

Reflection and Improvement on the System for Initiating Forensic Psychiatric Evaluation in China

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Abstract

The initiation of forensic psychiatric evaluations concerns which criminal justice entity decides, and based on what standards, to conduct a psychiatric assessment of a criminal suspect or defendant. In practice, the initiation of forensic psychiatric evaluation in China is primarily based on “judicial officer-initiated system”. By reviewing relevant laws and regulations and summarizing typical cases, this paper identifies defects in China’s forensic psychiatric evaluation system as confusion over the initiating authority, unclear initiation standards, ambiguous reasons for non-initiation, monopolization of initiation power and incomplete remedies for non-initiation. These defects fundamentally stem from the inherent conflict between the party and law-enforcement agencies, as well as the reality of “replacing trial with evaluation”. To address these issues, this paper proposes granting the defendants more rights, clarifying initiation standards, and reconstructing the system for adopting forensic psychiatric evaluation opinions, aiming to improve the practice of forensic psychiatric evaluations and protect the rights of the parties involved.

Keywords

Forensic Psychiatric Evaluation, Criminal Responsibility

1. Introduction

The initiation of forensic psychiatric evaluations primarily pertains to which criminal litigation entity, based on specific standards, decides to conduct a psychiatric assessment of a suspect or defendant in criminal proceedings. In criminal cases, forensic psychiatric evaluation opinions determine whether a litigant has criminal responsibility or is competent to stand trial, and the results often directly affect

the outcome of the trial. Therefore, forensic psychiatric evaluations hold significant importance for suspects and defendants (Yang & Li, 2019).

However, in China's judicial practice, a "recurring phenomenon" has emerged: in high-profile criminal cases, suspects, defendants, and their defense lawyers, along with many legal scholars and the broader legal community, call for law-enforcement agencies to initiate forensic psychiatric evaluation procedures to determine the criminal responsibility of the suspects or defendants. Yet, law-enforcement agencies often refuse to conduct these evaluations, completing the criminal procedure amidst controversy. It is important to recognize, however, that judicial officers face significant challenges in balancing public safety concerns with the rights of defendants, particularly in high-profile cases where public opinion may exert considerable pressure on the judicial process. For example, in the case of Qiu Xinghua, who was charged with intentional homicide, his family and defense lawyer requested a forensic psychiatric evaluation, with support from the academic community. However, the court of first-instance sentenced Qiu to death without conducting a psychiatric evaluation. The court of second-instance ruled that Qiu did not meet the conditions for psychiatric evaluation and upheld the death sentence without conducting an evaluation. Despite widespread doubt and controversy over whether Qiu suffered from mental illness, the court swiftly carried out the execution.

The issue of forensic psychiatric evaluation initiation is closely related to the situation described above. Given the significant divergence between law-enforcement agencies and the defendant's side regarding the need for psychiatric evaluations, it is necessary to study the current state of China's forensic psychiatric evaluation initiation, its problems and potential reforms.

2. Current Legal Provisions and Practical Issues in the Initiation of Forensic Psychiatric Evaluations in China

2.1. Current Legal Provisions

Currently, the system for initiating forensic psychiatric evaluations in China is highly conservative, operating under a "judicial officer-initiated system", where judicial officers decide whether, when, by whom, and how to conduct psychiatric evaluations. Since the Chinese criminal procedure system still retains certain elements of an inquisitorial model, the power to initiate psychiatric evaluations is regarded as part of the authority of law-enforcement agencies, extending from their evidence-gathering powers.

The Provisional Regulations on Forensic Psychiatric Evaluations of Mental Illness, jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Justice and the Ministry of Health in 1989, stipulates in Article 17 that the authority to commission psychiatric evaluations lies exclusively with law-enforcement agencies. According to relevant laws and regulations such as *the Criminal Procedure Law*, *the Regulations*

on the Handling of Criminal Cases by Public Security Organs and the Rules of Criminal Procedure for People's Procuratorates, the power to initiate psychiatric evaluations is vested in public security agencies, procuratorial agencies and judicial agencies during the stages of investigation, prosecution and trial, respectively.

Regarding the rights of litigants to apply for evaluations, Article 148 of *the Criminal Procedure Law* stipulates that investigative agencies are obligated to inform the litigants of any forensic evaluation used as evidence. Additionally, suspects and defendants have the right to request supplementary or renewed evaluations. *The Regulations on the Handling of Criminal Cases by Public Security Organs* reiterate this in Article 252, and further in Article 253, granting suspects and victims the right to request expert opinions when they disagree with the evaluation results. However, these provisions do not mention the right of the litigants to request the initial evaluation. Some scholars argue that current law in China does not explicitly specify who may request the initial evaluation (Zhang, 2010). *The Rules of Criminal Procedure for People's Procuratorates* grant the suspect's attorney or close relatives the right to request evaluations during the prosecution stage. However, it should be noted that the suspect themselves does not have the right to request an evaluation.

The lack of a right of litigants to initiate forensic psychiatric evaluations, combined with the lack of transparency and professionalism in the initiation process by law-enforcement agencies, makes this system highly unfavorable to protecting the rights of litigants (Li, 2019).

