

# Juvenile Justice Update™

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## The Surprise Success in Bridging the U.S. and China Is a Dialogue on Juvenile Justice

By John Kamm

Relations between the United States and China are not especially good these days. Diplomatic tensions are characterized by trade disputes, accusations of intellectual property theft, and concerns over human rights. Both nations have engaged in tit-for-tat tariffs, cybersecurity threats complicate the relationship, and the global response to the COVID-19 pandemic added a new layer of distrust, with the two countries blaming each other for the origin and handling of the virus.

But in one surprising area, the United State and China are benefiting from open, cordial, and productive dialogue: improving juvenile justice.

In 2007, the San-Francisco-based non-profit Dui Hua (meaning “dialogue” in Chinese) Foundation hosted Mr. Dan Wei, a senior Chinese prosecutor and legal scholar with close ties to China’s judiciary. The visit to the San Francisco Bay Area lasted eight days but covered a lot of ground—the University of California Berkeley, Hastings School of Law, and Stanford University, where the prosecutor gave lectures and spoke with law students and professors; trials and pre-trial hearings in San Francisco

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## The State of Juvenile Justice

Jay D. Blitzman

Cradle to prison analysis helps frame factors related to how youth enter our systems of state intervention and how children of color are disproportionately affected. The pandemic revealed the structural roots of the problem—the geographical and educational segregation that fuels social inequity.<sup>1</sup> We live in worlds that are still separate and unequal—justice for some but not for others.<sup>2</sup> The entire January 2023 issue of the ABA *Human Rights* magazine, “*Wealth Disparities in Civil Rights*,”<sup>3</sup> focused on equity. Articles included discussions of poverty, injustice, Jim Crow, the racial wealth gap, housing discrimination, institutional racism and inequitable school funding. “Wealth and poverty differences profoundly shape how people live, their relationship with the law, and whether they are afforded a basic level of dignity and equality reflective of their shared humanity.”<sup>4</sup> “Though engraved over the entrance to the Supreme Court, ‘Equal

Justice Under Law’ has proven more of an aspiration than a statement of fact.”<sup>5</sup>

Progress has been made but there is still a long way to go. In an era of declining arrests, black and indigenous youth are still overwhelmingly more likely to be held in custody than their white peers.<sup>6</sup> In addition, the scope of youth confinement is vastly understated.<sup>7</sup> National youth incarceration is typically measured via a one-day count taken in late October.<sup>8</sup> This metric vastly understates its footprint: at least 80% of incarcerated youth are excluded from the one-day count, including detained youth who have been arrested but have yet to face a court hearing, youth held for status offenses, for probation violations and those if they were adults.<sup>9</sup> “Hundreds of

<sup>5</sup> *Id.*

<sup>6</sup> Josh Rovner, *Racial Disparities in Youth Incarceration Persist*, THE SENT’G. PROJECT (Feb. 2021), <https://www.sentencingproject.org/app/uploads/2022/08/Racial-Disparities-in-Youth-Incarceration-Persist.pdf>; Jay D. Blitzman, “The State of Juvenile Justice,” in *The State of Criminal Justice 2022* (Washington, DC: American Bar Association Criminal Justice Section, 2022) at 106.

<sup>7</sup> Josh Rovner, *Too Many Locked Doors: The Scope of Youth Confinement is Vastly Understated*, THE SENT’G. PROJECT (Aug. 1 2022), <https://www.sentencingproject.org/app/uploads/2022/10/too-many-locked-doors.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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and San Mateo counties; meetings with local law enforcement officials, judges and prosecutors; San Quentin Prison and jails in San Francisco and San Mateo; dinner at a prisoner-rehabilitation restaurant; and a meeting with San Francisco District Attorney (now Vice President of the United States) Kamala Harris.

During the visit, Mr. Dan attended a hearing in juvenile court presided over by Judge Lillian Sing, the first Chinese American woman to serve as a judge in Northern California. At the end of the hearing, Dan took me aside: “Reforming the juvenile justice system is a key priority of China’s reform of the criminal justice system. This subject is high on the agenda of senior leaders. I suggest you contact your friends at the Supreme People’s Court (SPC) to explore doing joint programs. I will also get in touch with them,” he said.

