

Study on the Localization of the Age Rule for Malicious Supplementation: A Case Study of Sexual Offenses Committed by Minors Under the Age of 14.

Qianyue Yang^{1,*}

¹School of Law, Xinjiang University, Urumqi, Xinjiang, 830046, China

*Corresponding author: 1468134804@qq.com

Abstract

The ongoing reduction of the age of criminal accountability is not a viable resolution. In light of the escalating incidence of youth crime, particularly regarding sexual offenses and various acts not explicitly specified by law, the current legal framework is strikingly inadequate. It fails to align with the cognitive maturity of minors and does not sufficiently tackle the societal dilemmas that emerge as a result. This paper endeavors to assess the applicability of the "malicious age augmentation rule" as seen in international jurisdictions, with the objective of determining its pertinence within the framework of China's judicial processes. It aims to delineate the parameters of its application and the complexities surrounding the assessment of "malice," ultimately seeking to formulate a "malicious age augmentation rule" that harmonizes with the localization of the Chinese legal system, thereby bridging the gap related to other juvenile offenses.

Keywords

Age of criminal accountability; Malicious age augmentation rule; Criminal liability; Youth crime.

1. Introduction to the Issue: The Age-Only Theory Should Not Be the Benchmark for Criminal Accountability for Individuals Below the Age of Criminal Liability

It is our position that each demographic segment exhibits its own defined behavioral standards and cognitive capabilities. However, the alarming escalation of severe youth criminality has disrupted traditional societal beliefs about minors. As a result, the "Criminal Law Amendment (11)" has recalibrated the threshold for criminal responsibility for minors by reducing the age by two years. This modification specifies that only those accused of intentional homicide or intentional harm will be subjected to legal repercussions. Yet, recent occurrences of violent crime illustrate that certain sexual offenses, when viewed through the prism of sexual violence, are occasionally committed by individuals who do not meet the legal age criteria, rendering the law ineffective in curbing their nefarious activities. This situation highlights the limitations of the age-only theory as a determinant for imposing criminal liability on underage individuals, as it does not adequately address the practical needs and objectives of criminal justice. Internationally, various countries have adopted a more adaptable strategy, utilizing the "Malicious Age Completion Rule" to address these pressing issues effectively, a practice worthy of consideration within our own legal system. This paper will examine the formulation of a distinctive Chinese "Malicious Age Completion Rule," designed to align more closely with General Secretary Xi's vision of ensuring that "the masses perceive equity and justice in every judicial case,"[1] ultimately fortifying judicial integrity and enhancing the general welfare of the public.

According to the analyzed of the existing data and compiled statistical information on a subset of sexual assault cases involving minors below the legal age over the past five years, detailed as follows:

Case 1: In October 2019, a 13-year-old identified as Cai lured the victim to his residence with the intention of engaging in sexual activity. Following the victim's refusal, Cai perpetrated her murder. The charges included intentional homicide. Regarding the judicial outcome: Cai, having not attained the legal age of criminal responsibility, faced no criminal prosecution; instead, he was subjected to three years of residential educational intervention. Both Cai and his cohort, Zhuang, were mandated to publicly apologize to the victim's mother and family through provincial media within ten days of the judgment and were also ordered to provide total compensation amounting to 1,286,024 yuan to the plaintiff within the same period.

Case 2: In March 2023, a 13-year-old named Yin and an 11-year-old named Zhou duped the victim into another individual's home, where they secured the doors, assaulted, and sexually assaulted her. They documented a video of the incident, coercing the victim with the threat of disseminating the footage if she disclosed the abuse to her parents. The charges included rape. Concerning the verdict: Yin, identified as the instigator and orchestrator of the event, was not held criminally liable due to being under 14 years of age; he has since been released. Conversely, Zhou, having reached the age of 14, he was criminally detained and will subsequently be referred to the procuratorate for prosecutorial action.

Case 3: In February 2024, a 13-year-old male, Chen, perpetrated a sexual assault against an 8-year-old girl in a public restroom in Yangshan County, Qingyuan City, Guangdong Province. The charges included rape. However, Chen, being under the age of fourteen at the time of the incident, was not subjected to criminal sanctions. Following legal provisions, the county's public security bureau issued a "Cautionary Notice" to the guardians of the suspect. Currently, Chen has been placed in a specialized educational institution for corrective measures as mandated by law.