2.2. Practical Issues

By summarizing relevant academic papers and network reports, this paper has collected several typical cases involving forensic psychiatry evaluation in judicial practice (see **Table 1**) in an attempt to identify some common issues present in the current system (Wang, 2016).

2.2.1. Confusion over Initiating Authorities

Criminal procedure has both external and internal values. Its external value is to ensure the correct application of criminal law and the realization of substantive justice, while its internal value is the inherent value of the procedure itself, reflecting the litigants' status as subjects and the modern legal civilization (Chen, 2013). Litigation is not a gamble, nor is it flipping a coin; society is concerned not only with the final judgment but also with the process of adjudication. As mentioned earlier, public security, procuratorial and judicial agencies all have the authority to initiate psychiatric evaluations during the investigative, prosecution and trial stages. The legislative intent was likely to grant these entities independent authority to initiate evaluations without hindrance, thus ensuring the smooth progress of criminal proceedings. However, in practice, there is often a "too many cooks spoil the broth" scenario, where no single entity takes responsibility. When a party submits a request for an initial evaluation and provides the necessary materials,

Table 1. Typical cases involving forensic psychiatry evaluation in judicial practice in China.

Case	Application for Psychiatric Evaluation	Time of Application for Psychiatric Evaluation	Reason for Applying for Psychiatric Evaluation	Decision-Making Body and Result	Multiple or Repeated Evaluations	Final Conclusion (Prosecutor or Court)
Zhang Linfa Case	Yes	Investigation stage and trial stage	Zhang Linfa's sister suffers from schizophrenia, with a family history of mental illness.	Investigative agency initiated the evaluation, and the court conducted a re-evaluation.	Three judicial psychiatric evaluations were conducted: the first concluded full criminal responsibility, the second concluded no criminal responsibility, and the third limited criminal responsibility.	The court believed Zhang Linfa had "acute stress-induced psychosis." At the time of the crime, he had no impaired consciousness, his cognitive abilities were intact, but his self-control was weakened, and he should bear partial criminal responsibility.
Jiang Weiqiang Case	No, the investigation authority conducted an evaluation due to abnormal behavior in custody.	Investigation stage, prosecution stage, trial (first and second instance) stages	Abnormal behavior in custody and life.	The investigation authority initiated the evaluation, and the victim raised objections. The procuratorate, first trial court, and second trial court each conducted re-evaluations.	Four evaluations were conducted: initiated by the public security agency, re-evaluated by the procuratorate and courts. The first two concluded no criminal responsibility, the third limited criminal responsibility, and the fourth no criminal responsibility.	In the second trial, the evaluation concluded Jiang Weiqiang had schizophrenia and was in an active phase during the crime, losing substantial recognition ability, thus had no criminal responsibility. The first trial court adopted limited criminal responsibility, while the second trial adopted no criminal responsibility.
Ma Jiajue Case	Yes	First trial and second trial stages	The defense requested the court to conduct an evaluation based on the case details.	The court of first instance supported the defense's request, while the court of second instance rejected the re-evaluation request.	The second trial believed the defense's challenge to the evaluation lacked factual and evidentiary support, and the re-evaluation request was denied.	Ma Jiajue was determined to have no mental illness and was in a normal mental state during the crime, with full criminal responsibility.
Qiu Xinghua Case	Yes	Second trial stage	Extremely cruel crime methods, with a family history of mental illness.	The court of second instance did not support the defense's request for evaluation.		The court believed Qiu Xinghua had a clear intent to commit murder, and after the killings, he repeatedly evaded arrest, showing that he consciously avoided capture. His account of the crime, motive and method was consistent and logical, with no abnormal mental behavior, showing normal recognition and control abilities.
Yang Jia Case	Yes	Investigation stage and second trial stage	Yang Jia had previously suffered a mild concussion from a beating in Shanxi, with medical proof of possible related mental issues.	The Investigative agency supported the evaluation request, but the court of second instance rejected the re-evaluation request, stating that the defense had not provided evidence of abnormal mental state or mental illness.	The second trial application for re-evaluation was rejected due to insufficient evidence and reasons.	No mental illness. The subject, Yang Jia, had full criminal responsibility.
Ma Zhongfu Case	Yes	First trial, second trial and death penalty review stages	Family history of mental illness; Ma Zhongfu grandfather, uncle, and aunt all suffered from mental illness.	Both the court of first-instance and second-instance believed the reasons for applying for a psychiatric evaluation were insufficient and did not support the request.		The courts of first and second instance believed Ma Zhongfu was conscious and showed no abnormal reactions during detention and trial. He clearly confessed to the facts of the crime.

