**China**

**National Child Protection Legislation**

**National Legislation**

*Criminal Law of the People’s Republic of China*

a) **Age of Consent**: 14 years old, regardless of sex or gender orientation.¹

b) **Age of Criminal Responsibility**: The general age requirement for bearing criminal responsibility under Chinese law is 16. A person aged from 14 to 16 bears criminal responsibility in intentionally committing serious criminal offenses spelled out in the Criminal Law, including homicide, rape, and robbery. An offender aged from 14 to 18 shall be given a lighter or mitigated punishment. An offender under the age of 14 does not result in criminal punishment under Chinese law.²

c) **Age of Marriage**: 22 for a male and 20 for a female.³

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**Extraterritoriality** provisions under the *Criminal Law, Chap. 1*⁴

- Art. 7: This law shall be applicable to any citizen of the People’s Republic of China who commits a crime prescribed in this law outside the territory and territorial waters and space of the People’s Republic of China; however, if the maximum punishment to be imposed is a fixed-term imprisonment of not more than three years as stipulated in this law, he may be exempted from the investigation for his criminal responsibility. This law shall be applicable to any state functionary or serviceman who commits a crime prescribed in this law outside the territory and territorial waters and space of the People’s Republic of China.

- Art. 8: This law may be applicable to any foreigner who commits a crime the territory and territorial waters and space of the People’s Republic of China against the State or any of its citizens, if for that crime this law prescribes a minimum punishment of fixed-term imprisonment of not less than 3 years; however, this does not apply to a crime that is not punishable according to the laws of the place where it is committed.

**Dual Criminality** requirements are based on Articles 9 and 10 in the *Criminal Code*:

1) must be a violation of life and/or property of a Chinese citizen;

2) must be a serious offense that the maximum punishment to be imposed is at least 3 years of fixed-term imprisonment;

3) must be regarded as a criminal offense both in the People’s Republic of China and the foreign country where the crime took place.⁵

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² *Criminal Law, Article 17*.


⁵ *Criminal Law, Articles 9 and 10.*
Mandatory Reporting

**Internet Service Providers**

Measures for Managing Internet Information Services (2000)\(^6\)

**Article 15:** Internet Information Services (IIS) providers shall not produce, reproduce, release, or disseminate information that contains any of the following:

1. Information that goes against the basic principles set in the constitution;
2. Information that endangers national security, divulges state secrets, subverts the government, or undermines national unity;
3. Information that is detrimental to the honor and interests of the state;
4. Information that instigates ethnic hatred or ethnic discrimination, or that undermines national unity;
5. Information that undermines the state's policy towards religions, or that preaches the teachings of evil cults or that promotes feudalistic and superstitious beliefs;
6. Information that disseminates rumors, disturbs social order, or undermines social stability;
7. Information that spreads pornography or other salacious materials; promotes gambling, violence, homicide, or terrorism; or instigates crimes;
8. Information that insults or slanders other people, or infringes upon other people's legitimate rights and interests; or
9. Other information prohibited by the law or administrative regulations.

**Article 16:** When an IIS provider discovers that the information its Web site provides is clearly of a type listed under Article 15, it should immediately stop transmission, keep the relevant records, and report the situation to the relevant state authorities.

**Obligations of Educational Institutions**

Teachers Law of the People's Republic of China\(^7\)

**Article 8 Teachers** shall perform the following obligations:

(1) to abide by the Constitution, laws and professional ethics, and be paragons of virtue and learning;

(2) to implement the educational policies of the State, observe relevant rules and regulations, carry out schools' teaching plans, fulfil teaching contracts and accomplish educational and teaching tasks;

(3) to conduct education among students in the basic principles defined in the Constitution, education in patriotism, national unity and the legal system, and education in ideology, morality, culture, science and technology, and to organize and lead students to engage in beneficial social activities;

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(4) to concern themselves with all students, love them, respect their dignity and promote their all-round development in such aspects as morality, intelligence and physique;

(5) to stop acts that are harmful to students and other acts that encroach upon students' legitimate rights and interests, criticise and combat the phenomena that impair the sound growth of students; and

(6) to ceaselessly raise their ideological level and political consciousness and improve their professional competence in education and teaching.

Article 9 To guarantee that teachers complete their educational and teaching tasks, people's governments at various levels, administrative departments of education, relevant departments, schools and other institutions of education shall perform the following functions and duties;

(1) to provide educational and teaching facilities and equipment that are up to the safety standards set by the State;

(2) to provide necessary books, reference materials and other articles for education and teaching;

(3) to encourage and help teachers in their creative work in education, teaching and scientific research; and

(4) to back up teachers in their efforts to stop acts that are harmful to students and other acts that encroach upon students' legitimate rights and interests.

