

# Application of Law in Cases Involving the Execution of Minors: From the Perspective of Discussing Measures to Limit High Consumption

Xiaolai Wei

Harbin Daoli District People's Court, Harbin, China

Email: 277164252@qq.com

**How to cite this paper:** Wei, X. L. (2023). Application of Law in Cases Involving the Execution of Minors: From the Perspective of Discussing Measures to Limit High Consumption. *Open Journal of Social Sciences*, 11, 98-105.

<https://doi.org/10.4236/jss.2023.117007>

**Received:** June 19, 2023

**Accepted:** July 11, 2023

**Published:** July 14, 2023

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## Abstract

As the future of our country, it is the responsibility and obligation of every individual in society to provide a good social environment, learning environment, and growth environment for children. Especially in execution cases involving minors, whether the application of enforcement measures is appropriate concerns the physical and mental health and future development of minors, so how courts balance the relationship between substantive justice, judicial credibility, and physical and mental health of juveniles in execution cases has become the focus of legal research and judgment. This article takes the credit punishment as the core measure to limit high consumption as a discussion perspective, and seeks an implementation path that organically integrates legal and social effects in enforcement cases.

## Keywords

Minors, Credit Discipline, Social Effects

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## 1. Introduction

As the future of our country, it is the responsibility and obligation of every individual in society to provide a good social environment, learning environment, and growth environment for children. Especially in cases involving minors, the appropriate application of enforcement measures concerns the physical and mental health and future development of minors. Therefore, many experts and scholars have raised questions about whether adopting measures to restrict high consumption among minors is in compliance with current legal regulations. Is it

the best path to combine normative and factual effects? Is it the best choice when the execution of a case encounters a bottleneck?

China has had a tradition of protecting young people and minors since ancient times, known as the tradition of caring for children. For example, in the Tang Dynasty, the protection of minors was relatively perfect compared with the previous dynasties. The Tang Code of the Tang Dynasty took “morality and propriety as the foundation of politics and education, and punishment as the use of politics and education” as the basic principle of its legal norms. When punishing minors, it differentiated different disciplinary measures according to age, basically according to the law that the younger the age, the lighter the disciplinary measures. Moreover, the Song Dynasty also followed the legislative method of the Tang Dynasty, paying special attention to the protection of minors. Therefore, in the execution of cases, the rationality and appropriateness of imposing credit disciplinary measures such as restricting high consumption on minors should be of concern to us. How the court balances the relationship between substantive justice, judicial credibility, and the physical and mental health of adolescents in the execution of cases has become the focus of legal research and judgment. This article takes the credit punishment as the core measure to limit high consumption as a discussion perspective, and seeks an implementation path that organically integrates legal and social effects in enforcement cases (Zhao, 2023).

## 2. Understanding and Application of Current Laws

China’s measures to restrict high consumption have gone through multiple stages, namely the fragmented stage, the embryonic stage of the system, and the stage of system integration. In the fragmented stage, the basic attributes of measures to restrict high consumption have been established, one is administrative and the other is disciplinary. However, in legal norms and practical operations, there is no distinction between how to apply measures to restrict high consumption in different situations, including the execution of monetary claims or the execution of behavioral obligations, and the refusal to perform due to the ability to perform. There is no distinction between subjective malice in not fulfilling legal obligations, especially in adopting different measures to restrict high consumption at different age stages. In the embryonic stage of the system, two obvious changes have occurred. One is that the discretion of the court to take measures to limit high consumption has been significantly restricted, including referring to the performance ability of the person being executed. The other is the formulation of the “Several Provisions of the Supreme People’s Court on Restricting High Consumption Expenses of the Person Being Executed”, which has established its own system model for restricting high consumption measures. However, a comprehensive distinction has not yet been established to adopt different measures to limit high consumption at different age stages. At the stage of system integration, the measures to limit high consumption have presented two new points. One is the refinement of functions, adding the situation of “non life and work

necessary Consumer behaviour”. The other is that the measures to limit high consumption have begun to coordinate with other legal norms, and gradually integrate into the civil litigation legal system. Unfortunately, there is still no perfect distinction between the different measures to limit high consumption at different ages (Song, 2021).