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Zeng Shijie Case	Yes	First trial stage and retrial stage	The defense suspected Zeng Shijie had mental illness, with a family history of mental illness (mother, uncle, and cousin all had mental illness).	The court of first instance initiated the evaluation, but the re-evaluation request during the retrial was rejected.	During the retrial, the defense requested re-evaluation, but the court rejected it.	No mental disorder during the crime, and Zeng Shijie had full behavioral capacity, thus should be responsible for his actions. The court believed the defense had not provided evidence of a history of mental abnormalities or a family history of mental illness. Zeng Qiangbao's motives and purposes for the crime were clear, and he meticulously planned the crime, selecting the time, place and target. During the trial, he answered questions clearly without showing any abnormal behavior.
Zeng Qiangbao Case	Yes	First trial and second trial stages	Zeng Qiangbao had previously undergone mental treatment, suffering from severe mental disorders.	Both the court of first-instance and second-instance rejected the evaluation request.		Psychiatric evaluation concluded that Deng Yujiao had bipolar disorder, with partial criminal responsibility. The court believed Cheng Ruilong was quick-thinking and articulate, showing no signs of mental illness. He could not provide evidence of mental illness or records of previous psychiatric treatment, nor did he have a family history of mental illness.
Deng Yujiao Case	Yes	Investigation stage	Deng Yujiao had previously taken medication for depression.	The Investigative agency conducted a psychiatric evaluation during the investigation, and the court acknowledged the results.		The procuratorate believed Zheng Minsheng was clear-headed and articulate, with no signs of mental abnormality. His account of his motives for the crime was logical, including being fired, relationship failure, and verbal provocation from colleagues, leading him to seek revenge on society. The court believed Zhang Koukou had no family history of mental illness and no prior history of psychiatric problems. He committed a premeditated murder with clear thinking before, during and after the crime. He had full recognition and control abilities. Moreover, the psychiatric evaluation in the prosecution case was initiated by the judicial authority, and the defense's written evidence could not be used as a reference for the final decision.
Cheng Ruilong Case	Yes	First trial stage	Cheng Ruilong believed it was his right to request a psychiatric evaluation.	The court rejected the evaluation request before the trial commenced.		
Zheng Minsheng Case	Yes	Investigation stage	Zheng Minsheng showed symptoms of mental illness, including delusions of persecution and frequent talking to himself.	The public security, procuratorial and judicial agencies did not support the evaluation request.		
Zhang Koukou Case	Yes	First trial and second trial stages	Zhang Koukou was diagnosed with paranoid personality disorder, and though he had recognition ability during the crime, his control ability was slightly weakened, thus having limited criminal responsibility.	Both the court of first-instance and second-instance rejected the evaluation request.		

Continued

Wu Xieyu Case	Yes	Second trial and death penalty review stage	The defense claimed that during conversations with Wu Xieyu, he often seemed unfocused, gave irrelevant answers and frequently engaged in self-fantasies. Wu Xieyu's third aunt had a mental illness, and his fourth aunt had intellectual disabilities, suggesting a family history of mental illness and the possibility that Wu Xieyu inherited a mental illness.	The evaluation request was rejected.	The court believed there was no family history of mental illness. Testimonies from Wu Xieyu's girlfriend, relatives, neighbors, classmates and teachers confirmed that he was mentally normal. During the crime, Wu Xieyu had full recognition and control abilities, and there was no factual or evidentiary basis for a psychiatric evaluation.
Lao Rongzhi Case	Yes	Second trial and death penalty review stage	Lao Rongzhi repeatedly claimed to have been coerced and brainwashed by Fa Ziyi, causing her mental state to be abnormal.	The evaluation request was not accepted.	The court believed Lao Rongzhi showed composure and clarity in situations such as opening a suspect's door under questioning from neighbors, evading suspicion when waiting for a victim's arrival and deliberately taking a detour to avoid being followed. Her behavior during the crime and her ability to flee and hide for nearly 20 years showed strong self-preservation instincts with no signs of mental abnormality. The defense's arguments and request for evaluation were not accepted.

public security, procuratorial and judicial agencies often fail to initiate or outright reject the request. Although *the Criminal Procedure Law* designates these agencies as the initiating and implementing bodies for psychiatric evaluations, it does not specify legal consequences for the refusal or failure to initiate the evaluation.

In high-profile criminal cases, such as those mentioned earlier, law-enforcement agencies often, under pressure from public opinion or concerns over the legal classification of the case, choose to shelve psychiatric evaluations, leaving the decision to the next judicial entity. In other cases, law-enforcement agencies may initiate multiple evaluations due to disagreements over the understanding of the case. These practices highlight the confusion regarding the authority to initiate forensic psychiatric evaluations in China, undermining the protection of litigants' rights.

2.2.2. Unclear Initiation Standards

Current laws and regulations lack clear standards for initiating forensic psychiatric evaluations. As a result, law-enforcement agencies often rely on common sense and experience to assess the mental state and criminal responsibility of suspects or defendants before deciding whether to initiate a psychiatric evaluation.

For instance, in the case of Yan Zhenzhao, who was charged with abducting and trafficking women, the defense argued that Yan suffered from mental illness

and was in a state of mental disorder at the time of the crime. Therefore, the defense claimed that Yan should be deemed not criminally responsible. However, the court determined that Yan demonstrated normal mental faculties during the crime and trial, and thus rejected the defense's argument. Similarly, in the case of Zhang Koukou, who was charged with intentional homicide, the court of first-instance and second-instance both rejected the request for an evaluation. The Hanzhong Intermediate People's Court in Shaanxi Province ruled that Zhang exhibited no family history or previous diagnosis of mental illness and that his premeditated murder demonstrated a clear and normal mental state. These cases demonstrate how judicial staff, without relying on forensic evaluations, often rely on personal judgment to conclude that defendants are mentally competent and criminally responsible.