Below are laws related to sexual offenses of children in Chinese Criminal Law:8

- **Art. 236.** States that whoever rapes a woman by violence, coercion or any other means will be punished with by imprisonment of 3-10 years. It further states that having sexual intercourse with a girl under the 14 is considered rape. The following aggravating circumstances increase the punishment to fixed-term imprisonment of no less than 10 years, life imprisonment, or death: where the circumstances are flagrant, the actor rapes a number of women or girls under the age of 14, the act is committed in a public place, the rape is committed by one or more persons in succession, or the act causes causing serious injury, death, or other serious consequences to the victim.

- **Art. 237.** States that whoever acts indecently against or insults a woman by violence, coercion or any other forcible means shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Furthermore, whoever gathers a number of people to commit the same act, or does so in a public place will be punished by a fixed-term imprisonment of not less than five years. Whoever commits such acts against a child will be “given a heavier a punishment in accordance with the provisions of the preceding two paragraphs.”

- **Art. 240.** States that whoever abducts and traffics a woman or child will be fined and sentenced to fixed-term imprisonment of 5-10 years. Under aggravating circumstances where the actor is the leader of a gang engaged in trafficking, abducted three or more women/children, raped the victims, prostituted or facilitated prostitution of the victim.

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kidnapped the victims by means of violence, coercion or drugging, caused death or injury to the victim or her family, trafficked the victim(s) outside of China, or where the victim is an infant, the punishment is increased to fixed-term imprisonment of not less than 10 years or life imprisonment as well as a fine or confiscation of property. If the circumstances are especially serious, the punishment is death and also to confiscation of property. “Abducting and trafficking” is defined as abducting, kidnapping, buying, trafficking in, fetching, sending, or transferring a woman or a child, for the purpose of selling the victim.

- **Art. 241.** States that whoever buys an abducted woman or child shall be punished by imprisonment of not more than three years, criminal detention or public surveillance. Whoever buys an abducted woman and forces her to have sexual intercourse with him will be punished in accordance with the provisions of Article 236. Furthermore, whoever buys an abducted woman or child and illegally deprives the victim of his or her personal freedom or restricts his or her personal freedom, or commits any criminal acts such as harming and humiliating the victim may receive harsher penalties. Whoever buys an abducted woman or child and sells the victim afterwards shall be convicted and punished in accordance with the provisions of Article 240.

- **Art. 246.** States that whoever, by violence or other methods, publicly humiliates another person or invent stories to defame him will be punished by a fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

- **Art. 250.** States that it is a crime for any publication to carry material that is intended to discriminate against or humiliate an ethnic group, and the person responsible will be punished by a fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

- **Art. 262.** States that whoever abducts a minor under the age of 14 (separating child from his family or guardian) will be punished by a fixed-term imprisonment of not more than five years or criminal detention.

- **Art. 262a.** Further states that whoever, by means of violence or coercion, organise disabled persons or minors to beg will be fined and punished by a fixed-term of no more than three years. Where the circumstances are serious, the actor will be fined and sentenced to fixed-term imprisonment of 3-7 years.

- **Art. 262b.** Further states that whoever organises minors to commit theft, snatch, extortion or any other activity will be punished in accordance with the penalties in Art. 262a.

- **Articles 358-362: Prostitution**
  - **Art. 358.** States that whoever arranges for or forces another person to engage in prostitution will be punished by a fine and a fixed-term imprisonment of 5-10 years. The following are aggravating circumstances that whoever falls under any of the following categories shall be sentenced to fixed-term imprisonment of not less than 10 year or life imprisonment and shall also be fined or be sentenced to confiscation of property: making arrangements for another person to engage in prostitution and the circumstances being serious, forcing a girl under the age of 14 to engage in prostitution, forcing a number of persons to engage in prostitution or repeatedly forcing another person to engage in prostitution, forcing the victim to engage in prostitution after raping her, or causing serious injury, death or other serious consequences to the person who is forced to engage in prostitution. Furthermore, whoever recruits or
transport persons for an organiser or prostitution or otherwise assist in organising prostitution commits a crime punishable by imprisonment or not more than five years and a fine, or if the circumstances are serious, 5-10 years imprisonment and a fine.

- **Art. 359.** States that whoever lures other persons into or shelters prostitution or procures other persons to engage in prostitution will be punished by a fine and a fixed-term imprisonment of not more than five years, criminal detention or public surveillance, or where the circumstances are serious, fixed-term imprisonment or not less than five years and shall also be fined. The article specifies that whoever lures a girl under the age of 14 to engage in prostitution will be punished by a fixed-term imprisonment of not less than five years and shall also be fined.

