

**The Legal Status and Position of
Lesbian, Gay, Bisexual and
Transgender People in the People's
Republic of China**

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Executive Summary

1. Homosexuality was decriminalized in China in 1997 and removed from the official list of mental disorders in 2001. However, since these two changes to Chinese law and clinical practice the Chinese government has remained largely silent on the issue of homosexuality. That silence has had two main effects. First, it has stalled any further developments in removing legal discrimination against LGBT people in China. Secondly, it means that the legal status and position of LGBT people is unclear, with varying official treatment across different parts of China. Discrimination against LGBT people continues to be written into many different areas of law in China. Furthermore, as LGBT people in China largely lack legal recognition and legal protections there is no legal certainty as to their position. This results in a situation where the population is unable to clearly determine whether they will face official opposition in meeting together, organizing and providing services within the community.
2. The legal status and position of homosexuality in China bears the hallmarks of a subject which has been little considered within official Chinese governmental circles. The government seems to have maintained an official silence and general restrictions on the LGBT community based on a cautious, conservative policy. This is often expressed in the Chinese idiom as 不支持, 不反对, 不提倡 (not encouraging, not discouraging and not promoting). However even if the intention of the Chinese authorities is to adopt a cautious policy this is not a neutral policy, and the combination of official policy and official silence entails serious consequences for the LGBT population.
3. This report analyses the legal position and the legal status of LGBT people by reference to different areas of law. The key issues under each area are as follows:

Civil Society

4. Laws and regulations continue to place broad restrictions on the diffusion of LGBT-related content across all sections of the media. Laws and regulations continue to define homosexuality as ‘abnormal’ and fail to differentiate between sexually explicit and non-explicit LGBT content in broadcasts, television programmes and films. The internet provides the most open forum in which LGBT content can be accessed. However recently even the LGBT community’s freedom of expression online has been threatened as the proposed Green Dam internet filtering software, which may still be fitted to all computers in China, would block any website containing the word ‘gay’ (同性恋 - tongxinglian).

Education

5. Homosexuality continues to be largely ignored and invisible within the Chinese education system, despite the vulnerability of young LGBT people. There is no reference to sexuality in the regulations on the prescribed personal, health and sexual education curriculum for Chinese students. Furthermore, attempts to register LGBT student societies within China have largely been met with refusal by university authorities. Young LGBT people lack basic support services, which also increases the difficulties in providing accurate health information to the LGBT population.

Police, Security and the Criminal Law

6. LGBT people continue to suffer from police harassment and arbitrary detention. The police and public security services often use the sexual element of LGBT people’s sexuality against them, for example arresting LGBT people for suspected prostitution and using circumstantial items such as possession of condoms as *prima facie* evidence of the alleged involvement in prostitution. There are continuing problems of LGBT people facing extortion and blackmail from the police and security services, as well as from broader society, at threat of revealing their sexuality.

7. There is no applicable male rape law within China and perpetrators of rape against men face a maximum sentence of 15 days administrative detention. With an age of consent of 14 years old it is of particular concern that 14-18 year old men are not afforded adequate protection against sexual crime under the criminal law.

Family Law

8. LGBT couples are not recognized as constituting families. There is no applicable gay marriage, civil or domestic partnership regime in China. LGBT people face a variety of disadvantages in the context of family law from uncertainty in divorce and child custody proceedings to strong restrictions on fertility services and gay parenting. Adoption of Chinese children by foreign LGBT couples and individuals has already been prohibited by the Chinese authorities. The spirit of this regulation raises concerns that this explicit prohibition may be applicable or extendable to single Chinese LGBT people who seek to adopt a child.

Labour

9. There is no applicable anti-discrimination provision for LGBT people at work under Chinese Labour Law. The Labour Law specifically protects workers against discrimination on the basis of a person's ethnicity, gender or religion. However there are no applicable provisions against discrimination on the basis of sexuality or gender identity. This is particularly significant given anecdotal evidence that much of the blackmail and extortion used against LGBT people is contingent upon threats to reveal a person's sexuality to their employer or colleagues.

Transgendered People

10. Transgendered people face serious levels of police harassment in China. The transgendered community also faces particular difficulties in obtaining employment. The Chinese authorities are currently consulting on new rules on gender realignment

surgery. In certain aspects these rules fail to meet international standards on individual autonomy and privacy.

Health and HIV/AIDS

11. LGBT people continue to have difficulty in accessing accurate information on HIV/AIDS. Sufferers of HIV have difficulty accessing adequate medical and personal support. HIV/AIDS has become associated with homosexuality in the public mind in China. Discrimination continues in many contexts of Chinese life against HIV/AIDS sufferers, despite the express prohibitions against discrimination in the Regulation on Aids Prevention and Treatment 2006. There is a general prohibition against the donation of blood by homosexual people of either sex in China.

Legislative Background

12. Homosexuality and consensual homosexual sex has been legal in China since 1997 when the ‘Hooliganism Law’ (流氓罪 - liumangzui) was revised and split into six different criminal offences. This is often described as the point at which homosexuality was decriminalized in China. However certain legal scholars have persuasively argued that the change in the law vis-à-vis homosexuality was not an intended consequence of the reforms.¹ The codification of the general hooliganism offence into six specific crimes meant that certain offences which had previously been charged under the hooliganism law were no longer contrary to any criminal statute. Thus the decriminalization of homosexuality was not necessarily accompanied by a shift in official thinking on LGBT issues.
13. Regardless of the legislative intent behind the 1997 reforms it seems that the generally accepted official view in China is that consensual, private homosexual sex is not now contrary to the criminal law. However not all aspects of homosexual activity are legal. In particular, legal consensual same-sex sexual activity is confined to situations involving less than three people. Taking part in group sex involving three or more people constitutes a criminal offence under Chinese law², a law of equal applicability to homosexual and heterosexual group sex.
14. In 1992 the World Health Organisation removed homosexuality from the tenth version of the International Classification of Diseases (ICD-10). However it was not until 2001 that the Chinese Psychiatric Association (中华精神科学会) removed homosexuality from its list of mental disorders, in the third version of the Chinese Psychiatric Disorder and Classification Standards (中国精神障碍分类与诊断标准 - 第三版).

¹ See in particular Guo Xiaofei’s writings on this: 郭晓飞，中国法视野下的同性恋，知识产权出版社 [2007]

² 中华人民共和国刑法，第二十六条 及 第三百零一条。

15. Many argue that the Chinese government's official position on LGBT issues, to the extent that the government has a position at all, follows the so called 'three not's'. These are expressed as 'not encouraging, not discouraging and not promoting' (不支持, 不反对, 不提倡) homosexuality. This is a cautious political position which the Chinese government has also adopted on a wide range of other social issues which, while controversial, do not challenge China's political settlement.
16. There are some small signs that attitudes towards homosexuality within official Chinese circles may be changing. In particular the state-run English language newspaper China Daily has run a number of positive articles on LGBT issues in 2009 including a supportive editorial on the cultural activities making up the inaugural 'Shanghai Pride' in June 2009³. Further indications of a shift in official position include: a small but notable increase in LGBT references in the mainstream media; some cooperation by the Ministry of Health with HIV/AIDS NGOs and certain limited legal developments including the proposed revised regulations on gender reassignment surgery.
17. This report distinguishes between the legal status and the position of LGBT. 'Legal status' is used to refer to the formal legal and official provisions that regulate the lives of LGBT people in China. 'Legal position' is used to refer to the practical situation of LGBT people in the country, and encompasses areas where the law is silent through to areas where applicable laws and regulations are not being applied.
18. The report is divided into the following thematic sections for ease of reference: civil society; education; police, security and the criminal law; family law; labour law; transgender issues; health and HIV/AIDS.

³ See for example the BBC's analysis of China Daily coverage: <http://news.bbc.co.uk/2/hi/asia-pacific/8092516.stm>

Civil Society

19. In many countries LGBT legal reform has commenced with the decriminalization of homosexuality and been followed by developments in broader civil society, including the media and the arts, before further legislative reforms. As the various elements of broader civil society start to become more familiar with LGBT people the existence of this minority starts to enter popular culture through references to LGBT themes and people and the inclusion of LGBT characters. As society becomes more aware of the existence of the LGBT minority so tolerance of that minority tends to increase. These developments in civil society create a context which tends to prefigure subsequent legislative developments, extending legal recognition and protection of LGBT people beyond mere decriminalization.

20. In China this pattern is unlikely to be repeated and developments in civil society are unlikely to prefigure further changes in official policy. This is because the developing understanding of LGBT issues in Chinese culture and broader civil society is severely constrained by the Chinese state's pervasive control of civil society and the traditional media. There are a number of prohibitory regulations which specifically address the diffusion of LGBT-related content in the media, and while these regulations remain in force the ability of broader civil society to engage with LGBT themes will continue to be severely restricted. In China it is the government that will need to lead on further reform.

Broadcast Media

21. Several radio, televisual and film broadcast regulations make direct reference to LGBT content. The first such regulation is the Film Censorship Regulation promulgated in 1997 by the Radio, Television and Film Board (广播电影电视部令).⁴ The regulation states at article 10, "If the content [of the programme] includes individual scenes, language or plotlines about the following types of content it should be corrected and

⁴ The Regulation is accessible on the SARFT website at:
<http://www.chinasarft.gov.cn/articles/1997/01/30/20070922145320110024.html>

cut.” This is stated to apply to the items listed at article 10.1, at subsection (5): “any portrayal in detail of pornography, rape, prostitution or homosexuality.” The Radio, Television and Film Board was superseded by the State Administration of Radio, Film and Television (国家广播电影电视总局- SARFT) in 1998 but this regulation remains in force.

22. In May 2004 SARFT issued an Official Notice on Ensuring that Broadcasting Strengthens and Corrects the Moral Character of Adolescents (广播影视加强和改进未成年人思想道德建设的实施方案通知).⁵ This notice was reissued in 2007 with identical relevant provisions to those discussed below.⁶ At Article 15 of the Official Notice the agency stated: “Any pornographic details, licentious scenes or lewd language should be prevented from inclusion in broadcasts. Broadcasts/films/TV shows should consider the behaviour of the adolescent audience, their ability to accept different things, and their upbringing, the correct moral and healthy mental education and development of adolescents, and should ensure the censorship of any programmes that sell based on pornography and sex. This certainly includes a prohibition against the promotion of any unhealthy content which is against normal morals. As for unhealthy sexual content such as the promotion of sexual freedom, promiscuity and sexual enjoyment together with language, scenes and plots about homosexuality, all of the above should be cut. In particular language, scenes and plots connected to the sexual behaviour and early [sexual] relationships of adolescents should be cut.”
23. In March 2008 in an Official Notice on the Restatement of Film Censorship Standards (广电总局关于重申电影审查标准的通知)⁷ SARFT stated that “Any scenes in a film containing the following content should be cut and corrected”. The relevant content was defined as that containing: “pornography, sex and vulgarisms, showing pornography, rape, prostitution, sex, sexual abnormalities, homosexuality,

⁵ The 2004 Notice is accessible at: <http://www.china.com.cn/chinese/PI-c/563676.htm>

⁶ The 2007 Notice is accessible at:

<http://www.chinasarft.gov.cn/articles/2007/02/27/20070914165147430512.html>

⁷ <http://www.chinasarft.gov.cn/articles/2008/03/07/20080307155320180354.html>

masturbation etc. as well as the showing of male and female genitalia; also lewd lyrics, words, background music and voices.”⁸

24. Taken together these regulations constitute broad restrictions on the depiction of LGBT-related content on Chinese radio and television programmes and in film. There are three main issues concerning these regulations. Firstly, homosexuality is clearly defined in terms of an ‘abnormality’. This continuing stigmatization of legal behaviour acts as a disincentive for media outlets to include LGBT content. Secondly, there is a general failure to distinguish between sexual and non-sexual homosexual content. In the 1997 Regulation the prohibition is expressed to be against portrayal in detail. In many situations the Chinese phrase ‘具体 (juti)’ can be translated as ‘explicit’, however it is arguable that the term is somewhat broader than this and may be literally translated as ‘in detail’. This may mean that it is interpreted to cover non-explicit detailed portrayal, and certainly this appears to be the general practical policy of broadcasters. The lack of clarity in the regulations contributes to an atmosphere of uncertainty where Chinese media outlets are unlikely to include any but the most factual and cursory LGBT content. The effects of this can be seen in the LGBT content that is broadcast in China, consisting primarily of news stories and negative portrayals often focusing on HIV and AIDS. However there are occasional references to homosexuality in entertainment broadcasts. For example, in the officially licensed 2008 film *Feichang Wura* (非诚勿扰) a minor plotline involved a gay character declaring his love for his best friend. However this depiction would seem to satisfy the prohibition against portrayal on either reading of ‘juti’. It was neither explicit nor detailed in its portrayal, constituting a tangential minor storyline. Some within the LGBT community have also argued that this character was only allowed in the final version of the film because of the comic context and stereotypical nature of the character’s depiction.⁹ Thirdly, the freezing effect of these regulations is underscored by the regulations’ direct statement of the connection between the censorship of homosexual content and proper youth education and public morality. The 2004 and

⁸广电总局关于重申电影审查标准的通知, 第三条。

⁹ See differing opinions on the depiction of homosexuality in this film at: http://blog.sina.com.cn/s/blog_473d53360100btaa.html

2007 Regulations appears to be based on the premise that access to information about homosexuality and the depiction of gay themes and content in the broadcast media may cause detriment to young people. This neglects the scientific basis which led the Chinese Psychiatric Association to remove homosexuality from the list of mental disorders: that homosexuality is neither an illness nor a choice.

25. A coalition of interested parties wrote to SARFT in December 2008 to ask the Agency to amend these regulations in order to remove the continuing censorship and stigmatization of homosexuality in the broadcast media. To date the Agency has not responded to these appeals.

Publications

26. Publications in China are required to be registered with the state and to hold a valid licence. The relevant regulation is State Council Order 343 (中华人民共和国国务院令, 第 343 号), which has been in force since February 2002. Pursuant to Article 10 of this Regulation, the State Council Publications Administrative Department exercises various functions in authorizing publication organizations and institutions and directing and coordinating publishing activity within China. The criteria for making an application to run a publication is set out under Article 11 of the Regulation and includes certain onerous conditions that many small-scale and community-operated publications struggle to meet. Notably, there is a requirement for the publishing organization or institution to have at least 300,000 RMB in registered capital (注册资本)¹⁰.
27. Even if an organization or institution meets the conditions for application this does not guarantee that an application will be successful. Where the conditions for application under Article 11 are met the Regulation does not set out the criteria by which an application will be determined. In practice gay publications have not been granted licences.

