

## Forensic Psychiatry in the People's Republic of China

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**Forensic psychiatry is practiced somewhat differently in the People's Republic of China (PRC) than in the United States. In the United States, psychiatrists and psychologists often work at the interface of mental health and criminal, civil, family, correctional, and law enforcement matters. Their roles in the United States are sometimes consultative and sometimes more direct, sometimes as agency or government employees but often as private forensic practitioners. In China, forensic roles have only recently expanded from the criminal law context. Forensic psychiatrists are almost always government agents/ employees, and evaluations usually address only criminal responsibility. One of the authors (Dr. Gao), after spending almost a year in the United States working with Dr. Reid and other professionals, introduced several new forensic concepts to Kangling Hospital in the coastal city of Shenzhen. Many of those concepts have changed forensic procedures in the Guangdong region and are spreading more broadly in China. (*Journal of Psychiatric Practice* 2011;17:129-132)**

KEY WORDS: forensic psychiatry, criminal law, psychiatric evaluation, People's Republic of China

### History of Forensic Psychiatry in China

Professor Ji Lin, pioneer of forensic medicine in China, founded a department of forensic medicine at Beijing University Medical School in 1930. His syllabus for forensic medicine contained a special chapter for mental health evaluations, and he introduced classroom studies of German and Japanese forensic psychiatry. His lectures noted that some people who commit allegedly criminal acts suffer from a "loss of mind and spirit" and thus should not be held responsible for their actions; however, those who suffer from "*diminished* mind and spirit" (*italics added*) can be held partially or fully responsible in criminal court.

Beginning in the 1950s, China generally mirrored a Soviet model of forensic psychiatry. During those decades, psychiatrists in a few Chinese cities (Nanjing,

Beijing, Shanghai, Changsha, Chengdu) began developing clinical practice evaluations for mental patients with legal problems. In August, 1989, the office of China's Supreme People's Procurator, the Ministry of Public Security, the Ministry of Justice, and the Ministry of Health jointly promulgated requirements for Chinese forensic psychiatrists in the "Provisional Regulations of Forensic Assessment on Mental Illness."

Prior to 1996, Chinese forensic psychiatrists addressed only overall criminal responsibility. After 1996, the concept of partial responsibility was introduced. Although there is still no nationwide "mental health act" to address other forensic matters in China, several large cities (Shanghai, Beijing, Hangzhou, Ningbo, and others) have created their own "mental health regulations" over the past decade.

Organized academic activities of Chinese forensic psychiatry began only 25 years ago. In 1985, the Mental Health Consultation Committee of the Chinese Health Ministry created a special evaluating group for forensic psychiatry. The next year, the Chinese Forensic Psychiatric Academy (CFPA) was founded by the Chinese Medical Society of Neurology and Psychiatry. In 1987, the CFPA held its first meeting, which included discussions of China's proposed "Mental Health Law" and draft regulations for forensic psychiatry evaluations. Since then, a nationwide academic conference for forensic psychiatry has been held every 2 years and various continuing education programs have been offered. For the past several years, forensic psychiatry evaluation groups have been managed by the Bureau of Justice, establishing forensic psychiatry as one of five branches of Chinese forensic medicine. The others are forensic pathology, clinical forensic medicine (which evaluates bodily injury), forensic physical evidence (e.g., DNA testing), and forensic toxicology.

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DOI: 10.1097/01.pra.0000396065.79719.1e

# Law and Psychiatry

## The Legal System in Mainland China (PRC)

China uses a generally “Continental” system of law, one of the world’s two most common legal systems. The court consists of judges, a prosecutor, and a defense lawyer; there is no jury. The judges make the ultimate decisions using Chinese statute alone; the concept of “case law”—important to the U.S. system of legal precedent, which uses appropriate appeals court decisions to interpret the U.S. Constitution and statutes and to guide trial and appellate court decisions—is not legally relevant in China. In addition, China’s judicial system is “inquisitorial” (as contrasted with the U.S. “adversarial” system), although it has begun shifting toward adversarial procedures (such as argument between prosecution and defense in criminal matters).

Chinese forensic psychiatry follows some fundamental rules of Chinese law:

