

Disclaimer: The translation of Chinese law contained here is provided free-of-charge. It is intended for research purposes only and should not be used as a legal reference in practical applications in mainland China. It should be read side by side with a copy of the original Chinese text.

PEOPLE'S REPUBLIC OF CHINA

LAW ON POPULATION AND BIRTH PLANNING

(Passed by the 25th Meeting of the Standing Committee
of the Ninth National People's Congress on 29 December, 2001)

CONTENTS

Chapter One General Principles
Chapter Two Formulation and Implementation of Population Development Plans
Chapter Three Regulation of Reproduction
Chapter Four Incentives and Social Insurance
Chapter Five Birth Planning Technical Services
Chapter Six Legal Liability
Chapter Seven Supplementary Provisions

Translated by Edwin A. Winckler
East Asian Institute, Columbia University

Population and Development Review 28,3 (September 2002)

PEOPLE'S REPUBLIC OF CHINA

LAW ON POPULATION AND BIRTH PLANNING

(Passed by the 25th Meeting of the Standing Committee
of the Ninth National People's Congress on 29 December, 2001)

Translator's note: This translation is based on the official Chinese text, as published by the China Population Publishing House. In making it, I consulted two other translations (see Law 2001a and Law 2001b in the References to the article at the beginning of this issue). One was published by the Foreign Broadcast Information Service (FBIS) at the time the Law was promulgated. The FBIS translation conveys the general sense of the Law but evidently it had to be done quickly and it contains language that would permit significant misreadings on crucial points. The other was an early draft of a translation, some form of which was later adopted by the State Birth Planning Commission (SBPC), some form of which reportedly was in turn endorsed by the National People's Congress (NPC). The translation process for this version was slow and thoughtful, but with revisions by a succession of agencies and individuals, so that some key Chinese terms are not translated consistently or precisely. In any case, to the best of my knowledge, neither the SBPC nor the NPC has yet issued an official English version to the public, so no final official version is available. Finally, this translation is also indebted to Jason Wang of the Public Media Center (San Francisco) for sharing relevant materials and discussing translation issues.

For a matter as controversial as Chinese birth planning, translation should avoid the problem of saying one thing in one language and something else in another, inadvertently or otherwise. This problem is aggravated for this Law by the fact that Chinese terminology and syntax are often cryptic and by the fact that the Law is often deliberately vague and sometimes poorly drafted. Moreover, understanding the intent of many of the

terms in the Law requires knowledge of birth program policies and practices, of the commentaries that the SBPC has published separately to explain this Law, and of other current Chinese public programs or administrative practices. Therefore on many crucial points even a perfect literal translation would fail to convey what the Law is intended to mean in practice, unless accompanied by annotations. Accordingly, this translation adds English words in brackets to clarify or explain the Chinese original where necessary. (All instances of “shall” and “shall be” are only implicit in the Chinese but, for readability, have not been placed in brackets.) This translation also adds Chinese words in parentheses to identify the Chinese original of terms that are particularly important, controversial, ambiguous, or technical (usually only on first occurrence, in the official *pinyin* romanization).

In addition, throughout, the following conventions apply. Because the Chinese birth limitation program remains poised between state planning of births and family planning of births, *jihua shengyu* (literally “planned birth”) is translated as “birth planning” not “family planning”. The “work” of population and birth planning, referred to throughout the Law, usually means administrative work by state agencies. In “protecting citizens’ legitimate rights and interests” (*weihu gongmin de hefa quanyi*), the rights and interests might be narrower or broader depending on whether “*hefa*” is construed literally as “legal” or generously as “legitimate” (articles 1, 4 and 39). “Improving population quality” (*tigau renkou suzhi*) means not just avoiding unhealthy births but also increasing individuals’ education and well-being and even avoiding macro-demographic distortions (articles 2 and 11). “Technical services” include not only physical treatment but also information and counseling. “Measures for preventing pregnancy and controlling birth” (*biyun jieyu cuoshi*) strongly emphasize contraception, they include sterilization as a voluntary option, and they include safe abortions only as a last resort, after contraception fails (articles 19, 20 and 34). E.A.W.

