

# Application of the Offense of Sexual Assault by Persons with Care Responsibilities under the Perspective of Positive Criminal Law

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**Abstract.** The offense of sexual assault by persons with care responsibilities, introduced in the 11th Amendment to the Criminal Law of the People's Republic of China, is a typical example of the development of positive criminal law in our country. It aligns with the legislative trend of phased protection for minors in the international community and optimizes our country's norms on sexual offenses. The unlawful nature of this offense lies in the exploitation of underage females by special duty personnel through the covert use of their advantageous positions. Based on the adherence to the age of 14 as the age of sexual consent, the protected legal interest defined by this offense is the sexual autonomy of females aged 14-16. This offense and rape have overlapping provisions. The term "sexual intercourse" refers strictly to penile-vaginal intercourse, but its interpretation should be expanded in the future. The element of "utilizing special duties" by special duty personnel is an implicit constitutive requirement. Regarding subjective liability, it is generally presumed that the perpetrator is aware of the age of the underage female, but rebuttal is allowed. From a restrictive interpretation standpoint, there is room for excluding liability. However, challenges remain in the application of this offense concerning the protection of sexual rights, its scope, and specific preventive measures. It is urgent for criminal legislation to keep pace, address legal loopholes, and improve relevant preventive measures.

**Keywords:** Positive Criminal Law; Offense of Sexual Assault by Persons with Care Responsibilities; Sexual Autonomy; Special Duties; Exclusion of Liability Paths.

## 1. Introduction

In today's rapidly developing society, there has been a noticeable increase in new types of infringements on legal interests, leading to collective scrutiny and reflection from the public. Influenced by legal interest protectionism, criminal legislation in various countries has become more active, with a tendency towards forward-looking criminal law protection. In order to timely respond to social concerns, the perspective of positive criminal law has become the mainstream view in China's criminal law, and the 11th Amendment to the Criminal Law is one of its most important legislative practices. Positive criminal law emphasizes the use of proactive criminal legislation to expand the scope of criminal offenses and strengthen criminal punishment in order to meet the needs of maintaining social stability. Instead of pursuing stability in criminal law at the expense of individual case justice, we should face the activity of criminal legislation directly, shifting the focus of attention from criticizing legislation to seeking practical interpretations that are in line with respecting legal texts.

The establishment of the offense of sexual assault by persons with care responsibilities is a legislative response to the increasingly prominent issue of "acquaintance sexual assault." Data published by the Supreme People's Procuratorate in 2021 revealed that the number of prosecutions for rape of minors by prosecutorial authorities nationwide increased by 16.61% compared to the previous year. The "Bao's Alleged Sexual Assault of Adopted Daughter" case, which challenges ethical and moral boundaries, has raised public awareness of sexual offenses against minors and sparked discussions on the deficiencies in the existing system of sexual offense norms. Against this background, the addition of this offense is a necessary measure for China's criminal legislation to provide tiered

protection against sexual offenses against minors and to help fully implement protective mechanisms through criminal legislation and punishment systems.

As a newly established offense, the provision is presented in a concise form, and relevant judicial interpretations have not been issued, which increases the difficulty for legal professionals to understand and apply it. Even though some practical cases have emerged, there are still debates in academia regarding the protected legal interests, constitutive elements, distinctions between criminal and non-criminal acts, and the relationship between this offense and other offenses, which require in-depth research and exploration.

## **2. Protected Legal Interest of the Offense of Sexual Assault by Persons with Care Responsibilities**

The protected legal interest of this offense is the key to distinguishing between criminal and non-criminal acts, and the focus of controversy in academia. From a systematic interpretation perspective, this offense is classified under the chapter "Crimes Infringing upon Citizens' Personal Rights and Democratic Rights" in the "Criminal Law," and its protected legal interests should fall within the scope of citizens' personal rights. In addition, this offense is regulated after Article 236 "Rape" and before Article 237 "Forcible Indecency and Insult," so the protected legal interests should be related to sexual rights. The debate over the legal interest ultimately focuses on the theories of sexual autonomy and physical and mental health.