¹⁰ 第十一条, 条件四。

28. Without a licence publications cannot be sold in China and to do so constitutes a criminal offence under Article 55 of State Council Order 343¹¹. Nor can they raise revenue through advertising. The current publication licensing system has the result that the small number of LGBT publications operating in China are distributed for free and often also function as educative sources of information on health and HIV/AIDS information.
29. The publications that are produced tend to provide a variety of content from health education, to features and lifestyle information. Most are made available online and reach a large audience across China. The March 2009 edition of one such gay publication had been downloaded over 220,000 times three months after first publication. Anecdotal evidence suggests that the online versions of these publications are succeeding in reaching vulnerable people outside of the main urban centres. This is particularly important as the organizations working on LGBT support in China tend to be centred on the larger cities. Gay publications have received phonecalls, emails and letters from people in rural areas across China who have accessed important information through these sources. Many LGBT people in rural areas in China continue to fear that their sexuality is a form of disease. LGBT publications assist in destigmatising homosexuality and providing accurate and scientific information to people who do not have access to such information in their local communities or through the national media.
30. The regulations against LGBT publications are still actively enforced by the Chinese authorities. This year in July 2009 in Beijing police and officers from the Beijing Cultural Law Enforcement Agency (北京市文化市场行政执法总队) raided the Beijing LGBT cultural centre (北京同志文化活动中心) and confiscated a number of LGBT publications, including a lesbian magazine called Les+ produced by women for

¹¹中华人民共和国国务院令, 第 343 号, 第五十五条。

the female community and pamphlets on domestic violence.¹² The organisation has been told that they are now under active investigation for distributing illegal publications. At the date of publication it is still unclear whether these investigations will lead to criminal charges against the producers of the magazine. However it is clear that such police harassment of LGBT organisations acts as a strong and continuing disincentive against organisation within the LGBT community and the provision of important services.

Pornography

31. Pornography is defined in Regulation 862 issued by the General Administration of Press and Publication of People's Republic of China (国家新闻出版署) in 2006 under the title 'Regulation for defining pornography' (国家新闻出版署关于认定淫秽及色情出版物的规定). While there are restrictions on both heterosexual pornography (under section 2.1) and homosexual pornography (under section 2.6) it is notable that the Regulation continues to define homosexuality as 'abnormal' sexual behaviour (性变态行为)¹³.
32. Despite decriminalization there is a strong tendency to continue to view homosexuality as an abnormality and to include homosexuality in the sections of regulations which deal with criminal sexual activity such as rape (强奸 - qiangjian) and prostitution (卖淫 - maiyin)¹⁴. This contributes to an overall chilling effect whereby the Chinese media is cautious of even including LGBT content which falls outside of the censorship regulations given the continuing official stigmatization of homosexuality.

¹² See report at: http://www.xtra.ca/public/National/Chinese_lesbian_mag_raided_while_activists_in_Copenhagen-7243.aspx

¹³ 第二条，第六项。

¹⁴ 电影审查规定，第十条，第一项，第五点。

Internet

33. LGBT websites operate in an uncertain environment in China. The relevant legal instruments restrict the diffusion of pornographic LGBT content. In particular the Regulation on Banning the Transmission of Pornography and Obscene Information Online 2004 (互联网站禁止传播淫秽、色情等不良信息自律规范)¹⁵ issued by the Internet Society of China (中国互联网协会) continues to define homosexuality in terms of an abnormal sexuality.
34. However it is not only LGBT websites carrying pornographic content which experience difficulties operating in China. In practice the situation for LGBT websites is often more capricious than the formal stipulations against merely gay pornography would indicate. A number of gay websites have experienced problems of service disruption and coordinated hacking attacks. Some prominent LGBT websites have been forced to move operations outside of the country at certain periods in order to maintain continuity of service. The recent proposal to fit all computers in China with censorship software called 'Green Dam' (绿色上网过滤软件) at point of manufacture has constituted a serious new challenge to the viability of the LGBT presence online.
35. Green Dam is an initiative under the control of the Ministry of Industry and Information Technology (工业和信息化部) and was announced in the Notice on the Establishment of the Green Dam System (关于计算机预装绿色上网过滤软件的通知). In tests on the software the LGBT community discovered that 'gay (同性恋-tongxinglian)' had been listed as a keyword that would lead to a website being blocked. This has presented a great challenge to LGBT websites which could face a serious restriction on their ability to operate within China. The concerns about Green Dam have been much broader than those of the gay community alone and the installation of the system has been temporarily delayed, following pressure from the domestic and the international community. However the Ministry of Industry and Information

¹⁵ <http://www.isc.org.cn/ShowArticle.php?id=6486>

Technology has only announced a delay rather than a permanent suspension of the project. As such it continues to represent a serious potential challenge to the freedom of expression of the LGBT community online. If the decision is taken to continue to require its installation on new computers it is likely that LGBT keywords and sites will continue to be listed as key words and blocked on the basis that they constitute ‘unhealthy’ content.

Education

36. Education on LGBT issues in China is low at present and is affected by a combination of official silence and some degree of cultural sensitivity within China.
37. The education system does not include LGBT topics as any part of the prescribed curriculum at any level of educational institution. Although there has been some expansion of the discussion of homosexuality within the general public there continues to be a silence within the classroom on LGBT issues. Only in the most specialized departments and research institutes within the Chinese higher education system is the education system engaging with LGBT issues. This context has consequences in a number of areas from the psychological well-being and social integration of LGBT youth, to the ability to deliver effective sexual health education.

Personal, Health and Sexual Education

38. The Ministry of Education (中华人民共和国教育部) set out the applicable personal, health and sexual education (PHSE) curriculum up to high school level in its Education Direction Regulation on Health Education for Elementary and High Schools (中小学健康教育指导纲要) published in 2008¹⁶. The regulation defines the content of PHSE for different educative levels (水平 - shuiping). The only direct reference to sex education is set out in the list of content for level 5 students. Even

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this reference is confined to a requirement that students are educated on the physical and psychological risks of pre-marital sex.

39. The lack of reference to LGBT people and to homosexuality in the Ministry of Education's regulations creates an official silence which means that the Chinese high school students do not receive information about LGBT issues. This presents problems in helping LGBT youth to understand their sexuality. Furthermore it allows the perpetuation of dangerous myths such as the widely held view that HIV is a gay problem.
40. There is no applicable Ministry of Education regulation on such PHSE content in Chinese universities. As such the great majority of students receive little comprehensive PHSE throughout their education and do not receive any information on sexuality, and safe-sex for LGBT youth.
41. Certain NGOs have worked together with the Chinese Red Cross (中国红十字会)¹⁷, to provide some special lectures on sexuality and safe sex in a few Chinese universities. These special lectures tend to be very popular with university students. In the course of some of these lectures homosexuality has been discussed as a part of the broader topics of sexuality and sex education. These discussions have reportedly been very well-received by participating university students.

University groups

42. There are a large number of societies and networks of LGBT students across China, however at present only one student society has achieved even quasi-official status – at Zhongshan University in Guangzhou¹⁸.
43. There is normally a central body in Chinese universities which organises and conducts the registration of student societies. LGBT student groups that have tried to register

¹⁷ Every university will have a branch of the Red Cross organizing health activities and education.

¹⁸ 中山大学 彩虹社 (Zhongshan University Rainbow Society)

(登记 - dengji) have been rejected. For example in 2004 Beijing's prestigious Peking University (北京大学) refused to accept the registration of an LGBT student society.

44. The ability to be officially registered as a student society has several consequences. Firstly registered societies have access to university facilities. This is important in facilitating a society's activities, allowing societies to book classrooms and other university facilities in which to conduct their activities. Secondly, the society is listed as a recognized student organization in the university's central directory, and can participate in events such as freshers' and student fairs. These provide safe and accessible ways for new LGBT students to meet and participate in activities with other students. Thirdly, the registered status of societies allows for targeted health and social support to be targeted towards the LGBT student community. Fourthly, the existence of an LGBT society raises awareness of LGBT issues among the general student population and promotes a tolerant and inclusive campus environment.
45. There is no legal prohibition against the registration of an LGBT student society in China. However with the partial exception of Zhongshan University, attempts to register LGBT student societies have always been refused. This is a form of extra-legal action.

Police, Security and the Criminal Law

Police Detention and Investigations of LGBT people

46. Since the decriminalization of homosexuality LGBT people have enjoyed a certain freedom to conduct a personal life. However the continuing official silence on homosexuality has led to a number of serious problems for the physical safety and personal security of LGBT people.
47. Although the situation varies from region to region there are many continuing reports of police harassment of LGBT people across China. In particular there are a

significant number of incidents where police have detained LGBT people. These incidents tend to involve LGBT people meeting together in private or public spaces, from gay bars to public parks. As many LGBT people live with their families and are not open about their sexuality it is very common for LGBT people to meet in public. However there are also cases where individual LGBT people have been detained at times when they have been alone and have not been participating in activities with other LGBT people.

48. In 2009 reported incidents of police harassment and extra-legal action include detentions of LGBT people in Guangzhou and Beijing, following targeted action by police. In Guangzhou in two separate incidents on 30 March and 3 April 2009 between 50 to 60 LGBT people were detained in Guangzhou's Renmin Park and taken for questioning by police.¹⁹ Renmin Park (人民公园) had become a popular meeting place for the local LGBT population. The local police and public security bureau²⁰ stated that the two raids were conducted for public order reasons. It is a particular characteristic of police action that the sexual content of LGBT people's lives is used as an ostensible reason for their harassment. In the Guangzhou incident police detained LGBT people on suspicion of being sex workers. There was no attempt to determine which of the people detained were engaged in prostitution and which were not. Volunteers from the HIV/AIDS NGO the Chi Heng Foundation (智行基金会)²¹ were undertaking outreach work with LGBT people in the park at the time and were also detained in the raids. According to the Foundation its volunteers were told that by police that it was too difficult to determine which of the LGBT people in the park were prostitutes and which were people merely meeting other people and as a result the police decided to detain all of the people in the part of the park associated with the LGBT community. This failure to differentiate between legal and illegal homosexual activity creates a situation where lawful association between consenting adults is *de facto* penalised.

¹⁹ See articles on the raid online at: http://bbs.koubei.com/thread_202_8647_1.html and http://news.dayoo.com/guangzhou/200905/16/53872_6056000.htm

²⁰ The raids were carried out by officers from Guangzhou City Yuexiu District PSB (广州市越秀公安分局) and Guangwei Street Police Station (广卫路派出所).

²¹ http://www.chihengfoundation.com/index_en.html

49. In June-July 2009 police in Beijing detained a number of transgender people for up to 48 hours in targeted police action against the community. Although the reason for these recent detentions was expressed in terms of public order police action often targets transgender people as likely sex workers.
50. Shanghai Pride took place in 2009 and was widely reported in the English language media, though not in the Chinese language media. Although the series of events which constituted the festival were not advertised in Chinese the Shanghai Industry & Commercial Administration Bureau intervened to stop a number of events from taking place. Most of these were stopped on technical reasons such as not having a licence to show a film.²²
51. In 2008 in the lead-up to the Olympics more than 40 people thought to be LGBT were detained in Beijing's Dongdan Park (东单公园), including 6 women.²³ Although they were ostensibly detained on the basis that there had been incidents of violence and even death in the park once the LGBT people were taken to the park security office the detainees were not asked any questions about these alleged recent incidents of violence. One of the detainees was a volunteer for the HIV/AIDS NGO Aizhixing (爱知行). It was reported that the police asked the detainees why young people like them were coming to the park for prostitution. The police then went on to say that it was very serious to do so in the run up to the Olympic games. Following this incident, which came after previous detentions of the NGO's volunteers in 2007, Aizhixing wrote to Dongdan police to explain the HIV/AIDS prevention outreach work that its volunteers were undertaking in the park. However this letter never received a response.
52. In Dalian a series of incidents between 2001 and 2004 brought the police into conflict with LGBT people.²⁴ In 2001 authorities raided the premises of an LGBT website

²² See reports at: <http://news.bbc.co.uk/2/hi/asia-pacific/8093695.stm> and http://shanghaiist.com/2009/06/11/authorities_intervenes_with_shangha.php

²³ See Dongdan Park Incidents Report at Appendix.

²⁴ See: http://gsrat.net/news/newsclipDetail.php?pageNum_RecClipData=8&&ncdata_id=152 and <http://www.aibai.cn/info/open.php?id=10951>

called Dalian Tongzhi Wang (大连同志网). The police stated that raid was conducted on account of the website publishing international LGBT content including 'LGBT images and cartoons'. As a result of this investigation and raid technicians for the website were sentenced to reeducation through labour (劳动教养 - laodong jiaoyang) for disseminating illegal foreign material. In 2002 Dalian Tongzhi Wang (DTW) announced on its website that it would hold a national gay meeting in Dalian. The notice attracted significant interest and a large number of participants came to Dalian for the meeting. The police responded by raiding the organization and told the participants to disperse on the basis that the meeting was illegal. In 2003 a journalist called Zheng Nuo (郑诺) with the local Xinhua news bureau pretended to be gay and accessed a chatroom on the DTW website. As a result of this Zheng published two articles on 25 and 26 August 2003 on alleged gay prostitution arranged by people in the DTW chatroom. Further undercover journalistic activities against DTW were undertaken by the Xinshang Newspaper (新商报) in November 2004, resulting in further investigations by Dalian police.

53. These incidents demonstrate the serious barriers that LGBT people face in trying to meet each other, organise activities and support services for the community. It is indicative of the general effect of the continuing official silence on homosexuality since decriminalization in 1997. Furthermore the incidents dealt with above are only a selection of the few incidents that are ever reported. The majority of incidents against LGBT people continue to go unreported.

Police Blackmail and Extortion

54. Anecdotal evidence suggests that there are many incidents where LGBT people, once detained by the police, face harassment, blackmail and extortion. These incidents are almost never reported and it is very difficult to obtain written corroboration. However it seems that when these incidents occur the LGBT people concerned are forced to pay money to the police on threat of the police continuing to detain them or revealing their sexuality to their employer, family or local community.

55. The law forbids the police to engage in this behaviour. The Police Law (中华人民共和国警察法) states at Article 22 (5) that the police may not restrict someone's freedom illegally (非法剥夺、限制他人人身自由)²⁵ nor, at Article 22 (6), engage in blackmail (敲诈勒索 – qiaozha lesuo) or corruption.²⁶ However given the large degree of local autonomy that local security forces enjoy it is unlikely that an affected person would seek to go above the local security services to complain of blackmail or extortion to the central authorities.