CONTENTS

Chapter One General Principles
Chapter Two Formulation and Implementation of Population Development Plans
Chapter Three Regulation of Reproduction
Chapter Four Incentives and Social Insurance
Chapter Five Birth Planning Technical Services
Chapter Six Legal Liability
Chapter Seven Supplementary Provisions

CHAPTER ONE GENERAL PRINCIPLES

Article 1 This Law is enacted on the basis of the Constitution, in order to achieve coordinated development of population on the one hand, and the economy, society, resources, and environment on the other; to promote birth planning and safeguard citizens' legitimate rights and interests; and to advance family happiness, national prosperity, and social progress.

Article 2 China is a populous country, [so] practicing birth planning is a basic national policy of the State.

The State shall employ comprehensive measures to control population quantity and improve population quality.

In developing (*kaizhan*) population and birth planning work, the State shall rely on propaganda and education, scientific and technological progress, comprehensive services, and the establishment and improvement (*jianli jianquan*) of rewards and of a social security system.

Article 3 The development of population and birth planning work should be mutually linked with increasing the opportunity of women for education and employment, improving women's health, and raising women's status.

Article 4 While carrying out the work of promoting birth planning, people's governments and their functionaries at all levels should conduct administration strictly in accordance with the law (*yange yifa xingzheng*), should enforce the law in a civilized manner (*wenming zhifa*), and must not infringe upon citizens' legitimate rights and interests.

In lawfully discharging official duties, birth planning administrative departments and their functionaries shall receive the protection of the law.

Article 5 The State Council shall lead (*lingdao*) the work of population and birth planning in the whole country.

Local people's governments at all levels shall lead the work of population and birth planning within their administrative jurisdictions.

Article 6 The birth planning administrative departments of the State Council shall be responsible for (*fuze*) national birth planning work and [national] population work that is related to birth planning.

The birth planning administrative departments of local people's governments at and above the county level shall be responsible for the work of birth planning, and for population work related to birth planning, within their administrative area.

Other relevant departments within local people's governments at and above the county level shall be responsible for related population and birth planning work, within the scope of their responsibilities.

Article 7 Social organizations (such as Trade Unions, Communist Youth Leagues, Women's Federations, and Birth Planning Associations), [as well as] business and public-service organizations (*qiye shiye zuzhi*) and citizens, should assist (*xiezhu*) the people's governments in developing population and birth planning work.

Article 8 The State shall reward organizations and individuals having outstanding achievements in population and birth planning work.

CHAPTER TWO FORMULATION AND IMPLEMENTATION OF POPULATION DEVELOPMENT PLANS

Article 9 The State Council shall formulate (*bianzi*) a national population development plan and incorporate it in the national economic and social development plan.

Local people's governments at and above the county level -- based on the national population development plan and the population development plan of the people's government at the next higher level, and according to their actual local conditions -- shall work out a population development plan for their administrative jurisdictions, and incorporate it in the [local] economic and social development plan.

Article 10 Local people's governments at and above the county level, based on the [local] population development plan (*guihua*), shall formulate an implementation plan (*fangan*) for population and birth planning and shall organize its implementation.

The birth planning administrative departments within local people's governments at and above the county level shall be responsible for implementing the day-to-day work of the [local] implementation plan for population and birth planning.

People's governments of townships, nationality townships, or towns, and urban neighborhood administrative offices, shall be responsible for the work of population and birth planning in their administrative jurisdictions and shall thoroughly carry out the [local] implementation plan for population and birth planning.

Article 11 The implementation plan for population and birth planning should stipulate measures (*guiding... cuoshi*) for controlling population quantity, for strengthening maternal and child health, and for improving population quality.

Article 12 Villagers' committees and residents' committees should do a good job of (*zuohao*) birth planning work, in accordance with the law.

Administrative organizations, military units, social organizations, and business and public-service organizations [all] should do a good job of their units' birth planning work.

Article 13 [Government] departments -- such as birth planning, education, science and technology, culture, public health, civil affairs, news and publication, and radio and television -- should organize propaganda-and-education for developing population and birth planning.

Mass media have a duty to [carry] social public-service propaganda (*shehui gongyixing xuanquan*) for developing population and birth planning.