I sent an email to Ms. Yu Xiaoyu, a member of the leadership team of the SPC’s foreign affairs department. She replied, confirming that reform of the juvenile justice system was a priority and promising to follow up with the Research Department, the body in charge of juvenile justice reform.

In August 2007, I was invited to attend a meeting with the MacArthur Foundation in Chicago to discuss possible human rights programs in China. I had been given a MacArthur Fellowship in 2005, and MacArthur was a recognized leader in reforming juvenile justice in the United States. I urged MacArthur senior staff as well as the others in attendance to fund a program in juvenile justice reform in China. It would entail inviting a delegation from the SPC and other judicial authorities to the United States. MacArthur endorsed the idea and we quickly agreed on the terms of the grant.

Having secured funding, Dui Hua began discussions with the SPC Research Department and the SPC International Department to fix the dates, make-up, delegation interests, and itinerary. I also began working with Judge Sing and the MacArthur Foundation on details of the delegation’s tour of juvenile justice facilities. All parties agreed that the delegation would take place in June 2008.

### **A Late but Promising Start**

On May 8, 2008, a devastating earthquake rocked Sichuan Province. Tens of thousands died and there was great loss of property. Travel in and out of China

was suspended, as were delegations and programs. Dui Hua and the SPC agreed to reschedule the delegation to October 2008.

The delegation, led by Senior Judge and Deputy-Director General of the Research Department Hu Weixin, arrived in Chicago, the delegation’s first stop, on October 12, 2008, at 6 PM. The delegation included another senior SPC judge, a senior judge of the Qingdao Intermediate Court in Shandong Province, a judge from the Beijing High Court, a senior official of the Communist Party of China’s Central Institute of Politics and Law, and a division director of the SPC’s International Department.

After arrival, the group checked into their hotel. I took Judge Hu aside and asked him “Do you know what kind of work I do?” referring to my efforts on behalf of Chinese political and religious prisoners that began in 1990. “We know about your work, but this will not affect our cooperation,” he replied.

After Chicago we visited juvenile facilities—juvenile courts, places of detention, and other institutions—and held meetings with more than 50 American judges, scholars, police, and probation officers, State Department and Justice Department officials (including from the Justice Department’s Office of Juvenile Justice and Delinquency Prevention), district attorneys and juvenile defenders, and community leaders of groups working on juvenile justice. We heard from juvenile detainees. We stopped in Washington DC, Maryland, and the San Francisco Bay Area. The delegation departed San Francisco and returned to China on October 23, 2008.

At each stop, Judge Hu and colleagues gave presentations on China’s juvenile justice situation, its past and current state, and its plans for the future.

### **A Momentous Encounter with Justice Anthony Kennedy**

On October 16, 2008, the delegation, joined by the Chinese Deputy Chief of Mission (now China’s Ambassador to the United States) Xie Feng, Judge Sing and me, met with Justice Anthony Kennedy of the Supreme Court. Justice Kennedy is a towering figure in juvenile justice reform in the United States, having authored the *Roper vs. Simmons* decision in 2005. In this 5-4 decision, the Court decided that executing a person for crimes committed before the age of 18 is unconstitutional. In the decision, Judge Kennedy reversed his previous support

for executing juveniles, and he cited the fact that China had long ago banned executing juveniles. The Chinese judges provided background on how China’s judiciary decided to take this step.

Justice Kennedy had just returned to Washington from a trip to Europe. He was struck at how severe sentences handed down by American courts were compared to sentences passed by courts in Western Europe, reflecting a culture of punishment instead of rehabilitation of offenders.

Judge Sing was impressed by Justice Kennedy’s grasp of research that showed that the adolescent brain is very different from the adult brain. These findings underpinned his decision in *Roper*. The Chinese judges were not surprised by the findings.

### **Two Sites in Maryland**

The day after our meeting with Justice Kennedy, we boarded our bus, packed with lunch boxes, and headed to two locations in Maryland: The Oak Hill Youth Center in Laurel and the Victor Cullen Center in Sabillasville. Both facilities had been recommended by the MacArthur Foundation.