In Chinese Criminal Law, there are two types of crimes against women involving sexual assault: the rape of women with the capacity to give sexual consent, and the rape of women who do not. The protected legal interests of the former are based on the theory of sexual autonomy, while the protected legal interests of the latter are based on the theory of physical and mental health. The capacity to give sexual consent is closely related to the age of the victim, which leads to discussions on the age of sexual consent. In China, the age of sexual consent is set at 14 years old. Even if females below 14 express consent to sexual intercourse, the perpetrator still commits rape.

### **2.1. The Dilemma of the Mental and Physical Health Argument**

Some scholars argue that the underlying purpose of this offense aligns with the protective interest of rape involving the seduction of underage girls, which is the mental and physical health of females aged 14-16. This argument is based on the premise of the "limited increase in the age of consent" theory, which means that after the introduction of this offense, the age of consent in China would be partially raised. Females aged 14-16 would possess the capacity to consent to sexual activities with individuals other than those in positions of special responsibility, but not with individuals in such positions. Clearly, this leads to a situation where the capacity of consent for underage females fluctuates, posing significant problems.

Firstly, this argument contradicts the trend of lowering the age of criminal responsibility. When revising the criminal law, legislators lowered the age of criminal responsibility based on the belief that minors over 12 have the ability to distinguish right from wrong and possess basic discernment and control capabilities. Although the capacity for responsibility and the capacity for sexual autonomy are not identical, they both reflect the ability of minors to recognize and control their specific behaviors and consequences. If the age of consent is limitedly increased, it would lead to the contradictory conclusion that a 12-year-old child can be held criminally responsible for intentional murder, while a 15-year-old female cannot be held responsible for consensual sex. While criminal legislation affirms general early maturity of minors, the age of consent for underage females not only fails to decrease but is instead partially raised, resulting in a lack of harmony in the application of criminal law rules.

Secondly, this argument contradicts the establishment of criminal offenses in the criminal law. Assuming that the age of consent is limitedly increased to 16 years old, then sexual consent would be invalid for females aged 14-16 when they engage in sexual activities with individuals who have

special responsibility. So it can be directly assessed as rape. The fact that the criminal law establishes a separate offense with a lower statutory penalty than rape already indicates that the social harm caused by such situations is relatively lower than that of rape involving underage girls. Therefore, females aged 14-16 do not lack the capacity to consent to sexual activities, but rather their sexual autonomy rights are violated. Furthermore, China has long had the "Two Minors Innocent Rule," which states that if individuals aged 14-16 occasionally engage in sexual activities with underage girls without causing serious consequences, it shall not be considered as a crime. The academic community does not agree that this provision actually lowers the age of consent, but rather views it as a special treatment under the premise of maintaining the age of consent. Considering this similar situation, argument of a limited increase becomes untenable.

Thirdly, this argument inappropriately blocks a reasonable path for innocence. It would mean that once females aged 14-16 engage in sexual activities with individuals in positions of special responsibility, regardless of their consent, they would be subject to criminal punishment. This understanding could actually lead to an excessive protection of underage females, infringing upon their sexual rights based on their own choices. In certain circumstances where the rights of underage females are not violated, there is no necessity for criminal punishment. Instead, moral condemnation or administrative penalties can be used for regulation.

## **2.2. The Establishment of the Sexual Autonomy Argument**

After analyzing the issues with the previous view, this paper argues that the underlying purpose of this offense is to protect the sexual autonomy of females aged 14-16. The age of consent in China remains at 14 years old.