Firstly, the restriction of high consumption in the compulsory execution procedure for minors has not been explicitly prohibited by current laws. Firstly, According to Article 1 of the “Several Provisions of the Supreme People’s Court on Restricting High Consumption by Persons Subject to Execution”, “If the person subject to execution fails to fulfill the payment obligations determined by the effective legal documents within the period specified in the execution notice, the people’s court may take measures to restrict consumption, limit their high consumption expenses and related consumption that is not necessary for daily life or business operations.” and “Provisions of the Supreme People’s Court on Several Issues Concerning the Execution Work of the People’s Court (Trial)”. The first paragraph of Article 24 stipulates that “if the person subjected to enforcement fails to fulfill the obligations determined by the effective legal document in accordance with the enforcement notice, they shall take timely enforcement measures”. This means that when the legal document based on enforcement takes effect, the enforcement case has entered the judicial enforcement procedure, and the court has sent the enforcement notice, property report, and other pre procedures in accordance with the law, the person subjected to enforcement fails to fulfill the legal obligations determined by the effective legal document, The court has the power to take enforcement measures against him, including measures to restrict high consumption. Based on the overview of this case, the handling court has served legal documents such as property report orders in accordance with the law. Secondly, from the perspective of the Civil Procedure Law of the People’s Republic of China and its judicial interpretation, the Provisions of the Supreme People’s Court on Several Issues Concerning the Implementation of the People’s Court (for Trial Implementation), and the Provisions of the Supreme People’s Court on Restricting High Consumption of Persons Subject to Enforcement, there is no explicit prohibition against restricting high consumption of minors. Therefore, in the enforcement case, if the people’s court adopts measures to restrict high consumption, it has not yet violated the current legal provisions.

Secondly, the rationality of adopting measures to restrict high consumption among minors is questionable. The public and experts and scholars have raised questions about the measures taken to restrict high consumption among minors: “Although they feel that the measures are not right, they cannot say where they are wrong”. In fact, this is a process of legal and emotional game and integration. The value goal of court enforcement work is not only to maintain the authority of the judiciary and the fairness of judgments, but also to maintain social harmony and stability. While striving for the rights of the applicant for enforcement, it is also necessary to fully consider the legitimate rights and interests of the per-

son subjected to enforcement. The “Opinions on Further Strengthening the Concept of Good Faith and Civilized Enforcement” issued by the Supreme People’s Court clearly requires that enforcement work should find a balance of interests among all parties involved and prevent excessive enforcement, In the execution of work, efforts should be made to implement the concept of good faith and civilization, and strict standards should be applied to the conditions and situations for imposing restrictions on high consumption and credit punishment measures. Returning to this case, firstly, restricting high consumption in a sense belongs to a type of credit punishment. Beyond tangible restrictions, it will invisibly reduce the social credit rating and survival and development ability of the restricted subject. The life journey of a nine year old girl has not yet begun, and adopting measures to restrict high consumption will inevitably have a certain impact on her future physical and mental growth, learning and work; The second is to restrict high consumption by individuals with property and consumption capabilities. For the vast majority of minors, due to their lack of labor and economic capabilities, there is no other property except for those that have ownership but have been “pre sealed” by the court (the legal effect of pre sealing can be converted into formal sealing after the property has been registered and filed with the housing registration authority), In his daily life, he himself does not have the high consumption activities listed in Article 3 of the “Several Provisions of the Supreme People’s Court on Restricting High Consumption by Persons Subject to Execution”, and the measures to restrict high consumption require the linkage of multiple functional departments. Therefore, taking such measures against minors may crowd out judicial resources and waste social resources; Finally, according to the general provisions of the Law of the China on the Protection of Minors, the society should adhere to the “principle that is most beneficial to minors”, and combine the protection and education of minors. Minors are the hope of the motherland. The Supreme People’s Court, in the Opinions of the Supreme People’s Court on Strengthening Juvenile Justice in the New Era issued on January 20, 2021, requested that, When facing trial cases involving minors, it is necessary to adhere to the principle of two-way protection, which not only protects the rights of minor victims but also upholds the legitimate rights and interests of minor offenders. The principle of “maximizing the interests of minors” is still mentioned, which is also one of the measures to fully protect the physical and mental health of minors in the context of adhering to people-centered principles. The enforcement court should pay equal attention to both legal and emotional principles Implementing measures will be taken in this case when legal and social effects are combined. Therefore, the timely lifting of restrictions on high consumption measures by the court is in line with the value goals of the implementation work in the field of social effects.

