



The Dui Hua Foundation- *Advancing
rights through dialogue*

Transcript for the Joint Program on Child Welfare Law

*The Dui Hua Foundation and the Supreme People's Court of China
Event Details: Thursday April 7, 2022 (Friday April 8, for Beijing)*

MODERATORS

- Dui Hua Founder and Executive Director, John Kamm – American businessman and human rights campaigner.
- Judge Leonard Edwards (retired) – Legal Consultant and Educator, retired Superior Court Judge now working as a consultant and teacher.
- Director JIANG Jihai (江继海) – Director of Juvenile Justice Guidance Division, Supreme People's Court, P.R.China (中国最高人民法院少年审判指导工作处处长)

PANELISTS

United States

- Howard Himes – Consultant, Former Director of Social Services in Napa County, California
- Judge Roger Chan – Judge, San Francisco County Superior Court
- Judge Jerilyn Borack – Presiding Judge, Sacramento County Juvenile Court Judge
- Marian Gaston – Assistant Presiding Judge, San Diego County Juvenile Court

China

- LI Chen – Deputy Director, Division of Supervision of Minors' Protection, Child Welfare Department, Ministry of Civil Affairs
- CHEN Haiyi – Standing Member of the Adjudication Committee, Guangzhou Intermediate People's Court, Guangdong
- SONG Yin – Deputy Chief Judge, Juvenile Division, Beijing High People's Court
- WANG Wei – Deputy Chief Judge, the First Criminal Division, Jiangsu High People's Court

Transcript:

John Kamm

My name is John Kamm, I am the Executive Director of the Dui Hua Foundation. This is the US China Joint Program on Child Welfare. So, this is a historic moment, and I am honored to be on the stage with two really accomplished and dedicated people devoted to the protection of children's rights, Dr Jiang Jihai of the Chinese Supreme People's Court, and Judge Len Edwards of Santa Clara. Now going forward, what I am going to do is turn it over to Dr Jiang, he

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will say a few words about the cooperation between Dui Hua and the Supreme People's Court. After that, Judge Edwards will say a few words. Dr Jiang-

Director Jiang Jihai

Distinguished Chairman John Kamm, honorable judges of People's Courts of Beijing, Jiangsu and Guangzhou and Distinguished Judge Edwards, dear American friends, distinguished Deputy Director of the Department of Children's Welfare Affairs of the Ministry of Civil Affairs of China, Li Chen

Good morning!

It is a great pleasure to meet with you online. The scheduled face-to-face visits and exchanges have been converted into online video forum due to the COVID-19 pandemic, but I believe that it will not weaken the enthusiasm and effectiveness of our communication.

For a long time, China and the United States have carried out exchanges and cooperation in political, economic, cultural, judicial and other fields. Since 2008, we have maintained close exchanges in the field of juvenile justice. In the past decade, we have held seven rounds of seminars and discussions, which served as a crucial platform where the courts of both countries shared their experience and learned from each other, and the judges from the two countries established and enhanced their friendship. I would like to extend my heartfelt thanks to the judges who have been supporting the project and the friends of the Dui Hua Foundation.

Minors are the future of a country and the hope of a nation. Chinese President Xi Jinping pays special attention to the health, safety and well-being of minors. He has stressed that it is our greatest wish for the children to grow up to be better adults, and that raising them well is a strategic task with a long-term bearing. Chinese courts thus attach great importance to juvenile justice. Since the Primary People's Court of Changning District of Shanghai Municipality established the first collegial bench dedicated to juvenile criminal cases in 1984, for more than 30 years, Chinese courts have continuously explored and reformed the juvenile justice system and taken a great step forward toward increasingly specialized and professional practices, thus making great contributions to establishing better juvenile justice system with Chinese characteristics, effectively protecting the legitimate rights and interests of minors, as well as correcting and preventing juvenile delinquency. In October 2020, the Standing Committee of the National people's Congress of China made another substantial amendment to the Law of the People's Republic of China on the Protection of Minors. The revised Law on the Protection of Minors clearly stipulates that "to protect minors, the principles that are in the best interest of minors shall be adhered to." In an all-around manner, it further strengthens the legal protection of minors from six aspects: family protection, school protection, social protection, cyber protection, government protection, and judicial protection.

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The Law of the People's Republic of China on Family Education Promotion was also revised last year, and was formally implemented on January 1 this year, escalating family education from traditional "family affairs" to "state affairs" in the new era and opening the era of "taking care of children in accordance with the law." The Law of the People's Republic of China on Family Education Promotion clearly stipulates that parents should bear the principal responsibility in family education. For parents, their responsibility in family education is an all-round and legal obligation. If they fail to fulfill this responsibility, or do not implement family education correctly, they should bear the corresponding legal responsibility. In the course of handling a case, the people's court may issue a family education order according to the specific circumstances, ordering parents to receive family education guidance. The amendments of the two laws have not only injected new and powerful momentum into the development of juvenile justice in China, but also brought new tasks and challenges to our work. In this context, it is timely and significant for us to take the Child Welfare Act as the theme of this forum. We are pleased to brief our American colleagues on the latest developments in the field of juvenile justice in China, and we look forward to learning about your experiences and practices as well. I hope to see your open and heated discussions in this forum, so that we can join hands to contribute wisdom to the further innovation and development of juvenile justice in China and the United States. I wish this online forum a complete success!

Judge Len Edwards

Thank you, Dr. Jiang. My name is Len Edwards, and I am a retired Judge from Santa Clara County. I am honored and delighted that our two great countries are going to talk about a critical issue this evening, that is child welfare. I have four experts who will speak in order after I introduce them. These experts have careers working with abused and neglected children, and they look forward to learning from you, and we hope this exchange is only a beginning, as child welfare is complex, challenging, and best practices are being developed on a regular basis. We hope we can learn from you, and we hope we can give you some suggestions that might be of use.

Our four speakers tonight, first we have Howard Himes. He is a consultant and former director of social services in Napa County CA. Then we have Judge Chan, San Francisco County Superior Court Judge, and Chairperson of the Juvenile Court Judges in CA. Then Judge Jerilyn Borack, presiding Judge, Sacramento County Juvenile Court, and our fourth speaker will be Judge Marian Gaston, Assistant Presiding Judge, San Diego County Juvenile Court. I will now turn the presentation over to Howard Hines.

Howard Himes

Thank you, Len, and for our colleagues in China, good morning! Information provided in this presentation is specific to the delivery of child welfare services in the state of California. It is a

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state-administered/county-run system that implements State and Federal laws regarding Child Welfare. (Other states have a state-administered/state-run systems.) There are 58 counties in the state of California.

Basic Data: Oct. 2021 California data (point in time)

Allegations - 400,313

Entries into Foster Care - 22,004

Exits out of Foster Care - 23,359

Total number of children in foster care is 58,072 (point in time)

- High - Los Angeles County 20,982
- Low - Mariposa County 15

How does the state learn of a child who has been abused and/or neglected?

Counties have a hotline telephone number where you can report suspected child abuse 24 hours a day. Referrals can come from anyone in the community who suspects that a child is possibly being abused. We receive referrals from two primary sources. The first source are referrals received from the general public (relatives, neighbors, etc.). The second source is from Mandated Reporters.

Is there a mandatory reporting law? (For example, if a doctor believes a baby has been abused, does the doctor have an obligation to report to a child protection agency?)

Mandated Reporters are required to make a report of suspected child abuse when they have a reasonable cause to suspect that a child is a victim of child abuse to either law enforcement or child welfare. They are required to make a report immediately by phone with a written report (Department of Justice form) within 36 hours. Failure to make a report when required could lead to 6 months in jail and/or up to a \$1000 fine. Mandated reporters are people who usually come into contact with children during the course of their work. Examples are, but are not limited to, the following:

- Health care professionals (doctors nurses, dentists, etc.)
- Mental health professionals (social workers, psychologists, psychiatrists, etc.)
- Law enforcement
- Childcare provider
- Education professionals (teachers, aides, principals, janitors)
- Child welfare professionals
- Commercial film processors

Mandated reporters account for more than half the reports.

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What are the most common types of cases that you have investigated?

Of the 400,313 allegations received break out based on abuse type as follows: (Top 4)

- 192,964 General Neglect
- 63,188 Physical Abuse
- 47,466 Emotional Abuse
- 46730 Sexual Abuse

General Neglect - is the negligent failure of a parent/guardian or caretaker to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred. [It] can sometimes be a catch-all category.

Physical Abuse - bodily injury inflicted by other than accidental means on a child, including willful cruelty, unjustified punishment, or corporal punishment.

Emotional Abuse - nonphysical treatment, resulting in disturbed behavior by the child, such as severe mental suffering, or endangering a child's emotional well-being.

Sexual Abuse - victimization of a child by sexual activities, including molestation, indecent exposure, fondling, rape, and incest.

Research has shown that 40-60 percent of the families involved in the Child Welfare System are struggling with a substance use disorder. Research also suggests that risk factors for child abuse/neglect include poverty, unemployment, history of child abuse and violence in the family, limited support systems, low self-esteem, and poor health of parent.

What is the role of a child protection worker who is investigating a report of abuse or neglect?

Once an allegation is received, a response time is identified based on the allegations as well as other factors such as potential access of the alleged perpetrator, law enforcement waiting, etc. An immediate response is within a two-hour window from the time frame they were received. Other referral responses are within 10 days of receiving the referral. A structured decision-making tool, I Response Priority Assessment, is used to determine response time.

Structured Decision Making is a set of assessments that occur during key decision points within the child welfare process. The assessment tools include the Response Priority, Safety Assessment, Risk Assessment, and Family Reunification Prognosis. The assessments were based on an actuarial process that developed factors that indicate safety concerns, factors that look at risk of potential future abuse, and factors that indicate potential for reunification.

The investigating social worker is using the safety and risk assessment tool. The worker needs to determine overall safety for the children. The worker is also assessing risk factors as well as potential strengths [and] looking at various support opportunities: extended family, friends,

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community. Once the investigator has gathered the information, [then] they bring the family, supporters, and other professionals into a meeting to discuss possible directions. This meeting is called a Child Family Team meeting.

Under what circumstances would a child protection worker remove the child from parental care?

During the investigation process the worker is reviewing past child welfare history, gathering information from the referring party, and gathering information from collateral contacts (family, friends, etc). With all of the information gathered, the investigating worker completes a safety and risk assessment. The social worker will determine if the allegations are founded. If the allegations are inconclusive -- meaning that based on the investigation, you are unable to determine if the allegations are founded or unfounded. Or the allegations may be determined to be unfounded. If the factors are founded, and the safety factors indicate possible immediate safety issues as well as high risk factors for future abuse, [then] the social worker can complete a protective order to request the child be placed in protective custody by the courts. If the safety issues are not as significant and there are family supports, then the social worker can leave the children in the parent's custody with a safety plan developed with the family and then conduct a follow up Child Family Team meeting. If the safety and risk assessment represent lower levels of risk, [then] the family might be given referrals to services and be supported by community-based organizations.