Case 4: In September 2023, a 9-year-old boy, Xiaoqiang, faced humiliation from his classmates Zhao and Jin within the school environment. The reported incidents included physical assaults, forced oral contact with their genitals and anus, as well as occurrences of genital penetration. It emerged that Xiaoqiang had been a recurrent target of a classmate, Xiaoxuan, since the second grade. By the fourth grade, another peer, Xiaozhuang, had joined in the harassment, which involved verbal abuse, physical attacks, and various forms of bodily degradation. Charges included insult, intentional injury, and coerced indecency. In response to the actions of both Zhao and Jin being minors, public security authorities issued them a warning, coupled with a requirement for psychological counseling and behavioral rehabilitation.

2. Practical Necessity: Justification for Implementing the "Malicious Age Supplementation" Regulation

(1) Necessity

To begin with, the age-centric criterion for evaluating criminal accountability is excessively reductive. Empirical research highlights a troubling trend of diminishing ages among juvenile offenders within our nation, paired with an escalating percentage of minors who engage in recidivist behavior. Approximately 10% of juvenile delinquents perpetrated their inaugural offense between the ages of 7 and 13, with 56% possessing a prior record of two or more criminal acts[2]. The escalation in juvenile delinquency is not solely quantitative; the spectrum of criminal behaviors has broadened considerably, employing methodologies that are as varied as they are vicious, often paralleling the egregious acts committed by adult criminals. In 2021, a 13-year-old male in Dalian attempted to sexually assault a 10-year-old female, ultimately resulting in her murder executed in a particularly brutal fashion, with her body subsequently

concealed. In the aftermath of this heinous act, he resumed playing video games, interrogated the girl's parents nonchalantly about her location, and participated in a group chat while dismissing doubts, asserting, "I haven't turned 14 yet." Such conduct starkly illustrates that this 13-year-old exhibited cognitive awareness, self-regulation, and psychological fortitude commensurate with that of a standard adult offender. Yet, due to his failure to reach the statutory age for criminal accountability, law enforcement was unable to enact criminal charges, resorting instead to a trivial 3-year corrective education sentence. We must not simplistically equate biological age with criminal responsibility. Should the evaluation of a suspect's culpability hinge solely on age, the status of not having attained the age of criminal responsibility would effectively operate as a "get-out-of-jail-free card" within the judicial system. Thus, the prevailing legal framework governing the age of criminal responsibility does not accurately mirror the principles of justice in our country; it inadequately addresses the culpability of youthful offenders while failing to safeguard minors subjected to significant physical and psychological trauma in specific incidents. Therefore, the enactment of the "malicious age supplementation" regulation emerges as a crucial measure aligned with the progress of contemporary society.

Furthermore, the prevailing legal framework is inadequately equipped to confront a multitude of criminal challenges, particularly those pertaining to sexual offenses involving juvenile offenders. As demonstrated in the previously cited table, young offenders partake in various criminal behaviors, including sexual misconduct. However, the current legal provisions leave authorities perplexed when addressing such offenders, who are unable to commit crimes within the boundaries of established legal definitions. Thus, it is insufficient to restrict the classification of offenses to a narrow range of categories; failing to do so risks relegating crimes beyond "intentional homicide and intentional injury" into a legally ambiguous realm devoid of appropriate legal recourse.

(2) Feasibility

Firstly, the "malicious age enhancement rule" resonates with the fundamental principles of our nation's criminal policy, which aims to balance leniency and punitive measures. The 2019 "Several Opinions of the Supreme People's Court on Implementing a Criminal Policy that Balances Leniency and Severity" specifically articulates that such a policy should be applied with flexibility—adopting a lenient approach when warranted and a stringent one when necessary. Additionally, regarding juvenile offenses, a perspective of "tolerance devoid of leniency, legal punishment alongside lawful leniency" ought to be embraced. In June 2020, the Supreme People's Procuratorate's "White Paper on Juvenile Prosecution Work (2014-2019)" unequivocally highlighted this dual approach. The prevailing societal frustration and academic discourse surrounding juvenile crime primarily arise from the inadequate implementation of this criminal policy in cases involving young offenders. By appropriately contextualizing the "malicious age enhancement rule," we can effectively respond to the growing demands for the "strict" component within our legal framework. In addressing issues related to sexual offenses and other juvenile crimes, the law can minimize ambiguity while fully harnessing the advantages of a balanced criminal policy.