Sexual autonomy refers to the right of individuals to autonomously decide whether, when, where, and with whom to engage in sexual activities, free from any unlawful interference. As an inherent human right, it encompasses the rights of refusal, self-defense, and other protective rights, as well as the rights of choice, commitment, and other governing rights. Due to cognitive limitations, girls under the age of 14 are generally deemed to have invalid exercise of active governing rights but still possess passive protective rights. Females aged 14-16 also naturally possess sexual autonomy. This viewpoint is recognized by Article 174 of the German Criminal Code on sexual offenses against protected persons, Article 179(2) of the Japanese Penal Code on sexual intercourse with a guardian, Article 228(1) of Taiwan's "Criminal Code" on sexual intercourse through abuse of authority, and Article 167 of Macau's Penal Code on sexual offenses against students and dependents.

Considering the placement of the provision and the principle of classifying crimes based on the underlying protective interests in the Criminal Law, the addition of this offense in the form of "Article XX-1" generally shares the same or common protective interests as the preceding article. This offense is listed as Article 236-1, and its protective interest, like that of Article 236 on rape, is sexual autonomy, which is reasonable.

If females aged 14-16 possess sexual autonomy, why does the criminal law still establish this offense? From a proactive view of criminal law, early intervention by the law is in line with legal principles to provide comprehensive protection for the underlying interests. The legislation presumes that when facing individuals in positions of special responsibility, females aged 14-16 have difficulty making truly autonomous decisions. This presumption is based on the implicit coercion exerted by individuals in positions of special responsibility. This viewpoint is supported by practical cases, such as a case in which the Third Door County Court in Zhejiang Province explicitly stated that the stepfather's identity created a controlling personal attachment and trust relationship with the victim. Based on this unequal relationship, it can be presumed that the victim lacks the psychological foundation and ability to resist. Even if the stepfather did not employ physical violence or coercion, he exerted coercive control over the victim psychologically. Foreign scholars have also made relevant arguments. Due to various unequal relationships between the parties, individuals in positions of special responsibility can subject the other party to coercion without resorting to physical force, which may be more effective than

mere violence. Specifically, the reasons for this unequal relationship include the experiential gap caused by the age difference between the parties, the dominance and influence exerted by individuals in positions of special responsibility, and the severe psychological harm caused by sexual abuse by trusted individuals. In such cases, although females aged 14-16 possess sexual autonomy, their consent is not genuine, and therefore, they require special protection. However, when females aged 14-16 are facing individuals other than those in positions of special responsibility, both parties are generally in an equal relationship, and their sexual autonomy rights are not likely to be violated. Of course, being in an unequal relationship does not mean that sexual relations between the parties will inevitably violate the underlying interests. Whether there is implicit coercion needs to be determined based on specific circumstances.

It is worth noting that the recognition of sexual autonomy rights for females aged 14-16 does not mean that the law encourages underage individuals to engage in sexual activities or will lead to a significant increase in sexual relations between minors and others. The legal rationale that females aged 14-16 possess sexual autonomy rights has been implemented for many years in China without significant adverse consequences. Whether minors engage in sexual activities depends on their own experiences, education, living environment, and other factors, rather than having a strong correlation with the possession of sexual autonomy rights.

### **3. Constituent Elements of the Offense of Sexual Assault by Persons with Care Responsibilities**

#### **3.1. Engagement in Sexual Relations**

##### **3.1.1. Meaning of Engagement in Sexual Relations**

After clarifying the underlying protective interest of this offense, we can proceed with the analysis of its constituent elements. From a systematic interpretation standpoint, this offense, along with the offenses of rape and forcible indecency, belongs to China's legal system of sexual offenses. The prevailing view is that in rape, "engagement in sexual relations" refers to sexual intercourse involving the penetration of the penis into the vagina and does not include indecent acts that do not involve penetration. For example, if the perpetrator forces or engages in anal intercourse with a 15-year-old girl, it would not be considered "engagement in sexual relations" but rather constitute the offense of forcible indecency. Therefore, the actus reus of this offense should only include narrow sexual intercourse.

