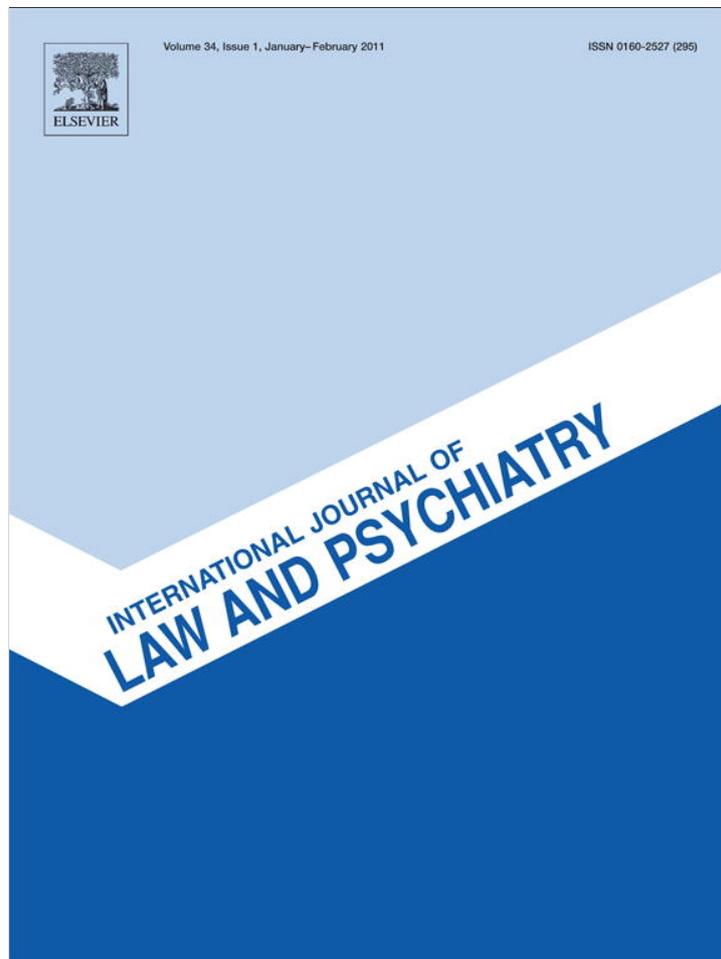


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Forensic psychiatry in China

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ABSTRACT

This article reviews the legal basis for the development of forensic psychiatry in China, the organization of clinical assessments, and training of forensic psychiatrists. Regulations for the management of patients in Ankang hospitals and the role of forensic psychiatrists within the Criminal Justice system are described. The primary role of forensic psychiatrists is to provide expert opinions on competence to stand trial and criminal responsibility in criminal cases. They are increasingly involved in civil court proceedings and tribunals at the request of a range of official agencies. The clinical cases assessed by Chinese forensic psychiatrists are very similar to those of their counterparts in Western countries, but the organizational and legal framework for these assessments reflects a very different system that has evolved independently.

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1. Introduction

Forensic psychiatry is the branch of psychiatry that deals with issues arising in the interface between psychiatry and the law (Arboleda-Florez, 2006). As a cross-specialty of law and psychiatry, it has become an acknowledged and respected psychiatric subspecialty in recent decades (Simon & Gold, 2004). In China, the notion that an individual who suffers from mental disorder should not bear the full weight of responsibility for their actions dates back to ancient times. For example, during the Warring States period (475–221 B.C.), Sun Bin, a famous militarist strategist¹, escaped death by pretending to be a madman (malingered or pseudo psychosis). A series of special rules to reduce punishment for mental disorder offenders already existed in the Law of the Tang Dynasty (A.D. 618–907) (Tiechu, 2005). Just as the legal system can be regarded as an independent system of government, and laws vary between countries and during different periods and within states within countries, so the practice of forensic psychiatry can vary considerably from one country to another and even during different periods within a single country. Each country has its developed legal, medical and specialized penal system to deal with mentally disordered offenders. Due to the limited literature on this area that is in English, little is known about forensic psychiatry in

China in Western countries. The aim of this article was to therefore provide a description of forensic psychiatry in China.