### 3. Reflection and Discussion

The execution work of the people’s court bears three main functions: firstly, to maintain social order, ensure the stability of the people’s lives, and protect the

smooth operation of the market economy order; The second is to safeguard the rights of the applicant for enforcement and safeguard the legitimate rights and interests of the person subjected to enforcement; The third is the popularization of laws, social education functions, and the construction of a social integrity system. To achieve the balance of interests and achieve the ultimate value goals of the three main functions, it is necessary for court staff and various social entities to work together. As an effective and highly punitive measure in judicial practice, measures to limit high consumption have made significant contributions to the smooth execution of case funds, the active performance of legal obligations by parties, and the reconciliation and completion of performance by both parties, with significant results. However, in practical application, due to the lack of a sound regulatory system (such as the Civil Compulsory Enforcement Law), insufficient supporting measures, and a lack of interpretation and guidance in enforcement regulations, many enforcement works are difficult to balance legal and social effects. Therefore, in this special context, we should take credit disciplinary measures. Especially in cases involving minors, the scope and circumstances of the application of measures to restrict high consumption should be limited to make up for the shortcomings of supporting measures, imperfect regulatory methods, and missing relief systems.

Firstly, it is the responsibility and obligation of every individual in society to prudently apply measures to restrict high consumption among minors. As the future of our country, it is the responsibility and obligation of the whole society to provide a good social environment, learning environment, and growth environment for children. Restricting high consumption is in a sense a form of credit punishment, beyond tangible limitations. It will invisibly reduce the social credit level and survival and development ability of the restricted subject. The life journey of minors has not yet begun, and the adoption of measures to restrict high consumption will inevitably have a certain impact on their future physical and mental growth, learning and work. Moreover, in judicial practice, the situation of minors as the subject of execution, divided by the high proportion of cases caused by private lending, is an execution case arising from inheritance disputes. According to the provisions of Articles 1124 and 1161 of the Civil Code of the Civil Code of the People's Republic of China, the successor has the right to abandon inheritance. Abandoning inheritance of property also means abandoning the assumption of debt. However, because of lack of social experience and legal awareness, minors often fail to understand the actual situation of property and explicitly abandon property. Therefore, the enforcement court should understand the facts of the case on the basis of abiding by legal provisions, actively seek a balance between the protection of minors and social interests, and prudently adopt measures to limit high consumption. The suggestion of prudently adopting measures to restrict high consumption among minors essentially stems from the lack of comprehensive relief channels and measures. In other words, there are no clear provisions on how to restore the reputation of the person sub-

jected to enforcement and how to restore the person's credit after taking credit disciplinary measures such as restricting high consumption improperly. The future path for minors is still long. How to ensure the minimum negative impact on the future employment and education of minors while complying with the law should be the focus of our legal research. For example, not only should we prudently adopt credit punishment measures, but we should also improve the credit repair system (Chen, 2019).