However, the argument for an expanded interpretation also has some merit. The specific meaning of "engagement in sexual relations" should evolve with the development of sexual culture and concepts. Looking at other countries and regions with similar offenses, acts of rape or indecency are included within the scope of their criminal laws. Many countries are also gradually changing their definitions of traditional sexual intercourse. In the past, the Ministry of Public Security's reply on the classification of sexual activities between same-sex individuals involving monetary transactions explicitly included acts such as oral sex, manual stimulation, and masturbation. However, to maintain the coherence of the sexual offense system, the requirement for sexual intercourse here involves physical contact. Therefore, virtual sexual activities conducted through online videos or voyeuristic sexual performances without actual physical contact should not be included.

##### **3.1.2. Voluntariness of Engagement in Sexual Relations**

There is significant controversy in academia regarding whether the offense requires voluntary engagement in sexual relations between two parties. This debate is also crucial in exploring the relationship between this offense and rape. The affirmative view argues that this offense only applies when underage females engage in sexual relations voluntarily. If underage females engage in sexual relations under coercion, it would be considered rape. In other words, these two offenses are mutually exclusive. The negative view, on the other hand, suggests that there is no requirement for voluntary

engagement in sexual relations for underage females under this offense. In this view, two offenses are in competition.

This paper agrees with the negative view. Article 236-1(2) of the Criminal Law connects the phrase "the act described in the preceding paragraph" and "the offense specified in Article 236 of this Law" with the phrase "at the same time constitutes," indicating that the perpetrator simultaneously commits both offenses. Since the perpetrator simultaneously commits multiple offenses, the law stipulates that they should be convicted and punished according to the provision with the heavier penalty. If the two offenses were mutually exclusive, the legislator would not have made this provision. Furthermore, when defining the constituent elements of this offense, the legislator did not specify any requirements regarding the means of the crime. It is precisely because the voluntariness of underage females is not a prerequisite for this offense that the means of the crime become less important.

On the other hand, the affirmative view is difficult to implement in practice for providing comprehensive protection to minors. If this offense only applies when females aged 14-16 engage in sexual relations voluntarily, then when it is impossible to determine whether underage females engaged voluntarily, according to the principle of "favorable to the defendant in case of doubt," the perpetrator cannot be convicted of this offense. Moreover, since it cannot be proven that the sexual relations occurred against the other party's true will, it cannot be punished as rape either. In such cases, the perpetrator ultimately goes unpunished, which is inappropriate.

We can summarize the application scenarios of the relevant offenses as follows:

**Table 1.** Application of offenses related to sexual crimes

Behavior subject	Behavior object	Mode of Conduct	Offense
Special duty personnel	Females aged 14-16	Involuntary coercion + sexual intercourse within a narrow definition	Sexual assault by caretaker
Special duty personnel	Females aged 14-16	Forced state, against the will of the woman + sexual intercourse within a narrow definition	Rape
Special duty personnel	Females aged 14-16	Involuntary coercion/forced state, against the will of the woman + other sexual acts	Forcible indecency
Special duty personnel	Females aged 14-16	No exploitation of advantageous position, consensual sexual activity with a minor female	Not guilty
General individual	Females aged 14-16	Forced state, against the will of the woman + sexual intercourse within a narrow definition	Rape
General individual	Females aged 14-16	Forced state, against the will of the woman + other sexual acts	Forcible indecency
General individual	Females aged 14-16	Consensual sexual activity with a minor female	Not guilty
All individuals	Females under 14 years old	None	Rape (sexual intercourse with a minor)
All individuals	Females aged 16 and above	Forced state, against the will of the woman+ sexual intercourse within a narrow definition	Rape
All individuals	Females aged 16 and above	Forced state, against the will of the woman+ other sexual acts	Forcible indecency

