

# A New Path for the Prevention of Illegal Acts Committed by Mentally Ill Persons in China: Improving the Legal Supervision Function of the Chinese Procuratorial Organs

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## Abstract

This research aims to study the prevention of illegal behaviors of mentally ill persons. This paper analyzes Chinese laws and regulations involving the prevention of unlawful behaviors of mentally ill persons, and examines a typical criminal case, using normative analysis and case study methodology. The research shows the illegal acts committed by mentally ill persons are socially dangerous, and China has constructed a three-tier prevention mechanism to prevent them. The existing prevention mechanism has major problems, which are highlighted by the failure of the responsible authorities to perform their duties in accordance with the law, and the lack of a supervisory body to urge them to fulfill their legal obligations. The prevention mechanisms are fragmented seriously, which leads to the occurrence of cases of mentally ill persons committing illegal acts. The findings and conclusion of this paper are that the people's procuratorate should play an important role in the prevention of acts committed by mentally ill persons, they should make supervision suggestions, file public interest litigation, and support litigation to urge the responsible subjects to perform their duties so that the quality of prevention of the illegal acts committed by the mentally ill persons can be improved.

**Keywords:** the people's procuratorate, mentally ill persons, illegal acts prevention, legal supervision

## 1. Introduction

Mentally ill persons are likely to commit illegal acts that endanger themselves, others and even society, because they suffer from mental disorders and are totally or partially incapable of recognizing or controlling their acts. There is an increasing number of severely mentally ill persons in the criminal justice system. (Lamb, Weinberger, & Gross, 2004) In China, acts committed by mentally ill persons in violation of the *Public Security Administration Punishment Law* are generally called *Zhaoshi*, and acts committed in violation of the *Criminal Law* are called *Zhaohuo*.<sup>1</sup> It is estimated that there are about 16 million people with serious mental illness in China, about 10% of whom have a propensity for violence, and more than 10,000 illegal acts are committed each year. (Zhao, 2020) These acts are violent, committed suddenly and blindly with cruel means, which may lead to significant casualties and great property damage, with extremely serious consequences. (Yun, 2011) Some scholars point out that, from 2000 to 2006, "among the 1,323 cases of serious mental illnesses identified by four institutions qualified for psychiatric forensic identification in Beijing, the number of deaths due to injuries in seven years amounted to 190, and 80 police officers were injured." (Zeng & Cheng, 2020) Legal sanctions are neither justified nor ineffective in dealing with mentally ill persons, so the preventive strategy can only be adopted and the tight protection networks must be established. In the prevention mechanism for illegal acts by the mentally ill persons, the medical institutions, police departments, local communities and other responsible bodies should play their role, and cooperate with the guardians of the mentally ill persons to care for, treat and control them. However, in practice, the aforementioned responsible bodies sometimes work in isolation and do not carry out their duties in accordance with the law, resulting in "holes" in the prevention network in China. The prevention mechanisms are fragmented seriously, which leads to the occurrence of cases of mentally ill persons committing illegal acts. Unlike many Western countries, China's procuratorate is not an administrative organ, but a judicial one. (Ji, 2022) Further, In China, the people's procuratorate is not only a public prosecution organ but also a legal supervisory organ. The procuratorial authorities can improve the unique and important legal functions as legal supervisors and representatives of the public interest, to strengthen the prevention of illegal acts committed by mentally ill persons.

In any country in the world, it is of great practical significance to effectively prevent mentally ill persons from

committing illegal acts under the premise of human rights protection principle. This is necessary for social self-defense, for avoiding vicious cases that harm victims, and for protecting the legitimate rights and interests of mentally ill persons. China's procuratorial organs have legal supervision function, and the effective improvement of this function is a new path to solve the aforementioned problems. This may provide some inspiration for other countries. Based on current academic research, this paper analyzes Chinese laws and regulations regarding the prevention of unlawful behaviors of mentally ill persons, while conducting a specific study on a real criminal case. By using both normative and case study methodology, the paper identifies the problems of the prevention mechanism for mentally ill persons' unlawful behaviors. The paper then argues for the justification of procuratorial involvement in the prevention of illegal behaviors of mentally ill persons and proposes principles and measures for institutional reform.