China is the largest country in East Asia and the most populous country in the world, with over 1.3 billion people. It has jurisdiction over 23 provinces (including Taiwan), five autonomous regions, four municipalities, and two highly self-governing territories (Hong Kong since 1997 and Macau since 1999). Excluding self-governing territories (Hong Kong, Macau) and Taiwan, the current legislative structure of China has its own characteristics, reflecting a certain degree of similarity to the civil law system because of China's historical background. This indicates that the laws of China largely adhere to the characteristics of a civil law system rather than those of common law.

2. Criminal law and mental disorder in China

Shao, Xie, Good, and Good (2010) have described current legislation on the voluntary and involuntary admission of mentally ill patients in China. However, this review does not cover the role of forensic psychiatrists and their specific involvement in criminal law and the assessment of offenders in China. In 1950, just after the establishment of PRC, it was stipulated that if an offender is a “mental patient”, or suffers from temporary insanity (short term mental disorder), or another pathological condition, and cannot recognize or control his criminal actions, he will not be punished. However, custody and care would be enforced. If the offender has “mental weakness”, he should receive lighter penalties according to article 12 of The Outline of the Criminal Law of China (the draft; 1950) (Zhao, 2001).

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¹ Sun Bin (Chinese: 孙臏, pinyin: Sūn Bīn;) BC–316 was a military strategist who lived during the Warring States Period in ancient China. Born in Qi, he wrote his own military treatise, the Sun Bin Bing Fa, that was rediscovered in a 1972 archaeological excavation after being lost for almost 2000 years.

In 1956, the Supreme People's Court stated in a Reply regarding the issue of dealing with a mentally disordered patient's offence (1956) that the mental patient who has lost his/her ability to understand or has lost his/her capacity to control his/her actions, and which has resulted in danger to the community, will not bear criminal responsibility; an "intermittent" mental patient should still be responsible for his/her offence if this was committed whilst in his/her normal mental state.

The legal basis for forensic psychiatry therefore existed in the 1950s and by this time, psychiatrists in Nanjing, Beijing, Shanghai, Changsha, and Chengdu had begun to carry out forensic psychiatric assessments, although there were only a small number of practitioners. Modern forensic psychiatry in China did not begin until the 1980s following the enactment of Criminal Law of PRC² in 1979. It was stipulated in article 15 that:

If a mental patient causes dangerous consequences at a time when he is unable to recognize or control his own conduct, he shall not bear criminal responsibility, but his family members or guardian shall be ordered to keep him under strict surveillance and arrange for his medical treatment. Any person whose mental illness is of an intermittent nature shall bear criminal responsibility if he commits a crime when he is in a normal mental state. Any intoxicated person who commits a crime shall bear criminal responsibility.

In practice, the ambiguous Chinese term “精神病人” (jing shen bing ren) in the law, which can be interpreted as “psychotic patient” or “mental patient”, raised heated arguments among forensic psychiatrists during the 1980s. However, an article was subsequently written by judges in the Supreme People's Court and published in 1996 to clarify its meaning as the “mental patient” instead of the “psychotic patient”.

In 1997, the Criminal Law was amended and supplemented by a number of additions from the National People's Congress (NPC) Standing Committee. It is stipulated in article 18 of a second version of Criminal law of PRC² that:

① *If a mental patient causes harmful consequences at a time when he is unable to recognize or control his own conduct, upon verification and confirmation through legal procedure, he shall not bear criminal responsibility, but his family members or guardian shall be ordered to keep him under strict watch and control and arrange for his medical treatment. When necessary, the government may compel him to receive medical treatment. Any person whose mental illness is of an intermittent nature shall bear criminal responsibility if he commits a crime when he is in a normal mental state. If a mental patient who has not completely lost the ability of recognizing or controlling his own conduct commits a crime, he shall bear criminal responsibility; however, he may be given a lighter or mitigated punishment. Any intoxicated person who commits a crime shall bear criminal responsibility.*