1. *Judges do not make law or set precedent which has the force of law.* Only the legislative body can create law. Judges make decisions based on current statute and the evidence placed before them. Lower courts make decisions without reference to higher courts’ prior cases, but a defendant may appeal to a higher court.
2. *Judges play the main role in the court.* Criminal courts normally consist of three judges. In high-profile cases, a court may add two ordinary citizen-judges. The court (judges) questions both the defendant and the prosecutor. No one may speak in court without a judge’s permission. The judges make the final decision concerning guilt or lack of guilt based on their interpretation of the facts presented, and they decide sentences.
3. *The defendant’s lawyer exercises certain rights on behalf of the accused.* The office of the prosecutor must provide all its known evidence to the defense prior to trial, even if it favors the defendant. Withholding evidence from the defense may cause dismissal or mistrial. The court may mandate appearance of any witness, including a forensic psychiatrist.
4. *Only the police, prosecutors, or judges may order a forensic psychiatry evaluation.* A suspect or lawyer cannot independently ask for an evaluation, but if the suspect has a history of mental illness, law enforcement must request a forensic psychiatric evaluation. If the defendant has no history of psychiatric treatment but the alleged crime suggests

mental illness, the law enforcement agency, court, defendant, or defendant’s family can request a forensic evaluation, but the request must be approved and the process begun by the law enforcement agency, prosecutor’s office, or court. Once such an evaluation has begun, the burden is on the prosecution to prove that the defendant was mentally responsible at the time of the alleged crime. If the suspect is not satisfied with the result of the evaluation, the evaluation may be repeated at government expense.

5. *All forensic psychiatric evaluations are performed at and by a government-designated forensic psychiatric institute or hospital.* Criminal courts do not use private forensic psychiatrists (of which China has almost none). Each evaluation must employ at least three forensic psychiatrists. The evaluation report comes from the forensic group that attends a particular case. If all three forensic psychiatrists agree on the report, they send it to the court with a unanimous opinion. If there is disagreement, dissenting opinions must be added to the report. There are about 220 forensic psychiatry institutes in China, with about 1750 designated forensic psychiatric experts (see below).

In 2008, the Chinese government created standards for forensic medical evaluations. Forensic psychiatry reports usually consist of six parts: 1) general information (resources, duration, number of evaluators, subject matter); 2) case summary; 3) case investigation and information; 4) examinations (e.g., mental status, physical, neurological, laboratory, psychological testing, and evaluation for malingering); 5) case analysis (psychiatric diagnosis and forensic issues such as cognitive capacity and volitional ability in criminal matters); and 6) conclusion.

As addressed in this paper, Chinese forensic psychiatry evaluations refer only to criminal responsibility (not trial competency or other issues common in the United States). “Section 18” of Chinese Criminal Law specifically states that a person will not be held responsible for his/her otherwise criminal behavior if a forensic evaluation determines that he/she was unaware of his/her actions and the resulting consequences, or could not control his/her harmful behavior. If the person did not know the rightfulness or wrongfulness of his or her behavior, there is no criminal responsibility. This is generally interpreted to mean that, even if a defendant knew his or her behavior was

wrong, *motivation* that is pathological (i.e., resulting from a mental disorder and meeting the above criteria) requires that no criminal responsibility be assessed. Such a mental condition must be confirmed by forensic evaluation.

Forensic psychiatrists' opinions are held in high regard by Chinese courts. Although the judges make the final decision, once a psychiatric recommendation about criminal responsibility is heard, the judges accept that recommendation more than 90% of the time.

Unlike common procedures in the United States, few Chinese defendants are sent to a hospital or clinic after being found non-responsible by reason of mental condition. Such persons are usually released to family members. Those who are found responsible and convicted, but who are later deemed mentally unsuitable for prison sentencing are also commonly released to their families. As one might expect, this can create substantial danger and other social problems. The court holds the family responsible for monitoring and controlling the released person. In some, but not all, cases, the court mandates that the person receive psychiatric care.

## A New Approach

In 2006, the Department of Forensic Psychiatry of Shenzhen Kangning Hospital became the only institute in China that evaluates the mental status and illness of a defendant at the time of an allegedly criminal act (including degree of cognitive capacity and volitional control) *but does not make any decision about criminal responsibility*. This concept, developed by Dr. Gao after spending a year as a visiting psychiatrist in the Texas public sector, has been accepted in the Shenzhen and Guangdong region (a large area, but still a small part of China as a whole); however, forensic institutes in other parts of the country, at the time this article was written, continue to include verdict recommendations which judges are expected to follow.

Dr. Gao's view is that forensic psychiatrists should only evaluate mental illness, mental status of a defendant at the time of an allegedly criminal act, cognitive capacity, volitional control, and the like. The task of determining criminal responsibility should lie solely with judges (in a manner similar to the U.S. procedure, in which "triers of fact"—juries and sometimes judges—determine verdicts, not forensic experts). She believes that the current responsibility of Chinese

forensic psychiatric experts for virtually dictating legal outcomes exceeds their professional training and appropriate professional roles.

## Experts' Qualifications

As in the United States, the primary role of a Chinese forensic psychiatrist in court is to compensate for the court's (judges') lack of professional knowledge about psychiatric issues relevant to the case. In most U.S. courts, a judge can certify any professional as "expert" for purposes of a particular case. Chinese judges, however, rely on a national roster of specific, pre-qualified experts. Professionals on the roster are the only persons allowed to testify as experts, or even to evaluate defendants.