## 2. Tertiary Prevention of Illegal Acts Committed by Mentally Ill Persons in China

Due to the weakening or even loss of the functions of knowledge, emotion and intention, mentally ill persons are not sensitive to general and special crime prevention measures, and it is difficult for them to adjust and regulate their behavior accordingly. The illegal acts committed by mentally ill persons should be regarded as a social phenomenon based on specific mental disorders and should be dealt with through a tertiary prevention mechanism, drawing on the theory and experience of preventive medicine. "The aim of preventive medicine is the absence of disease, either by preventing the occurrence of a disease or by halting a disease and averting resulting complications after its onset". (Clarke, 1974) Preventive medicine is applied to "healthy" people, customarily by actions affecting large numbers or populations. (Park, 2015) In the field of preventive medicine, primary prevention, also known as etiological prevention, is "the prevention of disease by taking measures to eliminate the harmful effects of disease-causing factors on the body or to improve the body's resistance". Secondary prevention refers to the "early detection, early diagnosis and early treatment of diseases in the early clinical stage, in order to prevent the development and deterioration of diseases". Tertiary prevention refers to the treatment of patients who have already developed the disease, and medical personnel takes measures to "stop the development of the disease, control the deterioration of the disease, and prevent complications and disabilities". (Fu, 2013) For the prevention of illegal acts committed by mentally ill persons, the following three levels of prevention can be applied, based on the aforementioned theory, depending on whether the incidence has not yet occurred, will occur, or has occurred.

### 2.1 Primary Prevention

The first level of prevention is also known as "prevention before problems happen", and is the most basic level of prevention. It refers to the adoption of flexible measures such as education, advocacy, support, assistance, registration management, treatment and rehabilitation for citizens in general or those with suspected psychiatric symptoms, in order to eliminate the causes that induce them to commit the illegal acts. In China, in October 2012, the *Mental Health Act* was enacted and amended in 2018. In June 2015, the General Office of the State Council forwarded the *National Mental Health Work Plan (2015-2020)*. In May 2018, the National Health and Wellness Commission promulgated the *Work Standards for the Management and Treatment of Severe Mental Disorders (2018 Edition)* to build a leadership and coordination system for mental health work. According to this work norm and practical innovations, the main measures for primary prevention include: (1) All responsible subjects promote the medical and legal knowledge of mental illness and its causes and consequences to the public in order to sympathize, understand and respect the mentally ill persons, avoiding discrimination, insult and abandonment against the mentally ill persons, creating a friendly environment conducive to the discovery, treatment and rehabilitation of the mentally ill persons. For example, the *Mental Health Law* requires that "the whole society should respect, understand and care for people with mental disabilities. No organization or individual shall discriminate, insult, or abuse people with mental disorders, and shall not illegally restrict the personal freedom of people with mental disorders. News reports, literature and artworks, etc. shall not contain content that discriminates against or insults people with mental disorders." (2) The government departments establish mechanisms to provide medical treatment, poverty relief, follow-up management for mentally ill persons, adopt measures such as free medication, low-income assistance and community rehabilitation, striving to increase the standardized management rate and medication rate of seriously mentally ill persons, reducing the triggering effect of poverty factors on them. (Zhang, 2018) The *Mental Health Law* provides that, "the medical expenses of patients with mental disorders shall be paid by the basic medical insurance fund in accordance with the relevant state social insurance regulations. Medical insurance agencies shall, in accordance with the relevant state regulations, include patients with mental disorders in the coverage of basic medical insurance for urban workers, basic medical insurance for urban residents or new rural cooperative medical care."<sup>iii</sup> (3) The government departments implement measures to register and manage persons with serious mental illness, so that management agency could know the basic number of persons with serious mental illness and their treatment, thus providing the necessary conditions for subsequent medical help and behavior control. (4) The responsible authorities supervise and support the guardians or relatives of mentally ill persons in fulfilling their guardianship and support obligations. For example, in Changsha City, Hunan Province, the

government regulations provide that the guardian of the mentally ill person, should be responsible for the management of their daily lives and closely observe the changes in their condition. If the patient is found to tend to commit illegal acts or has committed illegal acts, the guardian shall promptly report and assist in escorting him to a designated hospital for treatment. When a mentally impaired patient is out wandering, the guardian is responsible for reclaiming and taking care of him. The government rewards guardians who effectively fulfill their guardianship responsibilities; for those who do not fulfill their guardianship obligations, the government will hold them accountable. In primary prevention, the relevant responsible subjects, in addition to guardians of mentally ill persons, also include state authorities, such as health administrative departments and public security authorities, medical institutions and local autonomous organizations, etc.