Among students, schools should develop education on physiology and health, education on puberty, and education on sexual health, in a planned way and using methods that are appropriate to the characteristics of those receiving the instruction.

Article 14 Birth planning work for the migrant population shall be the joint managerial responsibility of the people's government of the place where their household is registered and of the place where they currently reside, with [the government of] the current residence playing the main role.

Article 15 The State shall, based on the situation of national economic and social development,

gradually raise the overall level of funding (*jingfei touru*) for population and birth planning. People's governments at all levels should guarantee the funds necessary for population and birth planning.

People's governments at all levels should give targeted assistance (*zhongdian fuchi*, literally "keypoint support") for the development of population and birth planning work in poverty-stricken and minority-nationality districts.

The State shall encourage social organizations, business and public-service organizations, and individuals to provide support for population and birth planning.

No unit or individual whatsoever may withhold, deduct, or misappropriate [funds for] population and birth planning work.

Article 16 The State shall encourage scientific research and international exchange-and-cooperation that develop the field of population and birth planning.

CHAPTER THREE REGULATING REPRODUCTION

Article 17 Citizens have the right to have a child (*shengyu*, “give birth”) and also have a duty to practice birth planning according to the law. Husbands and wives bear joint responsibility in practicing birth planning.

Article 18 The State shall stabilize currently implemented birth policies, encouraging (*guli*) citizens to postpone marriage and childbearing (*wanhun wanyu*, literally “late marriage and late birth”) and advocating (*tichang*) that each couple have one child. Those who meet the conditions stipulated in laws and regulations can request the arrangement of the birth of a second child. Specific [administrative] measures shall be stipulated by the people’s congresses of provinces, autonomous regions, or directly subordinate municipalities, or by their standing committees.

Minority nationalities too must (*ye yao*) practice birth planning, with the specific measures to be stipulated by the people’s congresses of provinces, autonomous regions, and directly subordinate municipalities, or by their standing committees.

Article 19 The practice of birth planning should take contraception (*biyun*) as the main [method].

The State shall create conditions guaranteeing citizens informed choice of safe, effective and appropriate measures for preventing pregnancy and controlling birth (*biyun jieyu cuoshi*). [Personnel] performing operations for preventing pregnancy and controlling birth should protect the safety of the person undergoing the operation.

Article 20 Couples of childbearing age should conscientiously practice birth planning measures for preventing pregnancy and controlling birth and should accept guidance on birth planning technical services.

[Couples] should prevent and reduce unwanted pregnancies.

Article 21 Couples of childbearing age who practice birth planning shall enjoy, free of charge, (*mianfei xiangshou*) the technical services that the State stipulates as basic items (*guojia guiding de jiben xiangmu*).

The funds necessary for the items stipulated in the above provision shall be listed in the financial budget or guaranteed from social insurance, in accordance with relevant national stipulations (*guiding*).

Article 22 [It is] forbidden to discriminate against or mistreat women who give birth to female infants and women who do not give birth [i.e. are infertile].

It is forbidden to discriminate against, mistreat or abandon female infants.

CHAPTER FOUR INCENTIVES AND SOCIAL INSURANCE

Article 23 The State shall reward couples who practice birth planning, according to the [relevant] stipulations.

Article 24 [In order to] promote birth planning, the State shall establish and improve various social insurance systems, such as basic pension insurance (*yanglao*, literally “care for the old”), basic medical insurance, childbirth insurance, and social welfare.

The State shall encourage insurance firms to introduce insurance items that are beneficial to birth planning.

Localities with the [necessary] conditions can, based on the principle of government guidance and farmers' willingness, implement various forms of pension guarantee methods in villages.

Article 25 Citizens who postpone marriage and childbearing may obtain (*keyi huode*) longer wedding leave, longer maternity leave, and other beneficial treatment (*fuli daiyu*).

Article 26 During the period of pregnancy, birth-giving, and breast-feeding, women shall enjoy special labor protection (*teshu laodong baohu*) and can obtain assistance and compensation (*buchang*), in accordance with the relevant State stipulations.

Citizens undergoing a birth planning surgical operation shall enjoy State-stipulated leave. Local people's governments may give [them] rewards.

