



Involuntary detention and treatment of the mentally ill: China's 2012 Mental Health Law



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ABSTRACT

The long-awaited Mental Health Law of China was passed on 26 October 2012 and took effect on 1 May 2013. Being the first national legislation on mental health, it establishes a basic legal framework to regulate mental health practice and recognizes the fundamental rights of persons with mental disorders. This article focuses on the system of involuntary detention and treatment of the mentally ill under the new law, which is expected to prevent the so-called “Being misidentified as mentally disordered” cases in China. A systematic examination of the new system demonstrates that the Mental Health Law of China implicitly holds two problematic assumptions and does not provide adequate protection of the fundamental rights of the involuntary patients. Administrative enactments and further national legislative efforts are needed to remedy these flaws in the new law.

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1. Introduction

Involuntary detention and treatment of alleged mentally ill patients has been a controversial and sensitive issue in the recent Chinese mental health practice. In December 2005, a successful businessman Mr. He Jinrong was involuntarily sent to Guangzhou Brain Hospital by his wife and son. He was forced to receive treatment and medication for thirty days. His mother and brother claimed that Mr. He was of sound mind and requested an immediate discharge. However, the hospital responded that in order to discharge him his wife's consent would be needed since she was his first-rank guardian. Subsequent to his release, Mr. He discovered that his wife had filed a divorce action after taking away all of his valuable possessions. He later sued his wife and the hospital for tortious liabilities. The forensic authenticator delegated by the court testified that Mr. He had no mental disorder at the time of his involuntary admission to the hospital. The court awarded compensation for his emotional distress but denied his other claims including an apology from the defendants (Yang, 2011).

More astonishingly, a person without mental disorder Mr. Xu Lindong was involuntarily detained in Zhumadian Mental Hospital and later Luohe Mental Hospital for over six and a half years by a local

government,¹ which saw him as a troublemaker because he spared no effort to defend the rights of his disabled neighbors in a land-taking dispute between his neighbors and the local government. During his detention, he was physically restricted for forty-eight times and forced to take medication for an ongoing period, received electroconvulsive administration for fifty-four times. He committed two unsuccessful escapes and attempted a number of suicides. The deputy president of Luohe Mental Hospital insisted that the local government, but not his family members, had a right to make medical decision on his behalf. Mr. Xu was discharged in 2011 and agreed to settle the case with a compensation paid by the local government (Xin, 2010).

Apart from the two typical cases above, the Chinese media had been reporting twenty other similar cases by March 2009.² Such illegal detention still occurred thereafter (Jiang, 2012). The public has created a new term “Being misidentified as mentally disordered” (*Bei Jingshenbing*) to label events of the kind. The term in Chinese implies that a person without mental disorder who has been misidentified as mentally disordered for a non-medical reason has little chance to deny the misidentification. The “Being misidentified as mentally disordered” cases show that

¹ The local government was Daliu township government of Yanhe county of Luohe City in Henan Province of China.

² Zhou, 2009, *Who have been sent to mental hospitals?*, China News Weekly, Mar. 18, 2009, <http://www.sachina.edu.cn/Htmldata/news/2009/03/5115.html>. Some petitioners and right defenders were sent to hospital as mentally ill patients by the local government, such as the “Sun Fawu Case” in Shandong Province in 2008, see Wang Jing, Li Xiang and Li Jia, 2009, *Psychiatric hospitals are criticized due to illegitimate involuntary detention and treatment*, China News Weekly, Apr. 3, 2009, http://news.ifeng.com/mainland/200904/0403_17_1089519.shtml.

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China's system of involuntary detention and treatment of the mentally ill had been seriously abused to deprive a sound person of physical liberty and autonomy in family disputes and right defending cases (Liu, 2011).

On the other hand, China has a large number of mentally ill patients who could not access to basic mental healthcare and rehabilitation services. In 2009 the National Center for Mental Health of the Chinese Center for Disease Control and Prevention estimated that there were more than one hundred million people with mental disorders and sixteen million people with severe mental disorders in the country (Liang, 2011). Among those people with severe mental disorders, 60% might harm themselves and 30% might attempt suicide (Liang, 2011). According to China Health Statistics Yearbook 2012, the numbers of psychiatric outpatients and inpatients were 27,410,000 and 1,280,000 respectively (1.2% of the total outpatients and inpatients), the number of beds for psychiatric inpatients was 213,877 (5.8% of the total beds), and there were around 13,000 practicing psychiatrists (1% of the total medical practitioners) (Ministry of Health, 2012). In other words, for the year of 2011, less than 8% of those with severe mental disorders were admitted to hospital and the ratio of psychiatrists to those with severe mental disorders was less than 1:7692. The fact that most people with severe mental disorders have not received the necessary medical treatment poses a potential threat to the safety of their own and others.