The Oak Hill Youth Center was, at the time of our visit, a maximum-security detention facility for Washington DC youth convicted of committing serious crimes. Upon arrival we were told that the center could house 60 male youths. We had a look at the living quarters, the kitchen, the gym, and a new building under construction. We had the opportunity to speak with detainees both before and after the tour.

As we got ready to leave, Judge Hu took me aside and offered me a cigarette. “When will we see the detention center for white youth?” he asked. On our walk around the facility, we interacted with youth of color, nearly all of whom were African American.

Housed in a historic building in Sabillasville, the Victor Cullen Center is part of the Maryland Department of Youth Services. We listened to a presentation on the “Maryland Model” and engaged in a roundtable discussion with state officials, staff of the center, and detainees.

### **Tough Love: A Meeting of Unlikely Minds**

A focus of the discussion was recidivism. Maryland was proud to have lowered recidivism among youth detainees to

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under 50 percent. Our Chinese guests were asked what the recidivism rate for youth offenders was in China.

The Chinese judges were reluctant to answer. After prodding, Judge Zou Chuanning of the Qingdao Intermediate Court replied that, in Shandong, the recidivism rate was “around five percent.” American officials were astonished. They asked how this low rate was achieved. Judge Zou and Judge Hu responded:

“Time spent in detention is not easy. We make it tough. Youth rise early, have a simple meal, and then start marching. They march for a couple of hours after which lunch is served. Youth then attend a lecture on state and party practices and ideology, after which they march for another two hours. They have another meal and then they go to bed. We practice what you call, in America, tough love,” said Judge Zou.

Judge Hu weighed in: “Being sentenced to a detention center or a juvenile prison is a matter of great shame for Chinese families. Upon release, the youth is put under the care of a family member who is preferably a retired soldier or officer of the People’s Liberation Army. This person handles the youth very strictly to make sure he respects the law and policies of the Chinese government and the Communist Party.”

This was not the answer the Americans wanted to hear.

### Dialogue is a Two-Way Mirror

The last event of the delegation took place on October 23, 2008, at San Francisco’s historic University Club. Judge Leonard Edwards, a leading authority on juvenile justice in the United States, made a presentation on “Building a Juvenile Justice System.”

Judge Edwards remarked that, in fact, there is not a single, unified juvenile justice system in the United States. Referring to the number of counties in America, he remarked that there are more than 2,800 juvenile justice systems in the country. It is not unusual for a system in one county to be radically different from an adjacent county.

Dialogue is a two-way mirror. One learns about how other countries handle issues related to law and, at the same time, one learns about our own laws and practices as they relate to juveniles under detention. On this visit, American deficiencies

in juvenile justice were laid bare: executions of juveniles until 2005, racial disparity in the treatment of youth, and abuse of juveniles. United by a common concern for youths, both parties also had the opportunity to rethink how youth offenders could best be supported.

### Finding Common Ground: Juvenile Rights Are Human Rights

The 2008 juvenile justice program marked the beginning of Dui Hua’s cooperation with the SPC in areas of law that affect juveniles and women in prison, including girls in conflict with the law. In the ensuing 15 years, Dui Hua and the SPC cooperated on eight programs, some in person, others held virtually. Each exchange with the SPC required a great deal of preparation—selecting topics, identifying presenters, resolving a multitude of logistical issues.

Juvenile justice is one of the few areas in the realm of human rights where the two countries can talk with each other rather than talking past each other. Experts from both countries are committed to continuing cooperation in this vitally important area of human rights and engaging in meaningful dialogue. For Dui Hua, our work on juvenile justice facilitated our work on political and religious prisoners, many of whom are juveniles.