What are the possible responses that the state can make once it discovers an abused/neglected child?

For children who were temporarily removed from their parents' custody, the Child Family Team discussion determines whether or not continual state involvement is needed for the safety of the child(ren) and a petition to be filed in Dependency Court. When making that determination, a discussion of whether or not services could be offered to the family to avoid having to continue court involvement.

This might include providing the family with voluntary case management services by Child Welfare. The voluntary program is Voluntary Family Maintenance and is usually provided instead of filing a petition in Dependency Court. The services are provided for up to one year.

In a case where the safety and risk assessment are determined to be too high for voluntary services, but low enough with family strengths and supports to consider returning the child to the family, the court would maintain involvement.

If a petition is filed, then the Child Family Team will work with the family to determine needed services to alleviate safety and risk factors. [The] Social worker reports back to the court progress made by parents on services received.

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Families who have inconclusive allegations or have low safety and risk issues can be referred to community-based organizations without Child Welfare involvement.

Judge Roger Chan

The United States and China both place great value on the importance of family in our societies. In the US, parents are recognized as having a basic protected right to the care, custody, management, and companionship of their own child. Child welfare law prioritizes protection of the child along with preservation of the family. Children are understood to also have a right to be provided with a stable permanent home in a timely manner.

Right to Counsel

To protect the rights of parents and children, the federal and state governments enacted laws to mandate appointment of counsel for parents and children when they cannot afford their own attorneys.

Parents are provided with due process rights to notice and an opportunity to be heard. The child welfare agency bears the burden of proof and parents have the right to a trial. The law also requires that child welfare proceedings be conducted in an informal and non-adversarial atmosphere whenever possible. We encourage the parties to make agreements outside of court through mediation, negotiation, or other child-centered meetings. However, lawyers must still advocate zealously for their clients.

In California, parents and children have a statutory right to counsel. The child welfare agency is represented by a county counsel who essentially acts as the “prosecutor” in the case. Other interested parties may be represented as well. To ensure the system is fair, the court appoints counsel for parents and children when they cannot afford their own attorneys at no cost to the parents. All children are presumed to be unable to afford an attorney, and all children are provided with an attorney regardless of age. Because child welfare law is a particularly specialized area of law, it may also be wise to appoint experienced counsel even when a parent is not indigent but require the parent to pay attorney’s fees based on their ability to pay. Parents may waive the right to counsel if the waiver is knowing and intelligent.

Also, because child welfare law is highly specialized, we have found it important to set minimum training requirements and standards to ensure that court-appointed counsel are competent. In addition to understanding the child welfare law and procedure, a child welfare attorney must understand other subjects such as child development, reasonable efforts, substance abuse, mental health, trauma, and the impact of poverty and race. Attorneys must provide evidence of their competency when requested by the court.

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For both parents and children's counsel, it is critical that these lawyers are adequately compensated at the same rate as the government attorney, and that the lawyers be provided with the resources to do their job effectively. As judges, we desire to receive as much reliable information as possible to make decisions that are in the child's best interest. Resources for court-appointed counsel must include investigators and social workers and educational advocates. Investigators can talk to witnesses and help the court to determine what really happened. Social workers can find services for the family and help a parent in denial begin the process of change and treatment. Educational advocates can make sure the child does not get lost in the school system, especially when the child is experiencing so much disruption in the home. Expert witnesses can help illuminate the nature of any abuse or explain any mental health conditions that require treatment.

Representing the Parent

The duties of the parent's attorney include investigating the case and representing the parent at trial. The parent's attorney explains the law and court system to the parents. Through investigation, the parent's attorney is typically able to negotiate amendments to the allegations which accurately reflect what happened, resulting in the parent admitting the conduct and then focusing on the treatment plan. The parent's attorney can help the parent communicate effectively with the social worker and attend out-of-court critical meetings where topics such as the reunification case plan are being discussed. To avoid a conflict of interest, California provides separate counsel for each parent, even if the parents are in agreement. It is not uncommon for the parents to deviate in legal position later in the case, especially when one parent is making more progress than the other.

Representing the Child

The duties of a child's attorney also include investigating the case and representing the child at trial. In some states, a guardian ad litem (GAL) is appointed for a child instead of a lawyer. A guardian ad litem, who may not be a lawyer, is usually charged with conducting an independent investigation on behalf of the child and with representing the best interests of the child to the court.

The child's attorney is charged with obtaining firsthand a clear understanding of the situation and needs of the child. When a child is placed in the child welfare system, everything affecting the child's life becomes a legal issue, from living in a safe and clean home to receiving support at school to having enough clothes to wear to having basic health needs met. California enacted a foster youth bill of rights to specify a foster youth's basic rights to dignity and to grow as a child. Studies have shown that when children are represented by lawyers, the likelihood of reunification with a parent, placement stability, school stability, and permanency outcomes improve, thereby reducing disruptions in children's lives and shortening their time in the court system.

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A central conflict for a lawyer representing a child client is whether to follow the child's stated interest or best interest, which are not always the same. A child's stated interest may be the result of immaturity, and the natural desire to return home may be an unsafe choice. However, we do not want lawyers to simply substitute their own judgment either. Whether the child's attorney advocates for the child's stated interest or best interest is guided by the child's age and maturity. For the court, the best interest of the child is discovered by hearing the input of those who know the child, including the children themselves. To ensure that the voice of the child is heard, the child's attorney must meet with the child, visit the child in their home, and interview the people charged with responsibility for the child. A lawyer provides an additional layer of monitoring to not only ensure a child's needs are met but also to prevent further abuse in a foster home.

You might think that the child's attorney would typically side with the parents, but that is not always the case. Because the child's interest in permanency may ultimately conflict with the parent's efforts to reunify with the child, the child's attorney must make sure that the child remains at the center of the proceedings. US child welfare law establishes strict timelines for a parent to reunify with the child. This is because the life of a child and the needs of the child cannot wait indefinitely for a parent to address the underlying problems that led to removal. Therefore, the child's attorney may need to advocate for the child client's interest in permanence including the termination of parental rights.

Early Appointment of Counsel

Child welfare cases typically begin quickly when child protective services respond to an emergency and remove a child from their parents. In the first 48 to 72 hours, many decisions need to be made without losing sight of how the child is experiencing the removal. I favor early appointment of counsel after a child is first removed and before the initial court hearing so that an attorney can meet with the parent or child as quickly as possible to explain the process, begin the investigation of the facts, and prepare a remediation plan. Too often, attorneys meet their clients for the first time at the courthouse just before the hearing. This is a disservice to all because the attorneys do not have enough time to interview the client and the entire family is being ushered through a busy court system with its complicated legal terminology.

Reasonable Efforts and Visitation

Another critical issue after a child is removed is the provision of reasonable efforts to reunify the family and appropriate visitation.

Lawyers must keep a watchful eye on the provision of reasonable services. Because time is of the essence in a reunification case, delay in the provision of services or inadequate assistance to the parents can set the case on an unjust pathway to termination of parental rights. Lawyers can bring any issues to the court's attention before the case is derailed.

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The lawyers for the parents and child play an important role in helping the court determine an appropriate visitation schedule. By interviewing their clients, the lawyers can convey to the court what their clients want and any specific aspects of the family that should be considered. This may include the role of relatives in the child's life, including grandparents. There are times when a child may refuse to visit with their parents – in such cases, the child's lawyer may need to prove to the court why ongoing visitation would be detrimental to the child. Lawyers should also investigate how a child responds before and after a visit. In a public system with limited resources, advocacy ensures the child's needs are prioritized instead of the public system's needs.

Conclusion

Legal representation for parents and children is essential to a fair child welfare system. Competent and well-trained legal representation ultimately contributes to family preservation and better outcomes for children.

Judge Jerilyn Borack

Cases are brought before the juvenile court only after the social services agency has made efforts and offered to help the family solve the problems that seem to be endangering the welfare of the child, and those efforts have been unsuccessful. In my experience, the most common causes for a family coming to my court involve problems that are difficult to remedy quickly: substance use disorders, domestic violence in the home, and mental health impairments. These are such a threat to the health and safety of the children that removal becomes necessary more quickly, and removal requires the involvement of the court.

We know from most every study that children do better when they can stay in their homes with the parent or parents. This can only be accomplished if necessary services can be put into place, and if the parent is a willing and cooperative member of the Family Maintenance Team. In situations where the child must be removed from the home of the parent in order to be safeguarded, we make a concerted effort to find another family member who is willing to take the child into their home, and who is able to be a safe and healthy placement option for the child. If no relatives or non-related, extended family members can be found, we have a group of foster parents who are strangers to the child, but who open their homes. They have been approved for placement and are given financial support by the government. The final, and least desirable, option would be to place the child in a congregate care, or group home setting. These offer intensive residential treatment for children who have more serious behavioral or mental health problems. The children's residential program is supposed to be delivered in a period of no longer than six months, and then a lower level of care must be considered so the child can be placed in a family setting.

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The system is designed with one end in mind: to create a healthier and safer environment for the child in the home of the parent. If a child must be removed, it is imperative that services are delivered so that the child can be returned as soon as possible. Those services include providing the child and parent an opportunity to spend time together in a safe environment. This sometimes means having someone present to supervise that contact. Therefore, visits between a parent and child are frequently dependent, especially in the beginning of a case, upon a family service worker being available to transport the child and/or spend time supervising the time with the parent. As the parent progresses with services, with longer periods of being clean and sober, for example, their time with the child is expanded. What this means is that typically the time that parents and children spend together may be as little as an hour or two, one time each week, until the parent is able to demonstrate greater safety with the child.

Children do not do well when they are in an unstable situation with an unknown future. Although they may feel safe, they need to know that their future is predictable. They want to be back home, and that is what we want too, but only if they will be safe. However, we cannot keep the child in this uncertain status for long. The parents must quickly move to demonstrate they can accomplish the needed change. The younger the child, the less time the parents have to engage and succeed. This is based upon the developmental needs of children, some of whom are infants or toddlers. Parents typically can continue to try to reunify for periods from six months to two years. Again, our primary goal is to accomplish this reunification while not making children wait forever extending periods of time.