There are some differences from the first version in that to assess the ability of a mental patient “such a circumstance” must follow legal procedures, i.e. must be confirmed by forensic psychiatrists. This was the first time that diminished responsibility was formally established in Chinese Law. Consequently, three different levels of responsibility for mentally disordered offenders were recognized according to the law: full responsibility, no responsibility, and diminished responsibility, with some similarity to those of some European countries such as Germany, Finland and the UK (Harvey & Lindqvist, 2007). However,

the obligation of “his family members or guardian” “to keep him under strict surveillance and arrange for his medical treatment” as ordered by the law differs markedly from other countries and where legal obligations upon family members or guardians to provide treatment, as well as security for the patient, can extend to the protection of the patient as well as the future protection of other persons. The responsibility of the family in this statute follows the traditional Chinese concept that the family must perform its function of providing mutual help and care for the elderly, immature, invalid and handicapped. Taking advantage of the strong bonds between family members in China, social treatment for mental disorders includes psychiatric family care in which family members are educated to observe the patient's mental condition, to provide guidance and advice to the patients, to resolve social difficulties, and to administer drugs as prescribed (Jianlin, 1993; Mengze, Maosheng, & Sigant, 1994). If the patient has no suitable guardian, the unit or commission of villagers, or the Civil Affairs department of the place of abode, must act as the guardian.

2.1. Mental health legislation in China

Similar to 33% of countries in Southeast Asia, China still lacks an adequate Mental Health Act (WHO, 2001). Although an initial draft had been written following a concerted effort on the part of forensic psychiatrists from Sichuan and Hunan provinces, as designated by the Ministry of Health in 1985, and where the 15th version had been established in 2006, the Mental Health Law of PRC was still not formally enacted even by the time of the 11th NPC in 2008. In China, the NPC is the only law maker. All national laws must be enacted by the NPC, with delegates coming from different fields over the country. Nevertheless, certain local Mental Health Rules or Regulations have been implemented recently such as in Shanghai (2001), Ningbo (2006), Beijing (2007) and Hangzhou (2007). Because of these successes at a local level, national legislation is being rapidly developed, and mental health legislation is a key agenda for the government, with new legislation expected to be promulgated within the next few years.

2.2. Management measure for forensic assessments

The management rules for carrying out forensic psychiatric assessments can be found in a series of different laws, rules, and documents. It was stipulated in Section 7 (Expert Evaluation) of Criminal Procedure Law of PRC³ first published in 1979 and amended in 1996 that:

When certain special problems relating to a case need to be solved in order to clarify the circumstances of the case, experts shall be assigned or invited to give their evaluation.

Where a criminal assuredly has a serious illness and must be released on bail for medical treatment, documentary evidence shall be issued by a hospital designated by a provincial-level people's government, and such release shall be submitted for examination and approval in pursuance of the procedures stipulated by law.

Furthermore, an expert who intentionally issues a false expertise shall bear legal responsibility.

A further special management rule regarding forensic psychiatric assessment is The Temporary Regulations on Forensic Psychiatric

² Criminal Law of the PRC adopted by the Second Session of the Fifth National People's Congress on July 1, 1979 and amended by the Fifth Session of the Eighth National People's Congress on March 14, 1997. An English translation of it is available from the Web site of the Government Offices of China at <http://www.china.org.cn/english/government/207320.htm>.

³ Criminal Procedure Law of PRC adopted at the Second Session of the Fifth National People's Congress on July 1, 1979; amended in according with the Decision on Revising the Criminal Procedure Law of the People's Republic of China adopted at the Forth Session of the Eighth National People's Congress on March 17, 1996. An English translation of it is available from the Web site of the Government Offices of China at <http://www.china.org.cn/english/government/207334.htm>.

Assessment, published jointly by the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of Justice and Ministry of Health in 1989. This stipulates that all forensic psychiatrists must have the medical rank of attending doctor or above, with more than 5 years of clinical practice.

To make the system work more effectively, additional administrative regulations and rules were published: Ministry of Justice in the Forensic Assessment Procedure General (trial, 2001), the Regulations of Management for Registration of Forensic Assessment Expert (2005), and in the Regulations of Management for Registration of Forensic Assessment Organization (2005).

