

Criminal Liability for Guardianship Negligence: Legal Gaps and Reforms in the Protection of Minors

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Abstract

The absence of criminal liability for guardianship negligence in China's legal framework has created a structural dilemma: while civil and administrative remedies prove insufficient in deterring gross negligence, criminal intervention encounters value conflicts between "parental ethics" and "state parental rights". Comparative analysis of extraterritorial legislation reveals distinct approaches - civil law jurisdictions establish refined offense systems centered on "infringement of legal interests", whereas common law systems employ an "administrative preemption with risk prevention" mechanism for timely intervention. To address this, China should adopt a dual-path strategy integrating "legal interest protection" and "risk governance", proposing amendments to the Criminal Law through provisions like "negligent guardianship" and establishing a tiered liability system characterized by "categorized misconduct + graduated sanctions". Concurrent improvements should encompass judicial guidelines, administrative early-warning mechanisms, and social support networks, ultimately forming a collaborative governance framework featuring "targeted intervention - corrective adjustments - technological safeguards".

Keywords

Minor guardianship; neglect of guardianship; criminal liability.

1. Formulation of the Problem

In recent years, there have been frequent cases of injury or death of minors caused by negligence of guardians, and the lack of criminal punishment for guardians has triggered heated discussions in society. For example, in the 2023 case of a four-year-old girl who went missing on the beach, her father left her alone at the beach while he returned to the shore to retrieve his phone, which led to the tragedy.^[1] In the January 2025 case of a girl who went missing on a snowy mountain, the guardian was careless for a moment, causing the girl to go out of sight in the snowy mountains for several minutes while wearing a broken sleeve.^[2] The legal regulation of guardianship negligence has become a shortcoming in China's juvenile protection system. In the face of the reality that the juvenile guardianship system is gradually becoming ineffective, due to the weakening of the effectiveness of the associated non-criminalization system safeguards and the lack of supporting systems, the strict fulfilment of juvenile guardianship responsibilities is difficult to exert its due institutional value.^[3] Typical cases such as the girl lost on the beach and the girl missing on the snow-capped mountain show that the absence of criminal accountability has led to a serious lack of legal deterrence. Such cases reflect a double contradiction: first, traditional law regards the guardianship relationship as a private family domain, emphasizing *parental autonomy*, but the negative externalities of guardianship negligence (such as the consumption of public resources and the transfer of social costs) in the modern risk society have already exceeded family boundaries; second, the crime of abandonment in China's current Criminal Law only regulates the lack of financial support, and

the judicial interpretation's closed list of *aggravating circumstances* cannot cover hidden negligence such as long-term emotional abuse. Criminalizing neglect of guardianship does not lower the threshold for criminal liability, but rather, through the balancing of interests and allocation of risks, it is the *state's parental rights* that make up for the failure of family guardianship, ultimately achieving the core value of maximizing the interests of minors.

2. The Necessity of Criminal Liability for Negligence in The Guardianship Of Minors

2.1. Inadequacy of civil and administrative disciplinary mechanisms

Under China's current legal framework, the restraint on acts of negligence in the guardianship of minors mainly relies on civil and administrative regulations. However, these regulations have revealed many deficiencies in actual implementation, as follows:

2.1.1 Deficiencies in the mechanism for deprivation of guardianship rights. Although the Civil Code provides for guardianship rights, there are still many ambiguities in the conditions and procedures for deprivation of guardianship rights in the actual implementation process. For example, there is a lack of a clear definition of the specific circumstances of *inability to exercise guardianship*, and there are no clear provisions on procedural details related to the guardianship restoration system, such as the subject of evaluation, criteria, time frame, supervision mechanism, and the subject of application, making it difficult to effectively operate the system in practice.

2.1.2 The revocation mechanism for guardianship rights is weakened. The Civil Code stipulates that the guardianship rights of parents over their minor children shall remain unchanged after divorce. However, in actual practice, differences in blood relationships greatly reduce the actual effectiveness of the guardianship system. For example, how can divorced parents' guardianship over their minor children maximize the rights and interests of minors? How can step-parents' guardianship over their step-children break through the limitations of the concept of blood relationship? These issues cannot be solved simply by civil law provisions.

2.1.3 The administrative regulations are insufficiently punitive. Due to the traditional view of family custody disputes as internal affairs, public law intervention in the custody order for minors has always been weak. The public security authorities are usually conservative and cautious when handling such cases, and the short-term effect of administrative punishment is difficult to form effective long-term prevention and restraint of custodial neglect of minors.