On 26 October 2012, the Standing Committee of the National People's Congress of China passed the long-awaited Mental Health Law (the MHL) in the backdrop described above. It came into force on 1 May 2013. The MHL has eighty-five provisions and provides a comprehensive set of legal rules on mental health promotion and prevention, and diagnosis, treatment and rehabilitation of mental disorders. The law aims to develop the mental health system, regulate the mental health services and protect the legal rights and interests of patients with mental disorders.³ Particularly, the MHL is expected to prevent the "Being misidentified as mentally disordered" cases by establishing a clear and reasonable system of involuntary detention and treatment of the mentally ill. This article focuses on this system under the MHL. Part II of the article discusses the legislative debate on the system of involuntary detention and treatment of the mentally ill during the MHL deliberation process. Part III presents the legislative framework of involuntary detention and treatment of the mentally ill under the MHL. Part IV analyzes two problematic assumptions implicitly held by the MHL. Part V discusses the inadequacies of the MHL in protecting the legal rights of the involuntary patients. The article concludes with two brief suggestions for the implementation of the MHL.

2. Legislative debate on the system of involuntary detention and treatment of the mentally ill

It has already been twenty-eight years since the Ministry of Health initiated the first drafting of the MHL in 1985 (W. Guo, 2012). The drafting process was then suspended in 1990 and restarted in 1999. In 2009, the Legislative Affairs Office of the State Council⁴ formally started its law-drafting procedure with reference to the draft proposed by the Ministry of Health (Liu & Gao, 2012). Meanwhile a number of local people's congresses⁵ made local mental health regulations, which became an important reference for drafting the MHL. On 10 June 2011 the Legislative Affairs Office of the State Council announced its formal draft of the MHL for public consultation (the LAO's Draft). After the first reading on 29 October 2011, the Standing Committee of the National People's Congress announced the draft of the MHL for

public consultation (the NPC's Draft). The bill passed the second and third readings respectively in August 2012 and October 2012.

The Vice-minister of the Ministry of Health Mr. Ma Xiaowei commented, "admission to and discharge from hospital and involuntary detention of the mentally ill are the core issues in mental health legislation" (Liu & Gao, 2012). During public consultation and three readings, the system of involuntary detention and treatment of the mentally ill was continuously under heated debate, which focuses on the following five issues.

The first issue is whether a mentally ill patient with a risk to harm public security or to disturb public peace can be involuntarily detained for diagnosis and treatment. The LAO's Draft provides an affirmative stance in Article 26; but the NPC's Draft and the MHL change the stance, by replacing "harming public security or disturbing public peace" with "endangering the safety of others" in their equivalent provision. Chapter Three of the 2005 Public Security Administration Punishment Law of China illustrates various acts of disturbing public peace and harming public security. It shows that although the acts of harming public security may be understood as endangering the safety of others "as a whole", the acts of disturbing public peace do not necessarily endanger the safety of others, such as indecent exposure of body parts in public places. Therefore, when a mentally ill patient commits an act disturbing public peace but not endangering the safety of others, he could be involuntarily detained under the LAO's Draft, but could not be so under the NPC's Draft or the MHL. The primary concern with deleting the terms "harming public security" and "disturbing public peace" in the MHL is to prevent the government from abusing the system of involuntary detention and treatment of the mentally ill by taking advantage of the vague meaning of the terms, with its hidden purpose of maintaining social stability (Bi, 2011).

The second issue is whether the law should require a minimum number of psychiatrists who shall diagnose the involuntary patients and a maximum period of detention for diagnosis. Both the LAO's Draft and the NPC's Draft state that at least two psychiatrists shall undertake the first diagnosis. They further state that the first diagnosis, the second diagnosis and the final medical authentication shall be made within a seventy-two-hour period, a five-day period, and a seven-day period respectively. But the MHL removes these drafted provisions and simply provides that the diagnosis shall be made "timely", without any proper explanation.⁶

The third issue is concerned with the kind of institutions that are empowered to conduct the final medical authentication to determine whether a detained patient has severe mental disorder or whether it is necessary to hospitalize a patient for treatment. Both the LAO's Draft and the NPC's Draft state that any qualified forensic authentication institution has such power. However the medical professionals heavily criticized this drafted provision, insisting that forensic authentication institutions are not suitable to conduct such kind of authentication because only few forensic authenticators possess the relevant clinical knowledge and experiences in mental health (J. Guo, 2012). The MHL adopts their view and provides that the final medical authentication shall be medical authentication rather than forensic authentication.⁷

The fourth issue is whether mentally ill patients who are only a danger to themselves and those who are a danger to others should be treated differently with respect to the rules of detention for treatment. The LAO's Draft applies the same rules to these two categories of the patients, while the NPC's Draft and the MHL differentiate and apply different rules to them. For example, for the patients who are only a danger to themselves, their guardian may reject medical advice to detain the patients for treatment; while for the patients endangering the safety of others, their guardian has no right to do so.⁸

³ See Article 1 of the MHL.

⁴ The major function of the Legislative Affairs Office of the State Council is drafting, or organizing the drafting of, certain important laws and administrative regulations. The draft of law is submitted to the National People's Congress or its Standing Committee for deliberation.

⁵ Such as Beijing, Shanghai, Wuhan, Wuxi, Hangzhou and Ningbo.

⁶ See Article 29(2) and 32 (2) and (3) of the MHL.

⁷ See 32(3) of the MHL.

⁸ See Article 31 and 32(1) of the MHL.

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