Further important milestones in the development of Chinese forensic assessment include the Decisions on Management of Forensic Assessment promulgated by the NPC Standing Committee on February 28, 2005. This stipulated the legal responsibilities regarding expertise, organization, and the supervision of a forensic assessment. The Decisions established clearer and more stringent management mechanisms aimed to improve the quality and to raise the standard of assessments. These laws and regulations have established a legal basis for forensic psychiatry in China.

3. Forensic evaluation organizations and experts

Forensic psychiatrists in China are engaged primarily for the purpose of providing expert opinions for public security authorities, the courts, or tribunals in criminal cases, and to a lesser degree in civil cases. A forensic psychiatrist is not just a medical doctor but a finder of truth. In order to achieve this purpose, special knowledge and skills must be developed. In China, any individual or organization (including psychiatric hospitals) that applies to become a forensic expert or forensic evaluation organization must be reviewed and be registered if eligible. This is then given formal announcement by the administration at the provincial level of justice. If a clinical psychiatrist has the medical rank of attending doctor or above with more than 5 years of clinical practice, and has passed the examination set by the administration at provincial level, he or she can then obtain a license as a forensic psychiatrist. He/She must obtain a practicing certificate by registering with an organization (or hospital), which itself must have a legal basis. At the lowest estimate, there were 944 practitioners of forensic psychiatry in 143 organizations across China by 2005 (Yang & Zeqing, 2007). There were 19,130 psychiatrists working in different psychiatric hospitals (CHSS, 2008) at the same time.

Forensic experts cannot sign reports on behalf of a different organization. It is also required that a team (typically three) which works in the same organization undertakes an assessment on a given case, and that any forensic report, or the documentary evidence, must be a cooperative report from the team and authorized by the organization or hospital that is appointed by the provincial government. This procedure differs markedly from that in the UK or USA where forensic psychiatric reports are issued by individual forensic psychiatrists, but is similar to the Dutch system where "a smaller number of multidisciplinary experts (typically two) conducting the evaluation and issue a cooperative report" (van der Leij, Jackson, Malsch, & Nijboer, 2001). It is also similar to the Swedish system where "the assessment of whether a criminal offender suffers from a severe mental disorder is made by a team of forensic psychiatric experts" (Moa, Clara, Marie, Lupita, & Susanna, 2009). When there is a difference in opinion, the experts may need to testify in court, if ordered to do so.

The legal position for all evaluation organizations is the same: all organizations must be essentially impersonal and provide neutral assessment of any client. Any registered organization can be requested to assess and provide the expert report. In criminal cases, the lawyer for the accused, the family of a criminal suspect, the suspect himself or herself, or victims can all apply for the forensic

assessment. The situation where lawyers can instruct one or more experts to independently provide assessments, select those who finally present their evidence, which may then be supported or opposed by another expert for the prosecution, and with the court finally deciding on the evidence it prefers within an adversarial process (as in the UK and USA), does not happen in China. Generally, the public security authority (with responsibility for criminal investigation⁴) or the court will decide on the organization to provide the assessment. In civil cases, the applicants themselves make the decision on which organization carries out the assessment. Referring agencies are billed for these assessments by the organizations to which forensic psychiatrists are contracted and are paid a salary by their employers. Much of this work would be carried out in the context of private practice in many Western countries and is therefore constrained by costs in China. In North America, and to a lesser extent in the UK, a number of forensic psychiatrists financially support themselves independently through private practice, but this does not currently happen in China. The key factor in maintaining quality control is the preparation of assessments carried out by a team of forensic psychiatrists.