2.2. Inadequacy of criminal legislation

From the perspective of criminal legislation, China has adopted a relatively lenient criminal policy and legislative spirit towards juvenile crime, emphasizing *leniency and generosity* and *leniency and leniency*. However, the protection of criminal legislation for juvenile victims is relatively insufficient. To date, in the 1997 Criminal Law and its 12 amendments, there are only 13 crimes that specifically target minors as the object of a particular crime, accounting for 2.8% of the total number of crimes. The Criminal Law stipulates nearly 50 types of negligent crimes, accounting for about 20% of the specific crimes in the Criminal Law, but there is no specific crime for the protection of negligent crimes in the interests of minors.

2.3. Limitations on the application of negligent homicide

Some scholars oppose criminalizing negligence in the guardianship of minors, arguing that it lacks necessity, feasibility and legitimacy. The main reasons are as follows:

2.3.1 It violates the principle of criminal law being reserved. Expanding the scope of crime to the family domain and blindly pursuing the maximization of the protection of the interests of minors may sacrifice the basic task and concept of criminal law in safeguarding human rights.

2.3.2 Increased consumption of legislative resources. Criminalizing the neglect of a minor's guardianship may exceed the scope of *common sense, reason, and common decency*. Matters that originally belonged within family ethics should not be subject to excessive intervention by criminal law.

2.3.3 Application of the crime of negligent homicide. Some scholars believe that the crime of negligent homicide under Article 233 of the Criminal Law can be applied to the neglect of a minor's guardianship, and that it can be characterized as negligent homicide, thereby leading to conviction and sentencing.

However, the above view is open to debate. First, reasonably constructing the constituent elements of the crime of neglecting one's duty to supervise a minor and setting an appropriate sentencing range does not violate the principle of criminal law modesty, but rather better upholds the principle basis of *the last line of defense of criminal law*, strengthens the prevention of victimization of minors, and realizes the protection of the human rights of offenders. Second, family ethics can be used as a discretionary consideration when determining sentencing to prevent the improper influence of morality on justice. From the perspective of normative criminology, the influence of specific relationships between relatives on criminalization mainly exists in property crimes, and property interests are restorable. However, the result of the death or serious injury of a minor caused by serious neglect of one's duty of care cannot be compensated for with time and money.

In summary, the establishment of the crime of neglect of one's duty of care towards a minor is of great necessity and practical significance. By clearly stipulating criminal liability, it can effectively make up for the deficiencies of the civil and administrative disciplinary mechanisms, strengthen the protection of the rights and interests of minors, and achieve fairness and justice in the law.

3. An Analysis of The Extraterritorial Legislative Paradigm of Criminalizing Negligence in The Guardianship of Minors

3.1. Normative construction in civil law countries: focusing on the infringement of legal interests

Civil law countries generally adopt the binary model of constitutive elements of *breach of duty + substantial harm*. Article 171 of the German Criminal Code, for example, uses *serious violation of the duty of guardianship that results in damage to the physical or mental development of a minor or inducing a minor to commit a crime* as the basis for criminalization.^[4] The legislative logic highlights two major features: first, it breaks away from the traditional crime of abandonment's singular focus on the obligation of material support, and includes non-substantive legal benefits such as the right to psychological development and social adaptability within the scope of protection; second, through the establishment of the element of *significant harm*, the principle of proportionality is delineated between family autonomy and state intervention. In response, Article 227-15 of the French Criminal Code uses *harm to health* as an element of result, reflecting the strengthened protection of minors' right to physical integrity.^[4] This type of legislative paradigm has achieved an escalation of the wrongfulness of custodial neglect through a fine division of the hierarchy of legal interests.

3.2. Procedural intervention mechanisms in the common law system: oriented towards risk prevention

Common law countries place more emphasis on constructing a three-dimensional responsibility system that combines administrative pre-emption with judicial supplementation. For example, the Ontario Minors' Welfare Act provides that if a minor is abused in the family, the Minors' Protection Authority has the power to remove the minor from the family and obtain

temporary custody of the minor through the court. ^[4] This model combines the principle of criminal law's restraint with the timeliness of administrative intervention to maximize the interests of minors, and has had a demonstration effect in common law countries. In addition, the Hong Kong Special Administrative Region of China has adopted special provisions in the Offences against the Person Ordinance to establish *neglect* of minors under the age of 16 as the standard for holding people accountable, ^[4] providing substantive law support for procedural intervention.