### 2.2 Secondary Prevention

The secondary prevention of illegal acts committed by mentally ill persons is to prevent the possibility of the illegal acts from becoming a reality, by taking measures to identify, treat and control the mentally ill persons when they show specific signs of the possibility of committing illegal acts. The key to the secondary prevention of illegal acts committed by mentally ill persons, is the "early detection" of signs of perpetration, the "early control" of perpetrators with mental disorders prone to illegal acts, and the "early treatment" of such cases, thus minimizing the probability of perpetration and the harm caused. The main measures that can be taken include: (1) According to the *Code of Practice for the Management and Treatment of Severe Mental Disorders (2018 Edition)*, medical institutions screen patients for severe mental illness by referring to the manifestations listed in the "Abnormal Mental Behavior Identification Checklist", such as "unprovoked impulsivity, hurting others, destroying objects, or running away from home for no reason". Medical institutions also conduct risk rating for psychiatric patients prone to commit illegal acts according to the *National Basic Public Health Service Specifications (Third Edition)*, and enhance treatment for patients at Level 3 or above. (2) The public security authorities strengthen the management of patients with mental illness on a case-by-case basis and in a classified manner, (H. Chen & Li, 2019) strengthen visits to households to determine whether they have a greater possibility of harming society and urge their guardians to send them for medical treatment, or send them to medical institutions for diagnosis of mental disorders in accordance with the *Mental Health Law*. In Chenzhou City, Hunan Province, the government regulations provide that the public security organs are responsible for the on-site disposal of patients with severe mental disorders when they commit illegal acts; The public security organs should assist guardians and employers in sending patients to the hospital, should make a compulsory medical opinion for eligible patients with mental disorders, transferring to the people's procuratorate, and take temporary protective restraint measures in accordance with the law. (3) The local self-governance organizations analyze whether the guardians of the mentally ill persons prone to commit illegal acts have such ability to act as guardians, whether they are fulfilling their guardianship duties, and take measures to admonish, urge or assist in replacing guardians for those who refuse to fulfill the obligations. For example, the villagers' committee or residents' committee of the place where the mentally ill person is located may apply to the people's court to revoke the guardianship and appoint a new guardian, when the guardian is "negligent in performing his guardianship duties or is unable to perform his guardianship duties and refuses to entrust part or all of his guardianship duties to another person, resulting in a dangerous state of the person under guardianship" in accordance with Article 36 of the *Civil Code*. The subjects of responsibility for secondary prevention are the same as those for primary prevention.

### 2.3 Tertiary Prevention

Tertiary prevention of unlawful acts committed by people with mental illness, exists in the administrative penalty procedure, criminal prosecution procedure, or compulsory medical treatment procedure, which is to prevent them from committing crimes and other illegal acts again. Article 18 of the *Criminal Law* provides: "A mentally ill person who has not completely lost the ability to recognize or control his or her own behavior shall be criminally responsible for committing a crime, but the punishment may be mitigated or reduced. " In addition, China's criminal procedure law provides for compulsory medical treatment procedures. Article 302 of the *Criminal Procedure Law* provides: "a mentally ill person who commits acts of violence, endangers public security or seriously endangers the personal safety of citizens, and is identified by legal procedures as not criminally responsible according to law, and who has the potential to continue to endanger society, may be subject to compulsory medical treatment." For example, Mr. Zhang, suffered from schizophrenia and was dominated by severe hallucinations, though the victim was an alien who was going to kill him. Mr. Zhang kills the victim out of self-defense motive. If Mr. Zhang is identified as not having the capacity for criminal responsibility, but there is still a possibility that he may endanger the safety of society, the judicial authorities should decide on compulsory medical treatment for him; If Mr. Zhang is identified as having a limited capacity for criminal responsibility, he should be criminally prosecuted and thus be held criminally responsible. In these procedures, the judiciary works in conjunction with the medical sector and other responsible parties to take measures to reduce the likelihood of the mental patient's recurrence of the offense, using the theory of prevention as a guide. The