In the event that a parent fails to achieve the goal of reunification, we try to identify an alternative permanent plan for the child. We call this “permanency planning.” We hope to place the child with a family member or with a foster family able to care for the child on a permanent basis in the event the parent fails to successfully reunify. Our preferred permanent plan for a child is to be adopted by someone willing to make the child their own. Adoptive parents have all the rights and responsibilities of biological parents. If this is to occur, the parental rights of the biological parents will be legally terminated by court order. Their rights as parents will cease. It will be up to the adoptive parents to agree to any further contact between the child and the biological parents.

A judge assigned to hear juvenile dependency cases must deal with people who are in very emotional and stressful situations. Many of them are young parents, who have a right to appear before the court and be represented by an attorney. Training for a judge is very specialized. The law itself is something that is rarely studied in law schools and rarely practiced by those who are appointed to the bench. In addition, the number of matters heard in a single day is frequently large in volume, in some places 40 or more matters on a single courtroom’s docket, allowing minimal time to address the serious problems in meeting the needs of our children and families.

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The one thing we have found to help children and families best, and to prevent the need for them becoming involved in court proceedings, is to engage families in early intervention and prevention services. An impediment that needs to be overcome is the family's fear of government involvement and the possibility of having their children removed. Providing intervention and prevention help through partnering with community-based groups helps to instill more trust and greater success.

Judge Marian Gaston

My name is Marian Gaston, and I am a judge in San Diego County in California. For the past five years, I have heard cases where children were victims of abuse or neglect by their parents.

The primary purpose of my court's involvement in these cases is to protect children who are unsafe in the care of their parents. Sometimes the court protects the child by removing them from their parents' care.

The second purpose of my court's involvement in these cases is to ensure that the parents are provided with the tools they need to be safe caregivers and raise their own children, as they should, when possible.

The philosophy of the juvenile dependency system is that the government should only remove children from parents when it absolutely has to – when it has been proved by clear and convincing evidence that a child is at significant risk of harm if the child remains in the parents' home. Even then, as a general rule, the goal of the system is to give the children back.

Procedurally, a case comes to my court only after our child welfare agency, Child Welfare Services, has received a report of abuse or neglect, and an investigation has been conducted by one of the social workers who work for Child Welfare Services. A report could be that a child is physically or sexually abused, born with drugs in their body, or suffering from neglect – not eating, not being dressed in appropriate clothes, or not being taken to a doctor when they need to go. When safe, our child welfare agency attempts to provide help to the family that will ensure the child's safety without court intervention.

For example, if a teacher has reported that a child had a mark on his back from being hit with a belt, our child welfare agency may reach out to the parent to determine what happened. If the parent admits [to] hitting the child with the belt and is open to learning other ways to discipline the child, the social worker may connect the parent with resources to help them learn effective ways to communicate with and correct the child. The social worker may check in with the family a few times to ensure that the child is safe, and if the social worker is satisfied that the child is not at risk, the court will never intervene.

On the other hand, if the abuse or neglect is on-going or is so extreme that Child Welfare Services wants the court to be involved, an attorney representing the child welfare system files a

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petition alleging that a child has been abused or neglected. As I mentioned, I live in San Diego County. This is a county of approximately 3 million people. Our courts hear around only 1,200 petitions alleging abuse or neglect in a year. So these petitions are relatively rare.

A typical case is one involving drugs and domestic violence. For example, a petition may allege that a child, Thomas Wang, is in danger of suffering serious physical harm. The petition will contain supporting facts. For example, the petition may state that on April 1, 2022, police responded to a physical fight between the mother, Cynthia Wang, and her boyfriend. Upon arrival at the mother's apartment, police found that both parties were intoxicated. The television had been broken, there was glass on the floor, and there were drugs and drug paraphernalia found around the apartment, including on a table where a child could reach it. The two-year-old child, Thomas, was crying and wearing a dirty diaper with severe diaper rash, and there was no food in the apartment.

Before having the case heard in court, the child welfare agency must provide notice to the parents, either orally or in writing. In our example, where the mother is the only parent present, the child welfare agency must make reasonable efforts to locate and notify the father about the upcoming court date. If the child has been removed from the mother's care, the agency must also attempt to place the child with a relative or family friend if at all possible; this is because research shows that children tend to do better when removed from a parent if they are placed with family or others who are familiar to them.

The case must come to court within two days if the child has been removed from a parent's care. Once the case comes to court, the parents each have the right to a separate attorney. The attorneys or the court must advise the parents of the allegations against them, the nature of the proceedings, and the possible outcomes, which could include the loss of parental rights and placing the child for adoption. The parents have the right to contest the allegations in the petition at a trial heard by a judge.

If the parent admits that the allegations in the petition are true, or if, at trial, a judge determines that the allegations in the petition are true, the court takes jurisdiction over the child. The next question the court must decide is whether the children can safely go home. The court has the option of placing the child with a caregiver other than the parents. However, if it can be done safely, the court must place the child with the parents. In our example, let us imagine that Ms. Wang has a sister who has known Thomas since birth. The sister is willing to move in to watch Thomas while the case is going on. The mother is willing to begin drug treatment, take regular drug tests, and stop seeing her boyfriend. In this situation, we may decide to leave the child in the mother's care.

Once the decision is made about where to place the child – with a parent or outside the home – another question for the court is what services to order for the parent to support the safety of the child. We call this list of services a case plan. For Ms. Wang, the court may order that she follow a case plan that includes drug abuse treatment, drug testing, and counseling to address

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violence in her romantic relationships. The goal is for her to learn from these services how to protect her child. Future hearings will be set at six-month intervals to monitor her progress and see if court intervention can end. When this happens, we terminate the court's jurisdiction and congratulate the parents on a job well done.

Chinese Panelists

Vigorously Promote High-Quality Development of Child Welfare and Minor Protection Department of Children's Welfare Affairs of Ministry of Civil Affairs - LI Chen

Your Excellencies, dear friends from the Dui Hua Foundation,

Good morning. It's my great pleasure to attend the meeting today. On behalf of the Department of Children's Welfare Affairs of the Ministry of Civil Affairs (MCA), I would like to brief you on MCA's work on child welfare and minor protection. The Department of Children's Welfare Affairs of the MCA was officially established in early 2019, mainly responsible for the protection of orphans and de facto unattended children, as well as care and protection of left-behind children in rural areas and children in hardships. Since 2021, the Department of Children's Welfare Affairs has undertaken related functions of the Office of the Leading Group on Minor Protection of the State Council and further expands its scope of service targets.

I. Introduction to Child Welfare Work

At present, child welfare in China mainly refers to the special security and special services provided by the government and the society for children in special hardships, mainly including orphans, de facto unattended children and other special disadvantaged groups. In recent years, we are continuously improving the design of child welfare work at the top level, enhancing the security standard, enriching the security contents, optimizing services, expanding the scope of service targets and transforming our services from simple material supply to material and mental integration.

In terms of policy making, the State Council successively issued the Opinions on Strengthening Security Work for Orphans, the Opinions on Strengthening Security Work for Children in Hardships, and the Opinions on Establishing the Rehabilitation and Assistance System for Disabled Children, and made an institutionalized top-level design of basic livelihood security for orphans, classified security for children in hardships, and rehabilitation and assistance for disabled children. In 2019, the MCA and other relevant authorities issued the Opinions on Further Strengthening Security for De Facto Unattended Children, which incorporates de facto unattended children into the scope of national security with reference to the security standard for orphans, filling the institutional gap in the field of child welfare for a number of years.

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In terms of security measures, since 2019, the central government has increased its fiscal subsidies for living expenses of orphans in the eastern, middle, and western regions by 50 percent, better ensuring the basic livelihood of orphans. In 2021, efforts were made to include orphans and de facto unattended children into the scope of temporary price subsidies. The “Tomorrow Program for Medical Rehabilitation of Orphans” and the “Welfare Lottery Assisting Dreams of Orphans for Education” were carried out, effectively assuring the rights and interests of orphans in medical treatment, rehabilitation, and education.

In terms of institutional management, China has formulated standards and regulations, such as the Regulations on the Administration of Child Welfare Institutions, the Family Foster Care Assessment Standards and the Specification for Business Archive Management of Child Welfare Institutions, which continuously improved the normalization, professionalism and standardization of child welfare institutions. China has carried out activities including extensive investigation into the upbringing of orphaned and abandoned children, and prevention and resolution of major risks in the field of children’s welfare. In 2021, 13 authorities including the MCA issued the Opinions on Further Promoting Improvement, Upgrade and Innovation-Driven Transformation of Child Welfare Institutions to Pursue High-Quality Development to facilitate improvement and upgrade of such institutions at provincial and municipal level for the integrated development of children upbringing, medical treatment, rehabilitation, education, and social work.

II. Introduction to Minor Protection in China

China is a country with a large population and a considerable number of children, ranking second in the world. In recent years, the State Council successively issued the Opinions on Strengthening and Improving Assistance and Protection for Vagrant Minors, the Opinions on Strengthening Care and Protection for the Left-behind Children in Rural Areas and other policy documents. The MCA, coordinating with other relevant authorities, issued a number of policy documents on revoking the right of guardianship of infringers, providing shelter and assistance for victims of domestic violence, enhancing personnel development of social workers, and optimizing care and service systems, etc. It has appointed 55,000 child welfare supervisors in towns and townships and 667,000 child welfare directors in village or neighborhood committees, preliminarily establishing full-time and part-time grassroots working teams for children affairs, and organized and carried out care activities such as the “Synergy for Guardianship, Companion for Growth.” Thanks to all the efforts, the legitimate rights and interests of minors are effectively protected.

The Law of the People’s Republic of China on the Protection of Minors recently revised on October 17, 2020 increases the number of articles from 72 to 132, which explicitly provides that “people’s governments at or above the county level shall establish a coordination mechanism for the protection of minors,” and subdivided the protection of minors into six aspects: family protection, school protection, social protection, cyber protection, government protection, and judicial protection, so as to further consolidate the legal groundwork for the protection of minors.

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On April 21st, 2021, the State Council established the Leading Group on Minor Protection, with its office located at the MCA. In the past year, great progress has been made in the protection of minors.

First, the top-level design is constantly improved. The Family Education Promotion Law, the Personal Information Protection Law, the Population and Family Planning Law, the Education Law and other legislation and regulations were made one after another. The State Council Leading Group on Minor Protection issued policy documents such as the Opinions on Strengthening Minor Protection. The Outline on the Development of Chinese Children (2021-2030), the Action Plan for Development and Upgrade of Preschool Education during the 14th Five-Year-Plan Period and other plans and arrangements were successively made. A large number of departmental regulations and policy documents including the Guiding Opinions on Promoting the Development of Child Friendly Cities and the Implementation Opinions on Building a Socialized Working Mechanism for Young Pioneers in the New Era were issued. Local governments are actively encouraged to establish and improve a coordinated working mechanism. By mid-September 2021, people's governments at and above the county level have been fully covered by the Leading Group (Committee) on Minor Protection.