The lack of uniform standards results in law-enforcement agencies reaching different conclusions in similar cases. In cases involving forensic psychiatric evaluations, agencies typically initiate evaluations when the litigant exhibits abnormal behavior or the motive for the crime is unclear. In such cases, even multiple evaluations are conducted by different agencies. For instance, in the case of Jiang Weiqiang, who was charged with intentional homicide, the authorities commissioned four separate evaluations due to Jiang's abnormal behavior during his detention, involving hospitals in Liuzhou, Guangzhou, Beijing and Shanghai. Conversely, in other cases, particularly high-profile ones, law-enforcement agencies tend to adopt a conservative approach, rejecting evaluation requests even when the litigant exhibits behavior that defies explanation.

In China's criminal justice system, judicial staff generally lack knowledge of forensic psychiatry, with some unfamiliar with even basic forensic evaluation theories. As a result, individuals who should be receiving psychiatric treatment are sometimes wrongfully convicted and punished (Sun, 2008). The development of science and technology has greatly enhanced the ability to uncover the truth in criminal cases, and specialists in specific fields have become important assistants to law-enforcement agencies. Therefore, forensic evaluation plays a vital role in criminal proceedings (Wang, 2009). However, the reliance on common sense and experience by law-enforcement agencies in deciding whether to initiate evaluations clearly runs counter to the original purpose of forensic psychiatric evaluations and the laws governing them.

2.2.3. Ambiguous Reasons for Non-Initiation

When law-enforcement agencies reject requests for forensic psychiatric evaluations, they often use vague language. For example, in the Ma Jiajue intentional homicide case, the court stated that "doubts about the evaluation conclusions are groundless and unsupported by sufficient reasons and evidence." In the Yang Jia intentional homicide case, the court ruled that "the defense's request for a re-evaluation lacks sufficient grounds." In the Qiu Xinghua intentional homicide case, the court held that the prosecution's evidence and facts are sufficient to prove that

Qiu had full capacity to recognize and control his behavior during the crime. Even when attorneys and family members provide materials or evidence, such as a family history of mental illness or prior diagnoses, law-enforcement agencies still reject the evaluation requests.

In essence, law-enforcement agencies often make premature conclusions about the necessity of psychiatric evaluations without fully considering the materials and evidence provided. Furthermore, in a large number of cases, the agencies reject evaluation requests based on reasons such as “clear thinking during questioning”, “clear articulation of the crime” or “no abnormal behavior compared to ordinary people”. However, such reasons are insufficient to scientifically determine whether a litigant has a mental disorder.

For example, individuals with paranoid personality disorder may exhibit normal behavior and express emotions appropriately only if their delusions are not triggered. However, these individuals may engage in stalking, violence or even murder when in a delusional state, actions that are difficult for ordinary people to understand. In the case of John Hinckley, who attempted to assassinate President Reagan, the court eventually concluded that Hinckley suffered from paranoid personality disorder and lacked the capacity to recognize the illegality of his actions or conform his conduct to legal requirements.

Forensic psychiatric evaluations are essentially retrospective medical evaluations that require experts to use their professional knowledge to assess the individual’s mental state at the time of the crime. Over time, the mental disorder that a psychiatric patient experienced during the crime may have subsided by the time of the trial. This is especially true for individuals with intermittent mental disorders, where the individual may have recovered by the time of the criminal proceedings. Therefore, it is essential to avoid equating a litigant’s mental state during the trial with their mental state at the time of the crime. Merely observing that the individual exhibits no abnormal behavior during the trial cannot conclusively determine that they were mentally competent at the time of the crime (Guo, 2012).

2.2.4. Monopolization of Initiation Power

Throughout the criminal procedure, only law-enforcement agencies have the authority to initiate forensic psychiatric evaluations. This further exacerbates the imbalance in power between the prosecution and the defense. Equal standing between the prosecution and the defense is a key condition for achieving procedural justice in criminal proceedings. First, both the prosecution and the defense are subjects in the litigation process, with equal rights and obligations. Second, there should be no hierarchical distinction between the legal standing of the prosecution and the defense. Third, judges should give equal weight to the facts and reasons presented by both sides (Chen, 2013). However, in terms of initiating forensic psychiatric evaluations, the defense lacks not only the right to initiate but also the right to participate in the decision-making process. This deprives the defense of any proactive role in determining the defendant’s criminal responsibility. Modern

criminal procedure aims to set numerous procedural hurdles on the path to conviction to minimize the possibility of wrongful convictions (Zhang, 2016). In the context of determining criminal responsibility, the right of the defense to initiate evaluations should be one of these critical procedural obstacles. However, China's laws and regulations, from a legislative perspective, are designed to limit the defense's ability to initiate evaluations rather than to protect their rights. This legislative approach hinders the establishment of an adversarial judicial system where the prosecution and defense are on equal footing. However, it is essential to understand that law-enforcement agencies may also have valid concerns about public safety and potential risks when initiating psychiatric evaluations in cases involving violent crimes. The reluctance to initiate evaluations is not always driven by negative motivations but can also stem from a need to balance the safety of the broader public with the rights of the defendant.