Secondly, the "malicious age complementation rule" is consistent with the core principle of proportionality regarding criminal liability and sanctions within our judicial system. Proportionality maintains that the penalties enacted should reflect the seriousness of the offense as well as the degree of blameworthiness of the perpetrator. In cases involving juvenile crimes marked by particularly violent methods and evident malevolent intent, it becomes clear that the principle of proportionality is not maintained. In such instances of youth delinquency, one can logically infer the offender's potential for criminal behavior by considering their malicious intent, the ferocity of their actions, and their demeanor following the offense. It is illogical to exonerate individuals from accountability merely on the grounds of age when they

display these traits. Essentially, the implementation of the "malicious age complementation rule" perfectly harmonizes the need for offenders to be held to an appropriate level of criminal accountability while upholding the principle of proportionality in the criminal justice system.

3. Promoting the Localization of the "Malicious Age Completion Rule" in China's Judicial Application

(1) Scope of Application

1. Age Limitations for Applicability. An examination of the existing scholarly literature reveals a consensus among experts that the minimum age for applying the "Malicious Age Completion Rule" should ideally range between 10 to 14 years[4], with many suggesting a more precise range of 12 to 14 years. However, this paper argues that a more equitable approach would be to establish the age limitation for the "Malicious Age Completion Rule" as being between 0 to 14 years. The fundamental principle underlying the "Malicious Age Completion Rule" centers on utilizing "malice" to rectify situations involving minors whose ages do not fulfill the criteria for criminal accountability. Provided that the "malice" exhibited by the underage offender meets the requisite evidentiary standards, it is feasible for their heightened "malice" to offset any age-related deficits, rendering their specific age less significant. Restricting the application to a clearly defined age range risks undermining the original purpose of the "Malicious Age Completion Rule." Furthermore, although the proposed age parameters might seem excessively broad and cases involving very young offenders are infrequent, it is nonetheless evident that such offenses do indeed occur, and these actions have inflicted genuine harm upon victims. I contend that the law ought to uphold the protection of all citizens; it should not neglect the safeguarding of victims' rights merely due to a lack of prevalence of cases. Such neglect would hinder the effective protection of minors. The essence of ensuring that all citizens receive equitable treatment and justice in every case underscores that no victim should be overlooked. Finally, the enacted legislation is fundamentally characterized by its intrinsic delays. The proposed minimum age in this document aims to address potential issues surrounding juvenile delinquency that may emerge in the future, thereby enhancing the efficacy of the "malicious age supplement rule" from its inception.

2. Restrictions on applicable criminal offenses. A key rationale for refining the "malicious age supplement rule" is the necessity to tackle juvenile delinquency issues beyond the scope of intentional homicide and grievous bodily harm, specifically concerning offenses such as sexual assault, as evidenced by the data presented in the previous table. In alignment with the principle of "clarifying the light by weighing the heavy," it is advocated that post-localization, the "malicious age supplement rule" should ensure consistency with the defined parameters of criminal liability for individuals aged 14 to 16, as articulated in our criminal jurisprudence encompassing eight designated offenses. Furthermore, instances of male victimization, including those associated with the documented sexual assault cases in Shanxi, continue to be prevalent. Hence, within the same framework of criminal accountability, a broader interpretation regarding rape victims is regarded as the most pragmatic approach. Additionally, drug trafficking offenses should be excluded from this framework; incidents of minors independently engaging in drug trafficking are infrequent, as they are typically instigated, coerced, or seduced by adults[5]. Given their limited comprehension of the ramifications of drug use, it is justifiable to exclude this offense from applicability.