main measures that can be taken are as follows: (1) According to the provisions of the *Interim Provisions on Judicial Appraisal of Mental Disorders* and the practice, the judicial authorities generally commission an appraisal institution to appraise whether the suspect or defendant has the capacity for criminal responsibility. The suspect or defendant does not have the right to directly commission an appraisal agency to conduct an appraisal. In the process of criminal prosecution, the judicial authorities shall pay attention to the claims of the defendant and his family members or defense lawyers regarding his possible mental illness, and if he puts forward certain clues and materials, commission an appraisal agency to conduct an appraisal in order to screen out the suspected mentally ill person to the maximum extent possible. (2) The judicial authorities shall provide active and effective assistance and treatment to mental patients who have been determined to be suffering from mental disorders, regardless of whether they are in custody or not, and may decide to suspend the proceedings for this reason. For example, Article 35 of the *Criminal Procedure Law* provides that if a mentally ill person who has not completely lost the ability to recognize or control his or her own behavior does not appoint a defender, the judicial organ shall notify the legal aid agency to assign a lawyer to provide legal assistance. Article 304 of the *Criminal Procedure Law* provides that if a mentally ill person does not appoint a litigation representative during the compulsory medical treatment procedure, the people's court shall notify the legal aid institution to assign a lawyer to provide legal assistance. Article 206 of the *Criminal Procedure Law* provides that if, during the trial, the defendant is seriously ill and unable to appear in court, so that the case cannot continue to be heard for a longer period of time, the people's court may suspend the trial. (3) The procuratorial authorities supervise the compulsory medical treatment of mental patients to ensure that they receive appropriate treatment and protect their other legal rights, including the right to apply for release from compulsory medical treatment.

### 3. Problems in the Prevention of Illegal Acts Committed by Mentally Ill Persons

China has constructed an overall prevention mechanism for the perpetration of offenses by mentally ill persons, and medical institutions, state agencies and other subjects should each take responsibility and work together to try to reduce the occurrence of offenses. However, in practice, there are major loopholes in this prevention network. Serious cases involving offenses perpetrated by mentally ill persons are frequent. As a lawyer, I acted as the litigation representative of Mr. Guo, a mentally ill person, in his compulsory medical treatment case in November 2021.<sup>iii</sup> The case is used as an example to analyze the deficiencies of the prevention mechanism for illegal acts of mental patients.

The facts of the case are as follows: Mr. Guo, male, 74 years old, is a citizen of a city in Anhui Province, China. He and his wife were divorced and had two sons and a daughter, but had not lived together for a long time. On September 26, 2021, Mr. Guo hit Mr. Wei on the head with a hammer for no reason near an elementary school. Mr. Guo and Mr. Wei did not know each other, there was no conflict or dispute. Mr. Guo was randomly choosing the object of his assault. Mr. Guo had been talking to himself and claiming that he had injured the devil who was going to kill his family. The judicial appraisal authority issued a judicial appraisal opinion, which found that Mr. Guo suffered from an organic mental disorder and was incapable of criminal responsibility at the time of the offense. Mr. Guo's eldest son stated that his father usually behaved quite normally, but around the Mid-Autumn Festival, his mind was a bit abnormal, often talking to himself, saying that demons and monsters were haunting him. Mr. Guo's son said: "The doctor said he has mental problems, but I really do not have the money, so did not send him to hospital. My brother and my sister are not in contact with my father now because of the original family conflict. So now there is no money for my father's hospitalization". Ms. Zhu, a neighbor, testified that about one or two dozen days ago, Mr. Guo often talked to himself, sometimes staying awake at night, speaking loudly, disturbing neighbors' sleep, and recently Mr. Guo took a stick and knocked on the door of the neighbor next to him. The Psychiatric Admission Record shows that "the patient was not taken to the hospital for treatment because he was left unattended." In addition, Mr. Guo did not take his medication on time to treat his mental illness, and neither Mr. Guo nor his son were entitled to urban low-income benefits. After hearing the case, the People's Court found that Mr. Guo met the conditions for criminal compulsory medical treatment and decided to put him under compulsory medical treatment. This case is a typical example of the complete failure of primary and secondary prevention of illegal acts committed by mentally ill persons. This case may show that the current prevention system, in practice, has several significant problems.