Domestic Violence

56. Under the generally accepted interpretation of the Chinese criminal law's provisions on rape a man cannot 'rape' his wife. It may still be open to a wife to cite rape as a reason for divorce, and this may carry some weight, but generally inter-marital forced sex will not be seen as a criminal offence.

Rape

57. Under the Chinese criminal law rape is defined as a crime committed against a woman. There is no applicable rape law concerning male victims. Article 237 of the Criminal Law (刑法) provides a lesser offence of sexual assault (强制猥亵 - qiangzhi weixie).²⁷ However this offence is also confined to female victims.²⁸

58. If a man is the victim of rape or sexual assault then there are no applicable provisions within the criminal law. Instead the offence comes under the administrative law. Article 44 of the Security, Administration and Punishment Law (中华人民共和国治

²⁵ 第二十二条，第五项。

²⁶ 第二十二条，第六项。

²⁷ This offence is best translated as sexual assault as it encompasses the notions of an obscene act which is done with force or violence. The phraseology used in Article 237 is “以暴力，胁迫或者其他方法强制猥亵妇女或者侮辱妇女”。

²⁸ This is stated explicitly in Article 237: “妇女”。

安管理处罚法) states that the maximum applicable punishment for a sexual assault or obscene act against another [and thus against a man] is for the offender to be detained in custody for a maximum of 15 days.²⁹

59. As the age of consent in China is 14 years old this lacuna in the law leaves male children as well as adults without adequate legal protection. In a reported case from 2004 a 16 year old male waiter by the name of Ma Ke (马克) was raped by his boss in Dalian while he was sleeping. The rape caused internal injuries to Ma and was reported to the police. At first instance the court held that sexual invasion between people of the same sex does not constitute a criminal offence under Chinese law. Therefore the perpetrator was only detained for the maximum 15 days custody. Ma appealed to the Zhongshan District People's Court (大连市中山区人民法院) in Dalian, where the appeal was heard in private. Ma appealed on the basis of a spiritual harm (精神损失 – jingshen sunshi). While not dissenting from the judgment at first instance the appeal court awarded Ma compensation of 50,000 RMB.

Blackmail

60. Although there is no specific reference to blackmail scenarios involving homosexuality in the law, there is a generally applicable law against blackmail at article 274 of the criminal law³⁰. This means that, at least in theory, LGBT people should be able to appeal to the police for protection if another person attempts to blackmail them at threat of revealing their sexuality.
61. As set out in Article 274 blackmail is a crime which is punishable by up to ten years imprisonment (拘役 - juyi) or administrative detention (管制 - guanzhi). Furthermore there are stipulations that the police have a duty to maintain the confidentiality of the victim on the latter's request in cases of blackmail.

²⁹ 第四十四条。

³⁰ 刑法，二百七十四条。

62. In a case in 2006 a gay man was able to obtain assistance from the police against three men who were blackmailing him. The victim, Liu Bing (刘兵) had met the three perpetrators of the blackmail Zhou Ming (周明), Chen Wei (陈伟) and Wang Qing (王庆) in 2005. The four had dated and had participated in sexual activity. At some further point the other three began to blackmail Liu Bing, threatening to reveal his sexuality to his employer. In total they extorted more than 25,000RMB from Liu, who finally reported the blackmail to the police. The police arrested the three men and they were all subsequently sentenced to custodial sentences of between 1 – 3 years for the crime. This incident suggests that in disputes between private citizens it is sometimes possible for LGBT people to successfully seek the protection of law enforcement authorities and the courts.

Family Law

63. For the purposes of this report I define family law broadly. This includes marriage law, both in its application to LGBT people and their partners in heterosexual marriages and in terms of the partnerships of LGBT people. The latter includes issues on cohabitation, property rights and ‘next-of-kin’ status in medical situations. It also includes issues of child custody, adoption and fertility rights.
64. In understanding family law it is important to recognise the centrality of the cultural significance of marriage and child-bearing in Chinese society. Children experience strong marriage pressure (婚姻压力 – hunyin yali) and pressure to have a child (生育压力 – shengyu yali) from their parents. This stems from the cultural significance attributed to having younger people to care for older people in their old age and to continue the family line. This pressure is reinforced by familial and community nexuses. In many cases LGBT people enter into marriages of convenience not only to relieve the pressure exerted on them by their parents but also to relieve the pressure placed on them and their parents by the extended family and community. The

pressure is heightened by the context of the one-child policy, as the responsibility for the continuation of the family line rests on only one child.

Cohabitation, Partnership

65. There are no formal legal protections for cohabiting same sex partners in China. Nor is there any system of registering domestic or civil partnerships. In many respects same sex couples do not enjoy the same legal protections as heterosexual married counterparts. Firstly, there is no automatic right of inheritance. Secondly, the partners will not be defined as each other's next-of-kin (近亲 - jinqin). Thirdly, a partner cannot obtain a hukou based on their partner's place of residence in the way that a heterosexual married couple may.
66. However in certain respects same sex couples may use normal contracts under the civil law to order their affairs to provide equivalent arrangements to those afforded by marriage in China. Under Article 31 of the Inheritance Law (继承法)³¹ a person is free to define another as the person who provides for them and is responsible for their affairs in life and death (扶养 - fuyang). This designated person will be the beneficiary under the will of the designator unless contrary arrangement is made. In the case of the family home same sex couples may also use contractual instruments to protect their respective ownership by signing a division of property contract setting out the details of the shared ownership of the property. Furthermore when purchasing a new property both partners may sign the purchase contract to provide proof of mutual ownership.
67. If a relationship ends then where a same sex couple has a contract on their shared possessions the law will require that their possessions should be divided according to the contract. If the couple has no contract then their possessions should be divided in line with their contributory shares.

³¹ 继承法, 第三十一条。

Marriage and Divorce

Gay marriage

68. There is already a live debate on the issue of gay marriage in China. Professor Li Yinhe (李银河) of the Institute of Sociology at the Chinese Academy of Social Sciences and also a member of the national committee of the Chinese People's Political Consultative Conference (CPPCC – 中国人民政治协商会议) has submitted proposals to the CPPCC to legalise gay marriage in 2003, 2005 and 2006. None of these proposals have succeeded in gathering enough support to date, however it is notable that these proposals have reached the level of the Chinese political establishment.
69. Furthermore there have been actions by LGBT groups to raise awareness of the issue of gay marriage and gay partnership. For example, on Valentine's Day 2009 in Beijing two LGBT couples took photographs together in wedding dress while supporters distributed roses with information about LGBT issues to passers-by. The event was well publicized in the unofficial online Chinese media and provoked much debate online.³²

Heterosexual marriage and divorce involving LGBT people

70. For most LGBT people their interaction with marriage will come in the context of heterosexual marriage. Many Chinese LGBT people enter into heterosexual marriages, principally because they only realise their sexuality after marriage or because they enter into the marriage as a marriage of convenience (形式婚姻 *xingshi hunyin*) with the purpose of alleviating family and societal pressure to marry.

³² See Die Welt's reporting on this at: <http://www.welt.de/english-news/article3205574/Chinese-gay-and-lesbian-activists-take-to-the-streets.html>

71. All valid heterosexual marriages in China are now regulated by the Marriage Law 1980, as amended by the Marriage Law 2001³³. The law also provides the applicable provisions on divorce (离婚 - lihun). Pursuant to Article 31 divorces may be effected by the consent of both parties. In contested cases an application for divorce will go to mediation. Only if the mediation fails will the court then give judgment on the divorce petition. The grounds for granting a divorce are set out at Article 32 of the Marriage Law. The overriding criteria is that mutual affection no longer exists (感情确已破裂). Of specific relevance, divorce will be granted where (a) a party is a bigamist or a person who has a spouse but co-habits with another person [of the opposite sex] or (d) both parties have lived separately due to lack of mutual affection for up to two years or the catchall (e) other circumstances have led to the non-existence of mutual affection as husband and wife. Article 46 then sets out the situations when the divorce is held to have been concluded on the basis of a fault (过错 - guocuo). In these cases the innocent party may obtain compensation. These are set out in Article 46 as follows: (a) bigamy; (b) cohabitation between a person who has a spouse but co-habits with a third person [of the opposite sex] (c) familial violence (d) maltreating or deserting a family member.
72. In the Supreme People's Court's (最高人民法院) explanation of the Marriage Law (中华人民共和国婚姻法) at Article 2 the court states: "The situation of living together with another when already married regulated by the Marriage Law in Articles 3, 32 and 46 means one who is married living together with another person of the opposite sex continuously and stably, without calling themselves husband and wife."³⁴ Thus although the Marriage Law itself does not limit the grounds for divorce and the fault of cohabitation with a third party to opposite sex cohabitation this is the correct interpretation of the law following the Supreme Court's explanation and is reflected in the interpretation at paragraph 71 above.

³³ Collectively referred to as the: 中华人民共和国婚姻法.

³⁴ 最高人民法院 关于适用 中华人民共和国婚姻法若干问题的解释， 第二条。

73. Extra-marital relations with someone of the same sex is not therefore a ground for the granting of a divorce. This represents a potential difficulty for either an LGBT person or their heterosexual partner seeking divorce. However in practice it is a more pronounced legal problem in the former situation. Many heterosexual partners of LGBT people resist a divorce sought by their husband or wife on account of the latter's sexuality. A variety of factors may play into this trend from societal pressure not to lose face, to different conceptions of marriage whereby extra-marital homosexual relations may not be interpreted by the heterosexual partner as a threat to their marriage. In any event anecdotal evidence suggests that the issue of divorce occurs more in these situations on account of the LGBT partner seeking to exit the marriage. Although sexuality itself is not a ground for a court to grant divorce in contested cases the Marriage Law procedures on divorce do provide other indirect ways of achieving the same end result of a grant of divorce. The LGBT partner seeking to exit the marriage would need to demonstrate the non-existence of mutual affection as husband and wife. Legally this presents issues of an arbitrary system whereby different judges may conclude that different sets of factors do or do not demonstrate the non-existence of mutual affection.
74. Where a divorce application is refused by the court the application may normally be renewed again after 6 months. In practice renewed applications are normally granted.

Child Custody

75. The law does not mention sexuality in the brief provisions of the marriage law which deal with child custody, however the wide discretion given to the court means that it remains a matter of concern, supported by some anecdotal evidence, that LGBT parents may lose custody of their children on account of their sexuality. Article 36 of the Marriage Law states as follows: "Both father and mother shall, after divorce, have the right and the obligation of bringing up their children. It is the principle that the children during lactation shall be brought up by their mother after the divorce of the parents. If any dispute arises concerning which party shall bring up the children beyond lactation, such dispute shall be settled by the people's court according to the

specific conditions of both parties and in light of protecting the rights and interests of the children.”³⁵ The overriding factor is therefore that of the best interests of the child. However as there are no set criteria by which judges are to evaluate what constitutes the best interests of the child this means that the decision will be dictated by the judge’s personal assessment. In the context of the continuing official silence on homosexuality and the legal restrictions in other areas of the law it must be at least a concern that one party’s sexuality could be deemed to make it less in the interests of the child to stay with the LGBT parent.

Adoption

76. As there is no applicable partnership or marriage law in China LGBT people can only adopt as single people. For Chinese nationals this does not prevent them adopting, subject to certain conditions. However the responsible authority in China, the Chinese Centre for Adoption Affairs (中国收养中心 - CCAA), has specifically forbidden the adoption of Chinese children by overseas homosexual people or families. The Agency has now restricted overseas adoption to married heterosexual couples. In a statement of 10 October 2005 the Agency set out its position on homosexual adoption:

“The CCAA shall not identify prospective adoptive referrals for homosexuals. Legally, the Marriage Law of the People’s Republic of China recognizes only families formed by marriage of opposite sex and does not recognize the legality of homosexual families, and the homosexual families are, therefore, not protected by laws. From the Chinese medical point of view, the China Mental Disorder Classification and Diagnosis Standard classifies homosexuality as sexual obstruction, belonging to psychiatric disease of the kind of sexual psychological barrier. In terms of the Chinese traditional ethics and customs and habits, homosexuality is an act violating public morality and therefore not recognized by the society. In accordance with the principle that

³⁵ 婚姻法，第三十六条。

adoption shall not violate social ethics as set forth in the Adoption Law, foreign homosexuals are not allowed to adopt children in China.”³⁶

77. This policy does not seem to be incorporated into the provisions on domestic adoption. For domestic adoption the requirements to be eligible to adopt are that the person should not already have a child, should not suffer from a disqualifying medical condition, should have the means to raise and educate the child and should be at least thirty years old. Furthermore there is a stipulation that when a single man adopts a female child there should be a difference in age between adoptive father and daughter of at least 40 years.
78. However even though there is no specific stipulation against LGBT adoption in domestic law, given the spirit of the CCAA’s statement of October 2005 it seems likely that single LGBT people are not openly adopting as LGBT people. Furthermore the spirit of the statement would suggest that single domestic LGBT people would also be refused adoption if the authorities are aware of their sexuality. This is corroborated by instances where post- operative transsexual people who have had their gender identity officially changed and notarized have attempted to adopt and, despite meeting the general criteria, have been refused as a prospective adoptive parent. Technically there is no restriction on transgender people becoming adoptive parents under the adoption law.
79. Even in instances where single Chinese LGBT nationals may become adoptive parents this is a sole adoption. Thus, if the adoptive parent has a partner in a homosexual relationship that partner cannot obtain any rights as a co-parent of the child. This creates a lacuna whereby a child adopted by an LGBT person in a homosexual relationship would be considered to be orphaned on the death of the adoptive parent, regardless of whether the adoptive parent’s partner has shared equally in the raising of the adoptive child.

³⁶ Statement from CCAA website at: http://www.china-ccaa.org/site/infocontent/SWSY_2005101202091715_en.htm

Fertility

80. Laws on human fertility in China regulate the provision of fertility services by third parties. The Ministry of Health (中华人民共和国卫生部) has banned any medical agency [private or public] from conducting artificial insemination. Contravention of this constitutes a criminal offence and any agencies conducting artificial insemination can be charged with providing illegal medical services. Under Article 22 of the Supplementary Regulation on Human Reproductive Techniques³⁷ the purchase or sale of human eggs or sperm is forbidden. Contravention of this may constitute a criminal offence.
81. Artificial Insemination is defined by the Regulation on Human Fertility to include using sperm donation, surrogacy and any other technique. According to the Regulation on Human Fertility artificial insemination should only be conducted by registered medical institutions for a medical purpose. The medical purpose stipulation means that a fertile woman could not undergo artificial insemination. In further regulations the Ministry of Health has prohibited the administration of artificial insemination for single women. In the case of a woman with a female partner she will be deemed to be single for the purposes of the law. Therefore artificial insemination is not available to homosexual women in China.