2.2.5. Incomplete Remedies for Non-Initiation

There is a legal maxim: "A right without a remedy is not a real right." As some scholars have pointed out: "Remedies are the precursor to rights; without remedies, there can be no real rights." However, under the current criminal procedure system, suspects, defendants, their defense lawyers and close relatives lack effective remedies when their request for forensic psychiatric evaluations is denied. This leaves them with no choice but to passively accept the decision.

3. Reflections on the Deficiencies in China's Forensic Psychiatric Evaluation System

3.1. The Conflict between Prosecution and Defense

Forensic psychiatric evaluations involve an irreconcilable conflict between the defendant and law-enforcement agencies.

From the perspective of the suspect and defendant, the constitution explicitly stipulates the state's obligation to respect and protect human rights. As long as there is reasonable doubt, the right to request a forensic psychiatric evaluation should be a fundamental right of the litigants. This practice is not only essential to realizing their individual rights but also concerns whether the constitutional principle of protecting human rights is effectively implemented in concrete legal systems. Moreover, it reflects the state's and society's respect for the basic rights of citizens. The level of human rights protection in criminal justice is a key indicator of the overall human rights situation in a country and demonstrates the state's commitment to protecting human rights at a fundamental level (Yang & Li, 2021).

From the perspective of law-enforcement agencies in China, they are responsible for maintaining local public security and social order. Concerns about public safety, victim dissatisfaction, and potential public unrest influence their decisions regarding whether to initiate forensic psychiatric evaluations. Law-enforcement officers must balance these concerns with the need to ensure defendants' rights

are respected, a task that becomes especially challenging in high-profile cases. (Zhou, 2012). Due to the public's long-standing misconception that "mentally ill offenders escape legal punishment" and under the influence of a simplistic sense of justice, the public is likely to develop anxieties about the "abuse of mental illness defenses" and the "absence of fairness". This creates a situation where judicial authorities may be influenced by public opinion, making it difficult to achieve the legal values of order and justice (Liu, 2016). Faced with the potential public backlash from initiating psychiatric evaluations, law-enforcement agencies tend to adopt a conservative stance on this issue. Additionally, once a forensic psychiatric evaluation is initiated, if the opinion concludes that the litigant has a mental illness and was unable to recognize or control their behavior, or if their ability to do so was significantly impaired, the court may render a verdict of not guilty or at least give them a lighter or mitigated punishment, allowing the defendant to return to society (Chu, 2018). The difficult question then becomes how to protect potential victims' lives and safety. Some scholars note that though Article 18 of *the Criminal Law* provides for compulsory medical treatment, this provision, aimed at maintaining social order, is difficult to enforce in practice and is virtually ineffective (Sang, 2007).

In procedural law, the control over the initiation of evaluations has led to a singular characteristic of ultra-authoritarianism in the practice of forensic psychiatric evaluations in China. The right to initiate criminal evaluations is monopolized by public security organs, procuratorial organs and judicial organs during the investigation, prosecution and trial stages, respectively. This institutional model favors law-enforcement agencies, while undermining the rights of the accused and defendants.

3.2. The Reality of "Replacing Trial with Evaluation"

Although the academic community has long advocated that psychiatric evaluations should only assess whether a person has a mental disorder and the extent and type of the disorder, and that the question of whether the individual lacks or has limited criminal responsibility should be determined by the judge, judicial practice tells a different story. Article 9 of *the Provisional Regulations on Forensic Psychiatric Evaluation of Mental Illness* clearly stipulates that psychiatric evaluations not only determine whether the evaluated individual has a mental illness, what type of mental illness they have and their mental state at the time of the harmful behavior, but also must assess the relationship between the mental illness and the harmful behavior, as well as whether the individual has criminal responsibility. It should be emphasized that criminal responsibility under criminal law—the ability to recognize and control one's actions in relation to a crime—should not be equated with the simple physiological ability to understand and control one's actions. The ability to recognize and control, under criminal law, refers specifically to whether the individual, at the time of the harmful behavior, could understand the nature, consequences and social or political significance of their

actions, control their behavior and bear criminal responsibility. Because judicial officers lack professional knowledge in psychiatry, psychiatric evaluation opinions not only supplement their understanding of the case, but in fact, substitute the decision-makers' judgment regarding the criminal responsibility of the defendant. In practice, due to the highly specialized nature of forensic psychiatric evaluations, most legal professionals consider themselves to be outsiders and find it difficult to review and assess the opinions of forensic psychiatrists. As a result, judicial officials tend to uncritically accept the forensic experts' opinions, rarely conducting the evidentiary and probative reviews required by law. This is reflected in the extremely low application rate and relatively high success rate of mental illness defenses in China. Both in China and the United States, cases in which mental illness defenses are raised and ultimately successful are very few. In the U.S., the number of defendants who successfully raise and prevail in such defenses is minimal, accounting for approximately 1% of felony cases (Song, 2014). In China, the annual number of forensic psychiatric evaluations related to criminal responsibility remains around 15,000, with the average proportion of psychiatric evaluations in criminal cases being only about 0.3% (Chen & Cheng, 2012). Of these, successful defenses are even rarer. However, if a forensic psychiatric evaluation is initiated and the result indicates the presence of a mental illness, law-enforcement agencies typically adopt the evaluation's findings. Research has found that in cases where only one psychiatric evaluation was conducted during litigation, the defendant was deemed incapable of bearing criminal responsibility in 234 cases. The courts fully accepted the evaluation opinions in all 234 cases, finding the defendants incapable of criminal responsibility (Chu, 2018). Thus, it is evident that law-enforcement agencies are extremely cautious in initiating forensic psychiatric evaluations, but once initiated, they heavily rely on the forensic psychiatric opinions, forming a model of "replacing trial with evaluation".