Based on the understanding that two offenses are in competition, this paper believes that the two offenses are in a legal competition relationship. The key to understanding the competition relationship lies in the connection between criminal acts, and there is no direct link between provisions. However, the competition relationship between provisions can be identified based on the provisions themselves,

without the prerequisite of committing the criminal act. Both offenses protect the same underlying interest of sexual autonomy, resulting in partial overlap between the provisions. In situations where underage females engage in sexual relations involuntarily, when the perpetrator simultaneously satisfies the elements of both offenses, rape can provide a comprehensive evaluation of the conduct. The principle of "special law prevails over general law" usually applies to competition between provisions, but due to the fact that the statutory penalties for this offense are lower than those for rape, an exception is made by applying the principle of "heavier law prevails over lighter law" to achieve proportionate punishment. In the process of convicting and punishing based rape, the unique relationship between the perpetrator and the underage female can be considered as an aggravating factor for sentencing.

### **3.2. Exploitation of Special Duties**

This offense falls under the category of identity crimes, where the perpetrator is a person "with special duties of guardianship, adoption, care, education, medical treatment, etc." towards females aged 14-16. This type of individuals possess a specific identity that allows them to exert dominance and influence over underage females, leading to covert coercion and making it difficult for these minors to express their true will.

As a lesser offense, in order to fully protect the rights of underage females, the term "etc." in the legal provision should be understood as "and other similar relationships." Referring to the "Criminal Code" in Taiwan and the "Opinions on Punishing Crimes of Sexual Abuse against Minors in accordance with the Law," relationships such as training, assistance, official duties, and professional responsibilities can be included within the scope of regulation.

Specifically, the determination of special duties should be strictly interpreted. Special duties must exist in a concrete manner. While security guards in residential areas have an abstract duty to maintain the safety of residents, it is not sufficient to establish a position of dominance. The existence of a caregiving relationship is not necessarily present among cohabiting members. Special duties can arise from legal provisions, civil contract agreements, or even unrecognized caregiving relationships. In order for special duties to have a substantial impact, they must be of a continuous nature, but it is not necessary for such caregiving relationships to be stable or long-term. Whether a temporarily entrusted caregiver constitutes an identity offender must be analyzed based on the specific circumstances of the case. The determination of whether the perpetrator has special duties should be based on the time when the sexual relationship occurs. If the special duties arise only after the sexual relationship has taken place, or if the special duties have already been eliminated at the time of the sexual relationship, they cannot be attributed to this offense. The determination of whether special duties exist should not solely rely on the length of time, but should carefully consider various factors such as the living environment of the underage female, her psychological state, and the nature of her interaction with the perpetrator.

Some scholars argue that as long as the perpetrator meets the requirements of having a special duty and engages in sexual relations with the protected individual, it falls within the scope of this offense. However, the interpretation of the elements of this offense should be guided by the protection of legal interests. The actual utilization of special duties by the perpetrator in engaging in sexual relations with the underage female is necessary for the establishment of this offense. Without the exploitation of special duties, there is no covert coercion, and the sexual autonomy of the underage female is not violated. From a comparative law perspective, the "Leipzig Commentary" explicitly states the necessity of this element. The "Japanese Criminal Code" specifies that one of the elements for the offense of sexual intercourse by a guardian is "utilizing the influence as a guardian." The "Criminal Code" in Taiwan also stipulates the element of "utilizing power or opportunity."

In practical application, it should be presumed that the perpetrator has exploited special duties in order to alleviate the difficulties of criminal evidence. If this element must be actively proven by the judicial authorities, it's extremely challenging to provide sufficient evidence. Determining whether a

victim acted voluntarily poses as an international challenge. There are indeed situations where victims do not resist, and may even verbally express consent. By establishing "exploitation of special duties" as a legislative presumption, the burden of proof is shifted to the defense. If the defense fails to present counter-evidence, the presumption is considered valid. This provision alleviates the difficulties of providing evidence, improves the efficiency of handling cases, and to some extent, explains the relatively lenient statutory penalties for this offense. From this perspective, the social harm of this offense is not insignificant compared to rape and may even be more severe in certain circumstances. However, to safeguard the human rights of the accused, certain concessions can be made in statutory penalties, as the legislative presumption shifts some of the burden of proof, which is disadvantageous to defendants.