Labour

82. Labour law is a critical context for the LGBT population as, along with the family, it is the context where LGBT people most fear being open about their sexuality. This can be seen in the way blackmail and extortion against LGBT people is often carried out at the threat of revealing their sexuality to their employer and/or colleagues.

³⁷ 人类辅助生殖技术管理办法，第二十二条。

83. Chinese Labour Law states that all workers enjoy the same rights to choose and conduct an occupation. However there is no specific provision against workplace discrimination on the basis of sexual orientation. Article 12 of the Chinese Labour Law (劳动法) only states that a worker should not be discriminated against because of his or her ethnicity, gender or religion.
84. If an employer discriminates against an employee on the basis of their sexuality the employee's protections will therefore be limited to the contractual definition of the rights and obligations of the respective parties.

Transgender Issues

85. The transgendered community in China faces similar problems to the LGB population. In many instances the level of police harassment against transgendered people is considerably more serious and sustained. However the government has recently published a consultation on proposed new regulations on gender reassignment surgery.³⁸ The broad effect of these regulations supports transgendered people's right to seek and undergo gender reassignment surgery. However there are specific provisions which do not seem to comply with international standards of personal autonomy and the right to a private life.
86. Under Article 3.1 (1) there is a requirement that the patient is not currently under criminal investigation and under Article 3.1 (5) there is a requirement that the patient provide proof that he/she has informed his/her direct relatives of the prospective gender reassignment surgery. There is also a requirement under Article 3.2(2) that the patient lives and works in the gender he or she seeks reassignment to and under Article 3.2(4) that the patient not be in a marriage.
87. These stipulations present particular difficulties for transgendered people in China seeking to undergo gender reassignment surgery. For many transgendered people

³⁸ See draft regulation at appendix.

social hostility means that they find it difficult to obtain employment. The requirement that they not only live but also work in the gender into which they seek reassignment is a difficult requirement given the lack of protections against workplace discrimination on the basis of sexuality or gender identity. As many transgendered people struggle to find employment anecdotal evidence suggests that a sizeable percentage of the transgendered community work in the sex trade. Many are detained and charged by the police for prostitution and the stipulation against a patient being under criminal investigation means that for these members of the community they will not be able to undergo surgery. In the context of transgendered people's relationship with their families many are disowned by their immediate relatives. While other jurisdictions also require married people who are undertaking gender reassignment surgery to divorce prior to the reassignment in many jurisdictions the person will then be able to enter into a civil or domestic partnership. In China the divorce requirement entails the loss of all the rights and responsibilities under a marriage with no alternative structure to replace that marriage. For this reason there are transsexual people who wish to undergo gender reassignment surgery but to retain their legal birth gender. At present the relevant Chinese regulations do not permit this.

88. The World Professional Association for Transgender Health³⁹ in its Standards of Care⁴⁰ sets out best practice on the treatment of transsexual people. Rather than a requirement that the patient provide proof that he/she has informed his/her direct relatives of the prospective gender reassignment surgery the Standards of Care refers to “adequate social, economic and psychologic supports.” Instead of a requirement that the patient has been working and living in their prospective gender there is a requirement for “real-life experience” of living in the gender into which the patient seeks realignment. This provides some latitude for people who may have difficulties living in their preferred gender identity in certain contexts such as work. These are important differences which under the Chinese draft regulations may continue to prevent transgendered people from accessing gender realignment surgery.

³⁹ <http://www.wpath.org>

⁴⁰ <http://wpath.org/Documents2/socv6.pdf>

Health and HIV/AIDS

HIV and AIDS

89. Although there is no major discrimination on the face of the law between HIV positive heterosexual and LGBT people in China, HIV and AIDS have become associated in the public mind with homosexuality. As such many Chinese people see the infection as a 'gay problem'. Not only does this have the effect of hindering HIV and AIDS education for the heterosexual Chinese population but it also stigmatizes LGBT people within the country.
90. In 2006 the State Council issued the Regulation on AIDS Prevention and Treatment⁴¹. This Regulation provides broadly framed protections against discrimination in areas such as education, employment and medical treatment. However in practice there are still many instances where discrimination continues, for example with medical staff finding other ostensible reasons not to treat an HIV positive patient.
91. Furthermore any HIV or AIDS sufferer in China may be subject to a number of indirect restrictions.⁴² For example for many jobs in the Chinese civil service candidates are required to pass a medical examination. A person who has HIV or AIDS will often be deemed by the medical institution carrying out the tests to have failed the medical examination on account of his or her HIV positive status. As such they will be unable to take up a position working for the government on account of failing the medical examination in what amounts to a form of indirect discrimination.

⁴¹ 艾滋病防治条例 2006 - 国务院令 第 457 号. See in particular: 第三条, 地三十九条。

⁴² See the UNDP China and WHO Report, Enabling voluntary counselling and testing for men who have sex with men – 2008 at:
<http://www.undp.org.cn/modules.php?op=modload&name=News&file=article&catid=18&topic=7&sid=4379&mode=thread&order=0&thold=0>

Blood Donation

92. In the list under Article 52 (6.18) of the Blood Bank Administration Regulation issued by the Ministry of Health in 1998⁴³ homosexual people (同性恋 - tongxinglian) are prohibited from giving blood. This rule is on account of a stated higher risk of HIV/AIDS. This Regulation is still in force and has proved controversial. In 2009 some sections of the lesbian community in China have organised a petition against the ban on the basis that WSW (women who have sex with women) are a low-risk group for HIV/AIDS and that the regulation is discriminatory in its application to the whole LGBT community.⁴⁴

Summary

93. A summary of this report is provided at the front of this document at pages 3 – 6.

Tom Mountford

Beijing

August 2009

⁴³血站管理办法 1998, 第五十二条, 第六项, 第十八点。

⁴⁴ See the following article of 28 July 2009 in the China Daily: http://www.chinadaily.com.cn/china/2009-07/28/content_8479184.htm

Appendix

Legislative Background

Criminal Law – Articles 26 and 301

中华人民共和国刑法(2009年2月28日最新修正版刑法)

【发布文号】中华人民共和国主席令第83号

【发布日期】1997-03-14

【生效日期】1997-10-01

第二十六条 组织、领导犯罪集团进行犯罪活动的或者在共同犯罪中起主要作用的，是主犯。

三人以上为共同实施犯罪而组成的较为固定的犯罪组织，是犯罪集团。

对组织、领导犯罪集团的首要分子，按照集团所犯的全部罪行处罚。

对于第三款规定以外的主犯，应当按照其所参与的或者组织、指挥的全部罪行处罚。

第三百零一条 聚众进行淫乱活动的，对首要分子或者多次参加的，处五年以下有期徒刑、拘役或者管制。

引诱未成年人参加聚众淫乱活动的，依照前款的规定从重处罚。

Civil Society

Film Censorship Regulation 1997

第十条 电影片中个别情节、语言或画面有下列内容的，应当删剪、修改：

(一)夹杂有淫秽庸俗内容，不符合道德规范和观众欣赏习惯的：

- 1、不恰当地叙述和描写性及与性有关的情节，正面裸露男女躯体；
- 2、以肯定的态度描写婚外恋、未婚同居及其它不正当男女关系；
- 3、具体描写腐化堕落，可能诱发人们仿效；
- 4、造成强烈感观刺激的较长时间的接吻、爱抚镜头及床上、浴室内的画面；
- 5、具体描写淫乱、强奸、卖淫、嫖娼、同性恋等；
- 6、内容粗俗、趣味低下的对白；
- 7、庸俗、低级的背景音乐及动态、声音效果。

Official notices on ensuring that broadcasting strengthens and corrects the moral character of adolescents – 2004 and 2007 – Article 15

2004

印发《广播影视加强和改进未成年人思想道德建设的实施方案》的通知

为深入贯彻落实党的十六大精神和中共中央、国务院《关于进一步加强和改进未成年人思想道德建设的若干意见》，结合广播影视工作实际，全面提高未成年人思想道德素质，国家广电总局研究制定了《广播影视加强和改进未成年人思想道德建设的实施方案》。2004年4月30日，国家广电总局将此方案印发给各省、自治区、直辖市广播影视局(厅)，新疆生产建设兵团广播电视局，中央三台，总局机关各司局，各省(市)广播影视集团(总台)，中国教育电视台，请各单位遵照执行。

广播影视加强和改进未成年人思想道德建设的实施方案

《中共中央、国务院关于进一步加强对未成年人思想道德建设的若干意见》，充分体现了以胡锦涛同志为总书记的党中央对未成年人健康成长的高度重视和殷切希望，对新世纪、新阶段进一步加强和改进未成年人思想道德建设工作提出了明确要求和重要部署。各级广播影视管理部门和播出机构要认真学习、贯彻落实中央精神，通过实施“建设工程”、“净化工程”、“防护工程”和“督察工程”，使广播影视成为未成年人开拓眼界、提高素质的良师益友和陶冶情操、愉悦身心的精神园地，在全社会形成有利于未成年人健康成长的舆论环境和文化氛围。要努力创作代表社会主义先进文化前进方向，满足未成年人精神文化需求的优秀广播影视节目，帮助未成年人增强爱国情感，树立崇高理想，确立远大志向，培养文明行为，全面提高思想道德素质、科学文化素质和身心健康素质。要清除广播影视节目中不利于未成年人健康成长的思想、行为、语言、形象等内容，为未成年人健康成长提供一个“绿色文化空间”。要防止外国文化的糟粕对未成年人的不良影响，抵御西方敌对势力通过广播影视节目对我未成年人进行思想文化渗透。要加大广播影视的管理和督察力度，设立专门的机构、制定具体的管理规定，运用有效的监测手段，确保广播影视在未成年人思想道德建设中发挥重大作用。

一、切实推进广播影视“建设工程”

15、要杜绝色情描写、淫秽画面、下流语言。广播影视节目要充分考虑未成年人的欣赏习惯、接受能力和成长走向，加强正确思想和健康情感的宣传教育，坚决制止以色情和性为“噱头”、“卖点”等格调不高的广播影视节目，坚决制止宣扬与正常伦理道德相悖的不健康情感的内容。对于展示不健康的涉性内容，如宣扬性自由、性随意、性享受及**同性恋**的语言、画面和情节，要坚决删除。特别是要杜绝涉及未成年人的早恋、性行为等语言、画面和情节。

(责任单位：总编室、电影局、电视剧司)

2007

印发《广播影视加强和改进未成年人思想道德建设的实施方案》的通知
发布时间：2007-02-27 14:19

为深入贯彻落实党的十六大精神和中共中央、国务院《关于进一步加强和改进未成年人思想道德建设的若干意见》，结合广播影视工作实际，全面提高未成年人思想道德素质，国家广电总局研究制定了《广播影视加强和改进未成年人思想道德建设的实施方案》。

广播影视加强和改进未成年人思想道德建设的实施方案

《中共中央、国务院关于进一步加强和改进未成年人思想道德建设的若干意见》，充分体现了以胡锦涛同志为总书记的党中央对未成年人健康成长的高度重视和殷切希望，对新世纪、新阶段进一步加强和改进未成年人思想道德建设工作提出了明确要求和重要部署。各级广播影视管理部门和播出机构要认真学习、贯彻落实中央精神，通过实施“建设工程”、“净化工程”、“防护工程”和“督察工程”，使广播影视成为未成年人开拓眼界、提高素质的良师益友和陶冶情操、愉悦身心的精神园地，在全社会形成有利于未成年人健康成长的舆论环境和文化氛围。要努力创作代表社会主义先进文化前进方向，满足未成年人精神文化需求的优秀广播影视节目，帮助未成年人增强爱国情感，树立崇高理想，确立远大志向，培养文明行为，全面提高思想道德素质、科学文化素质和身心健康素质。要清除广播影视节目中不利于未成年人健康成长的思想、行为、语言、形象等内容，为未成年人健康成长提供一个“绿色文化空间”。要防止外国文化的糟粕对未成年人的不良影响，抵御西方敌对势力通过广播影视节目对我未成年人进行思想文化渗透。要加大广播影视的管理和督察力度，设立专门的机构、制定具体的管理规定，运用有效的监测手段，确保广播影视在未成年人思想道德建设中发挥重大作用。

15、要杜绝色情描写、淫秽画面、下流语言。广播影视节目要充分考虑未成年人的欣赏习惯、接受能力和成长走向，加强正确思想和健康情感的宣传教育，坚决制止以色情和性为“噱头”、“卖点”等格调不高的广播影视节目，坚决制止宣扬与正常伦理道德相悖的不健康情感的内容。对于展示不健康的涉性内容，如宣扬性自由、性随意、性享受及同性恋的语言、画面和情节，要坚决删除。特别是要杜绝涉及未成年人的早恋、性行为等语言、画面和情节。

(责任单位：总编室、电影局、电视剧司)

Notice on the Restatement of Film Censorship Standards 2008 – Article 3

广电总局关于重申电影审查标准的通知
发布时间：2008-03-07 15:53

3月3日，广电总局向各省、自治区、直辖市广播影视局，各电影制片单位，中国电影合作制片公司，电影频道节目中心发出《广电总局关于重申电影审查标准的通知》的通知，通知说，为贯彻落实党的十七大作出的推动社会主义文化大发展

大繁荣的重要部署，贯彻落实全国广播影视局长会议和全国电影工作会议的精神，始终坚持“二为”方向和“双百”方针，坚持“三贴近”原则，坚持正确的创作导向，始终把保护未成年人健康成长和社会效益放在首位，进一步繁荣创作、加强管理、净化银幕，为广大人民群众提供健康有益、丰富多彩的精神食粮，营造更加和谐、更加“绿色”的电影环境，总局决定，重申《电影管理条例》、《电影剧本（梗概）备案、电影片管理规定》（2006年5月22日国家广播电影电视总局令第52号）中的有关法规，各部门各单位要在电影片的备案（立项）、制作、审查、公映等环节严格执行。

电影片有下列情形，应删剪修改：

（一）曲解中华文明和中国历史，严重违背历史史实；曲解他国历史，不尊重他国文明和风俗习惯；贬损革命领袖、英雄人物、重要历史人物形象；篡改中外名著及名著中重要人物形象的；

（二）恶意贬损人民军队、武装警察、公安和司法形象的；

（三）夹杂淫秽色情和庸俗低级内容，展现淫乱、强奸、卖淫、嫖娼、性行为、性变态、**同性恋**、自慰等情节及男女性器官等其他隐秘部位；夹杂肮脏低俗的台词、歌曲、背景音乐及声音效果等；