Second, family protection measures are effectively implemented. The Supreme People's Court guided the Primary People's Court of Tianxin District of Changsha City, Hunan Province, to issue the country's first "family education order," examined and drafted the detailed rules for the implementation of the Family Education Promotion Law by the people's courts to correct acts of parents' negligence in fulfilling their responsibility for family education or improper implementation of family education by law. The Supreme People's Procuratorate and other departments made opinions on comprehensively providing instructions on family education and issuing the "supervision on guardianship order" in handling cases involving minors. The All-China Women's Federation took the lead in drafting the Five-Year Plan on Guiding and Promoting Family Education (2021-2025). The MCA, the Ministry of Human Resources and Social Security, the Ministry of Housing and Urban-Rural Development, China Cares for the Next Generation Working Committee, and other authorities are actively engaged in educational activities under themes of "policy publicity into villages (residence)," "elderly role models carrying forward sound family education and fine family traditions," etc., and provide timely support such as living assistance, employment assistance, housing security, and fostered care.

Third, school protection is constantly optimized. The Ministry of Education has issued the Regulations on School Protection for Minors, and strengthened professional ethnics and ethos of teachers, launched an inquiry system for access of teaching staff, and banned any person with any illegal or criminal record of sexual assault from being employed or certified as a teacher. China has initiated the "safe school and peaceful campus" campaign, launched the national safety education day for primary and secondary school students, carried out special activities to prevent drowning accidents and bullying involving primary and secondary school students to ensure campus safety. China has also taken measures to regulate extracurricular

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sports training, strengthen the physical health management of primary and secondary school students, and prevent and control myopia among children and adolescents, so as to promote the all-round development of students.

Fourth, cyber protection is carried out steadily. The Publicity Department of the CPC Central Committee, the Office of the Central Cyberspace Affairs Commission, the Ministry of Public Security, the Ministry of Culture and Tourism, the National Radio and Television Administration and other authorities aim to strengthen cyber environment governance for minors by making policy documents, carrying out special campaigns, and other means. The CPC Publicity Department gives full play to the mechanism of “through train towards clean Internet” and urges Internet-based enterprises to cement content review, launch the youth mode, and actively carry out the work of “protecting seedlings.” The Office of the Central Cyberspace Affairs Commission and the Ministry of Industry and Information Technology open up minor-related reporting channels. The Ministry of Culture and Tourism carries out law enforcement inspections on the online cultural market and measures to prevent minors from indulging in online games. The CPC Publicity Department, the Office of the Central Cyberspace Affairs Commission, the Central Committee of the Communist Youth League, and other authorities constantly improve the rule of law awareness of young Internet users through online legal publicity activities.

Fifth, government protection work is consolidated continuously. The MCA took the lead in issuing the Opinions on Further Promoting Improvement, Upgrade and Innovation-Driven Transformation of Child Welfare Institutions to Pursue High-Quality Development, encourages local governments to strengthen the construction of institutions for minor protection and speed up the construction of grassroots minor protection networks. It instructs local governments to provide assistance and protection for vagrants and begging minors and those who lost guardianship due to emergencies. The Health Commission makes systematic arrangements for the treatment and management of children’s hematological diseases and malignant tumors, eye care for children aged 0 to 6, children nutrition improvement, screening of newborn diseases, etc., and, jointly with the Development and Reform Commission, enhances infrastructure for nursery services and drafted the Plan on Nursery Service System during the 14th Five-Year Plan Period. The MCA and the China Disabled Persons’ Federation have made it possible to accept applications for the eligibility for subsidies for orphans, de facto unattended children, and the disabled through an inter-provincial process. The MCA, the All-China Women’s Federation, the Central Committee of the Communist Youth League and other authorities provide guidance for child welfare directors and volunteers during summer and winter holidays to promote care and services for left-behind children in rural areas and other minors.

Sixth, judicial protection is consistently strengthening. The Supreme People’s Court, the Supreme People’s Procuratorate, and the Ministry of Public Security are enhancing capacity-building of special agencies, such as juvenile courts and procuratorial agencies for juvenile delinquency, instruct local governments to handle minor-related cases by law and severely crack down on crimes involving minors. The Ministry of Justice instructs local governments to

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actively provide legal aid services for minors and community-based rehabilitation for juvenile offenders serving their sentences. The Central Committee of the Communist Youth League launched a nationwide campaign of electing “defenders of youth rights.” All relevant authorities are strengthening the publicity and education of the rule of law by publishing representative cases, carrying out publicity and education on the rule of law and other means.

Seventh, social protection is in progress in an orderly manner. The CPC Publicity Department includes eligible patriotism education and demonstration bases into the scope of subsidies for free access. The Supreme People’s Procuratorate deploys and carries out a special campaign of legal supervision on the protection of minors under the theme of “Protecting the Future with Justice and Love.” The Ministry of Public Security examines and formulates the requirements with “five musts” for hotel reception of minors. The Ministry of Culture and Tourism formulates measures to regulate performance brokerage activities, strengthen management of performers and promote healthy and orderly development of the performance market. The Ministry of Transport, the Ministry of Culture and Tourism, the General Administration of Sports, the China Association for Science and Technology and other authorities instruct transport companies, patriotism education and demonstration bases, sports venues, and science and technology museums to provide free or discounted tickets to minors. The Ministry of Emergency Management instructs local governments to revise emergency plans for places with gathering of minors. The State Administration for Market Regulation carries out special campaigns such as protecting the safety of children’s and students’ supplies, and gives the most severe punishment to off-campus training agencies with illegal acts of false publicity and price fraud. The CPC Publicity Department, the Ministry of Science and Technology, the MCA and the National Radio and Television Administration are actively engaged in publicity activities related to minor protection.

Looking ahead, the MCA will continue to give full play to functions of the Office of the Leading Group on Minor Protection of the State Council, collaborate with member agencies to further implement and refine “protection in the six major aspects,” enhance international cooperation, exchanges and mutual learning, and spare no efforts to promote the high-quality development of child welfare and minor protection in China.

CHEN Haiyi

**The Characteristic Work of Judicial Protection of Minors in China
The Intermediate People’s Court of Guangzhou City of Guangdong Province**

Distinguished guests. Good morning/afternoon!

China has been making continuous efforts to strengthen and improve the judicial protection of minors. In the 1980s, 17 provinces, autonomous regions and municipalities directly under the Central Government, including Shanghai and Guangdong, successively formulated regulations
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on the protection of minors. In 1991, the first Law of the People's Republic of China on the Protection of Minors was adopted. In 1999, the first Law of the People's Republic of China on Prevention of Juvenile Delinquency was adopted. In 2015, the Law of the People's Republic of China on Anti-Domestic Violence was adopted. In 2021, the Law of the People's Republic of China on the Promotion of Family Education was adopted. In 1984, the Primary People's Court of Changning District of Shanghai Municipality set up the first collegial bench dedicated to juvenile criminal cases. In 2006, the Supreme People's Court of the People's Republic of China set up juvenile tribunals in the first batch of pilot intermediate courts, including the Guangzhou Intermediate People's Court. The network of judicial protection for minors in China is becoming more and more dense and solid, safeguarding all-round and healthy development of minors on multiple dimensions.

Over the years, we adhere to the principle of "best interests of minors," provide minors with special and priority protection according to their physical and mental characteristics and render special judicial assistance to minors with special difficulties and demands. We promulgate and improve laws and regulations regarding minors, form a relatively independent and unique juvenile adjudication system, enhance the professional level of the personnel for juvenile justice, strengthen the contact and cooperation between judicial departments and the departments of civil affairs, departments of education, the Women's Federation, the Communist Youth League and minor protection organizations, and have established a comprehensive judicial protection system for minors from various aspects such as legal system, organizational structure, judicial procedure and social support.

Weaving a tight network of protection system and optimizing specialized adjudication teams

First, expand the scope of protection and achieve all-round protection. The Law on the Protection of Minors revised in 2020 builds an all-around and multi-dimensional protection system for minors through family protection, school protection, social protection, internet protection, government protection, and judicial protection. Taking domestic violence as a case-in point, the Law on Anti-Domestic Violence provides the personal safety protection order as an important weapon for minors under domestic violence. The Civil Code establishes a temporary guardianship system for minors in distress, as well as a reinstated guardianship system for guardians with repentance. The Law on the Promotion of Family Education promulgated in 2021 focuses on family education to protect the family growth environment of minors.

Second, elaborate the protection procedures and specify the subjects of responsibility. The people's courts, the people's procuratorates, and the public security departments have actively explored the ways and means of judicial protection of minors, and successively promulgated opinions and regulations regarding the cases involving minors. Among them, the Opinions on Several Issues Concerning the Handling of Guardians' Infringement upon the Rights and Interests of Minors by Law specifies the procedures and methods for reporting and handling the

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minors suffering from the infringement in guardianship, elaborates the measures for temporary resettlement, and provides detailed rules for the personal safety protection order and the legal proceedings for the application of disqualifying guardianship. The Opinions on Punishing Crimes of Sexual Assault on Minors by Law puts forward various judicial protection measures for cases regarding sexual assault on minors. The Opinions on Establishing the Compulsory Reporting System for Cases regarding Infringement on Minors (Trial) standardizes the procedures for the compulsory reporting system and specifies the responsibilities of the parties subject to the compulsory reporting system. Local judicial departments are requested to further strengthen the judicial protection of minors based on local conditions, establish special work plans, and formulate special guidelines for case-handling.

Third, strengthen the construction of specialized adjudication organs to improve the professional level of juvenile adjudication. In 2021, The Supreme People's Court issued the Opinions of the Supreme People's Court on Strengthening Juvenile Trials in the New Era, redefining the scope of cases accepted by juvenile tribunals, clarifying the division of labor between juvenile trials, criminal trials and family trials, establishing a leading mechanism for juvenile trials, developing professionals for juvenile trials, and establishing a new judicial statistical indicator system and an assessment mechanism for juvenile cases. The Guangzhou Intermediate People's Court established a juvenile criminal collegial bench as early as 1992, and a juvenile comprehensive tribunal in 2006. As a representative among China's juvenile tribunals, it innovates and develops a series of trial systems with Chinese characteristics and [is] suitable for minors, including trials based on education, social investigation, psychological counseling, and family education. It develops the juvenile justice brand "Yang Cheng Jin Bu Huan (Guangzhou's Invaluable Asset)" and the domestic affair justice brand "Guangzhou Wan Shi Xing (All-Round Prosperity in Guangzhou)," and formed an online and offline protection system based on the Juvenile Family Affairs Litigation and Investigation Center and extended by the mini program on mobile devices. A batch of juvenile judges with enthusiasm and dedication to the career of minor protection and rich professional adjudication experience have devoted themselves to juvenile trial for decades, making the protection of minors a highlight of the judicial protection of human rights in our country.