Secondly, firmly establish the value concept of friendly and civilized execution. The Opinion of the Supreme People's Court on Further Strengthening the Concept of Good Faith and Civilized Execution in Execution Work clearly requires strict standardization of the conditions and circumstances for the adoption of measures to restrict high consumption and credit punishment. The concept of Good Faith and Civilized Execution is an important measure to build a social integrity system and optimize the business environment, and it is necessary to promote the modernization of the national governance system and governance capacity through the modernization of judicial capacity and judicial system. Good faith and civilized execution is also a higher requirement put forward by the Supreme People's Court on the ability and quality of the execution work and personnel at all levels of courts in terms of social effects. It is an important way to output high-quality judicial products for the people and lay a solid judicial foundation for promoting the process of national rule of law construction. An effective measure is to establish a sound credit punishment and relief system for juvenile execution cases. First, establish a scientific and socially adaptive credit punishment system for juvenile execution cases according to the laws of social operation. In the process of establishing a Social Credit System, not only the requirements of the development goals of the Socialist market economy, but also the future development and physical and mental health of minors should be considered. On the basis of ensuring sustainable economic development, it is necessary to comprehensively consider the long-term development of minors' education, employment, and family development. On the basis of the universality of the applicable objects, a special system for the applicable objects should be established, and credit punishment measures of different degrees should be taken based on different ages, subjective malignancies, and objective faults; Secondly, it is necessary to standardize the execution behavior of cases involving minors, standardize the implementation behavior of credit disciplinary measures, and develop credit disciplinary measures suitable for court cases involving execution based on the integration of credit incentive and dishonesty punishment. It is necessary to strengthen the supervision of credit disciplinary measures taken by internal, social, and disciplinary inspection and supervision departments of the court in cases involving minors; Finally, it is necessary to establish a legalized credit punishment system, ensuring that joint departments related to credit punishment measures establish a unified understanding and positioning of connotation and value orientation. When prudently adopting credit

punishment measures involving minors, a coordinated, integrated, and scientific credit punishment and credit repair procedure should be established, and publicity measures should be strengthened to ensure that minors and their guardians have a correct understanding of the measures to limit high consumption (Ma & Zhong, 2022).

Finally, cases involving minors should attempt to seek alternative solutions beyond credit measures such as restricting high consumption. Although China's Civil Procedure Law and relevant enforcement laws stipulate that the daily necessities of the person subjected to enforcement and their dependents should be preserved, according to the facts of this case, Chen did not reside in the house involved in the case, but lived with the adopter in other properties, and his grandmother also had property under her name. In addition, according to Article 20 (3) of the "Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Enforcement Objections and Reconsideration Cases by the People's Court", Even if it is necessary for living, the property can still be auctioned or sold as long as the applicant for enforcement agrees to provide HLM or deduct the rent of five to eight years from the housing price. As for the problem of "pre sealing" of the property in the case of civil enforcement incidental to criminal proceedings, the legal effect of pre sealing can be transformed into the effect of formal sealing after the property has been registered and filed with the housing registration authority, Therefore, in the case that there is no Hypothec and other priority rights on the property, the first round of closure cases generally give priority to the disposal of the property. Even in Wang's enforcement case, the closure of the property only has the effect of waiting for closure, but in order to fully protect the actual interests of creditors, Article 506 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China stipulates the system of applying for participation in distribution: "If the person subjected to execution is a citizen or other organization, and after the commencement of the execution procedure, other creditors of the person subjected to execution who have obtained the basis for execution find that the property of the person subjected to execution cannot repay all claims, they may apply to the people's court for participation in distribution." This provides a new path for the applicant to achieve creditor's rights and interests, and also provides a new breakthrough for cases involving minors in seeking a balance between legal and social effects.

### **Conflicts of Interest**

The author declares no conflicts of interest regarding the publication of this paper.

### **References**

Chen, B. (2019) Difficulty and Solution of Limiting the High Consumption of the Executor. *Journal of Hebei Normal University of Science & Technology (Social Sciences)*, 18,

54-59.

Ma, L., & Zhong, X. L. (2022). An Analysis on the Legal Construction of Credit Punishment and Restoration Mechanism. *Journal of Shanxi Radio & TV University*, 24, 77-83.

Song, C. L. (2021). Institutional Evolution and Legal Analysis of Measures to Restrict High Consumption. *SJTU Law Review*, 12, 180-194.

Zhao, X. G. (2023). Education and Punishment of Juvenile Delinquency in Ancient Times. *People's Tribune*, 32, 110-112.