State Council Order 343

中华人民共和国国务院令（第343号） 出版管理条例

【进入论坛】 【推荐朋友】 【关闭窗口】 2006年06月09日 11:15

中华人民共和国国务院令

第343号

《出版管理条例》已经2001年12月12日国务院第50次常务会议通过，现予公布，自2002年2月1日起施行。

总 理 朱镕基

二〇〇一年十二月二十五日

出版管理条例

第十条 国务院出版行政部门制定全国出版单位总量、结构、布局的规划，指导、协调出版事业发展。

第十一条 设立出版单位，应当具备下列条件：

- (一)有出版单位的名称、章程；
- (二)有符合国务院出版行政部门认定的主办单位及其主管机关；
- (三)有确定的业务范围；
- (四)有 30 万元以上的注册资本和固定的工作场所；
- (五)有适应业务范围需要的组织机构和符合国家规定的资格条件的编辑出版专业人员；
- (六)法律、行政法规规定的其他条件。

审批设立出版单位，除依照前款所列条件外，还应当符合国家关于出版单位总量、结构、布局的规划。

第五十五条 未经批准，擅自设立出版物的出版、印刷或者复制、进口、发行单位，或者擅自从事出版物的出版、印刷或者复制、进口、发行业务，假冒出版单位名称或者伪造、假冒报纸、期刊名称出版出版物的，由出版行政部门、工商行政管理部门依照法定职权予以取缔；依照刑法关于非法经营罪的规定，依法追究刑事责任；尚不够刑事处罚的，没收出版物、违法所得和从事违法活动的专用工具、设备，违法经营额 1 万元以上的，并处违法经营额 5 倍以上 10 倍以下的罚款，违法经营额不足 1 万元的，并处 1 万元以上 5 万元以下的罚款；侵犯他人合法权益的，依法承担民事责任。

Regulation for defining pornography - Regulation 862 of the General Administration of Press and Publication of People's Republic of China - 2006

家新闻出版署关于认定淫秽及色情出版物的规定

2006 年 1 月 8 日【大 中 小】 浏览次数：862 次

第二条：

淫秽出版物是指在整体上宣扬淫秽行为，具有下列内容之一，挑动人们的性欲，足以导致普通人腐化堕落，而又没有艺术价值或者科学价值的出版物：

- (一)淫褻性地具体描写性行为、性交及其心理感受；

- (二)公然宣扬色情淫荡形象;
- (三)淫亵性地描述或者传授性技巧;
- (四)具体描写乱伦、强奸或者其它性犯罪的手段、过程或者细节,足以诱发犯罪的;
- (五)具体描写少年儿童的性行为;
- (六)淫亵性地具体描写同性恋的性行为或者其它性变态行为,或者具体描写与性变态有关的暴力、虐待、侮辱行为;
- (七)其它令普通人不能容忍的对性行为的淫亵性描写。

Regulation on Banning the Transmission of Pornography and Obscene Information Online 2004

互联网站禁止传播淫秽、色情等不良信息自律规范

【颁布单位】中国互联网协会 China Internet Association
【颁布日期】2004.06.10
【实施日期】2004.06.10

【正文】互联网站禁止传播淫秽、色情等不良信息自律规范

第一条 为促进互联网信息服务提供商加强自律,遏制淫秽、色情等不良信息通过互联网传播,推动互联网行业的持续健康发展,特制定本规范。

第二条 互联网站不得登载和传播淫秽、色情等中华人民共和国法律、法规禁止的不良信息内容。

第三条 淫秽信息是指在整体上宣扬淫秽行为,具有下列内容之一,挑动人们性欲,导致普通人腐化、堕落,而又没有艺术或科学价值的文字、图片、音频、视频等信息内容,包括:

- 1、淫亵性地具体描写性行为、性交及其心理感受;
- 2、宣扬色情淫荡形象;
- 3、淫亵性地描述或者传授性技巧;
- 4、具体描写乱伦、强奸及其他性犯罪的手段、过程或者细节,可能诱发犯罪的;
- 5、具体描写少年儿童的性行为;

6、淫褻性地具体描写同性恋的性行为或者其他性变态行为，以及具体描写与性变态有关的暴力、虐待、侮辱行为；

Education

Education Direction Regulation on Health Education for Elementary and High Schools 2008

教育部关于印发《中小学健康教育指导纲要》的通知

教体艺[2008]12号

各省、自治区、直辖市教育厅（教委），新疆生产建设兵团教育局：

为贯彻落实《中共中央国务院关于加强青少年体育增强青少年体质的意见》（中发〔2007〕7号）对健康教育提出的工作要求，特制定《中小学健康教育指导纲要》（原《中小学健康教育基本要求》同时废止），现印发给你们，请认真遵照执行。

附件：中小学健康教育指导纲要

中华人民共和国教育部

二〇〇八年十二月一日

附件：

中小学健康教育指导纲要

为贯彻落实《中共中央国务院关于加强青少年体育增强青少年体质的意见》（中发〔2007〕7号）对健康教育提出的工作要求，进一步加强学校健康教育工作，培养学生的健康意识与公共卫生意识，掌握健康知识和技能，促进学生养成健康的行为和生活方式，依据《中国公民健康素养-基本知识及技能（试行）》及新时期学校健康教育的需求，特制定本纲要。

（五）水平五（高中阶段）

1. 目标

了解中国居民膳食指南，了解常见食物的选购知识，进一步了解预防艾滋病基本知识，正确对待艾滋病病毒感染者和患者；学会正确处理人际关系，培养有效的交流能力，掌握缓解压力等基本的心理调适技能；进一步了解青春期保健知识，认识婚前性行为对身心健康的危害，树立健康文明的性观念和性道德。

2. 基本内容

(1) 健康行为与生活方式：食品选购基本知识；中国居民膳食指南的内容。

(2) 疾病预防：艾滋病的预防知识和方法；艾滋病的流行趋势及对社会经济带来的危害；HIV感染者与艾滋病病人的区别；艾滋病的窗口期和潜伏期；无偿献血知识；不歧视艾滋病病毒感染者与患者。

(3) 心理健康：合理宣泄与倾诉的适宜途径，客观看待事物；人际交往中的原则和方法，做到主动、诚恳、公平、谦虚、宽厚地与人交往；缓解压力的基本方法；认识竞争的积极意义；正确应对失败和挫折；考试等特殊时期常见的心理问题与应对。

(4) 生长发育与青春期保健：热爱生活，珍爱生命；青春期常见的发育异常，发现不正常要及时就医；婚前性行为严重影响青少年身心健康；避免婚前性行为。

(5) 安全应急与避险：网络交友的危险性。

Police, Security and the Criminal Law

First Article on Guangzhou Raids

http://bbs.koubei.com/thread_202_8647_1.html

广州六十位同性恋人民公园聊天被警察带走盘问 2009-04-24 18:11:18 楼主

广州六十位同性恋人民公园聊天被警察带走盘问

广州警方一周内两次带走同性恋者盘问

近 60 名同性恋者在广州人民公园聊天被警方带走盘问，有同性恋者追问，这么大的公园，为何单单盘问同性恋者，“是否有歧视同性恋的原因存在？”。

同志：警方带走近 60 名同志进行盘问

继 3 月 30 日晚，广州市越秀公安分局广卫路派出所警员从人民公园带走近 50 名同性恋者进行盘问后，昨日(4 月 3 日)晚，广卫路派出所再次从人民公园带走近 60 人至警局进行盘问。现场同性恋者反映，多名便衣警察一直在人民公园同志聚会地盯梢，大批保安员在四周巡逻，当晚 8 时左右，警员及外围保安人员，突然向同性恋者围拢，有同性恋者试图离开，被保安阻拦。在并未说明任何原因的情况下，要求同性恋者接受调查，有同性恋者追问原因，警员才称同性恋者涉嫌卖淫***，需到警局接受调查。整个调查持续到凌晨两点才告结束.....这是最近五天内，广州警察两次从人民公园带走大批同性恋者进行盘问。

警察：“老百姓反映同志太多了”

在两次警方带走同性恋盘问的过程中，本地活跃的同性恋组织智行基金会义工正在做外展，3 月 30 日晚有 5 名智行基金会义工被带至警局接受盘问，4 月 3 日晚有 6 名智行义工受到盘问，在与警方的沟通中得知，涉嫌卖淫***只是警方出动的托词，一位李姓警官表示，“有老百姓投诉人民公园同性恋太多了”，有义工反驳称，“难道我们不是老百姓吗？”这位警官称，因为同性恋者在厕所有同性性行为，老百姓看不惯，义工再次提醒警员，你可以带走在公开场所有性行为的人，这位警官建议，同性恋者可以搬至隐秘的地方，比如白云山上、海印桥下等。“义工反驳称，只要不违法，同性恋有权选择在什么地方聊天交友。人民公园里晚上人非常多，为什么要单单带走同性恋者接受调查呢？”

受到盘问的同性恋者小唐追问，“这当中有没有歧视同性恋的原因存在？”

Second Article on Guangzhou Raids

十字路口的“秘密花园” 人民公园同性恋聚集地

<http://www.dayoo.com> 2009-05-16 12:04 来源：南方网 [发表评论 \(9\)](#)

“人民公园是人民的，同性恋为什么不能来呢？”

如同白先勇小说《孽子》描写那般：“在我们的王国里，只有黑夜，没有白天。天一亮，我们的王国便隐形起来了。”

人民公园里鲜为人知的方寸之地，见证了同志人群的自身变迁和分化，也见证了社会对这个特殊人群的艰难认同过程，现在，他们和他们的“王国”走到了分崩离析的节点。

这里是他们的“王国”，“臣民”都是男性，没有领土，只是一处精神家园。

他们的“王国”狭窄得可怜，在广州市人民公园西侧，南北两个公厕之间，约200米长的绿荫小径。一排排石凳旁，矗立着小叶榕、玉兰树，枝叶遮天，落下斑驳光影。他们用眼神寻找志同道合者。开放而又隐晦，直率而又暧昧。这就是人民公园同性恋聚集地，应该是广州乃至珠三角最大的同性恋聚集地。

他们管这样的地方叫“渔场”，钓“鱼”的场所，驻足于此的人，背后都有一段历史，他们藏起身世，改用“艺名”或昵称，在这儿寻找短暂或长久的快乐。

现在，“王国”走到了分崩离析的节点。

隐形岁月

一听到脚步声，如同受惊的麋鹿，迅速分开两头跑。5月10日下午，老黄顺路去了人民公园。他在小道上转转，凝神瞧瞧下棋的、打牌的。走累了，坐在石凳上。一名陌生的中年男人走到跟前笑了笑，老黄回应了一个微笑。他挨着他坐下，两人聊起家常，说说笑话。不远处的一些石凳上，也坐着成对男子。这是“渔场”最常见的场景。在尖锐的世界之外，这儿没有家庭压力、同性禁忌。“放松”，是同性恋者提到最多的关键词。50岁的老黄削瘦，至今未婚。他大部分时间蜗居家中照顾老母亲，伺候一日三餐，两天换洗一次尿湿的被褥。他觉得亏欠父母：“不孝有三，无后为大”。一个月前，他刚和同居3年的男性朋友分手，后者要结婚了，这也是他一开始就规劝的：“你是家里的独子，一定要结婚。”

2000年，老黄开始逛人民公园。这里是广州的历史地标，1918年，孙中山倡导建成市立第一公园，后改名为中央公园，1966年改成现名。1999年，公园拆除围墙，与这座城市融为一体，也才真正扩大为同性恋聚集地，原因已经无法细究，但也只占了公园两百分之一的角落。阿刚更早知道这个“渔场”。1987年，他“糊里糊涂”结婚第二年，有朋友告诉他，要认识更多朋友就去人民公园。是那种朋友吗？他问。是的。那年，恰好人民公园雕塑群落成，有鲁迅头像等6座。园内保持着最初的法式建筑风格，也散落不少西洋雕塑。当时，公园收门票，1角钱/人。他做贼一般溜进公园，偷偷打望。在小树旁，他看到一些男人成双靠在一起，拖着手，压低嗓音聊天，一听到脚步声，如同受惊的麋鹿，迅速分开两头跑。

1980年代，这不叫同性恋，属“流氓罪”。“那个谁不就被抓去劳教吗？”阿刚努力回忆圈内典故。如同白先勇小说《孽子》描写那般：“在我们的王国里，只有黑夜，没有白天。天一亮，我们的王国便隐形起来了。”一直到80年代的最后一年，才有学者涉足同性恋：在上海，社会学家刘达临启动了对两万人的性文明调查，涉及到部分同性恋者；在北京，从美国回来的李银河把“性别和性”作为主要研究方向。当时信息闭塞，阿刚只为在人民公园发现那么多朋友而心跳不已。他老惦记

着，一下班就去。“在那儿很放松，跟过节一样，在家跟老婆一点语言都没有。”像从事地下工作，有男人不紧不慢跟着阿刚到没人的角落，紧几步上来问，你吃饭没有？或者，借个火，问个时间。第一次被邀请吃饭，阿刚不敢去，他留下了BP机号码。后来电话联络，这段关系维持了两年。阿刚讲述得很平静。老黄也一样。他们从一开始便洞察，特殊的感情会无疾而终，也不再去纠缠其中的痛与苦。好像人民公园，时光荏苒，新面孔变成老面孔，老黄还是愿意有空去逛一逛，仿佛是一个心照不宣的老朋友家叙叙旧。

纯真年代

“公园里是我的天堂，没有了，我都不知道去哪里？”