In criminal cases, the main objectives of the forensic psychiatric assessment is to assess whether the suspect has mental disorder or not, their criminal responsibility, or competence to stand trial, which are similar to those in Germany, France (Dressing & Salize, 2006) and Holland (Mieke, 2006). A study reviewing the work of a forensic psychiatric service in Sichuan province over a period of 10 years found that over 70% of assessments were carried out on criminal cases to determine fitness to stand trial and level of responsibility for criminal behavior (Hu, Yang, Huang, Liu, & Coid, 2010). Most individuals were facing charges of violence in which homicide was the largest category. Over half were diagnosed as suffering from schizophrenia, demonstrating similarities to assessments in the UK (Coid & Dunne, 2004; Mendelson, 1992a,b). Over 90% of these referrals came from the public security authority, reflecting not only the involvement of the police in most components of the criminal justice system in PRC, but also roles that would be routinely carried out by other professionals in Western countries. A large proportion of these cases were found to be suffering from mental disorder and had no or partial responsibility for their criminal behavior. This suggested that the police were accurately "screening" cases that required a specialist's assessment. However, the findings also questioned how many additional cases had been missed because they had not been referred, indicating an important area for future research.

The study from Sichuan indicated that approximately 20% of assessments in the province were for civil assessments. These included alleged psychiatric disturbance due to the threatening, violent, or negligent behavior of others. Assessments were also carried out to measure the level of psychiatric and cognitive disability affecting specific functioning, e.g. ability to drive. Some assessments included eligibility for compensation, civil competence to make decisions, e.g. making wills, determination of the presence or absence of mental disorder in the parties involved, and determination of fitness to work in relation to mental disorder. Many of these cases were referred directly by civil courts, but there were many referrals coming from a wide range of official agencies. Civil cases demonstrated the largest progressive increase over the 10 year period studied, possibly indicating a growing acknowledgement of the expertise of forensic psychiatrists in civil matters. However, it can also be questioned whether there is a growing tendency in this rapidly developing country for people to resolve civil disputes through the law (Guan, Huang, & Tang, 2002), similar to Western countries.

⁴ More information about the judicial system of China and the duty of public security authorities is available from the Web site of China at http://www.china.org.cn/features/judiciary/2002-04/22/content_1031278.htm.

A further small subgroup of assessments was carried out on alleged female victims of sexual offences to determine their capacity to consent to sexual intercourse. Lack of capacity to consent as determined by a forensic psychiatrist will result in criminal charges against the man involved according to Chinese law. Only a very small number of cases were assessed at the request of prisons in the Sichuan study. There was little evidence that forensic psychiatrists in the province were providing a service to mentally disordered prisoners.

Although forensic psychiatry has developed within a criminal justice system that has evolved independently from most Western systems, many aspects of the practice of Chinese forensic psychiatrists are similar to those of their counterparts in the West. However, some of these tasks will be carried out by different medical practitioners in Western countries such as forensic medical examiners, and occupational health specialists and psychiatrists in the case of civil assessments. Treatment interventions are not carried out by forensic psychiatrists in China, although most are contracted to carry out clinical work in other settings for other employing organizations. The prime responsibility for their forensic assessments is to the registered employing authority. In some Chinese university medical schools the academic department of forensic psychiatry is within an overall academic department of forensic medicine together with other sub-departments such as forensic pathology, forensic toxicology, etc.

4. Criteria for forensic psychiatric evaluation

The medical diagnostic criteria used in forensic psychiatric assessment in China are contained in the CCMD (Chinese Classification and Diagnostic Criteria of Mental Disorders, third revision CCMD-3)⁵ (Chinese Society of Psychiatry, 2001) but with reference sometimes to ICD-10 or DSM-IV when it becomes necessary. CCMD-3 originated from the ICD-9 (Sing, 1996; Chen, 2002), and the major categories, codes and diagnostic criteria follow the structure of ICD-10. However, terms such as neurosis and hysteria are still used. In consideration of the specific needs of forensic practice, a number of diagnostic criteria were also introduced including 92.1 without psychosis, 92.2 malingering, 92.3 suicide, 92.4 deliberate self-harm, 92.5 pathological emotional outbursts, 92.6 pathological semi-awakening state, 10.1111 simple alcohol intoxication, 10.1112 complicated alcohol intoxication, 10.1116 pathological alcohol intoxication, etc.