In order to qualify for the government's psychiatrist-expert roster for evaluations or testimony, the professional must have graduated from medical school, hold a senior position in psychiatry (such as director or professor in a large clinical or academic setting), and have 3 to 5 years of experience in forensic psychiatry. Psychologists and other non-psychiatrist professionals are not allowed to conduct forensic psychiatric evaluations.

## What Else Do Chinese Forensic Psychiatrists Do?

We have focused on assessment of criminal responsibility, the most common—and for a long time the only—forensic psychiatry role in China. Some other roles have recently become important, to a greater or lesser extent, including evaluation of competence to stand trial, competence to serve a sentence, mental health issues in civil cases, need for guardianship, competence to be a witness, ability of a victim to defend himself/herself (particular in sexual assault allegations), mental retardation, and degree of mental damage or permanent impairment. A 2006 report found that 64% of recent forensic psychiatric evaluations had been performed to determine criminal responsibility, 17% to determine civil compensation, 12% to determine mental capacity for civil conduct (such as contracting, making a will, managing property, or parenting), and 7% to determine a victim's self-defense ability in sexual assault. Civil commitment procedures are common. Civil lawsuits take place more often than in the past, but are far less common than in the United States or western Europe.

# Law and Psychiatry

A typical forensic matter, created from Dr. Gao's files but not describing any specific case, is summarized below:

*Officer Z from the district attorney came to my office with a request to have a defendant evaluated. My receptionist checked the commission paper and legal files to be certain the case met government requirements. She then submitted the paper and files to a section leader (senior psychiatrist) in my department of forensic psychiatry.*

*The section leader (psychiatrist) met with Officer Z and signed a standard contract for payment, and other general and specific conditions regarding the case, complying with our department requirements. The section leader listened to officer Z's concerns and requests about the case. Later, the section leader gave the files to a group consisting of three forensic psychiatrists for individual review by each. Additional information was obtained from Officer Z and the court.*

*The group of three forensic psychiatrists then interviewed the evaluatee together in our department at the hospital (interviews may also take place in a jail). The interview process was recorded on video. After the interview, the group decided on further tests, choosing among relevant laboratory, radiological, psychological, and malingering assessments, including a polygraph (lie detector). Our department is currently the only one in China that uses the polygraph.*

*After testing was complete, one of the forensic psychiatrists completed the report. In this case, all three evaluators agreed; otherwise, the dissenting evaluator would have created and submitted an additional report.*

*Finally, my receptionist called Officer Z. to review the report. (No changes are allowed without substantial discussion and approval by the Deputy Director of the Institute.) The group leader clarified some points with Officer Z., who was required to submit the report to the judge without change or comment. The court made a decision based upon our recommendation.*

*If the defense or family lawyer had been dissatisfied with our report, they could have petitioned Officer Z for a new evaluation (in addition to the original one). Such requests are almost always granted. If that had occurred, a separate evaluation would have been performed in a different forensic department. Only Officer Z or his department may require a forensic evaluation.*

In *civil* cases, the process is essentially identical except that a) any party (plaintiff, defense, court, or associated lawyer) can refer evaluatees to an institute, but at that party's expense; b) the evaluators may contact anyone for additional information, if needed (in criminal cases, evaluators have no contact with victims); and c) if it is necessary, and with the civil evaluatee's consent, the evaluatee may be admitted to a special hospital unit for observation to assess the likelihood of malingering.

## The City of Shenzhen and Additional Changes in Chinese Forensic Psychiatry

In the past, almost all Chinese forensic psychiatry involved criminal matters. Civil cases have increased in recent years as legal and political reforms, and awareness of citizen's rights, have come to the fore. In the coastal areas of China, particularly Shenzhen, up to 60% of court matters are civil cases.

Why Shenzhen? Some 30 years ago, after Mao's death, the mainland Chinese government decided to create a unique experiment of major political and financial reforms in the city and region of Shenzhen in Guangdong Province, near Hong Kong. At that time, Shenzhen was a very small city. For almost three decades, Shenzhen has been a special economic district in which the local government has been given the authority to manage its business without many of the controls and influences otherwise exerted by the central Chinese government.

The bold ideas that have been allowed to take root in Shenzhen attract attention from all quarters. There are fresh financial and legal incentives. Talented people in all professions and walks of life try to move to Shenzhen to pursue their dreams. Those talents and the reforms that allow them to flourish have created great political and economic success in the region, not unlike that in Hong Kong. The city is now among the largest and most modern in China, with a population that is comparatively wealthier and more liberal than elsewhere in the country.

Shenzhen's success has inspired other Chinese cities and has had a huge impact on China's modernization. The forensic department there was founded in 1999, based on principles brought by Dr. Gao from Hunan Medical College (Changsha, Hunan) and her experiences in Texas. Dr. Gao and her team have completed a dozen research projects, and provide training and examples for forensic psychiatrists throughout China.