#### 3.1 The Responsible Subjects do not Perform Their Duties in accordance with the Law

As mentioned above, for the prevention of illegal behavior of mental patients, health administrative agencies, public security agencies, mental health medical institutions, primary medical institutions, local self-governance organizations, and guardians of mental patients all have specific obligations according to the law. For example, Article 28 of the *Mental Health Law* stipulates that if a person with suspected mental disorder harms himself or endangers the safety of others, "his close relatives, his employer, or the local public security authorities" shall immediately take measures to stop him and send him to a medical institution for diagnosis of mental disorder. Article 69 of the *Mental Health Law* stipulates, "for patients with severe mental disorders who meet the conditions for minimum subsistence security in urban and rural areas, the civil affairs department, together with the relevant departments, shall promptly include them

in the minimum subsistence security." *The Code of Practice for the Management and Treatment of Severe Mental Disorders (2018 Edition)* imposes obligations for medical institutions to detect, diagnose, register and report patients. The prevention system can operate effectively only if each responsible body performs its duties in accordance with the law. However, in practice, there is a widespread phenomenon of responsible subjects not fulfilling their obligations under the law. For example, a scholar noted that "a large number of people with severe mental disorders are not found to be included in management." (Zhang, 2018) A scholar conducted statistics on cases of offenses committed by mentally ill persons in a city from 2010 to 2018 and found that only one case was in the database built by the public security authorities, and the percentage of these persons in the database built by the health administrative agencies was only 26%, which indicates that too many persons who might commit illegal acts are not included in the government's management. (H. Chen & Li, 2019) In addition, some police officers pointed out: "From a practical point of view, for most of the serious mental patients, it is their families or guardians who assume the responsibility of guardianship. However, due to their economic conditions, time and energy, knowledge level and family disagreements and other factors, many families are unable to effectively fulfill their guardianship responsibilities." (Tao & Sun, 2020) In the aforementioned case of Mr. Guo's compulsory medical treatment, Mr. Guo had verbal and behavioral abnormalities, indicating that he might be suffering from mental disorder. Mr. Guo went to the hospital for treatment, but the local medical institution did not identify the risk of illegal behavior, did not log his information into the management system, and did not share relevant information with the public security authorities and local communities. As a result, Mr. Guo did not receive effective medical treatment and was not subject to strong behavior management. The public security authorities did not have information that Mr. Guo suffers from mental disorder, let alone intervened in his illegal behavior promptly. Mr. Guo's guardian lived in poverty, had no will to guardianship, and knew that his father had obvious symptoms of mental disorder, but did not take strong medical and restraining measures. The occurrence of Mr. Guo's illegal behavior is closely related to the failure of the aforementioned responsible subjects to fulfill their obligations under the law.

### 3.2 Lack of Supervisory Authority to Urge Responsible Subjects to Fulfill Their Obligations

Only when the responsible parties fulfill their obligations in accordance with the law can the prevention of offenses committed by mentally ill persons be truly effective. If a responsible body is negligent in performing its duties and a "hole" appears in the prevention network, as long as it can be discovered and "mended" in time, the prevention mechanism will not be completely broken. However, in the current situation, there is a lack of supervisor to monitor and supervise the performance of duties by responsible subjects, resulting in a "fragmented" performance of their duties. For example, if the guardians of the mentally ill persons do not fulfill their guardianship obligations imposed by *Civil Code* and *Mental Health Law*, such as in the case of Mr. Guo's compulsory medical treatment, Mr. Guo's two sons and one daughter knew that Mr. Guo had obvious symptoms of mental disorder but ignored them, the public security authorities and health administration authorities do not have the legal authority to supervise and hold them accountable. In addition, the medical institution did not enter Mr. Guo's information into the management system and report it when he was treated for mental illness, thus there was a failure of management. Mr. Guo has not been taking his medication normally and has not been able to enjoy the policy of free medication. The public security authorities were unaware of the situation of Mr. Guo, who had clearly had the potential to endanger public safety and the personal safety of others, and failed to exercise strong control. However, the health administration agencies have no power to require the public security authorities to fulfill their statutory duties, and vice versa. The case of Mr. Guo's compulsory medical treatment shows that when there is a lack of a strong supervisory body, even if there is an abandonment of duties by the various responsible bodies, the illegal behaviors of the mentally ill persons will not be discovered, let alone corrected, until they cause significant harm.