- **Art. 360.** States that any person who knows clearly that he or she is suffering from serious venereal diseases such as syphilis and gonorrhea engages in sexual activity with a prostitute or engages in prostitution will be punished with a fine and a fixed-term imprisonment of not more than five years, criminal detention or public surveillance. The article further states that anyone who seeks the service of a prostitute where the prostitute is under the age of 14 will be punished with a fine and a fixed-term imprisonment of not less than five years.

- **Articles 361-2.** States that any employee engaged in the hotel trade, the catering or entertainment services, or in the taxi services who takes advantage or their trade to shelter or facilitate prostitution, procures other persons to engage in prostitution, or foils law enforcement attempts to address the crime will be punished in accordance with previous articles.

### Articles 363-67: Pornography

- **Art. 363.** States that whoever, for the purpose of profit, produces, duplicates, publishes, sells or disseminates pornographic materials will be punished with a fine and a fixed-term imprisonment of not more than three years, criminal detention or public surveillance, or if the circumstances are serious, fine and imprisonment of 3-10 years.

- **Art. 364.** States that whoever disseminates pornographic materials including books, periodicals, movies, video-audio tapes and pictures, if the circumstances are serious, will be punished with a fixed-term of not more than two years, criminal detention or public surveillance. Furthermore, whoever produces, duplicates, or arranges for shows of pornographic audio-video products including movies and video-tapes will be punished with a fine and fixed-term imprisonment of not more than three years, criminal detention or public surveillance, or if the circumstances are serious, fined and imprisonment for 3-10 years. The article further states that whoever disseminates pornographic materials to a minor under the age of 18 will be given a heavier punishment.

- **Art. 365.** States that whoever arranges for pornographic performances will be punished with a fine and fixed-term imprisonment of not more than three years, criminal detention or public surveillance, or if the circumstances are serious, a fine and imprisonment of 3-10 years.

- **Art. 367.** Clarifies that for the purpose of these laws, pornographic materials refer to obscene books, periodicals, movies, video and audio tapes, pictures, etc. that explicitly portray sexual behaviour or clearly publicise pornographic materials.
Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, and Ministry of Justice Opinion on Punishing Sexual Violations of Minors in Accordance with Law (October 2013)⁹

This opinion is formulated so as to punish sexual violations of minors in accordance with law and protect the lawful rights and interests of minors, and is based upon the Criminal Law, Criminal Procedure Law, Child Protection Law and other laws and judicial interpretations, together with the experience from judicial practice.

II. Procedural Case-handling Requirements

9. Personnel bearing special responsibilities to minors, such as for their supervision, education, training, rescue, care or medical treatment (persons with special duties), as well as other citizens and work-units, discovering that a minor has been sexually violated, have the right and the obligation to make a report or whistleblow to the public security organ or people's procuratorate.

10. Public security authorities receiving a report, accusation or whistleblower report of sexual violations against minors shall promptly accept it and quickly conduct a review. Upon review, those meeting the requirements for case filing shall be immediately filed and investigated.

Where a public security organ discovers that a minor might have been sexually violated or receives a report of relevant leads, regardless of whether the case is within the jurisdiction of that unit, it shall promptly adopt emergency measures including stopping the unlawful or criminal acts, protecting victims, and preserving the crime scene; when necessary, the relevant departments should be alerted to provide temporary placement and rescue for the victim.

III. Correct Application of Law

19. Where one fornicates with or commits other sexual violations against someone he knows or should know is an underage girl less than 14 years-old, the perpetrator shall be found to 'clearly know' that the other party was an underage girl.

Where a victim under the age of twelve years-old is the object of fornication or other sexually violations, the perpetrator shall be found to 'clearly know' that the other party was an underage girl.

Where fornication or other sexual violations are perpetrated against a victim between 12 and 14 years-old, and from the state of her physical development, her speech and deportment, her dress and lifestyle habits it was observed that she might be an underage girl, the perpetrator shall be found to 'clearly know' that the other party was an underage girl.

20. Where money or property is used to entice an underage girl to have sexual relations with oneself; or where one knows or should know that an underage girl was forced into prostitution by another person, but still has sexual relations with her; it will be treated as the crime of rape.

21. Where persons with a special duty towards underage girls have sexual relations with the underage girls, it shall be treated as the crime of rape.
Where a person with a special duty to minor females who are at least 14 years-old exploits his superior status, or the victims’ isolated position, to pressure a minor victim to submit, and has sexual relations with them, it is convicted and punished as the crime of rape.

22. Committing the crime of child molestation, and thus causing children to suffer light injuries or more serious consequences, while also meeting the requirements of article 234 or 232 or the Criminal Law, constitutes the crime of intentional harm or intentional homicide, and is convicted and punished according to the provisions of the heavier offense.