### **3.3. Subjective Liability**

This offense requires the perpetrator to be aware that the other party is 14-16, and hope or allow himself to have sexual relations with her. Based on common knowledge and experience, individuals in positions of special responsibility have a significant duty towards underage females, different from that of ordinary individuals. They have close relationships with them and possess objective conditions to ascertain their true age. Unless there is concrete evidence proving that individuals in positions of special responsibility are unaware, it is presumed that they are aware of the other party's age. The duty to exercise caution in age recognition is also reflected in legislation outside the jurisdiction. The greater the age difference, the more stringent the duty of care becomes.

### **3.4. Wicked Circumstances**

Article 236(1) of the *Criminal Law* explicitly stipulates the aggravating circumstance of "wicked circumstances," which represents an increase in the degree of illegality, reprehensibility, and the necessity for prevention. The following aspects can be considered:

- (1) Behavior subject: The perpetrator has an extremely intimate relationship with the underage female, such as a guardian with their ward who are blood relatives, causing significant physical and psychological harm to the underage female.
- (2) Behavior object: The perpetrator engages in sexual relations with an obviously vulnerable underage female, such as a caregiver sexually assaulting a bedridden or mentally ill underage female.
- (3) Frequency and duration: The perpetrator engages in sexual assault on the same underage female over an extended period of time or sexually assaults multiple underage females.
- (4) Public places: The perpetrator engages in sexual relations with the underage female under their care in public places, regardless of whether they are observed by third parties.
- (5) Consequences: The sexual relations result in serious consequences such as minor injuries, pregnancy, sexually transmitted infections, loss of reproductive capacity or the dissemination of a sex tape.

## **4. The Exemption Pathways to the Offense of Sexual Assault by Persons with Care Responsibilities**

### **4.1. Advocation for a Restrictive Interpretation Stance**

The addition of this offense reflects the progressive approach to criminal law in legislative practice. With the progressive approach gradually gaining dominance in the legislative and academic spheres, some scholars have expressed concerns about the premature intervention of criminal law and the extensive addition of new offenses. It is crucial to delineate the boundaries of the progressive approach. Blindly adding new offenses and excessively expanding the scope of punishment is not advisable. In other words, the progressive approach and the modesty of criminal law are not in conflict.

Only by formulating new offenses based on the modest principle of protecting legal interests can we maintain rationality while adhering to the limits of core criminal law.

Therefore, it is necessary to adhere to a restrictive interpretation stance. Completely disregarding the actual wishes of the protected individuals may lead to excessive protection and result in unjust criminalization. By appropriately limiting the interpretation, we could ensure more appropriate application in judicial practice, avoid criminal law becoming a purely emotional and moral tool, and seek a balance between protecting legal interests and safeguarding human rights, under the premise of conforming to the progressive yet cautious legislative trend.

#### **4.2. Specific Circumstances for Exemption from Criminal Liability**

First, when an underage female uses violence, coercion, or other means to suppress the resistance of a caregiver with special responsibilities and forces them to engage in sexual intercourse. In this case, the caregiver with special responsibilities does not have the possibility to refuse.

Second, when there is contributory fault on the victim, and an underage female sets up a criminal trap, either voluntarily or under instigation, with the purpose of holding the caregiver with special responsibilities criminally liable and demands sexual intercourse. In this case, the protected legal interests are not actually violated.

Third, when a 14-16-year-old female and a caregiver with special responsibilities develop a consensual romantic relationship and engage in sexual activities without causing any harmful consequences. However, this specific circumstance for criminal liability only applies to cases where the age difference between the parties is small. The larger the age gap, the more evident the power imbalance and the creation of an unequal relationship. German criminal law scholars have determined that if the age difference between a minor and another person exceeds 5 years, there is a certain power disparity. Considering that it may take around 3 years for a caregiver with special responsibilities who has just entered society after graduating from university to mature through experience, a caregiver with less than 3 years of work experience or under the age of 25 engaging in sexual activities with an underage female due to a romantic relationship may be exempt from criminal liability.