## 4. The Justification of the Participation of the Procuratorial Organs in the Prevention of Illegal Acts Committed by Mentally Ill Persons

In the current prevention mechanism for mentally ill persons' offenses, there is no role for the procuratorial authorities in the primary and secondary prevention. *The Mental Health Law*, *The National Mental Health Work Plan (2015-2020)*, and *The Guidelines for the Management and Treatment of Severe Mental Disorders (2018 Edition)*, along with other regulations, do not mention the procuratorial authorities. Some scholars surveyed the number and proportion of doctors, psychiatrists, social workers, and police officers involved in offense prevention, didn't mention *prosecutors*. (Zhang, 2018) Only after the public security agencies transfer criminal cases or compulsory medical cases to the procuratorial authorities, do they deal with matters of illegal behavior of mental patients, i.e., perform the duties of reviewing, filing criminal charges or filing applications for compulsory medical treatment. The prevention of offenses at this point, even if it exists, is only a "tertiary prevention" to avoid further illegal behavior by mentally ill persons. In practice, some procurators pay attention to the prevention of illegal acts of mentally ill individuals, but this is only an isolated case and has not yet been institutionalized. It is necessary for the procuratorial organs to intervene in the prevention of illegal acts committed by mentally ill persons and actively play the procuratorial role. It is legally justified and realistically

reasonable. The justifications are as follows.

#### *4.1 The Procuratorial Organs are the State Legal Supervision Organs and Have the Legal Status of Representing Public Interests*

Unlike the prosecution agencies in many countries, China's procuratorial organs are not simply organs for the prosecution of crimes, and their functions are not limited to the public prosecution of criminal cases. Article 134 of the *Constitution* provides that "The People's Procuratorate of the People's Republic of China is the legal supervisory organ of the state." During the nascent period of China's procuratorial organs, the *Organic Law of the People's Procuratorates* also gave the procuratorial organs general legal supervision powers to determine whether state authorities, state-owned enterprise organizations, as well as state public officials and citizens, accurately comply with the law, (Wang, 2013) which highlighted their duty to maintain the unity and proper implementation of the law, but this power had not consistently been exercised in practice. In 2014, *the Decision of the Central Committee of the Communist Party of China on Several Major Issues in Comprehensively Promoting the Rule of Law* requires that "the procuratorial organs, in performing their duties, should urge the administrative organs to correct any illegal exercise of power or non-exercise of power that they find." Jinping Xi, general secretary of the Communist Party of China, stated, "This provision was made to enable the procuratorial organs to make timely recommendations and urge the correction of illegal acts of administrative organs and their staff." (Xi, 2015) Since then, the procuratorial authorities have complied with the requirement to broaden the scope of legal supervision, and have begun to break through the limits of "litigation supervision" to explore the exercise of supervision over the operation of administrative power. At present, the Supreme People's Procuratorate is implementing the reform of "four major procuratorial functions", i.e., extending the procuratorial functions to criminal, civil, administrative and public interest litigation cases. (J. Chen, 2020) Mentally ill persons commit illegal acts, causing casualties and endangering the interests of society with serious consequences. The key to the prevention of illegal behaviors of mentally ill offenders lies in the public security agencies, health administration agencies and other responsible bodies to perform their duties in accordance with the law. All cases that lead to significant consequences, are directly and closely related to the failure of the responsible subjects to fulfill their obligations under the law. The procuratorial organs are "the defenders of national interests and social public interests" and "the supervisors of the unified implementation of national laws", (R. Chen, 2018) so their intervention in the prevention of offenses committed by mentally ill persons, is in line with the spirit of the *Constitution* and the requirements of the Supreme People's Procuratorate.