Article 27 [To] couples who voluntarily decide to have only one child during their lifetime, the State shall issue a "Certificate of Honor for One-Child Parents".

Couples who obtain a "Certificate of Honor for One-Child Parents" shall enjoy a reward for one-child parents, in accordance with the relevant national, provincial, autonomous region, or municipal stipulations.

[A couple's unit] should provide [the couple] with [any rewards] that are provided by their unit, among the [many possible] measures that are stipulated by laws, regulations or rules for rewarding couples who voluntarily decide to have only one child only during their lifetime.

[If] an only child suffers accidental disability or death, and [if] its parents do not have another [child] or adopt [another] child, the local people's government should give [any] necessary aid.

Article 28 People's governments at all levels shall give -- to rural households that are practicing birth planning [and that wish to] develop [their household] economies -- support and preference (*zhichi youhui*) in the area of funds, technology, and training. Impoverished households that practice birth planning shall be given priority treatment in the area of poverty relief loans (*fupin daikuan*), work relief (*yigong daizhen*), poverty relief items (*fupin xiangmu*), or social relief (*shehui jiuji*).

Article 29 Specific implementation methods for the reward measures stipulated in this chapter may (*keyi*) be formulated by the people's congresses or their standing committees of the provinces, autonomous regions, directly administered cities or relatively large cities, in accordance with this Law and the stipulations of [other] relevant laws and administrative regulations, and according to actual local conditions.

CHAPTER FIVE BIRTH PLANNING TECHNICAL SERVICES

Article 30 The State shall establish systems for premarital health care and for health care during pregnancy and childbirth, [in order to] prevent or reduce birth defects and improve the standard of health of new-born infants.

Article 31 People's governments at all levels should take measures to guarantee that citizens enjoy birth planning technical services, in order to raise the standard of citizens' reproductive health.

Article 32 Local people's governments at all levels should rationally allocate and comprehensively utilize health resources, establishing and improving a birth planning technical service network (formed from birth planning technical service organs (*jigou*) and from medical and public health organs that provide birth

planning technical services), improving technical service facilities and conditions, and raising the standard of technical services.

Article 33 Birth planning technical service organs and medical and public health organs that provide birth planning technical services, should -- within their respective area of responsibility and targeting people of childbearing age -- conduct propaganda and education on basic knowledge about population and birth planning. [They should also] develop pregnancy checkups and follow-up (*suifang*) service work for married women of child-bearing age. [They should also assume the burden of providing (*chengdan*)] information, guidance and technical services for birth planning and reproductive health.

Article 34 Birth planning technical service personnel should guide citizens practicing birth planning to select safe, effective, and appropriate contraceptive measures (*biyun cuoshi*).

[It is] recommended (*tichang*) that couples who have already had a child choose long-term (*changxiao*, literally "long effective") contraceptive measures.

The State shall encourage research, utilization and dissemination of new birth planning technologies, and products.

Article 35 [It is] strictly forbidden to use ultrasound technology or other technological means to conduct examinations of the sex of fetuses, other than as medically necessary. [It is] strictly forbidden to terminate a pregnancy [for the purpose of sex selection], other than as medically necessary.

CHAPTER SIX LEGAL RESPONSIBILITIES

Article 36 [Anyone who] violates this Law by one of the acts listed below shall -- by the birth planning or public health agency, based on their authority (*yijiu zhiquan*) -- be ordered to rectify the situation (*zeling gaizheng*), given a warning, and have illegal income confiscated.

If the illegal income is 10,000 yuan or more, a fine shall be imposed of no less than two times and no more than six times the illegal income. If there is no illegal income or the illegal income is less than 10,000 yuan, a fine shall be imposed of no less than 10,000 yuan and no more than 30,000 yuan. If the case is serious, the license to practice shall be revoked by the issuing agency. Acts constituting a crime shall be referred for criminal prosecution according to the law.

(1) Illegally performing a birth planning surgical operation for [the benefit of] another [person] (*wei taren* or *tuoren*)

(2) Using ultrasound technology or other technology for [the benefit of] another [person] to detect the sex of a fetus other than as medically necessary, and artificially terminating a pregnancy [for the purpose of] sex selection

(3) Conducting a fake (*jia*) birth planning surgical operation, conducting a fake medical appraisal (*jianding*), and issuing a fake birth planning certificate.