2000年11月11日，艾丽斯第一次来到人民公园时，“流氓罪”年代已褪去，他转了几圈，有男人在拥抱、亲吻，还有一对男人在哭泣，这些都已不再是躲藏在阴暗角落了。1990年代末，同性恋渐成社会话题。李银河的《同性恋亚文化》正热卖，艾丽斯买了一本，交钱时不敢把封面冲着收银员。这本书暗示他“渔场”特征：有公共厕所，人群热闹。书里还告诉他，同性恋是正常现象，并非犯罪。37岁的艾丽斯原在市郊开发廊，搬到市区卖早点后，他成了公园常客，一晃8个春秋。人民公园的初春，大叶榕枯黄又抽绿，北边的红棉树开花了，整个公园漾着香气。夏天了，黄色的芒果熟了，行人用矿泉水瓶、竹竿敲下果实。到了秋天，白色桂花开。艾丽斯生命却一度充满灰色。他自杀过3次，未遂。他喜欢上了抽烟，一天两包。“公园是我的天堂，没有了，我都不知道去哪里。”他说。公园里自娱自乐的项目渐多，下棋、唱歌、打羽毛球、踢毽子……有些人推来CD机和扩音器，5毛钱一首歌。大概2005年，涨到了1元。摊位太多，最后变成了互相飙歌，公园管理者不得已限制了区域和时间，现在，周末时才能听到狂野的卡拉OK了。心情愉快时，艾丽斯和圈内朋友会去唱几首。他唱粤剧、流行歌曲，喜欢梅艳芳的《女人花》，曲调幽怨，有时流着泪唱完这首歌。他们用的是女声，男女合唱时，一些路人乍听吃惊，却也鼓掌：男儿声竟能如此阴柔。人民公园的同性恋圈子名声渐隆。旧“渔场”经常被执法部门驱赶，也开始转移到这儿。2000年代初，可能是同性恋聚集最密的那几年。一般周末下午人最多，郊区、周边城市的同性恋都聚集在此。外国人也知道这个点，艾丽斯见过一个老外，金发碧眼，大腿上刺着“珠江啤酒同性恋”，他用蹩脚的英语打趣：“Canlkissyou?”“Yeah!”老外指着自己的脸颊。年轻的同志们开始学会了上网，交友不再依靠“渔场”。许多老年人怀念着这段时光，“那时候很纯。”他们与公园保安相安无事，“他们只是负责拔拔草什么的。”艾丽斯说。

流浪歌手

治安员喊着：“清场了，走啦走啦！”治安员走了，他们又回来了。人民公园南面原是一片民居、商铺。2006年初，扩充为南广场。公园面积增大一半。一个刻有史

文介绍、花岗岩加铜制成的城市原点标志，在南广场的圆形中心广场设立了。同志们的领地依然固守着那 200 米的小径。但同性恋圈子不可避免地复杂化了。2006 年国庆后一天傍晚，舒淇（化名）坐在公园的石凳上，心里既怕又兴奋，他不知道这样做对不对，那年他 22 岁，和一个男性朋友相处了 3 年。分手时，他没有工作，飘零一人。舒淇开始混迹于公园。这是特殊的一个流浪汉群体：没有工作，以园为家，在同性恋圈的灰色地带徘徊。他结识了一帮年轻“姐妹”，他嘴大，就被昵称为“舒淇”。缺钱时，舒淇和一帮人会去“献血”，200cc 血 200 元钱，免得饿肚子。在公园石凳上，一个高高瘦瘦的老人凑过来跟他说话。“我不喜欢他。”舒淇说，但跟着老人去了他家。完事后，老人问：“你是不是要钱？”“是。”“要多少？”“200。”这样的交往持续不久，舒淇找了一份酒楼服务员工作，便不再去老人家里，偶尔还会打电话问候一声。有时，老人会问：“公园有没有帅哥？介绍认识一下。”“没有啊。”他敷衍着。“像这种情况很多的。”舒淇说。“那是一段很惨的日子。”5 月 9 日，他穿着餐厅服务员制服，回想着。“我现在只想好好工作，有了钱，什么都不用担心。”那时，除了去朋友家、泡网吧、在麦当劳捱夜，舒淇便睡在公园石凳上。2006 年左右，公园深夜不清场。后来要清场，治安员喊着：“清场了，走啦走啦！”他们便挪到公园边上，治安员走了，他们又回来了。深夜，是他们的快乐时光。大家天南海北聊天、唱歌。唱完，有人尖着嗓子喝彩：“好好听哦！”闹得凶了，治安员就出来了：“走了走了，别在这里吵了！”有一些同性恋在酒吧、夜总会做反串演出，也就是男扮女装，用女声唱歌。他们在演出前，或者结束之后，会到公园来逗留。艾丽斯记得最有名的是“萍姐”，“他化女装很成功的，穿连衣裙、高跟鞋，带着假波（乳房），我们会去抓一下，大家逗逗开心。”有时候，萍姐会加入一些业务舞蹈队跳舞、唱歌。许多人围着他，听他粤语发音不标准的歌，一些人还跟他拍照留念。据说，他出过自传，上过报纸，带了不少徒弟入演艺圈。不过，现在公园已见不到他了。

何去何从

“人民公园是人民的，同性恋为什么不能来呢？”

寄生于此的行当也自然而生：偷窃、抢劫、卖淫的。受访的同性恋大都自认是受害者。

Ricky 家在广州、佛山交界的高村，他喜欢人民公园，但已不敢去。几年前，他在公园认识了一个看起来很纯净的年轻人，在公厕，他被对方抢走了钱包和手机。算起来，他被偷、抢的手机已有 5 部。“这个圈子什么样的人都有，有的是找朋友，有的只是想玩一下，有的来聊天，有的就是为了生活赚钱。”舒淇说。现在，老黄也不敢在公园里找朋友了，只是逛逛。“在这个圈子里交往，弦不能放松的。真爱是有的，但概率太低太低了。”很多同性恋不会去公厕里，三五人占据了小便池，作势小便，每当有人进门时，猥猥的眼神如同扫射猎物一般盯着，如遇相同的眼

神，便尾随而行。而这大部分是借“钓鱼”为幌子偷窃、抢劫。今年初开始，人民公园辖区内的广卫派出所加强了治安管理，一批一批的同性恋被带到所里询问。这在同性恋社区引起轩然大波，有人提及了电影导演张元的电影《东宫西宫》，影片讲述的是北京某公园，民警抓捕、审讯同性恋的经过。

在小白的印象中，频繁搜查出现在3月底。他是智行基金会志愿者，这个香港慈善机构专为艾滋病和弱势群体提供关怀。“就像演电影一样。”志愿者小姚回忆。4月3日，几名警察、治安员突然从四面包围上来，包括他们4名志愿者在内，有二三十人被带到派出所，大多是同性恋者。

小白记得，询问笔录上写明事由是“涉嫌卖淫嫖娼”。但仅有两个问题涉及：“你是不是卖淫嫖娼”、“你知不知道这里有卖淫嫖娼”。所有接受询问的人还都会被问到：“你是不是同性恋？”最后，民警会在笔录外补充一句：“以后不要来了，这里不是你们呆的地方。”包括智行志愿者，他们会被告诫不要来做外展，因为会招来同性恋者。

一名曾被询问的同性恋者 Tony 很气愤：“人民公园是人民的，同性恋为什么不能来呢？”敏感者觉得这涉嫌“歧视”。在北京爱知行研究所所长万延海看来，警方行动缺乏法律依据，“影响警方行动的是道德层面的问题，但警方是执法者，需要法律依据和事实证据，不能随便抓人”。智行志愿者，以及一起开展活动的广州市疾控中心官员事后曾到广卫派出所所交涉。“我们也有难处。”广卫所负责人告诉他们，警方是接到市民投诉采取行动的，否则警方会被认为不作为。比如，有市民被同性恋者骚扰；有人在公厕里盯着小便的市民，甚至过来抚摸。有一次，一名警官身着警服如厕，刚一进厕，就有两个人一左一右围上来，盯着他看。在警方最近的一次行动中，从一个公厕里带走了20余人，“他们呆在里面长时间不出来。”另外，该负责人提到同性恋抢劫、敲诈、卖淫的事件时有发生，这已是属于触犯法律的行为。该负责人称，警方行动时，很难辨别哪些同性恋有不文明或者违法行为，“这些人的身份我们并不掌握，只能统一行动。”智行工作人员叶贝担心这个精神家园会消失。“我们会采取一些办法，一是加强人民公园的宣传教育，同性恋者作为文明市民，不要发生不文明行为。二是组织羽毛球比赛、英语角，把这里变成同性恋的文明场所。”许多同性恋者已不敢在公园露面，家在附近的 Tony 被询问过一次之后，不再敢来公园逗留。舒淇站在公园边上，估摸着又到治安员出巡时间，也匆匆逃离。“我一些朋友都被带到派出所里，现在哪还敢去啊。”不管是非如何，人民公园，这个“王国”已经走到了分崩离析的节点。（记者 何海宁 阿强）

Shanghai Pride Article 1

(<http://news.bbc.co.uk/2/hi/asia-pacific/8093695.stm>)

BBC NEWS

China bans parts of gay festival

By Chris Hogg
BBC News, Beijing

The organisers of China's first Gay Pride Festival have been told to cancel two of their sessions.

The news came on the very day a state-run newspaper described the Shanghai festival as of "profound significance".

Officials have warned the owners of two venues planning to hold a play and a film screening they would face "severe consequences" if they went ahead.

Homosexuality was illegal in China until 1997, and officials described it as a mental illness until 2001.

Since then the government's attitude might best be characterised as "don't condemn, but don't promote".

So a front-page article that discussed how many gay people there might be here, and an editorial in the state-run China Daily that highlighted the tolerance of a city like Shanghai seemed to represent a shift towards a more tolerant attitude.

A few hours later, however, officials in Shanghai were visiting businesses that planned to hold events as part of Pride Week and ordering them to cancel.

Nervous?

The festival's organisers are confused and frustrated. They do not know what is going on, and calls to the officials involved have gone unanswered.

It could be that this is more the result of the authorities' nervousness about public events they do not control than about the official attitude to homosexuality.

But it shows how, in this country, any effort to advance the rights of a group in society is viewed with suspicion and sometimes alarm.

The festival's organisers face an anxious wait to see if their remaining events will be allowed to go ahead.

Story from BBC NEWS:

<http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/8093695.stm>

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Shanghai Pride Article 2

(http://shanghaiist.com/2009/06/11/authorities_intervenes_with_shangha.php)

Authorities intervene with Shanghai Pride

Up until yesterday, it'd been smooth sailing for Shanghai's first Pride week. But as of Wednesday afternoon, the festival, a celebration of gay pride and social tolerance, ran into some problems with the authorities. Officials from a Shanghai commercial bureau visited and warned the owners of two venues that they would face "severe consequences" if they failed to cancel the events that were to be held there.

At 4pm on Wednesday, officials visited Kathleen's 5, which had plans for two film screenings, and ordered them to cancel the events because they lacked the proper film screening license. The films they'd intended to show were "s/he," about a young girl's sexual identity crisis, and "Destination Shanghai," about the city's sex trade.

Jeffrey Tang, the event manager of Kathleen's 5, was there when the officials from Shanghai Industry & Commercial Administration Bureau arrived yesterday. "They told us the reason for the cancellation is that we don't have any entertainment licence, which is true, but we have never had any problems with cancellations before. Although, we have never screened any movies before, we've had corporate and business events, and also DJ's playing," said Tang. When asked if this was related to the Chinese authorities' sensitivity regarding LGBT issues, Tang replied, "Of course it's somehow related. China has too many laws, and people often go around them. The police often choose not to use the law, but if there's something they don't like, they choose to use it."

Similarly, authorities visited Barefoot Studios, which was supposed to host the "The Laramie Project," a play about gay hate crimes in small town America—and told warned them not to hold the event. Furthermore, one of today's Pride events, the Open Bar at Shanghai Studio, was also canceled, though organizers say this was the venue's own decision.

Despite these cancellations and setbacks and the associated jitters, much of the show will go on. The organizers are busy finding new venues for some of the cancelled events. Co-organizer Hannah Miller tells us that The Laramie Project will find a new venue and run next Friday instead. Of all these setbacks and minor brushes with the authorities, Miller said "of course we're disappointed, but it's true we didn't have a license. But the overall feeling is still positive and we're still feeling optimistic. We'll wait and see how the rest of the week goes."

Shanghaiist tried to get in contact with both commercial bureaus who cancelled the events to hear their side of the story, but apparently "no one who knows anything about this is here today."

You can also read other links to this story from the [BBC](#) and the [Shanghai Daily](#).

Dongdan Park Incidents – Aizhixing Report

关于 3 月 17 日东单公园事件，万延海给北京市公安局长的信
(万延海 2008 年 3 月 30 日)

关于 2008 年 3 月 17 日下午公安人员在北京东单公园抓捕游客的情况

2008 年 3 月 17 日，周一，下午 3-4 点钟，大批公安人员和武警乘警车进入北京市东城区辖区内的东单公园，当场带走 40 多人，到公园内的治安办公室。目击者称，其中有 6 名妇女，其余是男子，并多数是在公园里游玩的同性恋者。其中至少有一名我所在机构“北京爱知行研究所”的志愿者。

公安以公园里发生暴力死人案件为由带走这些人问话，并调查每个人的身份证、居住证明和给每个人拍正面照。公安没有询问相关死人的事件。

有人拒绝拍照，遂被告知其身份信息无法在电脑中查询，需要将其带至派出所进一步调查；当事人表示，在过往的查询中，其身份信息一直是可以查询的，怎么这次在其拒绝拍照后就无法查询了？

有人表示，有人是北京当地居民，在其拒绝被拍照后被很快释放。

有人表示，有公安询问他，这么年轻到这里来是否是 MB（男性卖淫者）？公安并告诉他：马上要开奥运会了，你来这里性质很严重，你被备案了，等等。

我们认为，上述公安人员针对游园人士的检查和拍照等行动，并无证据支持，也无正当理由。

3 月 17 日之后，每天有公安在公园里巡逻，特别是晚上。

东单公园是北京市著名的恋爱角。自从 1980 年代末，东单公园逐渐成为北京市男同性恋者聚会的场所。因为北京市作为首都的影响力，东单公园成为中国和世界上著名的男同性恋者交流场所。

在各国，当同性恋议题最初提出的时候，因为偏远和乡村地区同性恋者们普遍存在的苦闷，会有大量同性恋者从小城镇或乡村来到都市里，寻找恋人和自我认同。当大量的同性恋人口突然进入都市，会带来一系列的问题，特别是当同性恋者不受法律保护 and 面临警察压力。这些问题包括失业、同性卖淫、敲诈勒索和疾病流行等。

北京的东单公园也是一样。东单公园是很多同性恋者发现自我的地方，也是很多人痛心疾首的地方。自从 1990 年代中期来，东单公园一直存在上述社会问题。

如何处理上述社会问题？可能有不同的意见。长期以来，北京市政府部门采取不闻不问或简单打击的态度。我们认为，需要一个有同情心的、以大量社会工作为基础的、有政府和非政府组织以及公园游客共同参与的综合治理方案。为此，2006年上半年，我们北京爱知行研究所专门起草一个方案，我们联系了北京市性病艾滋病防治协会、北京市东城区卫生局、东城区疾病预防控制中心，试图推出一个政府和民间组织共同参与的东单公园内男性同性恋者的公共卫生、法律和心理社会问题的工作机制，我们并尝试寻求国内外资源来开展相关工作。我们的计划是建立一个专门的工作网络，利用公园里或公园外的场所，每天在公园里针对男同性恋者开展健康教育、疾病诊断和治疗、法律咨询和法律援助、心理咨询和培训社群同伴教育人员。