Combining protection with treatment to build a strong line of judicial defense

First, bring the role of judicial functions into full play and severely punish crimes against children. For crimes against minors, especially sexual assault and trafficking, the court shall determine the punishment according to the physical and mental damage, rehabilitation status of the minor victim and social impact. The court shall not be lenient in any crime with flagrant circumstances and serious consequences that shall be sentenced heavily according to law and shall effectively avoid improper sentencing. Defendants who make use of professional work such as teaching, after-school tutoring, and talent training to facilitate sexual assault or indecency of children shall be severely punished and banned in accordance with the law. The court shall render relevant judicial suggestions to schools, education departments, and local communities on issues such

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as inadequate implementation of the minor protection system, and seriously investigate the responsibility to build a strong defense line for the protection of minors.

Second, implement the principles of special protection and priority protection in case handling. For cases where guardians infringe upon the rights and interests of minors, we have launched the compulsory reporting system and the personal safety protection order system, optimized the temporary settlement methods and post-judgment settlement methods for the minor victims, determined that the disqualification and regaining of guardianship shall respect the minors' opinions, and fully considered the physical and mental health, study, and life of minors. For criminal cases of sexual assault against minors, the public security, procuratorial, and judicial organs jointly signed the case-handling guidelines, which specify the principles of special protection and priority protection for minor victims, and give specific guidelines for the acceptance of cases, questioning of victims, obtaining objective evidence, recording of verbal evidence, protection of the litigation rights of victims, psychological counseling and protection and related relief work, so as to effectively enhance the judicial philosophy and judicial capacity for the protection of minors.

Third, establish a pre-trial, in-trial and post-trial working mechanism that is in line with the physical and mental characteristics of minors. A pre-trial social investigation system has been launched. The people's courts and the political and legislative departments jointly issued the relevant implementation measures for social investigation on minor suspects and defendants, and the results of such social investigation shall be taken as an important reference for the people's courts in trials and court education. A team with 650 members has been selected to participate in the judicial protection of minors, including experts and scholars, lawyers, cadres of women's federations, social workers, and other personnel with expertise in law, psychology, and family education, to conduct targeted investigations on the social relations of minor victims. Psychological intervention has been introduced to assist the trial of cases. Through cooperation with professional psychological institutions, psychological counseling, and assessment mechanisms have been introduced, juvenile psychological counseling and assessment rooms have been established, and relevant psychological assessment scales have been independently developed to form professional guidelines. Psychological assessment experts conduct individualized psychological assessment and counseling for minor defendants and victims to realize the integration of psychological assessment, counseling, and assistance. We assist in providing legal aid in criminal cases involving minors, coordinate with judicial administrative organs to issue documents to fully cover all minor defendants with defense lawyers, designate lawyers familiar with relevant business based on the needs of minor victims to provide comprehensive legal aid, and make it clear that female lawyers must be assigned to female minors.

Facilitating the development of a social support system to foster synergy for protection

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First, provide judicial assistance to build a child-friendly society by relying on the leading group for minor protection. A leading group for minor protection shall be set up as a consultative and coordinating agency for the protection of minors. The people's courts, the people's procuratorates, and the public security organs, as members of the leading group, shall strengthen the protection of minors in the case handling and trials, adopt special protective measures in favor of the physical and mental health of minors, and strictly protect the privacy and personal information of minors. Senior judges shall act as advisory experts for the professional advisory committee of the Guangzhou Minor Protection Committee to consult on individual cases and give legal assistance and rectification opinions. Judicial departments shall work together with civil affairs departments, education departments, cyberspace departments, Youth League committees, women's federations and other organizations to form a "six-in-one" protection system for minors, which is composed of family, school, society, internet, government, and judicial protection.

Second, establish a joint mechanism for the protection of children's rights and interests. In accordance with the adjudication rules that are most beneficial to the healthy growth of minors, we provide litigation protection such as revocation and change of guardians for children in distress, including children without guardianship, without de facto guardianship or being infringed by guardianship, and work together with the civil affairs departments, education departments, women's federations, the Youth League, and other departments to provide all-round living and education support for children in distress. For example, when hearing the case of revocation of guardianship, the Huadu Primary People's Court fully considered the needs of the child in study and growth, cooperated with relevant authorities in obtaining subsistence allowance for the child, and provided judicial help for the child's difficulties in schooling and medical treatment. The case was selected as the Typical Cases of the Year among the People's Courts. In a case of disqualification of guardianship filed by the District Committee of the Communist Youth League heard by the Baiyun Primary People's Court, the professional advisory committee of the Guangzhou Minor Protection Committee organized a consultation and submitted the consultation resolution to the court for reference. The court fully reviewed the household registration materials, reports of social workers' intervention and other evidence, conducted social investigations, and made a judgment revoking the guardianship, which helped the minor victim gain independence.

Third, strengthen social assistance and protection for minor victims. Courts in Guangzhou, by using the service program resources purchased by the government, introduce individual cases to the "Youth Zone," and set up workstations in the courts for the "Youth Zone" program. The Municipal Committee of the Communist Youth League organized youth social workers to provide psychological counseling and emotional guidance for minor victims. In hearing cases involving minors, we explore family education guidance, strengthen communication and cooperation with psychological experts and community workers, help the children's family members to improve parental education capacity through professional social forces, guide them

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to provide more family care and attention to minors, and if necessary, order the delinquent guardians to accept family education guidance. The people's courts actively promote the optimization of social governance through the linkage of case governance and comprehensive management, provide judicial advice, and endeavor to safeguard the healthy and safe growth of minors.

Judicial Process for Hearing Cases against the Rights and Interests of Minors in China's Juvenile Courts: From the Perspective of Handling Domestic Violence Cases- The Juvenile Division of the High People's Court of Beijing Municipality

SONG Ying

As the legal system for protecting the rights and interests of minors improves and the awareness to protect human rights raises in China, the judicial process has provided stronger protection to minor victims. Here, I would like to talk about China's relevant judicial process from four aspects, from the perspective of handling domestic violence cases.

The first aspect is relevant laws and regulations.

China's Anti-Domestic Violence Law, Law on the Protection of Minors, and Family Education Promotion Law provide relevant regulations for the handling of cases of domestic violence against minors and the judicial protection of minors. In addition, several other laws and guidance documents have offered guidance for the legal process related to the above-mentioned cases, such as the Civil Code, the Criminal Procedure Law, the Civil Procedure Law, the Opinions on Several Issues Concerning the Handling of Acts of Guardians Against the Rights and Interests of Minors in Accordance with the Law, and the Opinions on Punishing Crimes of Sexual Assault Against Minors in Accordance with the Law.

The second aspect is basic principles.

When handling domestic violence cases against minors, prudent decisions should be made based on the following five principles.

First, the principle of the best interest of the minors. This principle aims to help avoid and alleviate the negative impact to minors brought about by judicial activities to the maximum extent.

Second, the principle of prompt and effective intervention.

Third, the principle of safeguarding the safety and privacy of victims. For example, information about the identity of minor victims or information that can reveal their identities should be kept strictly confidential. When collecting evidence in the victim's residence, behaviors that might

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affect the victim's reputation and privacy should be avoided, such as driving police cars or wearing uniforms.

Fourth, the principle of respecting the choice of the victim. When making decisions that might have a significant impact on the aggressor or the victim, the victim may be heard first, and then a reasonable and sensible decision may be made within the limits of the law.

Fifth, the principle of special and general protection. Decisions should be made in favor of the interests of the victim in an appropriate manner. Meanwhile, communication and cooperation with relevant departments should be strengthened and all necessary means should be taken to solve the problems faced by the victims.

The third aspect is judicial practice.

First, expand the channels for the discovery of domestic abuse cases involving children.

1. Establishment of a compulsory reporting system. In addition to the victim himself/herself, individuals and organizations in close contact with such minors, such as his/her relatives, neighbors, colleagues, village or residents' committee, hospital, school, and kindergarten, should immediately report to judicial authorities or civil affairs and educational departments if they discover that a minor is or is suspected of physically or mentally assaulted, or is in other dangerous situations, in order to prevent serious consequences caused by delayed discovery.

For example, one domestic child abuse case was discovered because the victim asked for a leave from school cleaning services from the teacher because of foot pain. The teacher checked his/her foot, asked about the causes, and learned that the victim was abused by his/her mother. Then, the teacher immediately reported it to the school and the police.

2. Attention shall be paid on discovery on relevant criminal evidence. In some cases, the domestic violence behaviors have constituted a crime, but the victim and his/her close relatives thought it was only a violation of public security administration regulations and requested public security departments to impose administrative punishment on the aggressor. Others only filed civil lawsuits with the courts claiming civil liability. As a result, the cases failed to enter the criminal judicial process and the aggressors were not duly punished. To address the problem, public security departments when handling administrative cases such as physical injury and abuse, and courts when hearing civil cases related to family and marriage or tort disputes, should treat such cases as criminal cases upon the discovery of evidence of domestic violence crimes. Courts should transfer such cases to public security departments. In cases of private prosecution, the victims should be advised to initiate private prosecution.

Second, investigate and handle relevant cases promptly.

1. Upon receipt of a report, accusation or complaint of domestic violence, a court shall immediately ask for preliminary information about the case, make a statement, investigate it

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promptly, and decide whether to accept the case based on its jurisdiction. If the conditions for case acceptance are met, the case shall be filed promptly. If the case may constitute a crime but fall outside its jurisdiction, the case shall be transferred to the competent authorities and the informant, accuser or complainant shall be notified of such transfer. If the case does not fall within its jurisdiction but urgent measures must be taken, urgent measures shall be taken first and then transferred to the competent authorities afterward. If the act of domestic violence does not yet constitute a crime, but is a violation of public security administration regulations, the case should be handed over to the public security authority in accordance with the law, and the victim should be informed that he/she can resort to the mediation committee, or file a civil suit with the court.

2. In cases of minor domestic violence offenses for which the victim has evidence, the victim's right to choose between public or private prosecution should be respected. If a public security authority is requested to handle the case, it shall accept the case and investigate it in accordance with the law. If a private prosecution is filed with the people's court, the court shall accept it in accordance with the law.