3.3. Different options for legislative techniques: from result-oriented to behavior-oriented

Extraterritorial legislation has undergone a paradigm shift from result-based attribution to risk-based attribution. Traditional civil law countries such as Germany and France still adhere to the causal link between the result of harm and criminal liability, but they have strengthened the protection of legal interests by expanding the connotation and extension of *harm*, for example, by incorporating psychological trauma and social adaptation disorders into the evaluation system. In contrast, Article 27 of the Hong Kong Offences Against the Person Ordinance innovatively adopts the legislative technique of *dangerous behavior control* and sets *exposing a minor to a situation where harm may be caused* as a punishable act in itself. For example, if a guardian leaves a minor alone in a closed vehicle for more than 15 minutes, it constitutes criminal negligence. This legislative shift indicates that modern criminal law is gradually breaking through the shackles of result-orientation and instead constructing a preventive liability system through an independent evaluation of the wrongfulness of an act.

4. Systematic Construction of Criminal Liability for The Dereliction of Guardianship of Minors in China

4.1. Substantive law adjustment: from a single crime to a system of categorized liability

To solve the dilemma of regulating the dereliction of guardianship, consideration can be given to constructing a substantive law framework of *typification of conduct + graded liability*.

4.1.1. Refine and stratify the crime system

(a) Passive abandonment type: expand the scope of application of the crime of abandonment in Article 261 of the current Criminal Law of China through judicial interpretation. For example, disguised abandonment behaviors such as *long-term absence from home without entrusting a substitute guardian and refusal to pay necessary medical expenses* can be included in the scope of regulation. In response to the problem of left-behind minors in rural areas, a *de facto abandonment* clause can be added, and a ladder of administrative penalties can be set for parents who have been away from home for work for more than a certain period of time (such as 6 months) and have not fulfilled their remote guardianship obligations (such as regular contact and providing educational support). Those who repeatedly refuse to change their behavior can be upgraded to criminal accountability.

(b) Risk-indulgent: A new provision on *negligent guardianship*, which is a disguised form of abandonment, can be added to the crime of abandonment. The specific scenario needs to be classified according to regional differences. For example, in economically developed regions, emphasis should be placed on regulating new forms of negligence such as *allowing minors to participate in high-risk outdoor activities, but failing to fulfill the corresponding heightened duty of care, resulting in injury or death*. To avoid excessive intervention, an exception clause of *reasonable guardian* can be set up. For example, if the guardian in a poor area is unable to properly fulfill his or her care obligations due to practical reasons such as financial difficulties, discretion can be exercised to reduce or exempt criminal liability.

(c) System failure type: Similarly, a clause of *incompetent guardianship* that is a disguised form of abandonment should be added to the crime of abandonment, which is characterized by *continuity + complexity*. The constituent elements should include the time element of *failure to perform core obligations such as education and emotional care for more than 6 months* and the result element of *causing psychological trauma to minors* (as assessed by a professional institution) or *impaired socialization* (such as long-term school dropout). Considering the difference in guardianship capabilities between urban and rural areas, an additional transitional period clause is added for rural areas, allowing grassroots organizations to replace some criminal penalties with *guardianship support agreements*.

4.1.2. A stepped design for assigning responsibility

After a crime is committed, differentiated liability is assigned according to the subjective viciousness and harmful consequences, taking into account the local enforcement capabilities.

(a) Ordinary negligence (e.g., briefly leaving a minor unattended while shopping in a supermarket): In economically developed areas, *80 hours of online parenting education + 200 hours of community service* is applicable, with course learning and assessment carried out using a digital platform. In less developed areas, this can be simplified to *intensive face-to-face training + village-level public welfare labor*, with implementation supervised by the township judicial office.

(b) Gross negligence (e.g., leaving a minor alone in a closed compartment): Promote the *conditional non-prosecution + graded monitoring* model. First-tier cities can use electronic monitoring methods such as smart bracelets and home monitoring systems. County-level areas in the central and western regions can rely on daily inspections by community grid workers, combined with manual records in a *guardianship log*. The trial period setting needs to be flexible, and the time can be extended appropriately in areas with inconvenient transportation such as pastoral and mountainous areas.

(c) Intentional neglect (such as repeated abandonment or long-term abuse): This should be dealt with in accordance with existing criminal law provisions. At the same time, consideration could be given to adding the option of *correctional substitution*, whereby the guardian is required to complete designated training, such as basic parenting and cognitive correction courses, and pass an assessment.

4.2. Procedural law collaboration: judicial, administrative and social tripartite linkage

4.2.1. Standardization and specialization of judicial decisions

The Supreme People's Court can formulate a *list of high-risk scenario guardianship standards* to clarify the guardianship obligations in common high-risk scenarios such as water areas, transportation hubs, and unclosed dangerous areas. For example, positioning equipment must be equipped to ensure that minors are within visual range. At the same time, provincial courts are allowed to supplement special scenarios based on local conditions, such as adding *wild grazing guardianship regulations* in pastoral areas and *beach activity guardianship requirements* in coastal areas. In addition, a national collaboration platform for expert assistants will be established to integrate the resources of psychologists and social workers for minors and provide technical support to grassroots courts through a remote video system. In areas where ethnic minorities live together, a *bilingual assessment team* will be formed to incorporate reasonable guardianship methods from ethnic customary law, such as mutual assistance and guardianship by neighbors of nomadic families, into judicial discretion to avoid *one-size-fits-all* judgments.