事与愿违，在各个方面表达了良好愿望之后，我们依然没有能够和政府部门共同开展相关工作。在这种情况下，2006年底，我们开始通过完全民间的策略，组织了一些经常游园的朋友，在公园里开展艾滋病教育，发放艾滋病教育材料和安全套，发放同性恋相关法律和心理学读本等。我们的工作人员也经常访问东单公园，直接开展工作。目前，我们基本可以保证每天有志愿者和员工在东单公园里工作。

但是，我们在公园里的健康工作，在2008年3月17日的公安行动后，被迫中断。我们无法保证志愿者的安全。我们也无法和他人安全的环境下进行正常的交谈。我们也无法确保和我们交谈或接受我们教育材料的人们会不会被看作同性恋者而被抓捕。

2007年，我们在东单公园里的志愿者曾经有过被公安抓捕的情况。我们随后积极和东交民巷派出所和东城区公安分局联系，说明我们机构开展艾滋病工作和志愿者在公园活动的情况。至今，我们没有得到回应。

我们对2008年3月17日及其随后北京市公安部门在东单公园的行动感到失望。我们要求北京市公安局调查这个事件，并严格管教公安人员依照法律行动。

2008年8月8日，北京市就要举办奥运会了。我们理解北京市面临的治安压力。东单公园作为一个有着多种群体出入、邻近天安门的场所，公安部门予以关注和必要的查询，我们是理解的。但是，如果处置不当，非但政府公安部门不能聚焦挑战性的问题，反而扩大社会矛盾，耗费政府资源，影响奥运会前的社会和谐。

我们建议如下：

- 1、公安人员在公园里的行动，以维持秩序为主，而不是清理游客，更不能随意抓捕；
- 2、没有事由的情况下，公安人员不宜白天频繁出现在公园里；
- 3、公安人员对任何游客的检查，需要有案由和证据支持；
- 4、公安人员执法工作，不能侮辱同性恋者，比如不能问及个人性倾向或要求其改变性倾向；在问及个人生活的时候，只在案件相关连的情况下；
- 5、夜晚清园，公安人员只是协助园林管理人员，不能用公安人员去威胁游客离开；
- 6、对公园里发生的相关法律问题，公安人员应该介入，而不是平常的不闻不问；
- 7、可以咨询相关民间组织，探讨处理公园里的各项问题的方法和策略；

- 8、可以不定期召开公园游客的咨询会议，听取不同游客对处理公园管理相关问题的意见；
- 9、可以邀请社会学者和法学者们对类似东单公园的场所开展专题研究，提供政府多个部门政策意见。

以上意见，盼请北京市公安局长尽快答复。我也愿意就相关问题当面提供意见。

万延海

First Article on Dalian Incidents

(<http://gsrat.net/news/newsclipDetail.php?pageNum RecClipData=8&&nclid=152>)

大連警方邁進 GAY 吧，打擊同性愛
【同志新聞通訊社白小豆 2000/8/16 綜合報導】

7 月 28 日是一個普通的週末。晚上約 11 點左右，大連的王先生和幾個朋友和往常一樣來到某 GAY 吧，一隻腳剛跨入大門，幾個全副武裝的警察一擁而上，王某和朋友就這樣莫名其妙地被全部抓走。經過一夜的關押、提審、蹲著、取樂、人格遭到極大侮辱之後，交上罰款 10,000 元後才被放走。同行的幾位朋友遭遇相同。

這是發生在大連較大的 GAY 吧——「名人」吧裡真實的一幕。7 月 28 日晚約 9 點左右，酒吧裡突然衝進一夥警察，堵住大門，將裡面所有人全部抓走，押至大連刑警一大隊和二大隊。而後埋伏在那裡，近來一個抓一個，一直到午夜。王先生就是其中的一個。

在一大隊和二大隊，約有五十多名同志被抓，警方以同性愛是傷風敗俗的行為為由大肆罰款。經濟好點的 10000 元，其他的 2000 至 8000 元不等，如不交罰款，就通知其單位和家屬。（後來警方稱這筆錢為保證金，具體怎麼保證法筆者不清楚，只知道警方並沒給出任何收據一類的憑證）

在提審過程中，同志的人格遭到了極大的侮辱，被耍猴一樣地取樂，警察開口問話是，「叫你們先生還是女士、小姐呢？」其中有一便秘者，警察說：「找一個棍子給你捅一捅？」窺陰癖一樣地獵奇，問：「你們性交是幹前面還是幹後面」、「你扮演男人還是女人」等等（無論同性愛者還是異性愛者，法律都保護個人隱私權，任何人無權過問）。

有被抓的同志問警方：我們到底犯了什麼罪？警察說：同性戀是傷風敗俗，又問：我們傷風敗俗的行為是什麼？警察反問：同性戀合法嗎？回答：法律沒有明文規定，這個警察說：法律沒有明文規定就是違法。被抓遭侮辱又被罰款的同志氣憤地說：我們真不知道這是「警察」還是「山大王」？

97年中國刑法已經取消了判同志為流氓罪的第160條，在全國已極少聽到毫無理由地抓同性愛者。

對於大連警方的這種行為，《朋友通信》項目組負責人張北川老師震驚了，北京的全國同性愛熱線「99575」震驚了！大連這座發達前衛、同性愛文化日臻完善的文明城市竟然發生了這樣的事情！大連的同性愛者更是驚詫萬分，瞬間整個城市籠罩在白色恐怖之中，同志們欲哭無淚！

（又訊）被抓的同志被迫交待出的同性愛者，警方也一一傳訊，傳到即罰，可謂生財有道。被抓的同志有本市的、外地的、也有警察，只有一個台灣人不服出來反抗，遭到警方拳腳相加，目前，這個台灣人找律師正在起訴，這是為一位用法律手段來保護自己的同性愛者，向他表示致敬！

報長的話：在這社會上無法以同性戀身份和社會福利沾上任何一點邊，稅一毛也沒減免，倒是還要這樣偶爾充慰安、娛樂偉大的人民「保母」，順便再被刮鉅額零花，怪不得某些異性戀這麼需要把同性戀孤立出來，功能這麼多、又好控制的東西，確實不太容易發明。不過這案例還真證明了原來大陸和台灣真是同文同種的孽緣啊～！連幹的爛事、說的爛話都一模一樣，好在台灣同志早習慣了台灣警察在公園、健身房、馬路邊…的操練，竟還成了大陸同志對抗警方濫用公權力的楷模ㄟ！

Second Article on Dalian Incidents

<http://www.aibai.cn/info/open.php?id=10951>

爱知行：关于辽宁省大连市“同心—大连”网站有关问题的申明

北京爱知行健康教育研究

2004-12-07

2004年11月15日，大连新商报第七版以“同性恋网站有人公开‘喊价’”为标题，对“同心—大连”网站存在的一些“问题”进行了报导。该报导称，这个为同性恋“圈内人”所熟知的网站上，目前存在着一定数量的性交易活动，该文作者并通过某“圈内人”提供的注册号登陆后，参与性交易交流过程，并成功约见了一名欲寻求性交易的男性网友；我们无法根据该报道提供的信息判断作者约见的该男性网友的身份，我们也不清楚作者和其约见的该网友之间是否在此之前就存在某种程度的关联。11月16日，大连商报就该事件的后续报导中，指出当地警方“已经对本报提到的网站名做了记录，并对该网站严密监控”。据悉，大连商报在2003年曾用类似的手法对另一同性恋网站“大连同志”进行过报导。

我们认为，对于上述“同心—大连”站及该网站涉及的有关“问题”，涉及一系列

复杂的法律问题，各方应本着审慎、客观、理性的态度，合理合法地进行对待和处理，避免简单定论，粗暴查封、处理的做法。我们强烈建议，在“同心—大连”网站问题上，应对下列因素进行考虑：

一、不能依据部门规章或地方法规来限制宪法规定的言论自由权

《中华人民共和国宪法》第三十五条规定，中华人民共和国公民有言论、出版、集会、结社、游行、示威的自由。言论自由意味着，中华人民共和国的公民有权通过某种载体、媒介，发布自己的观点，除非该观点违反了宪法或基本法律（如刑法）的规定（如宣传煽动颠覆国家的言论），也就是说，对于宪法第 35 条规定的言论自由的限制，应该有着严格的法律依据，同时如果该言论没有违反宪法、基本法律，那么仅仅依据行政法规、部门规章或地方性法规，是不可以对言论自由权随意做出限制的，否则就会造成权力的滥用，侵犯公民的宪法权利。在“同心—大连”网的问题上，设立网站及在网站上留言，都是言论自由的表现，如果我们要对该言论做出限制甚至惩罚，那么必须至少满足两个条件：1、该言论触犯了宪法规定的其他权利（力）或基本法律的有关规定，并且 2、设立该网站与网站上不适当的言论有直接的因果关系，或网站设立者对该言论的出现，在现有技术可以去除的情况下，却主观故意或放任该言论出现。

二、网站经营/运做与通过网站联系而发生性行为的产生之间，不存在直接的因果关系

这里要明确以下几点：

1、大连商报报导的有关男性“性交易”行为是否真实存在，证明这一点，不仅需要确凿的证据证明其行为（性与交易）存在，还要对“同性性交易”做出明确的定义，以区分于日常情况下的“同性恋”行为；

2、此种所谓“性交易”是否违法？我国法律的原则，是“法无明文规定不为罪”，在我国刑事法律和其他法律法规没有明文规定的情况下，对同性性行为进行处罚是不适当的；

3、此种所谓的“性交易”，或者说，通过网站联系而发生性关系的行为，是否与“大连—同心”网的设立之间有直接因果关系？我们认为不存在因果联系。除非网站的设立就是为了组织性交易，或向进行性交易的人收取性交易佣金，或者像上文说的，网站的经营/运做者对性交易的发生有故意或放任的情况。

如果我们没有明确的法律规定（依据），也没有对什么是“非法”的“性交易”做出明确的定义，也没有通过正当程序（DUE PROCESS）（或者说合法程序）获得上述该行为的充分证据，就不能对该行为进行处罚；进而，也不能主观臆断地推论在网站和通过网站进行的上述所谓行为之间，必然存在直接的因果关系，并据此对网站实施处罚。即便对网站进行处罚，也依然要有充分的事实依据和法律依据，

并严格遵照法定的程序行使。

三、“同心—大连”网站的合法权益应当得到维护

据悉，大连警方已表示，“这些人群如果进行非法色情交易，他们会与有关部门联合对其进行打击。对于不构成犯罪的行为，他们会对其进行严密监控”。我们对大连警方这种审慎的做法表示理解。但是，我们仍然要指出，“同心—大连”网站本身的存续，没有违反相关的法规与规章，在该网站上发生的行为，无论性质如何，都应该与该网站的存续与否区别对待。

应当指出的是，理性的社会管理者应当倾向于疏导的政策，不随意地将“性”或“道德”问题法律化或意识形态化，对包括同性恋（团体）在内的弱势群体的合法权益提供充分的保护。为此我们呼吁，社会各方对此事保持理性、客观和克制的态度，尊重同性恋人群的合法权益；我们反对在舆论宣传中向社会大众对同性恋人群做出某种道德性的暗示，反对在没有充分事实依据和法律依据的前提下，对社会弱势群体的一部分武断地下某种结论，或者一味采取压制的措施。未经法定的正当程序，任何个人或组织均无权削弱、减损或剥夺“同心-大连”网站的合法权益。

北京爱知行健康教育研究
贾平 法律顾问/研究员
2004年12月7日

资讯来源：北京爱知行健康教育研究
2004-12-07

Police Law – Articles 21 and 22

中华人民共和国人民警察法（主席令第40号）

（1995年2月28日第八届全国人民代表大会常务委员会第十二次会议通过 1995年2月28日中华人民共和国主席令第四十号公布 1995年2月28日起施行）

第二十一条 人民警察遇到公民人身、财产安全受到侵犯或者处于其他危难情形，应当立即救助；对公民提出解决纠纷的要求，应当给予帮助；对公民的报警案件，应当及时查处。人民警察应当积极参加抢险救灾和社会公益工作。

第二十二条 人民警察不得有下列行为：

- (一) 散布有损国家声誉的言论，参加非法组织，参加旨在反对国家的集会、游行、示威等活动，参加罢工；
- (二) 泄露国家秘密、警务工作秘密；
- (三) 弄虚作假，隐瞒案情，包庇、纵容违法犯罪活动；
- (四) 刑讯逼供或者体罚、虐待人犯；
- (五) 非法剥夺、限制他人人身自由，非法搜查他人的身体、物品、住所或者场所；
- (六) 敲诈勒索或者索取、收受贿赂；
- (七) 殴打他人或者唆使他人打人；
- (八) 违法实施处罚或者收取费用；
- (九) 接受当事人及其代理人的请客送礼；
- (十) 从事营利性的经营活动或者受雇于任何个人或者组织；
- (十一) 玩忽职守，不履行法定义务；
- (十二) 其他违法乱纪的行为。

Criminal Law - Article 237

中华人民共和国刑法(2009年2月28日最新修正版刑法)

【发布文号】中华人民共和国主席令第83号

【发布日期】1997-03-14

【生效日期】1997-10-01

中华人民共和国主席令
(第八十三号)

第二百三十七条 以暴力、胁迫或者其他方法强制猥亵妇女或者侮辱妇女的，处五年以下有期徒刑或者拘役。

聚众或者在公共场所当众犯前款罪的，处五年以上有期徒刑。
猥亵儿童的，依照前两款的规定从重处罚。

Security, Punishment and Administration Law – Article 44

中华人民共和国主席令

第 三十八 号

《中华人民共和国治安管理处罚法》已由中华人民共和国第十届全国人民代表大会常务委员会第十七次会议于2005年8月28日通过，现予公布，自2006年3月1日起施行。

中华人民共和国主席 胡锦涛

2005年8月28

日

中华人民共和国治安管理处罚法

（2005年8月28日第十届全国人民代表大会常务委员会第十七次会议通过）

第四十四条 猥亵他人的，或者在公共场所故意裸露身体，情节恶劣的，处五日以上十日以下拘留；猥亵智力残疾人、精神病人、不满十四周岁的人或者有其他严重情节的，处十日以上十五日以下拘留。

Criminal Law – Article 274

第二百七十四条 敲诈勒索公私财物，数额较大的，处三年以下有期徒刑、拘役或者管制；数额巨大或者有其他严重情节的，处三年以上十年以下有期徒刑。

Family Law

Inheritance Law – Article 31

中华人民共和国继承法

(一九八五年四月十日第六届全国人民代表大会第三次会议通过)