The reality of "replacing trial with evaluation" in China has caused two consequences. First, law-enforcement agencies, aware that evaluation opinions will likely determine the criminal responsibility of suspects or defendants, have become increasingly cautious in initiating psychiatric evaluations, which exacerbates the existing difficulty in initiating such evaluations. Second, when the evaluation opinions of no criminal responsibility contradict the expectations of law-enforcement agencies, these agencies tend to initiate a second evaluation and adopt conclusions that suggest limited or full criminal responsibility. This phenomenon is especially prevalent in cases with significant social impact and public controversy. For example, in the Zhang Linfa intentional homicide case, the Zhuhai Intermediate People's Court commissioned the Shenzhen Judicial Psychiatric Evaluation Group, which concluded that Zhang Linfa suffered from paranoid mental disorder and committed the crime during an acute delusional state, thus having no criminal responsibility. After the prosecution raised objections, the Zhuhai Intermediate People's Court commissioned the Foshan Judicial Psychiatric Evaluation Group, which concluded that Zhang exhibited no conscious

impairment during the crime, had normal recognition ability, but showed weakened self-control. Based on Article 18 of *the Criminal Law*, Zhang was found to have limited criminal responsibility. The partial responsibility conclusion was ultimately adopted by the court. However, Articles 184 and 197 of *the Criminal Procedure Law* only grant the defendants and their attorneys the right to request a re-evaluation during the investigation and trial stages, but do not grant the law-enforcement agencies the right to initiate a re-evaluation on their own. To some extent, this can be seen as a legislative restriction on the powers of law-enforcement agencies, as their unilateral initiation of re-evaluations would violate the principle that what is not authorized by law cannot be done (Figure 1).

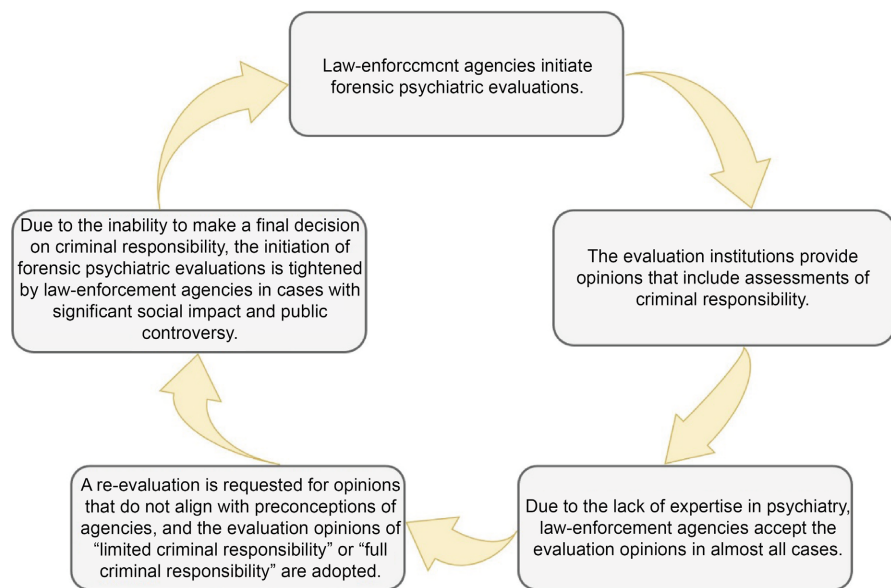


Figure 1. The contradictions in initiating forensic psychiatric evaluations caused by “Replacing Trial with Evaluation”.

4. Improvement of the System for Initiating Forensic Psychiatric Evaluation in China

4.1. Granting More Rights to the Parties

4.1.1. Improving the Application System for Initiating Psychiatric Evaluations by the Parties, Defenders and Litigation Agents

Compared with the past in China, the current *Criminal Procedure Law* strengthens the adversarial nature of the evidence system, defense system and trial procedures. However, it must be acknowledged that China’s current litigation model still leans towards an inquisitorial system, which means that the power to initiate forensic psychiatric evaluations is not exercised by the parties but by the public security, procuratorial and judicial organs. While reforming this system is important if the rights of the defendants are to be protected, it is equally crucial to recognize the difficult balancing act faced by law-enforcement agencies and officers, for they must weigh the rights of the defendants against public safety concerns

and the potential for public backlash, particularly in high-profile cases. In reality, China does not yet have the basic environment or supporting mechanisms necessary for the adoption of a litigant-initiated system typical in common law countries. Everyone may praise foreign societies, but praise does not mean that we need to completely transform the societies in which we live. If legislation were to directly grant the parties full authority to initiate evaluations, it would likely lead to the abuse of the right to initiate evaluations, exacerbating the situation of “repeated evaluations.” In current judicial practice, the number of cases requiring re-evaluation has already significantly increased, with parties fixating on evaluation opinions and repeatedly requesting re-evaluations, forcing law-enforcement agencies to agree in some cases (Zou, 2012).