Molestation of a minor male who is already 14 years old, which causes light injury or more serious consequences to the victim and meets the requirements of articles 230 or 232 of the Criminal Law, shall be convicted and punished for the crime of intentional harm or intentional homicide.

23. Where rape or molestation is committed against minors at a public venue such as a school campus, a swimming pool or a children's playground, the crime of rape of an underage girl, forced indecency, humiliating women or child molestation, may be found to have been in a public forum ‘before the public’ as provided for in clause 3 of Criminal Law articles 236 and 237, so long as there were other people present, regardless of whether they actually saw it.

24. Those making introductions or assisting others in fornicating with underage girls or molesting children, are treated as joint offenders in the crime of rape or child molestation.

25. Crimes of rape or molestation targeting minors shall be severely punished, and in any of the following situations, the penalties should be even harsher:

   (1) persons with a special duty to minors, persons who share a common family life with the minors, state workers or persons posing as state workers committed the rape or molestation;
   
   (2) entered a minor's residence or student dormitories to commit the rape or molestation;
   
   (3) employed violence, intimidation, anesthetic or other compulsory means to fornicate with an underage girl or molest a child.
   
   (4) committed rape or molestation of a minor who is a child under 12 year-old, a left-behind child in a rural area, severely disabled or mentally retarded.
   
   (5) Molested multiple minors or committed rape or molestation multiple times;
   
   (6) caused a minor victim to sustain minor injuries, become pregnant, contract a sexually transmitted diseases, or other such consequences;
   
   (7) those with a previous record of rape or molestation.

26. Where the organizing, compelling, enticing, accommodating or making introductions for a minor to become prostitutes constitutes a crime, it shall be punished severely. Where underage girls are compelled or enticed into prostitution, conviction and sentencing shall be handled in accordance with clause 1(2) of article 358 and clause 2 of article 359 of the Criminal Law respectively.
Where persons with a special duty to minors, persons who share a common family life with the minor, or state workers organize, compel, entice, accommodate or make introductions for minors to be prostitutes, the punishment shall be even harsher.

27. Where a person who is already 14 years-old, but not yet 16 years-old, occasionally has sexual relations with an underage girl, the circumstances are minor and there are no serious consequences, it shall not be found to be a crime.

IV. Other Matters

28. When adult criminals are given punishments for raping a minor, generally a suspended sentence is not applied.

As to whether suspended sentences should be used for criminals who sexually violate minors, the people's court and people's procuratorate may entrust the community corrections organization at the place of the criminal's residence, to conduct an investigation into whether announcing a suspended sentence would have a major negative impact on the community. A community corrections organization so entrusted shall promptly organize an investigation submit an investigative assessment opinion to the relevant requesting organ within the designated period.

Where a suspended sentence is announced at the same time as sentencing, a restraint order may be announced at the same time, on the basis of the circumstances of the crime, restricting the criminal for engaging in work or activities connected to minors during the probationary period of the suspended sentence, and restricting entry in elementary schools, junior high schools or kindergartens as well as other places where minors congregate; except as upon approval by the enforcement organ due to his own study or residence.

29. Foreigners committing rape or molestation of minors, or other such crimes, within the territory of China, shall be judged in accordance with law; and when giving a punishment, deportation may be used either by itself or as a supplement. As to conduct that does not constitute a crime but constitutes an administrative management violation, or where it is inappropriate for a person to continue living in China's territory because they committed a sexual violation against a minor, the public security organs may lawfully use a short-term expulsion or deportation.

30. In cases of rape or molestation of a minor where the judgment as already taken effect, the people's courts may release relevant judgment documents on the internet, with prerequisite of protecting the victim's privacy in accordance with law, and with the exception of where the crime was by a minor.

31. As to the personal injury done to a minor as a result of being sexually violated, where the victim, his legally-designated representative or close relatives submit a request for compensation for reasonable expenses such as fees spent on conducting rehabilitative therapy, nursing, transportation or lost wages, the people courts shall support it in accordance with law.

32. Where a minor has personal injuries caused by a sexual violation occurring while they were studying or living in a kindergarten, school of other educational organization and the victim, his legally-designated representative or other relative files suit in a people's court requesting that the unit described above bear responsibility for compensation, the people's court shall support in accordance with law.
33. Where minors are sexually violated by their guardians or other persons with guardianship, and the civil administration department or other such relevant unit or organization submits an application to the court requesting that their credentials as a guardian be revoked, and that another guardian be appointed, the people's court will support it.

34. As to personal injuries caused to a minor victim as a result of sexual violation, where compensation cannot be immediately received and there are hardships in their lives, people's courts, people's procuratorates and public security organs at all levels, together with other relevant departments, may prioritize consideration of providing judicial relief.