Article 37 [If there is] forging, altering or trafficking (*maimai*) in birth planning certificates, any illegal income shall be confiscated by an administrative department in charge of birth planning. If the illegal income is 5,000 yuan or more, a fine shall be imposed of no less than two times and no more than ten times the illegal income. If there was no illegal income, or the illegal income was less than 5,000 yuan, a fine shall be imposed of no less than 5,000 yuan and no more than 20,000 yuan. Acts constituting a crime shall be referred for criminal prosecution according to the law.

Anyone obtaining a birth planning certificate by improper means shall have the birth planning certificate revoked by an administrative department in charge of birth planning. [If] the unit that issued the certificate was at fault (*yu guozuo de*), an administrative punishment shall be imposed on the supervisory officials directly responsible and on other directly responsible personnel, according to the law.

Article 38 Birth planning technical service providers who, with serious consequences, act against the rules (*weizhang caozuo*) or delay emergency response, diagnosis or treatment shall assume corresponding legal responsibility (*chengdan xiangying de falu zeren*), according to the relevant stipulations of laws and administrative regulations.

Article 39 A State functionary who commits one of the acts below in the course of birth planning work, if the act constitutes a crime shall be prosecuted according to the law. Or, if the act does not constitute a crime, [the functionary] shall be given administrative punishment according to the law. Any illegal income shall be confiscated.

- (1) Infringing upon a citizen's rights of person, property rights, or other legitimate rights and interests
- (2) Abuse of power, dereliction of duty, or graft
- (3) Demanding or accepting a bribe
- (4) Withholding, deducting, misappropriating or embezzling birth planning funds or social compensation fees
- (5) Distorting, under-reporting, fabricating, altering, or refusing to report population and birth planning statistics.

Article 40 Anyone [unit or person] who violates this Law or does not perform the duty to assist in the management of birth planning, shall be ordered by the relevant local people's government to correct the situation and shall be criticized in a circular [by that government]. Administrative punishment shall be given to supervisory personnel directly responsible, and to other directly responsible personnel, according to the law..

Article 41 Citizens who give birth to a child in violation of Article 18 of this Law should pay a social compensation fee (*shehui fuyang fei*, literally "social bringing-up fee").

Those who do not pay the full amount of the social compensation fee within the stipulated time period shall, from the date of default, be levied a late payment penalty according to relevant State stipulations. [In the case of] those who still do not pay, the birth planning administrative department that decided to levy [the social compensation fee] shall petition the people's court for enforcement (*qiangzhi zhixing*, literally "forceful implementation"), according to the law.

Article 42 Among personnel (*renyuan*) who pay a social compensation fee in accordance with Article 41 of this Law, those who are State staff (*guojia gongzuo renyuan*) should also be given administrative punishment (*xingcheng chufen*) according to the law. Other personnel [who are not State staff] should also [in addition to the social compensation fee] be given disciplinary punishment (*jilu chufen*) by their own unit or organization.

Article 43 Anyone who refuses or obstructs (*jujue zu-ai*) a birth planning administrative department or its personnel while they are lawfully performing their official duties shall be given criticism-and -education and stopped by the birth planning administrative department. Anyone whose conduct constitutes a violation of

public security management (*weifan zhian guanli*) shall be given public-security-management punishment. Anyone [whose acts] constitute a crime shall be referred for criminal prosecution.

Article 44 Citizens, legal persons, and other organizations which deem that an administrative agency has infringed on their legal rights and interests in the process of implementing birth planning management may appeal for administrative reconsideration or may initiate administrative litigation.

CHAPTER SEVEN SUPPLEMENTARY PROVISIONS

Article 45 The State Council shall formulate specific management methods for birth planning work among migrants, specific management methods for birth planning technical services, and management methods for collecting social compensation fees.

Article 46 Specific measures for implementing this Law by the Chinese People's Liberation Army shall be formulated by the Military Commission [of the Central Committee of the Chinese Communist Party] based on this Law.

Article 47 This Law shall go into effect from 1 September, 2002.