From a social perspective, the public also harbors some dissatisfaction with forensic psychiatric evaluations. Influenced by a sense of natural justice, many believe that psychiatric evaluations have become a means for suspects and defendants to “evade punishment”, which is not entirely without basis. For example, in a study conducted by Zhang Li and Zhang Xiaoli on forensic psychiatric evaluations in intentional injury cases at a certain hospital, they found that out of 187 cases, 120 (64.17%) were commissioned by the litigants, while 67 (35.83%) were commissioned by law-enforcement agencies. Of the cases commissioned by the litigants, 39.17% concluded that the individual had full criminal responsibility, while 23.07% of cases commissioned by law-enforcement agencies reached the same conclusion (Zhang & Zhang, 2014). This significant disparity is partly due to the fact that a number of litigants hope to avoid or reduce punishment by relying on psychiatric evaluations. In Taiwan region, legal professionals have also noted that suspects are increasingly claiming to have mental illnesses to reduce their criminal responsibility and this trend is seen as inevitable in the future (Cui & Wei, 2017). Therefore, directly granting parties the right to initiate forensic psychiatric evaluations could, to some extent, lead to widespread and disorderly requests for psychiatric evaluations. Thus, while reforming the current system where public security, procuratorial and judicial organs monopolize the initiation power for forensic psychiatric evaluations, it is feasible to appropriately grant the parties, defenders and litigation agents the right to apply for an initial psychiatric evaluation, which is also in line with China’s national conditions. As long as the defense’s application is based on certain evidence and meets the standard of proof, law-enforcement agencies should initiate the evaluation. After the relevant institution has issued its evaluation opinion, law-enforcement agencies may also provide corresponding opinions, and the court would ultimately adjudicate the claims from both sides. This approach can also minimize the possibility of defendants using psychiatric evaluations to evade punishment.

Currently, as mentioned above, there is still controversy over whether the defendants and their attorneys have the right to apply for an initial evaluation. This paper argues that the right of the litigants to apply for an initial evaluation should be incorporated into the relevant laws. Legislation should establish a system where

the defendants and their attorneys have the right to apply for an initial evaluation, and this right should cover the investigation, prosecution and trial stages of criminal proceedings.

To ensure that defendants and their legal representatives have the right to request psychiatric evaluations, the following legislative reforms should be implemented.

1) Amending *the Criminal Procedure Law*

The Criminal Procedure Law should be revised to explicitly grant defendants and their attorneys the right to apply for psychiatric evaluations. This amendment should specify the conditions under which such requests are valid, such as a history of mental illness, erratic behavior observed by law enforcement, or inconsistent testimonies that suggest mental instability.

2) Public Guidelines

Law-enforcement agencies develop and publish clear public guidelines on how defendants can apply for psychiatric evaluations. These guidelines should be made accessible to legal professionals and the public to ensure transparency and to provide a clear roadmap for defendants and their attorneys.

3) Mandatory Training for Legal Professionals

Comprehensive training shall be provided for judges, prosecutors and other law-enforcement officials on the significance of psychiatric evaluations in criminal trials. This training should focus on recognizing potential signs of mental illness and understanding the legal implications of psychiatric evaluations.

4.1.2. Establishing Remedies for the Application Rights of the Parties

China's current *Criminal Procedure Law* and related legal provisions, as well as judicial interpretations, do not clearly stipulate a remedy system for the application for psychiatric evaluations. This leads to a situation where, if the litigants' application is rejected, there are no avenues for redress. Currently, the prosecution does not actively assess the mental state of suspects and defendants, forming a "presumption of full criminal responsibility" in the absence of abnormalities. The responsibility for confirming the mental state of suspects and defendants falls on law-enforcement agencies, directly leading to the monopoly of the initiation of forensic psychiatric evaluations by state agencies (Ye & Sheng, 2019). To address this issue, this paper advocates for the establishment of a corresponding remedy mechanism through legislation. When law-enforcement agencies reject a litigant's application for a psychiatric evaluation, they should issue a written rejection explaining the specific reasons for the refusal. At the same time, the litigants should have the right to submit materials and evidence to the appropriate agency and request an evaluation during the ongoing criminal proceedings. During the investigation stage, the litigants can raise objections to the people's procuratorate at the same level as the investigative agency that rejected the application. The people's procuratorate can exercise its judicial supervisory powers to decide whether to correct the investigative agency's refusal to initiate an evaluation. During the

prosecution stage, if the litigants believe that the decision to reject the evaluation application is erroneous, they can request a reconsideration. If the reconsideration is not accepted, the litigants can further request a review by a higher-level procuratorate. At the trial stage, if the litigants object to the court's decision not to grant their evaluation application, they have the right to request a reconsideration. The corresponding agency should decide within a specified time whether to change the decision not to initiate the evaluation.

To eliminate ambiguity in the initiation of psychiatric evaluations, the following standardized criteria should be introduced.