When considering the aforementioned circumstances for criminal liability, it is essential to grasp the original intention of protecting minors, strengthen the examination of evidence, and ensure rational criminalization and cautious exclusion from criminal liability.

### **5. Challenges in the Application of the Offense of Sexual Assault by Persons with Caregiving Responsibilities and Proposed Improvements**

Despite the establishment of this offense, which strengthens our country's sexual crime regulatory system and provides protection for minors, challenges have gradually emerged in its specific application. Firstly, this offense lacks protection for the rights of underage males. It is inappropriate for this offense to only protect the sexual autonomy of females aged 14-16. The sexual rights of underage males also require equal protection. This offense can refer to the coercive indecency and insulting offence, and expand the applicability to underage males.

Secondly, the existing legislation fails to regulate non-coercive, non-physical contact acts of indecency. Even with an expanded interpretation of "engaging in sexual relations," acts of indecency without actual physical contact are difficult to establish as constituting this offense. In cases where coercion is not employed, although there is a violation of legal interests, there is no corresponding offense within the sexual crime regulatory system, resulting in a loophole in punishment. Future criminal legislation should make necessary improvements.

Lastly, the follow-up preventive measures are inadequate. Due to the close connection between this offense and the perpetrator's special role, there is a high risk of recidivism. Judicial authorities should focus on implementing non-penal measures. Chinese Supreme People's Court has issued the *Opinions on Implementing the Prohibition of Employment System*, which prohibits individuals who have

seriously harmed the rights and interests of minors from engaging in specific occupations. The prohibition of employment restrictions in criminal convictions and punishments can be expanded to apply to this offense. In judicial practice, we can learn from the practice of the Baiyun District Court in Guangzhou, which applies employment prohibitions to special duty personnel who commit this offense, explicitly prohibiting them from engaging in work that involves caregiving relationships for a certain period of time. For individuals who have been sentenced to control or probation, restraining orders should be imposed, depriving them of the right to guardianship or adoption, prohibiting them from engaging in specific activities such as education and medical care, and restricting their access to relevant places. As both employment prohibitions and restraining orders have time limitations, China could build a sex offender registration system and establish a connection with the employment inquiry system established in the *Law on the Protection of Minors*, making it easier for the public to access relevant information and increase vigilance.

## 6. Conclusion

The establishment of the offense of sexual assault by persons with care responsibilities by legislators is a reasonable response to a proactive criminal law perspective, demonstrating the importance attached to the issue of sexual assault against minors. With regard to the protected legal interests, the concept of sexual autonomy should be used instead of the concept of physical and mental health. The criminal elements of this offense involve intentional exploitation of the implicit coercion arising from the caregiving relationship by individuals with care responsibilities towards females aged 14-16, regardless of the victim's consent. The term "engaging in sexual relations" is narrowly limited to sexual intercourse, but there is a need for an expanded interpretation. The legislation presumes that individuals with special responsibilities have sufficient awareness of the age of underage females. For situations where the sexual autonomy is not violated, there should be room for exemption from liability.

After careful consideration, although the establishment of this offense can strengthen the protection of the legal rights and interests of underage females, there are still challenges in gender inequality, protection system, and preventive measures. In response to these challenges, this article suggests expanding the applicability to underage males and indecent behaviors, and proposes comprehensive measures, such as the establishment of a sex offender registration system. Through research on the legal application and the proposal of relevant improvements, it is hoped that the theoretical research can promote the rationalization and refinement of the sexual crime law network, provide theoretical support for conviction, and realize the supportive effect of legal theory on criminal justice practice.

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