### An Important Milestone Is Reached

This year marks the 15th anniversary of Dui Hua’s first expert exchange with the Supreme People’s Court (SPC)

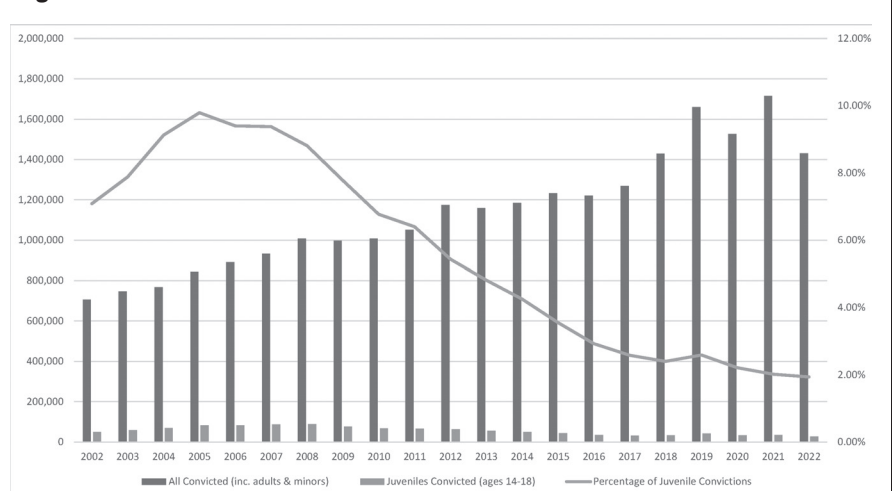
on juvenile justice, an area of concern around the globe. Beginning in 2008, Dui Hua has hosted US-China expert exchanges related to juvenile justice, women in prison, girls in conflict with the law, and child welfare. In April 2023, Dui Hua hosted “Topics in Juvenile Justice Reform: A Sino-American Exchange,” the ninth exchange involving the SPC. These exchanges address one of the few areas of human rights issues where the United States and China still engage in dialogue, in this case, a dialogue that contributes to justice system reform.

### Lower Convictions for Juveniles

Statistics released by the SPC and Supreme People’s Procuratorate (SPP) in 2022 reveal a continuous drop in juvenile convictions, falling by more than 50 percent since 2013. The statistics also show a sharp uptick in the number of juveniles given non-arrest and non-prosecution decisions, as well as an increase in the number of juvenile records sealed. This progress in restorative justice for juveniles has occurred in the decade since China added a new section to the Criminal Procedure Law that incorporated provisions for conditional non-prosecution, record sealing, and more non-custodial measures—topics that were discussed during Dui Hua’s US-China expert exchanges.

In 2022, the number of juvenile convictions reached a record low, with only 27,757 juveniles tried nationwide. The percentage of juvenile convictions had reached its peak at 9.79 percent

**Figure 1. Total Convictions & Juvenile Convictions**



Source: National Court Judicial Statistics Bulletin 2002-2022

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**Figure 2. Total, Juvenile & Girl Convictions**

Year	All Convicted (inc. adults & minors)	All Juveniles Convicted (ages 14-18)	Percentage of Juvenile Convictions	All Girls Convicted	Girls as Percentage of the Year's Juvenile Convictions
2002	706,707	50,048	7.08%	1,438	2.87%
2003	747,096	58,870	7.88%	1,792	3.04%
2004	767,951	70,086	9.13%	1,994	2.85%
2005	844,717	82,692	9.79%	2,188	2.65%
2006	890,755	83,697	9.40%	1,957	2.34%
2007	933,156	87,506	9.38%	2,007	2.29%
2008	1,008,677	88,891	8.81%	2,047	2.30%
2009	997,872	77,604	7.78%	2,075	2.67%
2010	1,007,419	68,193	6.77%	2,078	3.05%
2011	1,051,638	67,280	6.40%	2,146	3.19%
2012	1,174,133	63,782	5.43%	2,077	3.26%
2013	1,158,609	55,817	4.82%	2,001	3.58%
2014	1,184,562	50,415	4.26%	1,847	3.66%
2015	1,232,695	43,839	3.56%	1,777	4.05%
2016	1,220,645	35,743	2.93%	1,570	4.39%
2017	1,268,985	32,778	2.58%	2,170	6.62%
2018	1,428,772	34,365	2.41%	2,189	6.37%
2019	1,659,550	43,038	2.59%	3,321	7.72%
2020	1,526,811	33,768	2.21%	2,473	7.32%
2021	1,714,942	34,616	2.02%	2,612	7.55%
2022	1,430,865	27,757	1.94%	2,063	7.43%