3. In private prosecution cases with minor injuries and abuse, the minor victims often do not have or lack the objective ability to initiate proceedings. To protect their right to initiate proceedings, the victim's close relatives can file the complaint or represent them to file; if not, the procuratorate can file the case, and can also urge and support the close relatives to initiate proceedings.

Third, establish specialized organizations and professional teams.

Courts should allocate such cases to a special juvenile court, and the staff handling the cases should be specially trained and familiar with the physical and mental characteristics of minors.

Fourth, collect and review relevant evidence.

1. Public security departments shall collect and protect evidence promptly, fully, and comprehensively when handling such complaints, given minor victims' relative vulnerability and their difficulty in providing evidence.

2. Facing the victim's lack of ability to adduce evidence, courts shall provide timely guidance on the adduction and step up the effort to obtain evidence in accordance with their powers.

3. When it comes to testimonial evidence provided by minors, psychologists may be invited to conduct a comprehensive assessment of the cognition, memory, and expression of the minors based on their professional knowledge, so as to provide courts with a supplementary reference for the veracity of the statements made by minors.

Fifth, step up follow-up measures.

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1. The victim or his/her close relatives shall be contacted through visits and phone calls to understand and assess the victim's personal safety conditions. Coercive measures can be taken when necessary.
2. Efforts should be made to treat and resettle the victims. Victims that need urgent treatment shall be sent to medical institutions immediately; Relevant departments shall be contacted promptly and assisted for the resettlement of victims that are under severe threat of domestic violence or in a dangerous state such as being unattended.
3. Legal aid shall be offered. Relevant departments should inform the victims of their right to appoint a litigation representative, and take the initiative to help them apply for legal aid. Legal aid agencies should assign lawyers familiar with the physical and mental characteristics of minors and the laws and regulations against domestic violence.
4. Derivative harms should be avoided. When inquiring about a minor victim, the minor's home or other places where he/she feels psychologically safe shall be chosen and other adult relatives of the minor or a suitable adult such as a representative of the school or minors protection organization shall be notified to be present. During the inquiry, measures such as audio and video recording should be taken; languages and expressions that are acceptable for the minor victim should be used; repeated interviews shall be avoided. In cases with female victims, female officers should be assigned to do the inquiry. Minor victims generally do not testify in court, and if they must, protective measures such as technical means to protect their privacy should be taken (for example, setting up a special victim protection room where the victim participates in the entire court hearing via video, with technical processing of the victim's appearance and voice).
5. Measures such as social observation and protection, psychological intervention, and judicial assistance should be adopted. Depending on the cases, courts could assign social observation and protection workers to investigate and promptly intervene in cases where minors have been victimized, to participate in the follow-up of the execution of court decisions, etc. Courts may also engage psychologists to provide psychological reassurance and counseling to the victims to help alleviate their psychological trauma. If the victims are unable to obtain effective compensation in a timely manner, courts may offer them priority judicial assistance promptly in conjunction with the relevant authorities.
6. Education and guidance should be offered to address issues related to guardianship. In cases where a guardian has committed domestic violence and seriously infringed upon the legitimate rights and interests of a minor victim, courts may inform minor victims and other individuals or organizations that are entitled to be guardians of their right to apply for the revocation of guardianship. Based on relevant applications, courts may revoke the guardianship of the aggressor and appoint a guardian in accordance with the law. Courts may also admonish the guardian concerned and order him/her to receive regular family education and guidance.

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The fourth aspect is supportive measures.

First, personal safety protection orders and restraining orders should be used.

For cases where the victims have suffered domestic violence or are in present threat of domestic violence but have not yet constituted a crime, courts may issue a personal safety protection order in accordance with the law, prohibiting the aggressor from committing domestic violence and from following or contacting the victim, his/her relevant close relatives, etc. The aggressor shall be fined or detained according to the severity of the circumstances if he/she violates the personal safety protection order. If such cases constitute a crime, the aggressor shall be held accountable in accordance with the criminal law.

For offenders who have been sentenced to public surveillance or probation for committing domestic violence which constitute a crime, courts may also issue a restraining order in accordance with the law, thereby prohibiting the offenders from committing domestic violence, interfering with the victim's life, studies, or other activities again.

Second, a cross-departmental effort shall be made.

Courts should reinforce coordination and cooperation with relevant departments such as civil affairs and educational departments, relevant social organizations, and groups, and mobilize multiple parties to develop a joint working mechanism. For example, someone surnamed Li often used violence when disciplining Xiao Fang while he was raising her. Upon application by Xiao Fang's grandparents on her behalf, the court issued a personal safety protection order to prohibit Li from committing domestic violence against Xiao Fang. The court later found that Li had repeatedly violated the order and was suspected of criminal offenses, so the case was handed over to the public security authority. The relief and protection center for minors coordinated with the resident's committee and social workers to take care of Xiao Fang, and hired experts to carry out psychological counseling for her, and the juvenile legal aid center provided legal assistance to her. In the end, the prosecutor's office instituted public prosecution. The court imposed a criminal penalty on Li, and the Women's Federation sent a public interest lawyer to represent Xiao Fang's grandparents to file a lawsuit to revoke the guardianship. The court, on the basis of respecting Fang's choice, ruled to revoke Li's guardianship and appointed Fang's grandparents as her guardians, providing security for Fang's subsequent life.

Third, judicial advice should be offered.

Fourth, legal education should be intensified.

In closing, please note that the protection of the rights and interests of minor victims in domestic violence cases is only the tip of the iceberg in terms of the judicial protection of minors. Attention should be paid to the various groups of minors whose rights and interests have been infringed, and relevant judicial procedures should be designed to fully reflect the overarching

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principle of “special and priority” protection for minors and highlight the unique humanistic care of juvenile justice.

Issues Related to the Trial of Guardianship Revocation Cases in China Juvenile Tribunal of the High People’s Court of Jiangsu Province

WANG Wei

Relevant provisions regarding revocation of guardianship can be found in many laws of China, such as the General Provisions of the Civil Law, the Minors Protection Law and the Anti-Domestic Violence Law, among others. In December 2014, the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security and the Ministry of Civil Affairs jointly enacted the Opinion on Issues Relating to the Legal Measures for Guardians’ Abusive Actions Towards Minors which refines and improves the trial proceedings for guardianship revocation cases, as well as provides supplementary and systemic mechanism such as temporary guardianship and subsequent resettlement after a judgment is made. In 2016, the Supreme People’s Court published 12 typical cases where guardianship were revoked due to infringement on minors’ rights and interests. In 2017, the General Provisions of the Civil Law further made specific provisions on the applicant and applicable circumstances of the revocation of guardian qualification, which were incorporated into the Civil Code in 2020.

I. Circumstances Where Guardianship Revocation May Apply in China

Article 36 of the Civil Code of China lists three circumstances: (i) where a guardian is engaged in any act which severely damages the physical and mental health of the ward, such as sexual assault, sale, abandonment, abuse and violence against the ward; (ii) where a guardian fails to perform the duties of guardianship or is unable to perform such duties but refuses to delegate all or part of the duties to others, thus placing the ward in a desperate situation. Typical scenarios include the parents indulging in drug use, gambling, or being alcoholic [for] a long time and are therefore unable to properly perform their obligations as the guardian; or the patents are in jail serving sentences, unable to perform their obligations but refuse to assign all or part of the their guardianship, resulting in the minor being in a state of distress or danger; and (iii) (as a clause designed to cover all other circumstances) where a guardian is engaged in any other act which severely infringes upon the lawful rights and interests of the ward, such as instigating or using minors to commit crimes of a severe nature; coercing, deceiving and using minors to beg on the street and refusing to rectify after censure and education being conducted three times by the public security authority or institutions for minor protection and aid, as a result of which the normal life and education of the minors are severely impacted.

Chinese legislation is very prudent about revoking the guardianship, which shall only apply when a guardian has caused severe damage which jeopardizes the healthy development and survival

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of the minor. There is rationale behind such legislation. Family is the best place and parents are the best choice for raising children, and the care of parents and the warmth of a family are essential for children to grow up in a healthy way. Minors should live in their native family as far as possible, which is undoubtedly the most beneficial to the growth of minors. Parents are the natural guardians of their children. Raising their children is both an ethical and affectionate need and a statutory responsibility. The revocation of guardianship is only applicable to a limited number of particularly serious circumstances, and if revoking parents' guardianship happens too easily, it is not conducive to protecting the interests of minors and may also lead to a series of social problems. Therefore, the judicial power shall only intervene in family relations in a way of minimal damage as "the last resort." It should be prudent and modest to apply the revocation of parents' guardianship, and strictly distinguish between guardianship infringement and improper education/slight physical punishment.

II. Eligible Applicants for Guardianship Revocation

In case of a breach of guardianship duties, a number of parties are eligible to apply for the revocation of guardianship, including other individuals who are qualified as guardians (inclusive of grandparents, older brothers and sisters, other persons, or organizations who are willing to act as the guardian with the consent of the neighborhood committee, village committee of the place where the minor lives, or the civil affairs department), the local neighborhood committee or village committee, schools, medical institutions, the women's federation, the disabled persons' federation, minor protection organizations, and civil affairs departments, and minor aid and protection agencies thereunder. To prevent the situation where no person or agency files such an application to revoke the guardianship, the civil affairs department shall, as the last resort, be responsible for filing an application with the people's court for the revocation.

III. Jurisdiction and Applicable Procedure of Cases of Guardianship Revocation

The primary people's court of the place where the minor is domiciled, where the guardian is domiciled, or where the infringement is committed shall have jurisdiction over guardianship revocation cases. The people's court shall accept cases of revocation of guardianship without charging litigation fees.

The people's court shall try the case of revocation of guardianship in accordance with the special procedures stipulated by the Civil Procedure Law, and shall hear and conclude the case within one month. If an extension is needed under special circumstances, it shall be approved by the president of the court.

IV. Supplementary Mechanism for Guardianship Revocation Cases

Implementing necessary temporary guardianship measures

After the infringement by a guardian, necessary temporary guardianship measures shall be arranged to prevent the child from being left unattended before the people's court designates a

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new guardian. The people's court may, upon application by any relevant individual or organization for revoking guardianship of the minor, directly appoint a temporary guardian based on the principle of being in the best interest of the child, or designate any other individual qualified as a guardian to undertake guardianship duties, or temporarily appoint a relative of the minor, the neighborhood committee, the village committee, or a civil affairs department (including the aid management station, the juvenile rescue and protection center), and so forth, to serve as a temporary guardian and bear the temporary guardianship responsibility. Agencies for assistance and protection of minors will provide temporary care for minors by family foster care, voluntary sponsorship, institutional adoption, or resettlement at government-designated boarding schools and other means. For example, the Nanjing Municipal Regulations on the Protection of Minors has made specific provisions on the method of temporary assistance with multi-party involvement.