The relevant psychological criterion includes the ability of the individual suspect to control his or her actions, or the capacity for insight. As previously mentioned, the rule in law states:

If a mental patient causes dangerous consequences at a time when he is unable to recognize or control his own conduct, and such a circumstance is confirmed by a forensic doctor, he shall not bear criminal responsibility. There are two components in this criterion; one refers to “cognitive faculties”, or the ability to understand his actions. This is similar to the “*mens rea*” and “McNaughton Rules” of the UK, which state the following: It must be clearly proved that at the time of committing the crime, the accused lacked the understanding to know the nature of his or her act or even that he or she was doing something wrong. The other refers to “will faculties”, referring to irresistible or uncontrollable impulses. This is similar to irresistible impulse insanity defenses as used in certain states in the USA, but which is rarely, if ever, used in courts in the UK (Mawson, 1990).

Previous research has indicated that three major aspects influence professional opinions on criminal responsibility, in descending order: the presence of pathological motivation, the presence of severe mental disorder, and whether the victim was a family member or stranger (Sun & Hu, 2006). The importance of premeditation and

preparation for the crime has been emphasized as the most important factor in assessment (Cai, Shao, & Guan, 2004). It has also been reported that the final judgments of courts tend to be in agreement with psychiatric recommendations regarding criminal responsibility in nearly 90% of cases (Wang et al., 2007).

Due to previous lack of training in the importance and relevance of mental disorder to offending behavior, the ability of judges, police, patients, and criminal suspects to understand diagnostic and treatment issues in China was relatively limited. Most patients and criminal suspects were not aware of and therefore not concerned about their opportunities to receive assessments from forensic psychiatrists. In recent years, the situation has changed considerably. More Chinese citizens know their rights of law. Suspects or their families increasingly request a forensic psychiatric assessment and the number of cases assessed rises annually.

The issues and implications of concluding the absence of mental disorder (without psychosis) and of malingering are now debated frequently among forensic psychiatrists in China (Hu, Li, Huo, & Liu, 2007a,b; Li, Wang, Wang, Yao, & Luo, 2007). China retains the death penalty and sentences following conviction for homicide can include life imprisonment, 10 years, or death according to the criminal law of China. However, Chinese forensic psychiatrists do not make recommendations on sentencing on the basis of their assessments, as in some US states, and do not discuss mitigation in their reports, as in the UK. The process of carrying out a forensic psychiatric assessment in China is intended to be entirely separate from the sentencing process which is considered the responsibility only of the court.

5. Research, teaching and training

5.1. Forensic psychiatry committees and conferences

Formal committees and conferences potentially have a greater influence on the development of legislation and service provision in PRC than in Western countries. The Forensic Psychiatry Committee was established in support of the Ministry of Health in 1985 and of the Chinese Medical Society in 1986. A further forensic psychiatry committee was established by the Chinese Association of Forensic Medicine in 2001. As academic authorities, these organizations organize national conferences to discuss certain special problems within forensic psychiatry. An academic conference in PRC is similar to those in many Western countries as a venue for research and teaching, and also provides opportunity for discussion and resolutions on topics of importance to disciplines such as Forensic Psychiatry. These may be subsequently submitted directly to government agencies for approval. The first national conference on forensic psychiatry was held in Hangzhou in 1987, during which two drafts (Mental Health Law of PRC and Working Rules for Forensic Psychiatric Assessment (WRFPS)) were discussed by all commissaries, and then submitted to government. After 2 years, based on the WRFPS, the Temporary Regulations on Forensic Psychiatric Assessment was published in 1989 jointly by Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security; Ministry of Justice and Ministry of Health. However, the Mental Health Law of PRC had still not been formally enacted at the time of writing.

A series of national conferences on forensic psychiatry have been held in different cities. The sixth national conference was held in Kunming in 1999, at which certain problems regarding forensic psychiatric assessment systems, together with how to protect the rights and interests of the forensic psychiatrist were discussed. The 10th national conference was held in Guangzhou in 2007, in which the details of the procedure for forensic psychiatry assessments in China were discussed (Cao, 2008). The 11th National Conference on Forensic Psychiatry was held in Chengdu in 2009, in which the criteria of criminal responsibility and certain problems were discussed (Gao, 2009).

⁵ Both Chinese and English versions of CCMD-3 are available on Chinese Psychiatry Online at <http://www.psychiatryonline.cn>.