Source: National Court Judicial Statistics Bulletin 2002-2022

in 2005 and remained at around 9 percent through 2008. Following the first Dui Hua-facilitated Chinese-U.S. exchange, juvenile convictions continued to decrease year-by-year. Convictions fell below 5 percent for the first time in 2013, after the revised Criminal Procedure Law came into force and codified the principle of prioritizing education over punishment. Over the last decade, the number of juvenile convictions decreased by more than 50 percent from 63,782 in 2012 to 27,757 in 2022.

Of those 27,757 juveniles, 2,063 were girls. The number of convicted girls increased from 1,570 in 2016 to 3,321 in 2019 but dropped below 2,500 in 2020 and further to 2,000 in 2022. Despite this decrease, the number of girls convicted as a percentage of juvenile convictions has

remained above 7 percent since 2019, up from 3.58 percent in 2013.

**Collective Efforts**

Besides fewer juvenile convictions, the Chinese have worked to incorporate restorative practices into its justice operations, reducing the number of juvenile arrests and prosecutions. Of particular significance is the wider use of conditional non-prosecution, known in the United States as diversion. In 2022, 26,161 juvenile cases were diverted, and the application rate of diversion rose year-to-year from 20.8 percent in 2020 to 29.6 percent in 2021, and to 36.1 percent in 2022. In 2013, diversion was incorporated into the Criminal Procedure Law. Since 2014, the number of juveniles offered conditional non-prosecution increased eightfold.

**Sealing Records**

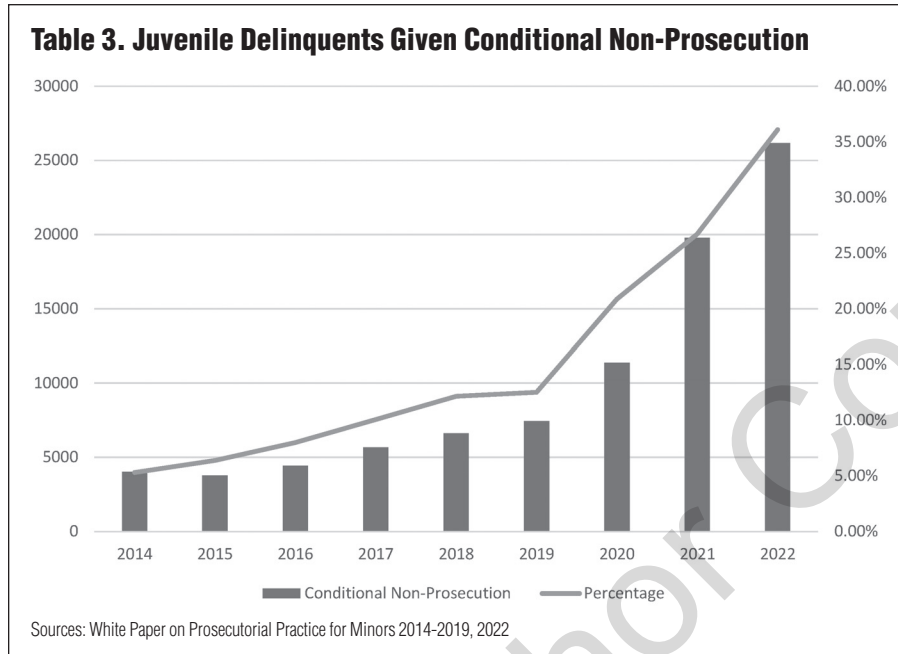
Record sealing was incorporated into the Criminal Procedure Law in 2013, and prior to that it was a major topic of discussion during the expert exchanges hosted by Dui Hua. Dui Hua was assisted in preparing and conducting the exchanges by Judge Leonard Edwards of Santa Clara County, California. Judge Edwards (retired) is a recognized expert in juvenile justice in general and the sealing of juvenile records in particular. In China, the practice of sealing juvenile records mandates that a juvenile offender's records be sealed after they successfully complete the probation period called for by conditional non-prosecution orders issued by the procuratorate, provided that the juvenile observes the conditions of non-prosecution and does not commit new crimes. The SPP has disclosed nationwide figures on how this restorative measure has been implemented. A total of 92,694 juveniles had their records sealed from 2020-2022. In 2022, 33,021 juvenile records were sealed, an increase from 28,163 in 2020 and 31,510 in 2021. In May 2022, the SPC, the SPP, and the Ministry of Public Security promulgated Implementation Measures for Sealing Juvenile Criminal Records, which provides detailed standards and operational procedures for sealing juvenile criminal records.