第三十一条 公民可以与扶养人签订遗赠扶养协议。按照协议，扶养人承担该公民生养死葬的义务，享有受遗赠的权利。

公民可以与集体所有制组织签订遗赠扶养协议。按照协议，集体所有制组织承担该公民生养死葬的义务，享有受遗赠的权利。

Marriage Law – Articles 31, 32 and 46

中华人民共和国婚姻法（修正）

(http://www.gov.cn/banshi/2005-08/21/content_25037.htm)

1980年9月10日第五届全国人民代表大会第三次会议通过

根据2001年4月28日第九届全国人民代表大会常务委员会第二十一次会议

《关于修改〈中华人民共和国婚姻法〉的决定》修正

第三十一条 男女双方自愿离婚的，准予离婚。双方必须到婚姻登记机关申请离婚。婚姻登记机关查明双方确实是自愿并对子女和财产问题已有适当处理时，发给离婚证。

第三十二条 男女一方要求离婚的，可由有关部门进行调解或直接向人民法院提出离婚诉讼。

人民法院审理离婚案件，应当进行调解；如感情确已破裂，调解无效，应准予离婚。 有下列情形之一，调解无效的，应准予离婚：

- (一) 重婚或有配偶者与他人同居的；
- (二) 实施家庭暴力或虐待、遗弃家庭成员的；
- (三) 有赌博、吸毒等恶习屡教不改的；
- (四) 因感情不和分居满二年的；
- (五) 其他导致夫妻感情破裂的情形。

一方被宣告失踪，另一方提出离婚诉讼的，应准予离婚。

第四十六条 有下列情形之一的，导致离婚的，无过错方有权请求损害赔偿：

- (一) 重婚的；
- (二) 有配偶者与他人同居的；
- (三) 实施家庭暴力的；
- (四) 虐待、遗弃家庭成员的。

Supreme People's Court's explanation of the Marriage Law

- 【法规标题】最高人民法院关于适用《中华人民共和国婚姻法》若干问题的解释（一）
- 【颁布单位】最高人民法院
- 【发文字号】
- 【颁布时间】2001-12-25
- 【失效时间】0:00:00

- 【法规来源】 <http://www.chinanotary.org/articles/2005-06-08/news20050608163741.shtml>
- 【全文】

最高人民法院关于适用《中华人民共和国婚姻法》若干问题的解释（一）——[附加英文版](#)

[最高人民法院](#)

最高人民法院关于适用《中华人民共和国婚姻法》若干问题的解释（一）

（2001年12月24日最高人民法院审判委员会第1202次会议通过）
法释〔2001〕30号

中华人民共和国最高人民法院公告

《最高人民法院关于适用〈中华人民共和国婚姻法〉若干问题的解释（一）》已于2001年12月24日由最高人民法院审判委员会第1202次会议通过。现予公布，自2001年12月27日起施行。

二〇〇一年十二月二十五日

为了正确审理婚姻家庭纠纷案件，根据《中华人民共和国婚姻法》以下简称婚姻法、《中华人民共和国民事诉讼法》等法律的规定，对人民法院适用婚姻法的有关问题作出如下解释：

第一条 婚姻法第三条、第三十二条、第四十三条、第四十五条、第四十六条所称的“家庭暴力”，是指行为人以殴打、捆绑、残害、强行限制人身自由或者其他手段，给其家庭成员的身体、精神等方面造成一定伤害后果的行为。持续性、经常性的家庭暴力，构成虐待。

第二条 婚姻法第三条、第三十二条、第四十六条规定的“有配偶者与他人同居”的情形，是指有配偶者与婚外异性，不以夫妻名义，持续、稳定地共同居住。

Marriage Law – Article 36

第三十六条 父母与子女间的关系，不因父母离婚而消除。离婚后，子女无论由父或母直接抚养，仍是父母双方的子女。

离婚后，父母对于子女仍有抚养和教育的权利和义务。

离婚后，哺乳期内的子女，以随哺乳的母亲抚养为原则。哺乳期后的子女，如双方因抚养问题发生争执不能达成协议时，由人民法院根据子女的权益和双方的具体情况判决。

Chinese Centre for Adoption Affairs Statement on (International) Adoption by homosexual people

Can homosexuals adopt children from China?

Date of Post: October 12, 2005 Source: CCAA

The CCAA shall not identify prospective adoptive referrals for homosexuals. Legally, the Marriage Law of the People's Republic of China recognizes only families formed by marriage of opposite sex and does not recognize the legality of homosexual families, and the homosexual families are, therefore, not protected by laws. From the Chinese medical point of view, the China Mental Disorder Classification and Diagnosis Standard classifies homosexuality as sexual obstruction, belonging to psychiatric disease of the kind of sexual psychological barrier. In terms of the Chinese traditional ethics and customs and habits, homosexuality is an act violating public morality and therefore not recognized by the society. In accordance with the principle that adoption shall not violate social ethics as set forth in the Adoption Law, foreign homosexuals are not allowed to adopt children in China.

Supplementary Regulation on Human Reproductive Techniques – Article 22

中华人民共和国卫生部令

第 14 号

现发布《人类辅助生殖技术管理办法》，自 2001 年 8 月 1 日起施行。

部 长 张文康

二〇〇一年二月二十日

人类辅助生殖技术管理办法

第二十二条 开展人类辅助生殖技术的医疗机构违反本办法，有下列行为之一的，由省、自治区、直辖市人民政府卫生行政部门给予警告、3 万元以下罚款，并给予有关责任人行政处分；构成犯罪的，依法追究刑事责任：

- （一）买卖配子、合子、胚胎的；
- （二）实施代孕技术的；
- （三）使用不具有《人类精子库批准证书》机构提供的精子的；
- （四）擅自进行性别选择的；
- （五）实施人类辅助生殖技术档案不健全的；
- （六）经指定技术评估机构检查技术质量不合格的；
- （七）其他违反本办法规定的行为。

Labour Law

Labour Law – Article 12

中华人民共和国劳动法 ——附加英文版

- **【法规标题】** 中华人民共和国劳动法
- **【颁布单位】** 全国人民代表大会常务委员会
- **【发文字号】**
- **【颁布时间】** 1994-7-5
- **【失效时间】** 0:00:00
- **【法规来源】**
<http://www.people.com.cn/item/flfgk/rdlf/1994/111801199431.html>
- **【全文】**

全国人民代表大会常务委员会

中华人民共和国劳动法

(1994年7月5日第八届全国人民代表大会常务委员会第八次会议通过)

中华人民共和国主席令
(第二十八号)

《中华人民共和国劳动法》已由中华人民共和国第八届全国人民代表大会常务委员会第八次会议于1994年7月5日通过，现予公布，自1995年1月1日起施行。

中华人民共和国主席 江泽民
1994年7月5日

第十二条

劳动者就业，不因民族、种族、性别、宗教信仰不同而受歧视。

Transgender Issues

Chinese Gender Reassignment Surgery – Draft Policy for consultation

附件 1

变性手术技术管理规范 (征求意见稿)

为规范变性手术技术临床应用,保证医疗质量和医疗安全,制定本规范。本规范为医疗机构及其医师开展变性手术的最低要求。

本规范所称变性手术，是指通过整形外科手段（组织移植和器官再造）使易性癖患者的生物学性别与其心理性别相符。即切除其原有的性器官并重建新性别的体表性器官和第二性征。

一、医疗机构基本要求

(一) 三级甲等医院或三级甲等整形外科专科医院，有卫生行政部门核准登记的整形外科诊疗科目。

(二) 医院设有管理规范、运作正常的由医学、法学、伦理学等方面专家组成的变性手术技术临床应用与伦理委员会。

(三) 整形外科

1. 设置整形外科 10 年以上，床位 20 张以上，有较强的整形外科的工作基础。

2. 能独立完成整形外科各种手术，包括器官再造和组织移植。

3. 有单间病房，便于保护变性手术患者隐私和进行心理治疗等。

(四) 具备开展整形外科临床工作所需的相应设备。

(五) 有至少 2 名具备变性手术技术临床应用能力的本院在职医师，有经过变性手术相关知识和技能培训的、与开展的变性手术相适应的其他专业技术人员。

二、人员基本要求

(一) 手术组由整形外科医师为主组成，必要时可有其他相关科室医师参与。

(二) 手术者：取得《医师执业证书》的本院在职医师，执业范围为整形外科；同时从事整形外科临床 10 年以上，有 5 年以上参与变性手术临床工作的经验，曾独立完成 10 例以上的生殖器再造术，具有副主任医师及以上专业技术职务任职资格。

(三) 第一助手：从事整形外科临床工作 5 年以上的整形外科医师，或者其他相关科室具有主治医师及以上专业技术职务的医师。

三、技术管理基本要求

(一) 遵循整形外科以及相关学科诊疗规范和技术操作常规。

(二) 变性手术的实施顺序：性腺和外生殖器的切除、再造是变性手术的主体手术，任何改变第二性征的手术必须在性腺切除之后或与性腺切除术同期进行。

(三) 手术前必须提供的法律文件和应当满足的条件

1. 变性手术前患者必须提交以下法律文件及证明并均需归入病历入档：

(1) 当地公安部门出具的患者无在案犯罪记录证明。

(2) 当地公安部门备案同意后更改身份证上的性别。

(3) 有精神科医师开具的易性癖病诊断证明，同时证明未见其它精神状态异常；经心理学专家测试，证明其心理上的性取向的指向为异性，无其它心理变态。

(4) 患者本人要求手术的书面报告并进行公证。

(5) 患者提供已告知直系亲属拟行变性手术的相关证明。

2. 手术前患者必须满足的条件

(1) 对变性的要求至少持续 5 年以上，且无反复过程。

(2) 患者以其选择的性别公开地生活和工作至少 2 年。

(3) 术前接受心理、精神治疗不少于 1 年且无效。

(4) 未在婚姻状态。

(5) 年龄大于 20 岁，是完全民事行为能力人。

(6) 无外科手术禁忌症。

(四) 实施变性手术前，应当由手术者向患者充分告知手术的目的、手术风险、手术后的后续治疗、注意事项、可能发生的并发症及预防措施、变性手术后的后果，并签署知情同意书。

(五) 医院管理

1. 术前审批：变性手术前要报告医务处和变性手术技术临床应用与伦理委员会，获准后方可施行手术。

2. 完成每例次变性手术的一期手术后，将有关信息按规定报送至相应卫生行政部门。

3. 性生殖器官切除后，送病理检查。

4. 变性手术后，医院为患者出具有关诊疗证明，以便患者办理相关法律手续。

5. 医务人员应尊重患者隐私权。

(六) 建立健全变性手术后随访制度，并按规定进行随访、记录。

(七) 医疗机构和医师按照规定定期接受变性手术技术临床应用能力评估，包括病例选择、手术成功率、严重并发症，死亡病例，医疗事故发生情况，术后病人管理，病人生存质量，随访情况和病历质量等。

Health and HIV/AIDS

Regulation on AIDS Prevention and Treatment 2006 – Articles 3 and 39

艾滋病防治条例

(国务院令 第 457 号)

《艾滋病防治条例》已经 2006 年 1 月 18 日国务院第 122 次常务会议通过，现予公布，自 2006 年 3 月 1 日起施行。

总 理 温家宝

二〇〇六年一月二十九日

第三条 任何单位和个人不得歧视艾滋病病毒感染者、艾滋病病人及其家属。艾滋病病毒感染者、艾滋病病人及其家属享有的婚姻、就业、就医、入学等合法权益受法律保护。

第三十九条 疾病预防控制机构和出入境检验检疫机构进行艾滋病流行病学调查时，被调查单位和个人应当如实提供有关情况。

未经本人或者其监护人同意，任何单位或者个人不得公开艾滋病病毒感染者、艾滋病病人及其家属的姓名、住址、工作单位、肖像、病史资料以及其他可能推断出其具体身份的信息。

Blood Bank Administration Regulation 1998

血站管理办法（暂行）

【颁布单位】 中华人民共和国卫生部

【颁布日期】 1998. 09. 21

【实施日期】 1998. 10. 01

【正文】 第一章 总 则

六、有下列情况之一者不能献血

1. 性病、麻风病和艾滋病患者及艾滋病病毒感染者。
2. 肝炎病患者，乙型肝炎表面抗原阳性者，丙型肝炎抗体阳性者。
3. 过敏性疾病及反复发作过敏患者，如经常性荨麻疹、支气管哮喘、药物过敏（单纯性荨麻疹不在急性发作期间可献血）。
4. 各种结核病患者，如肺结核、肾结核、淋巴结核及骨结核等。
5. 心血管疾病患者，如各种心脏病、高血压、低血压、心肌炎以及血栓性静脉

炎等。

6. 呼吸系统疾病患者，如慢性支气管炎、肺气肿以及支气管扩张肺功能不全。

7. 消化系统和泌尿系统疾病患者，如较重的胃及十二指肠溃疡、慢性胃肠炎、急慢性肾炎以及慢性泌尿道感染、肾病综合症、慢性胰腺炎。

8. 血液病患者，如贫血、白血病、真性红细胞增多症及各种出、凝血性疾病。

9. 内分泌疾病或代谢障碍性疾病患者，如脑垂体及肾上腺疾病、甲亢、肢端肥大症、尿崩症及糖尿病。

10. 器质性神经系统疾病或精神病患者，如脑炎、脑外伤后遗症、癫痫、精神分裂症、癔病、严重神经衰弱等。

11. 寄生虫病及地方病患者，如黑热病、血吸虫病、丝虫病、钩虫病、囊虫病及肺吸虫病、克山病和大骨节病等。

12. 各种恶性肿瘤及影响健康的良性肿瘤患者。

13. 做过切除胃、肾、脾等重要内脏器官手术者。

14. 慢性皮肤病患者，特别是传染性、过敏性及炎症性全身皮肤病，如黄癣、广泛性湿疹及全身性牛皮癣等。

15. 眼科疾病患者，如角膜炎、虹膜炎、视神经炎和眼底有变化的高度近视。

16. 自身免疫性疾病及胶原性疾病，如系统性红斑狼疮、皮炎、硬皮病等。

17. 有吸毒史者。

18. 同性恋者、多个性伴侣者。

19. 体检医生认为不能献血的其它疾病患者。

本标准自1998年10月1日起实施，1993年2月17日颁布的“关于发布《血站基本标准》的通知”（卫医发〔1993〕第2号）的附件2《供血者健康检查标准》同时废止。