Setting up a scientific and feasible evaluation mechanism

Where the applicant applies to the people's court for revocation of guardianship, relevant evidence shall be submitted. The law stipulates that the revocation of guardianship needs to reach the level of severe infringement on the healthy development and basic survival of the minor. The people's court attaches particular importance to such cases involving the basic rights and interests of minors. When the applicant is unable to produce evidence, the people's court needs to conduct a large number of visits and investigations to find out the facts. The people's court may entrust a family affair investigator to investigate the guardian's situation, and submit an investigation report to the court on the circumstances learned, including the minor's basic situation, problems existing in the guardianship and the reasons behind [them], the guardian's repentance, the minor's physical and mental health, and the will of the minor. The people's court shall comprehensively review the investigation and assessment reports and other evidence materials, and consider opinions of the respondent, the minor with ability of expression, the village (neighborhood) committee, schools, neighbors, and so forth.

Social care and psychological counseling

In such cases, the minor often suffers great harm both mentally and physically from their relatives, which is difficult to eliminate. When necessary, the people's court may hire appropriate persons in society to care for the minors, introduce psychological counseling and evaluation mechanisms, organize professional social workers and experts to participate in the legal proceeding to examine the minor's mental issues and provide psychological counseling and assessment services for both the minors and respondents

Classified Protection of Children in Distress

Our court, together with seven authorities including the Department of Civil Affairs and the Department of Finance, jointly issued the Supplementary Opinions on Issues Related to the Implementation of the Classified Security System for Children in Distress, and issued a notice

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requiring the people's courts at all levels in the province to promptly provide notification of children in distress if they find that minors involved in the juvenile tribunals meet the conditions for assistance due to lack of guardianship, serious illness, serious disability, or family poverty, etc. The juvenile tribunal shall contact the local civil affairs department of its same level at the place where the child in distress has household registration to provide assistance to the child, ensuring that the child in distress is free from any worries about his or her living and schooling.

V. Judgment of Guardianship Revocation Cases

Based on the trial of the case and taking various factors into consideration, the people's court shall make a judgment that is most conducive to the physical and mental health and development needs of the ward.

1. In a case of revoking guardianship, if a minor has any other qualified guardian, the other qualified guardian shall undertake guardianship duties. The other guardian shall take necessary measures to prevent the minor from further infringement. If there is no other guardian, the people's court shall appoint a new guardian in the best interest of the ward. When the court needs to appoint an individual as guardian, it shall take all factors into consideration, including his/her willingness, moral character, physical condition, economic condition, emotional and life connection with the minor, and the will of the minor with the ability of expression. Where there is no suitable individual or organization to serve as the guardian, the minor shall be under the guardianship of a civil affairs department designated by the people's court, and shall be taken in and brought up by its subordinate child welfare institution. This reflects the principle of "family guardianship as the basis, social guardianship as the supplement, and state guardianship as the last resort" in China's guardianship system. Parents who are legally responsible for the minor's cost of living shall continue to be obligated to pay in accordance with law after their guardianship is revoked.

2. Where the people's court rejects the revocation of guardianship, it, when necessary, may visit the minor and his/her family, and may also issue judicial recommendations to the local civil affairs department, the public security police station under its jurisdiction, the village (neighborhood) committee, the Communist Youth League, the Women's Federation, the minor's school, the guardian's employer, etc., to strengthen the protection of minors and the supervision and guidance of guardians.

VI. Reinstatement of Guardianship

Where a people's court makes a judgment revoking guardianship, it shall inform the respondent of the revoked guardianship in writing. Within three months to one year from the date on which the guardianship is revoked, the respondent may apply in writing to the people's court for the reinstatement of guardianship, and shall submit relevant evidence. The temporary guardianship responsibility of the government generally does not exceed one year, in addition to the provision that a written application for reinstatement can be made within three months to one year after

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the revocation of guardianship. Hence, the party concerned is given about two years to repent and restore his/her guardianship capacity as a matter of fact, which fully reflects the prudence applied in guardianship revocation cases.

The case of application for reinstatement of guardianship shall be handled in accordance with the trial procedure for changing guardianship. The people's court shall solicit opinions of the current guardian of the minor and the minor with the ability to express, and may entrust a juvenile aid and protection agency or any other minor protection organization located in the place where the applicant is domiciled to investigate the applicant's willingness to act as a guardian, repentance behaviors, guardianship capacity, physical and mental condition, work and life situation, and so forth, and form an investigation and assessment report. Where the applicant is serving a sentence or receiving community corrections, the people's court shall solicit opinions from the criminal punishment enforcement organ or the community correction establishment.

When, upon investigation and assessment, the people's court deems that the applicant has indeed shown repentance and is suitable to serve as a guardian, it may rule to reinstate his or her guardianship, and the guardianship between the previous designated guardian and the minor is terminated at the same time. Where the applicant ever committed an intentional crime against the minor, his or her guardianship shall not be reinstated in order to prevent causing repeated harm to the minor.

Both the Chinese and US panelists provided follow-up questions based on the proposed presentations of their peers in advance of the webinar, for their counter parts to address during the program. Below are the questions and the follow-up responses by each group respectively.

Howard Himes

1. How does child welfare relate to child protection in the United States? Does the government offer cash subsidies while providing services for families with disadvantaged children?

The terms "child welfare" and "child protection" are often used interchangeably. Child welfare is a continuum of services designed to ensure that children are safe and that families have the necessary support to care for their children successfully.

Child safety is a critical component of the Child Welfare System.

2. Which department will be responsible for the subsequent affairs after reports come in via the Child Protection Hotline? How does Child Welfare coordinate with Law

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Enforcement? Which branch funds the child protection services provided by social workers?

For children temporarily removed from the custody of their parents and under the jurisdiction of the courts, Child Welfare Departments are responsible for case management services based on direction and approval of the courts.

Child Welfare coordination with law enforcement may vary by jurisdiction. In general, when Child Welfare is investigating an allegation and confirms that the abuse occurred and that the abuse may have constituted a crime, Law enforcement is called to gather evidence and initiate a criminal investigation. (i.e. physical abuse that leaves bruises and marks, sexual abuse, etc.) In addition, there is a requirement that Law Enforcement and Child Welfare cross report child abuse referral allegations received by each department.

The Administration for Children and Families (ACF), a division of the Department of Health and Human Services, is the Federal administrative oversight for Child Welfare programs. Funding is through parts B and E of Title IV of the Social Security Act.

3. Please introduce US measures for engaging families in early intervention and prevention.

Families First Prevention Act enables states to use federal funds available under parts B and E of Title IV of the Social Security Act to provide enhanced support to children and families to prevent foster care placements through the provision of mental health and substance abuse prevention and treatment services, in-home and skill-based programs, and kinship navigator services. The Act addresses the following child welfare challenges:

- A funding structure where current funding is available only after children are removed from their home;
- A need for upfront services to strengthen families; and,
- The necessity to place children in the least restrictive and most family-like setting.

Judge Marian Gaston

4. At the end of Marian Gaston’s speech, it is mentioned that the court may order a parent to follow a “case plan.” What further measures will the court take if, according to monitoring, the parent refuses to follow the plan or fails to follow it strictly?

Ideally, a parent follows all aspects of their case plan, and their case is closed with the child in their care. If a parent fails to follow the case plan in a small way, we may close the case

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regardless. For example, if a parent has been stable and sober for many months but has not finished a parenting class, I would likely close the case.

If the parent is struggling to comply with the case plan, we ask why – is there a problem with transportation? Is the parent's life so unstable because of problems with housing or mental health that those issues need to be resolved before they can meaningfully participate in other services? Is it something that could be fixed easily, like a parent has been ordered to go to drug treatment many miles from their home when there's an equally good provider close by? Once we know why the parent isn't meeting the goals of their case plan, we can try to find a solution. In my opinion, it is critical that we ask the parent what they think would be helpful to them so we can try to meet that need.

Ultimately, if a parent does not comply with their case plan at all, we cannot return a child to their care or close the case if we believe that the child remains at risk.

Judge Borack

5. How do mental health professionals conduct child psychological intervention in a child protection case? Are there any particular laws or practices specifying norms and standards regarding mental health professionals' participation? Does the work of mental health professionals vary in different protection stages (for instance, when revoking and reinstating custody)?

Child psychological intervention occurs when a child is exhibiting symptoms of mental illness or behavioral disorders. Mental health professionals, usually psychologists or licensed clinical social workers, assist with evaluation and assessment of the child's mental health with the use of evidence-based assessment tools. Children are encouraged to participate positively in the evaluation. If it is determined that a child may be assisted by psychotropic medication, further assessment is done by a child psychiatrist with a medical degree who can prescribe medications. However, a child cannot be forced to take medication unless the child poses a danger to himself or others.

Likewise, mental health professionals assist in assessing the mental health of a parent. In cases involving severe mental illness, the law permits the court to determine, if supported by evidence offered by two mental health professionals that a parent would not be able to benefit from services, that the child welfare department need not even attempt reunification with the child.

Judge Edwards

Judge Borack, I have one follow-up question for you, since you mentioned psychotropic medications, one thing we discovered in our country is that in congregate care, group homes
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and institution is that sometimes the caretakers would use psychotropic drugs to reduce the activity of the children, not necessarily to treat them, but to make them easier to manage, so they would not be out of control. That is one of the reasons in CA, we judges oversee the use of psychotropic medication. I don't know if that is an issue in China, but our advice would be, be very cautious in the use of these types of medication. Now I would like to turn it over to Dr Jiang, so our panelists' questions could be answered by your panelists. Dr Jiang...