4.2.2. Dynamic early warning and graded intervention of administrative supervision

The civil affairs department should establish a risk behavior point warning system. (1) Red warning: For families with multiple records of custodial neglect, a history of alcohol/drug abuse by the guardian, and multiple abnormal injuries to minors, community grid workers will conduct weekly home inspections and sign a *Custody Improvement Commitment Letter*. (2) Yellow warning: For potentially at-risk groups such as single-parent families and low-income families, regular centralized training should be conducted through community service centers, covering practical courses such as first aid skills and psychological communication. (3) Blue warning: Ordinary families receive quarterly supervision and safety tips through the *Home-School Link* platform. Schools can organize a supervision ability assessment once per semester, and the assessment results are synchronized to the community file.

4.2.3. Integration of social support resources and technical adaptation

First, establish an emergency shelter network. Integrate existing community service centers, unused classrooms in schools, and other resources to set up temporary shelters for minors, equipped with basic living supplies and emergency call devices. Second, promote the universal use of smart supervision equipment. Add equipment such as anti-drowning bracelets and GPS locators to the *people's livelihood protection procurement list* and control the unit price to less than 50 yuan through centralized bidding. Provide full subsidies to low-income families and 70% subsidies to ordinary families, which will be issued online through the *one-click application* platform. Third, establish a mechanism to activate social forces. Implement a point system to improve guardianship capabilities, whereby guardians can accumulate points by participating in community training and volunteering, which can be used to redeem minor custody services or offset minor administrative penalties. In addition, a nationwide database of public-spirited lawyers will be established to provide free legal aid for custody litigation.

4.3. Supporting systems: refined data governance and rigid implementation of responsibilities

4.3.1. Construct a database for assessing guardianship capabilities

The database should include three core dimensions: survival protection (e.g., food and medical care); safety protection (e.g., supervision measures and equipment in high-risk scenarios); and development support (e.g., educational participation and frequency of emotional interaction). In addition, data collection can be done using the *automatic capture + manual verification* model. In urban areas, data can be automatically obtained from the information systems of the medical insurance and education departments. In rural areas, the village-level director for minors can upload evidence by taking photos using a dedicated app, such as photos of dietary records and home-school contact records. The government can provide a subsidy of 1 yuan or some other affordable amount for each piece of valid data, depending on the situation.

4.3.2. Improving the operability of the mandatory reporting system

The first step is to implement the main responsibility. Developed cities can include property companies and take-out platforms as reporting entities, taking advantage of their community reach. In rural areas, the core responsibility of teachers and village doctors should be strengthened, and appropriate performance incentives should be given based on the number of successful reported cases. The second step is to simplify the reporting process. A *one-click* WeChat applet can be developed, which can be used to report suspected dereliction of duty within 10 minutes by voice or taking photos. The system will automatically locate and transfer the case to the local police station and civil affairs department. In addition, the reward and punishment mechanism should be optimized. Those who report in a timely manner and are verified as true will be given appropriate rewards and paid promptly. For public officials who deliberately conceal information, measures such as disqualification from annual merit

evaluation and deduction of performance pay can be considered depending on the severity of the situation, to create a rigid constraint.

5. Conclusion

The criminal liability for neglect is not intended to expand the scope of punishment, but rather to use legal means to restructure the modern contract between the state's parental rights and family autonomy. By integrating the hierarchical logic of legal interests in the civil law system with the risk control techniques of the common law system, a three-dimensional regulatory system of *typification of crimes—gradual liability—coordinated procedures* is constructed. In essence, this is a systematic upgrade of the paradigm for protecting the rights and interests of minors. It not only recognizes the ethical legitimacy of family autonomy, but also supplements the gap in guardianship capabilities through the possibility of criminal intervention, ultimately achieving the value integration of restorative justice and preventive legal interests.

The deeper significance of this approach lies in promoting the transformation of juvenile protection from post-facto punishment to whole-process governance. Criminal liability is only one part of the institutional puzzle, and its core function is to activate the early warning effect of administrative supervision, the underpinning ability of social support, and the empowering potential of intelligent technology. A dynamic balance is struck between safeguarding family ethics and strengthening state responsibility, so that criminal law truly becomes a guardian of the bottom line for minors' growth rather than a rude interloper, and the civilized commitment to ultimately maximizing the interests of minors is fulfilled.

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