1) Mandatory Evaluation for Certain Crimes

For crimes involving extreme violence or irrational behavior such as premeditated homicide with unusual motives, law-enforcement agencies must initiate a psychiatric evaluation as part of the investigation process. This should be a mandatory step to ensure that defendants with potential mental disorders are properly assessed.

2) Expert Consultation Requirement

Before an application for a psychiatric evaluation can be denied, law-enforcement agencies must consult with a forensic psychiatric expert. This expert's opinion should be included in the decision-making process, and any rejection must be accompanied by a detailed explanation, supported by expert input.

3) Pilot Programs

Pilot programs should be firstly introduced in key cities such as Beijing, Shanghai and Guangzhou to test the implementation of these standardized criteria. These pilots will provide data on the feasibility and effectiveness of the new procedures, which can be refined before nationwide implementation.

4.2. Clarifying the Standards for Initiating Evaluations

The standards for initiating forensic psychiatric evaluations must be grounded in legal rationale and clearly defined circumstances, as this is a basic requirement of procedural justice. Law-enforcement agencies should reasonably set conditions for initiating evaluations to strike a balance between combating crime and protecting citizens' rights. To fill the legislative gap regarding the conditions for initiating psychiatric evaluations, it is recommended that judicial interpretations be used to add specific situations and standards for initiation. These situations and standards should focus on the following aspects: firstly, whether the litigant has a history of mental illness, or whether there is a family history of mental illness. Secondly, even if there is no obvious history of mental illness, whether family members or those around the litigants have observed bizarre behavior, impulsive actions or emotional instability. Thirdly, whether the litigant's criminal purpose, motive, method and process deviate from common sense, or whether there is a lack of clear criminal purpose or motive, or if the purpose and motive are disproportionate to the severe consequences of the actions. Additionally, whether the litigant exhibited abnormal mental behavior after the crime or during the criminal

proceedings. Finally, whether the litigant has a history of drug or alcohol dependence. As long as the individual meets the above standards, law-enforcement agencies should, in principle, initiate psychiatric evaluation procedures.

4.3. Reconstruction of the System for Adopting Forensic Psychiatric Evaluation Opinions

From the perspective of criminal law, determining whether a litigant has fallen into a state of no or limited criminal responsibility due to mental illness must be judged based on the specific legal requirements. The determination of criminal responsibility is not only a factual judgment but also a legal consideration, which should be decided by judicial officers, not by evaluation institutions or evaluators. Although the academic community has widely called for judicial officers not to rely solely on psychiatric evaluation opinions to determine criminal responsibility, but to independently judge the presence and degree of criminal responsibility, specific standards for such judgments have not been thoroughly discussed. In the absence of corresponding legal knowledge, it is unrealistic to expect medical evaluators to fully resolve the issue of the degree of criminal responsibility, nor can judicial officers be expected to determine the presence or absence of criminal responsibility without adequate medical knowledge (Guo, 2016).

Therefore, it is necessary to reconstruct the system for adopting psychiatric evaluation opinions. Firstly, the relevant provisions of Article 9 of *the Provisional Regulations on Forensic Psychiatric Evaluation of Mental Illness* should be amended in a timely manner, clarifying that forensic psychiatric evaluation opinions should not determine the degree of criminal responsibility, and returning the “discretion” to determine criminal responsibility to law-enforcement agencies. Additionally, during trials, the expert assistant system should be explored. This would allow both the defense and the trial panel to hire experts to participate in the trial, compensating for the lack of professional knowledge. Expert assistants would help both sides analyze and interpret evaluation opinions, provide opinions on professional matters in the case and cross-examine evaluators in court. This would also assist judges in forming a preliminary opinion on criminal responsibility and avoid the current situation where they fully accept psychiatric evaluation opinions.

5. Conclusion

In criminal proceedings, the significance of forensic psychiatric evaluations is self-evident, and the core issue lies in whether the procedure can be initiated. Substantive fairness in judicial justice varies with specific cases, while procedural fairness evolves with time. Therefore, when improving the system for initiating forensic psychiatric evaluations, it is necessary to balance crime control and human rights protection, as well as substantive and procedural justice. First, we must break away from the traditional view in China that emphasizes the criminal justice function of punishing crimes and abandon the belief that “all crimes must be punished”,

striving instead to achieve both crime control and human rights protection. Second, while opposing the practice of prioritizing substance over procedure, we must also avoid overly radical reforms and be cautious of emphasizing procedure at the expense of substance.

In conclusion, this paper argues that litigants should have the right to apply for the initiation of forensic psychiatric evaluations, and law-enforcement agencies must actively protect the rights of the litigants. Given that the litigant-initiated model is far removed from China's national context and judicial practice, and that the fully inquisitorial model has been proven to have significant flaws in China's judicial practice to date, it is necessary to establish a system through legislation that grants more rights to the litigants and clarifies the standards for initiating forensic psychiatric evaluations. Of course, it is also important to recognize that psychiatric evaluations are not limited to issues of procedural and substantive justice, but also involve interdisciplinary issues between law and medicine, as well as practical issues between society and law. Under the broader context of judicial reform in China, the reflection on the primacy of substance and the call for procedural justice in the issue of initiating forensic psychiatric evaluations will gradually lead to improvements.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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