedures are not yet able to ensure that the child can be completely protected from In addition, some people are worried that the report will lead to some

disputes and conflicts that will affect them, or they are afraid of retaliation. In fact, for these three cases, the Law on the Protection of Minors may not be so clear, the opinions of the Supreme Prosecutor and other nine departments on the mandatory reporting system provide the following measures to encourage people with reporting obligations to report: the first is a protective measure, the information of the reporter is kept confidential when reporting, which is a protective measure for the reporter; second, if you report the wrong cause of disputes or litigation, the reporter Not bear the corresponding legal responsibility, of course, framing is a different story, in general, in order to encourage the reporter to actively report, the provisions of the protection measures, but also provides that if a dispute does not bear responsibility; also provides for the responsibility of the work unit, such as a teacher or domestic helper to report, his home economics company or the school where not allowed to report, in this case to pursue the school or home economics company related In this case, the school or home economics company in charge of the responsibility of the relevant personnel, the subject of mandatory reporting on the one hand to the work unit, on the other hand to the staff. In short, the subject of the obligation to report should know that to report is to implement the provisions of the law, of course, we will have some entanglements in the process of implementing the legal provisions, such as the child may suffer secondary injuries, privacy may be disclosed but must know that these are two different things. We fulfill the legal requirements to report, on the one hand, can be timely to stop the crime in question, on the other hand, there is a more far-reaching significance, is to curb the continued occurrence of crime, to protect more children, especially like abuse, violence, sexual assault these injuries not only last a long time, and will continue to escalate. In addition, how to protect the child's privacy, of course, now the national law, including judicial practice departments have taken a variety of means to avoid secondary victim injury, such as the unprotected law provides for the sexual abuse of minors or violent injury cases, the public security organs to comply with some rules when questioning, such as a questioning, synchronized audio and video recording, to

minimize repeated questioning, in order to avoid causing The law also provides for privacy. The Law on Protection of Minors also provides for the protection of privacy, and the relevant opinions also stipulate that the subject of mandatory reporting, the department receiving the report, etc. are prohibited from disseminating information about the case and the child's personal information through the Internet or other forms. Outside of the judicial process, a wide variety of multi-professional services are to be provided to the child. In addition to legal needs, children need psychological help, educational help, emotional recovery, etc., all of which are already carried out in practice. For those who have the obligation to report, do not hesitate between the legal requirements and the issue of the child's privacy being disclosed and secondary harm, but always fulfill the legal requirements to report. We can only realize the rights and interests of our minors if we strengthen legal publicity, raise legal awareness, gradually improve legal norms to achieve state guardianship of minors, and implement our system for the protection of minors.

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