我方对美方问题的答复口径

问题1：请一位演讲者讨论儿童被虐待或被遗弃是怎么发现的？（北京高院 宋莹）

答：我国《未成年人保护法》及《关于建立侵害未成年人案件强制报告制度的意见》，规定了侵害未成年人案件的强制报告制度。根据相关规定，任何组织或者个人发现不利于未成年人身心健康或者侵犯未成年人合法权益的情形，都有权劝阻、制止或者向公安、民政、教育等有关部门提出检举、控告。国家机关、居民委员会、村民委员会、密切接触未成年人的单位及其工作人员，在工作中发现未成年人身心健康受到侵害、疑似受到侵害或者面临其他危险情形的，应当立即向公安、民政、教育等有关部门报告。有关部门接到涉及未成年人的检举、控告或者报告，应当依法及时受理、处置，并以适当方式将处理结果告知相关单位和人员。需要说明的是，这里的“密切接触未成年人的单位”，是指学校、幼儿园等教育机构；校外培训机构；未成年人救助保护机构、儿童福利机构等未成年人安置、救助机构；婴幼儿照护服务机构、早期教育服务机构；校外托管、临时看护机构；家政服务机构；为未成年人提供医疗服务的医疗机构；其他对未成年人负有教育、培训、监护、救助、看护、医疗等职责的企业事业单位、社会组织等。例如，某虐待亲子案的案发，就是因为受害人向老师请假说脚疼不能值日，老师看了其脚伤并询问原由，得知受害人的母亲对其有家暴行为，之后立即向学校和派出所报告了情况。

问题2：在大城市（北京、上海等），有多少法官审理儿童福利案件？ 在这些城市，法官一天要审理多少起案件？（北京高院 宋莹）

答：对于涉及未成年人权益保护的案件，我国法院一般交由少年法庭审理，这些案件不仅包括涉及未成年人的民事案件，也包括涉及未成年人的刑事、行政案件。一般在大城市，通常划分有10余个行政区，不同行政区域在不同时期的未成年人案件数量各有不同，根据审判需求所配置的法官数量也随之不同，例如，有的行政

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区设置3至5名少年法庭法官，有的行政区则设置少年法庭法官达10余名。如果单纯统计法官一天要审理多少起案件，不知贵方所指的“审理”是否可以理解为与当事人谈话、调解、开庭？即便如此，这个数据也很难固定，因为不同案件的复杂程度以及涉及的延伸工作各有不同。

问题3：当孩子从父母身边被带走，不再由父母照顾时，孩子可能会被安置在哪里？（江苏高院 王蔚）

答：从时间上分两个阶段，前一个阶段是在人民法院撤销监护人资格之前，为避免孩子处于无人保护的状态，给孩子安排必要的临时监护措施。后一个阶段是人民法院判决撤销监护人资格后的判后安置。

对于临时监护措施，人民法院可以根据最有利于被监护人的原则，直接指定临时监护人，也可以由其他监护人承担监护职责。如果孩子有其他未实施侵害行为的监护人，经公安机关确认身份，交由该监护人承担监护职责。如果没有其他未实施侵害行为的监护人，有符合临时监护条件的其他亲友的，经公安机关确认身份，征求有表达能力的未成年人意见后，经村（居）民委员会同意，办理书面委托监护手续，将孩子交其临时监护。如果没有符合条件的亲友，人民法院可以根据实际情况指定村（居）民委员会、民政部门或其设立的未成年人救助保护机构（未成年人救助管理站、未成年人救助保护中心、儿童福利院）及其指定的临时寄养家庭、寄宿学校进行临时照料。教育行政主管部门会协调安置孩子的就学问题，征求未成年人意见后，指定公办学校作为其临时就读的学校。实践中，绝大多数孩子是交由其他亲友临时监护。

至于判后安置。未成年人有其他监护人的，由其他监护人承担监护职责。没有其他监护人的，人民法院根据最有利于被监护人原则指定新监护人。指定个人为监护人的，综合考虑其意愿、品行、健康状况、经济条件、与未成年人的生活情感联系以及有表达能力的未成年人意愿等。没有合适的人员或其他单位担任监护人的，人民法院指定民政部门担任监护人，由其儿童福利机构收留抚养。民政部门担任监护人的，承担抚养职责的儿童福利机构可以送养未成年人。送养未成年人应当在人民法院作出撤销监护人资格后一年后进行，但被撤销监护资格的侵害人有性侵、出卖未成年人、虐待、遗弃造成重伤以上严重后果、因监护侵害被判处5年有期徒刑以上刑罚的，则不受一年后送养的限制。



问题4：政府是否会因安置照顾孩子而给予财政支持？（民政部 李晨）

答：2014年，最高人民法院、最高人民检察院、公安部、民政部联合印发的《关于依法处理监护人侵害未成年人权益行为若干问题的意见》明确，“公安机关在出警过程中，发现未成年人身体受到严重伤害、面临严重人身安全威胁或者处于无人照料等危险状态的，应当将其带离实施监护侵害行为的监护人，就近护送至其他监护人、亲属、村（居）民委员会或者未成年人救助保护机构，并办理书面交接手续。负责接收未成年人的单位和人员应当对未成年人予以临时紧急庇护和短期生活照料，保护未成年人的人身安全，不得侵害未成年人合法权益。民政部门应当设立未成年人救助保护机构，对因受到监护侵害进入机构的未成年人承担临时监护责任，必要时向人民法院申请撤销监护人资格。”新修订的《中华人民共和国未成年人保护法》第九十一条明确，“各级人民政府及其有关部门对困境未成年人实施分类保障，采取措施满足其生活、教育、安全、医疗康复、住房等方面的基本需要。”2019年，民政部会同最高人民法院等部门印发了《关于进一步加强事实无人抚养儿童保障工作的意见》，明确对父母双方均符合重残、重病、服刑在押、强制隔离戒毒、被执行其他限制人身自由的措施、失联情形之一的儿童；或者父母一方死亡或失踪，另一方符合重残、重病、服刑在押、强制隔离戒毒、被执行其他限制人身自由的措施、失联情形之一的儿童参照孤儿保障标准发放基本生活补贴。2020年底，民政部又会同公安部、财政部印发了《关于进一步做好事实无人抚养儿童保障有关工作的通知》，在原有政策规定情形的基础上增加了父母被撤销监护资格、父母被遣送(驱逐)出境两种情形。目前，对于临时紧急庇护和短期生活照料的儿童，政府统筹困难群众救助资金进行临时救助。对于父母被撤销监护资格的儿童，纳入事实无人抚养儿童保障范围，每月发放基本生活费。当民政部门对未成年人采取委托亲属抚养、家庭寄养等方式进行安置时，这些儿童的基本生活费会发放到代为照料其的亲属或寄养家庭中。如果没有合适的亲属或寄养家庭进行安置时，也可以交由未成年人救助保护机构或者儿童福利机构进行收留抚养，机构内有专人进行养育照料，部分儿童福利机构还实现了机构内孩子的类家庭式养育照料。

问题5：当孩子从父母身边被带走，不再由父母照顾时，政府是否提供服务，从而使父母重新获得对孩子的监护权？（广东广州市中院 陈海仪）

答：《民法典》第三十八条规定，被监护人的父母或者子女被人民法院撤销监护资格后，除对被监护人实施故意犯罪的外，确有悔改表现的，经其申请，人民法



院可以在尊重被监护人真实意愿的前提下，视情况恢复其监护人资格，人民法院指定的监护人与被监护人的监护关系同时终止。这个规定从申请主体、申请程序、悔改表现、被监护人意愿、不得恢复情形等几个方面对恢复监护资格做出严格限制，避免被监护人遭受二次侵害。《关于依法处理监护人侵害未成年人权益行为若干问题的意见》第38条至40条详细规定了人民法院审理恢复监护人资格案件的程序、审查要件以及不得恢复监护人资格的情形。具体而言，当事人申请恢复监护人资格，应当向人民法院提交书面申请，由人民法院根据具体情况判断是否准予恢复。人民法院在审理此类案件中应当征求未成年人现任监护人和有表达能力的未成年人的意见，委托申请人所在地未成年人救助保护机构等未成年人保护组织或依职权走访调查申请人所在地村居委、民政部门、所在单位以及未成年人其他亲属等，全面审查申请人监护意愿、悔改表现、监护能力、身心状况，结合新出台的《家庭教育促进法》，人民法院还应审查申请人接受家庭教育指导改善监护状况的情况。民政部门出台的《儿童福利机构管理办法》也为父母恢复监护资格的福利院儿童提供配套的离院手续。

问题6：父母重新获得对孩子的监护权是否有时间限制？（广东广州市中院 陈海仪）

答：《关于依法处理监护人侵害未成年人权益行为若干问题的意见》第38条第一款规定，被撤销监护人资格的侵害人，自监护人资格被撤销之日起三个月至一年内，可以书面向人民法院申请恢复监护人资格，并应当提交相关证据。这实际上是对被撤销监护资格的未成年人的监护人申请恢复监护资格做出了期限规定，即3个月之后1年以内。规定三个月以后才可以申请恢复监护人资格，目的在于给当事人一个合理的悔过和恢复监护能力的期限。规定申请恢复资格应在一年以内，目的在于为了避免未成年人的监护权长期处于不稳定状态，以便让新的监护人能够更好、更踏实地履行职责，让民政等相关部门能有效进行家庭教育指导及统筹安排救济措施，做出最有利于未成年人的监护兜底安排。

2021年1月1日实施的《民法典》并未规定申请恢复监护资格的期限，而是将“确有悔改表现”规定为监护资格恢复事由，以审查监护人的客观表现为重点。故人民法院审查申请恢复监护人资格案件重点在于充分考虑申请人的悔改及改善监护关系的状况，同时相关未成年人保护机构在相应的申请恢复期限内应做好家庭教育指导工作，保障未成年人合法权益得到最大限度地保障。



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Judge Edwards

Thank you, Judge Chen, that was very enlightening. I have one observation to make about child welfare law in the United States, and I suspect it's true in China too. Our laws are not very old. We only decided as a government to look at child welfare in 1980, 40 years ago. As a result, our system has had many changes over the years. We think we are getting better. We think there are improvements in and our most recent federal laws have given more money to families to prevent removal, and that may be the most important thing to have happened in American [child welfare] law. But, from my perspective, I want to thank you, Dr. Jiang and all the presenters, fellow judges from China, for sharing your ideas with us. We have had a most enlightening session. Now John Kamm would like to say a few words.

John Kamm

Thank you very much, Len. Judge Edwards had the foresight two years ago to recommend having this exchange, and that is really extraordinary. I just want to say thank you for the outstanding team you put together on the US side, and most of all I want to say thank you to Dr. Jiang, the Director of Juvenile Justice Guidance Division. He has done such great work, and we have a very deep friendship, and the team he put together is outstanding. I will just say, thank you very much. This is number eight, we have done eight programs together with the Supreme People's Court, and I am looking forward to cooperating more with you, Dr. Jiang. And now over to you...

Dr. Jiang Jihai

[I am] very grateful to Chairman Kamm, Judge Edwards, and colleagues in the United States. [I am also] very grateful for the tremendous support received from the International Cooperation Department at the Supreme People's Court. And my thanks for translators' excellent and professional work.

Today's forum was very successful. We have learned and drawn experience from the mature mechanisms and unique practices in two countries' juvenile justice systems. [We have] archived intended goals through the forum. Furthermore, I also look forward to the further strengthening of in-depth exchanges and cooperation between the two countries in the field of juvenile justice in the future.

Once again, I would like to thank all the judges and colleagues.

Thank you. Goodbye.

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