5.2. Skills training

In the mid-1980s, a number of medical colleges and universities in China started forensic medical training, including forensic psychiatry courses in these training programs. Certain institutes of political science and law and the faculties of law have also established forensic psychiatry courses. Forensic psychiatry departments are now established in Chengdu, Beijing, Shanghai and other medical colleges and universities to help develop specialized skills in the discipline and to carry out research. Meanwhile, a number of textbooks on forensic psychiatry have been published. A growing number of forensic psychiatrists continue to be appointed.

6. Psychiatric hospitals and services

6.1. Psychiatric hospitals in China

The admission and treatment of mentally disordered persons who are itinerant, at far distance from their homes and families, and who then commit a crime, have become important issues for China since the 1950s. This situation cuts across a number of administrative fields such as the medical health care system, public security system (PSS), and the welfare system of civil affairs. Various legal regulations were needed to govern these complex interdependencies. In order to improve the management and treatment for such patients, the Ministry of Health, Ministry of Civil Affairs, and Ministry of Public Security are each involved in services for these patients. Consequently, three different types of psychiatric hospital have been established since 1950. First, general psychiatric hospitals run by the public health system. These hospitals play the most important role in the Chinese Mental Health Service, with a total of 575 psychiatric hospitals at county level or above and with 110,000 psychiatric beds for the whole of China at the end of 2000 (Hu, 2005). Second, there are civil psychiatric hospitals run by the Civil Administration System. These hospitals mainly serve special groups of individuals, known as the three “no” persons: those who have no family, no legal guardian, and no steady income. These individuals are usually the elderly, chronic psychiatric patients, or the disabled. Third, there are Ankang hospitals run by the PSS. The main task of these hospitals is to treat mentally ill patients who could pose risk to public as well as to themselves, and to keep them safe from themselves and maintain the safety of the public. This system is not the same as the secure hospitals in Europe and the USA.

Psychiatrists in each of the three different types of psychiatric hospitals are similarly trained and are required to have the diploma and license of a medical doctor to practice. However, psychiatrists in Ankang hospitals are not specifically required to be forensic psychiatrists and Ankang hospitals are not designated forensic mental health facilities as in certain European countries such as UK, and Scandinavia. They do not have differences in levels of perimeter security as in UK, but can have different levels of security between wards within a hospital. The aim of such a setting is to maintain the appropriate level of patient security and freedom. For example, a patient with insight into his/her illness can be placed in an open or partly-open ward and can leave the hospital. However, patients without insight, such as those with schizophrenia and those at risk of suicide, are likely to remain in secure wards and do not receive leave agreement until insight is recovered and their risks are reduced. In this context, the responsibility of psychiatrists to assess risk of violence or suicide and determine security is similar to psychiatrists in the UK and North America.

6.2. Mandatory medical treatment in Ankang hospitals

The management of mentally ill offenders in any country is an indicator of its ability to balance public safety with basic human rights

principles in penal and mental health practice. Since the foundation of PRC, the PSS, which is responsible for public protection and dealing with any dangerous condition, has been involved in the management of psychiatric patients in China. It was stated in the 1950s that if a suspect was mentally disordered, and cannot recognize or control his or her criminal actions, he or she will not be punished but that custody and care must be enforced. To ensure both public security and the legitimate rights of mentally disordered offenders, mandatory medical treatment must be carried out in special psychiatric hospitals, which were originally named “Management and Treatment Institutes for psychiatric patients” and renamed using the uniform title of “Ankang” hospitals in 1987. The name ‘Ankang’ in Chinese means ‘peace & health’. In 2005, there were 25 Ankang hospitals with over 7000 beds and approximately 2958 staff distributed between different provinces, autonomous regions, and municipalities in China (Yang & Zeqing, 2007).