3. The applicability of the "malicious age supplementation rule" is confined to the conviction stage, rather than the sentencing phase. This rule serves to supplant the subjective notion of "malice" attributed to a minor offender due to non-compliance with age stipulations. If a minor offender satisfies the criteria for "malice," they should be acknowledged as possessing the requisite capacity for criminal responsibility. Within the framework of the four-element offense

model prevalent in our jurisdiction, the evaluation of criminal responsibility constitutes a critical element in establishing a crime during the conviction stage. Consequently, the assessment of "malice" should be exclusively applied during this stage, as its application in the sentencing context may result in redundant analyses and contradicts the relevant provisions aimed at the special protection of minors within our legal framework.

(2) Defining "Malice."

1. Defining "Malice." The principal challenge in implementing the "malice age supplement rule" lies in accurately assessing the "malice" present in juvenile offenders, which is crucial for promoting equity and justice within the legal system. While "malice," as a construct of subjective awareness, can be elusive, it remains identifiable. It often reveals itself through observable behaviors. Thus, subjective malice will invariably affect outward criminal conduct, including the preliminary actions undertaken prior to the offense, the tactics utilized during the commission of the crime, and the subsequent treatment of instruments and victims. By scrutinizing these elements, we can draw conclusions about the offender's subjective malice. In addition, adhering to the guidelines established in China's "Law on the Prevention of Juvenile Delinquency," which asserts that "social investigations and psychological evaluations can provide guidance in case management and educational interventions for minors," we can undertake comprehensive analyses of the juvenile's social interactions, living conditions, familial education, alongside authoritative psychological assessments from recognized institutions and experts, to determine the existence of subjective "malice."

2. The Standard of Proof for "Malice." In the United Kingdom, the standard of proof commonly enforced is "beyond reasonable doubt," [6]whereas, in the United States, this standard is satisfied by demonstrating a preponderance of evidence to establish "malice." In light of our judicial practice and the requirements set forth in the Criminal Procedure Law regarding standards of evidence, along with the principle of enhanced protection for minors, it is essential to apply the "beyond reasonable doubt" standard. This methodology not only corresponds to the localized implementation of the "Age of Malice Supplementation Rule," which reflects the corrective nature of our criminal law, but also partially aligns with the principle that favors the defendant. A more rigorous standard of proof necessitates that the evidence presented must be both clear and compelling. Conversely, should the evidence collected by the prosecution fail to substantiate the malice of a juvenile offender, the principle of favoring the defendant should prevail. Therefore, the introduction of the "Age of Malice Supplementation Rule" does not exhibit a bias against the interests of minors and reinforces the necessity for substantive justice, facilitating an appropriate response from the criminal law to criminal conduct.[7]

3. The Special Procedure for the Localization of the "Age of Malice Supplementation Rule." Prosecution may be sanctioned through the Supreme People's Procuratorate. Considering the gravity of offenses involving young offenders, alongside the difficulties encountered in evaluating "malice" under the "Age of Malice Supplementation Rule" and the increased societal interest in these cases, discrepancies in judicial capability at the grassroots level can result in disparate outcomes. Furthermore, the authority of local courts in deciding whether to initiate an indictment may not hold comparable significance to that of the Supreme People's Court, potentially eroding public trust. Ultimately, from a systemic standpoint, having the Supreme People's Procuratorate oversee the prosecution of juvenile offenders is consistent with the procedural framework established for the prosecution of individuals aged 12 to 14 under the Eleventh Amendment to the Criminal Law.

4. Conclusion

The revisions in the Criminal Law Amendment (Eleven) pertaining to the 17 articles of the original legislation signify China's heightened focus and advancements in tackling juvenile

delinquency among younger individuals. Nevertheless, research indicates that, in addition to the defined offenses of intentional homicide and intentional injury, younger offenders have leveraged their "age" advantage to partake in numerous illicit activities that are not explicitly addressed by the legislation, including sexual offenses and cybercrime. Consequently, this paper argues that biological age should not be rigidly aligned with the age of criminal responsibility when assessing a minor's accountability capacity. By examining the rationale for localizing the "malicious age supplementation rule," I intend to develop a "malicious age supplementation rule" tailored to China's unique context, emphasizing two key elements: applicability and the interpretation of "malicious." This framework aims to alleviate the legal stagnation frequently encountered in juvenile crime cases while ensuring a balance between the prevention of juvenile delinquency, safeguarding minors' interests, and meeting societal expectations, thus mitigating the rise of social challenges pertaining to juvenile crime.

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