The drop in juvenile arrests, prosecutions, and convictions in 2022 signals a more progressive approach to juvenile justice. Although public sentiment continues to support more punitive approaches, such as lowering the age of criminal responsibility from 14 to 12 in 2020, the Chinese government increasingly emphasizes rehabilitation and education as the first response to juvenile offenders. The Law on Protection of Minors, revised in 2020, refined the family guardianship system by improving guardianship measures, establishing a mandatory reporting system, and creating an information inquiry system for offenders. The law also provided more guidance on prevention and response measures for internet addiction, campus bullying, new offenses, and parental legal obligations. In the same year, the revised Juvenile Delinquency Prevention Law focused on prevention rather than punitive measures by stressing education, mental health, reduction of bullying, and multi-institutional collaboration to reduce juvenile delinquency.

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**Table 3. Juvenile Delinquents Given Conditional Non-Prosecution**



### Building Safer Systems for All

A notable omission of both laws is that they do not address gender-specific needs. It is increasingly recognized that rehabilitating girl offenders requires different approaches than those applied to boys. To raise awareness of the need for gender-specific treatment, Dui Hua formally expanded its mission in 2014 to include women and girls in conflict with the law. Later that year, Dui Hua co-hosted an international symposium on women in prison, facilitating discussions and capacity building on the Bangkok Rules, a set of regulations that provide guidance for policy makers, legislators, sentencing authorities and prison staff

to meet the specific needs of women detainees and to reduce overall female imprisonment. As part of this campaign, with permission from Penal Reform International, Dui Hua released a Chinese translation of “Neglected needs: girls in the criminal justice system in 2018.” The 12-webinar International Symposium on Girls in Conflict with the Law that took place from October 2020 to March 2021, continued this campaign in an international context with input from the SPC.

However, many countries—including both the United States and China—continue to use policies that are inadequate to address the unique needs of

girls in conflict with the law. Both the Law on Protection of Minors and the revised Juvenile Delinquency Prevention Law made significant strides in improving protections for minors, but the lack of gender-specific measures needs to be addressed in the future. The drop in convictions and the rise of diversionary measures reflect the great progress made in these protections, but it is important that girls are not left behind as China’s juvenile justice system continues to reform.

*John Kamm is an American businessman and human rights campaigner active in China since 1972. He is the founder and chairman of The Dui Hua Foundation. Kamm was awarded the Department of Commerce’s Best Global Practices Award by President Bill Clinton in 1997 and the Eleanor Roosevelt Award for Human Rights by President George W. Bush in 2001. In September 2004, Kamm received a MacArthur Fellowship for “designing and implementing an original approach to freeing prisoners of conscience in China.” In 2022, he was awarded the Harvard Graduate School of Arts and Sciences Centennial Medal, citing his “tireless, personal commitment to opening mutually respectful dialogues with Chinese officials about at-risk prisoners, an innovative approach that has spared and improved the lives of so many.” Since his first intervention on behalf of a Chinese prisoner in May 1990, Kamm has made more than 100 trips to China to engage the government in a dialogue on human rights, focusing on the treatment of prisoners and conditions in prisons. He has made 10 visits to Chinese prisons and has submitted requests for information on more than 1,000 prisoners. In the words of *The New York Times*, “No other person or organization in the world, including the State Department, has helped more Chinese prisoners.”* ■



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