Three types of patients are admitted to these hospitals by the local security authority: (1) mentally disordered offenders who have been assessed by the forensic experts as bearing no criminal responsibility and in need of treatment and custody; (2) mentally disordered offenders awaiting a forensic assessment; (3) mentally disordered offenders assessed as incompetent to stand trial and in need of treatment. However, all Ankang hospitals additionally receive admissions from the general community, including voluntary admissions of persons attending for voluntary treatment who have never been involved in offending behavior. In this sense, Ankang hospitals are serving the public but also require financial support from the public.

Ankang hospitals have many similarities to maximum security hospitals in North America and the high and medium secure facilities in the UK in terms of patients admitted for treatment. However, they are not specifically designated as “forensic” mental health facilities, as in the UK, and staff are not required to have specific forensic training in their respective disciplines.

Patients assessed as not having criminal responsibility and sent to Ankang Hospitals experience the same regulations as patients in any other psychiatric hospital in China. At a later stage, some offenders with mental disorder can be transferred to other psychiatric hospitals by their family. This is a specific right of supervision under Chinese law. In practice, the hospital to which a patient will be sent to depends simply on the distance of their home from the hospital, or where their family or supervisors can visit them most easily.

6.3. Admission and discharge procedures for mandatory treatment

6.3.1. Admission procedure

For those requiring involuntary admission to Ankang hospitals in China, application for mandatory treatment of the patient must be submitted to the hospital by the local public security bureau at county level, or above, or the supervisor. They must also present the forensic psychiatric report and complete the application form. The aim of these procedures is not only to avoid illegal detention but also to avoid an individual from otherwise escaping their sentence by fabricating mental disorder. Nevertheless, the principle of Ankang hospitals in PRC is that they are for medical treatment of patients and are not prison for punishment. All patients with civil competence have the right to be informed about their illness, to discuss their treatment with their doctor, to refuse to take part in research, and to have access to their families according to the law.

6.3.2. Discharge

Before a complete discharge from hospital, the patient will be discharged for a period of time to see if they can adapt to social life (“pretended discharge”). The full period is often 1 month (for example in Beijing). The supervisor submits an application and related materials to the hospital. The hospital then performs a comprehensive assessment and completes the discharge form for

mentally disordered offenders. The supervisor signs the supervisor's responsibility form for the mentally disordered offender when he/she has left hospital. Having obtained the discharge form for a mentally disordered offender, the supervisor must still obtain approval from the police station at county level (Hu, 2005).

7. Conclusion

The role of forensic psychiatry within the legal system of China continues to develop. Although a Mental Health Act has not yet been enacted by the NPC, the only law maker, a series of laws and regulations have continued to function within the practice of forensic psychiatry since 1950. Increasing numbers of forensic psychiatrists are being trained and are coming into practice due to increasing demands and requirements of a changing Chinese society. Expert reports must be issued by an organization or hospital which must be appointed by the government at a provincial level unlike some Western countries where it is the responsibility of the individual forensic psychiatrist. It is necessary that at least 3 forensic experts undertake an assessment of any given case, which is similar to the Dutch system of a smaller number of multidisciplinary experts (typically two) conducting the evaluation and issuing a cooperative report. A forensic psychiatrist in China is required to give an expert opinion regarding the criminal responsibility of suspects, competency to stand trial and to serve a sentence, civil competency in different forms of civil litigation, and disability depending on the psychological and medical criteria. The medical criteria primarily used in forensic psychiatric evaluations are CCMD-3 but sometimes with reference to ICD-10 or DSM-IV.

To protect the rights of mentally disordered offenders and security of the community, Ankang hospitals were established for the mandatory medical treatment and custody of mentally disordered offenders by the local public security system. After recovering from a mental illness, an offender can return home if he/she was not responsible for his/her criminal action. The obligation of "his family members or guardian" "to keep him under strict surveillance and arrange for his medical treatment", as stated by Chinese Law, differs markedly from other countries. However, because of economic factors and the shortage of local mental health facilities in some areas, mentally disordered offenders do not always receive adequate follow-up and supervision, thereby increasing their risk of further reoffending. At the present time, forensic psychiatrists are not perceived as specifically responsible for preventing the reoffending of these patients. They do not have the clinical resources to carry out this function. Nevertheless, forensic psychiatrists in China perceive risk management as a key area for future improvement in clinical practice.

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