#### *4.2 The Intervention of the Prosecutorial Organs Can Effectively Solve the Existing Problems*

The biggest problem in the operation of the existing prevention mechanism for mentally ill persons, as mentioned earlier, is that the responsible subjects are not able to fulfill their obligations according to the law, thus making a "hole" in the prevention net. For example, "the poverty rate of patients with severe mental disorders is high and they lack adequate social security support", so they should be helped precisely and "the effective connection of basic medical insurance, major medical insurance, medical assistance and other protection policies should be in place". (Zhang, 2018) However, in practice, the civil affairs agency does not provide minimum living security to residents with mental illness and financial difficulties, and the health administration agency does not reduce or exempt medical fees for them as required, resulting in the phenomenon that they cannot afford to seek medical treatment. Moreover, the guardians of mentally ill persons, who are directly responsible persons, often do not fulfill their obligations to prevent the illegal behaviors because their families are poor or lack guardianship ability. Some policemen pointed out that "health departments, education departments, public security departments, civil affairs departments, judicial departments, financial departments, the Youth League, the Disabled Persons' Federation, the Women's Federation, local governments, local communities and village committees have certain responsibilities for the prevention, treatment and management of mentally ill persons, but in practice, the effective organizational coordination and linkage mechanisms are lacking. In the disposal of serious mental patients in violation of the law, the public security department alone to deal with the accident, the policeman alone to face the danger, medical emergency, civil affairs and other departments appear missing." (Tao & Sun, 2020) The current prevention mechanism lacks a subject to supervise and urge the aforementioned responsible subjects to fulfill their obligations and rectify their violations, and lacks a subject to play a coordinating role in the prevention mechanism. Health administration agencies, civil affairs agencies and even public security agencies do not have the legal duty to supervise other responsible subjects. This is not the case for the procuratorial organs, which have legal authority to supervise the performance of obligations of the responsible subjects and have power to take necessary measures. For example, if the civil affairs agency fails to review and approve the application of a mentally ill person for minimum living security in accordance with the law, the procuratorial authorities have the power to make procuratorial suggestions or even file an administrative public interest lawsuit in the people's court. For guardians who do not fulfill their guardianship obligations, the procuratorial authorities can support interested parties to file civil lawsuits; if the guardian's inaction is suspected of being a crime, the procuratorial authorities can

supervise the public security authorities to open a case against him for criminal investigation. Through the exercise of the aforementioned powers, the procuratorial authorities can truly address and solve the real problems of the preventive mechanism.

## **5. Principles and Measures for the Participation of the Procuratorial Organs in the Prevention of Illegal Acts of Mentally Ill Persons**

Based on their legal status as legal supervisory organs and defenders of public interests, procuratorial organs should actively intervene in the prevention of illegal behavior of mentally ill persons and perform their legal functions. The prevention of offenses is a systemic project with different aspects of prevention at three levels. The procuratorial organs should not and cannot do all the work, but can supervise, coordinate and cooperate with other responsible bodies, and play the role of a "barrel rope" that ties all the "barrel plates" together.

### *5.1 Changes in the Principles of Prosecutorial Conduct*

#### 5.1.1 Changing from Handling Individual Cases to Participating in Comprehensive Social Governance

The prevention of crime and other illegal acts committed by mentally ill persons, which have complex pathological, social and humanistic causes, is an aspect of comprehensive social governance. Comprehensive social governance addresses the underlying causes of mental illness and illegal acts, such as economic poverty, social discrimination and guardianship failure. Comprehensive social governance cannot eliminate incidents of illegal behavior by mentally ill persons, but can prevent their occurrence to the greatest extent possible. Comprehensive social governance includes not only the handling of specific cases, but also the planning design, policy formulation and institutional construction. For example, the *National Mental Health Work Plan (2015-2020)* requires that "all patients should be treated, managed and admitted to hospital", which is an extremely important policy declaration. In practice, provincial and municipal planning, policies and systems for the treatment of mental illness and the prevention of illegal acts are not always sound, or there are formal regulations, but they are superficial and not implemented concretely. The procuratorial organs have the convenience of handling cases of illegal acts of mentally ill persons, so they can understand the context and circumstances of a case and have a better understanding of whether each responsible body fulfills its due obligations, and therefore have more say in the "pain points" of comprehensive social management involving mentally ill persons. As a representative of public interest, the procuratorate should not be limited to litigation, but should actively participate in the comprehensive social management of the prevention of illegal acts of mentally ill persons, and actively express procuratorial opinions on the planning design, policy formulation and system construction from the perspective of guaranteeing the correct implementation of the law.

#### 5.1.2 Changing from Passive *ex post facto* Disposal to Active Pre-emptive Prevention

At present, the procuratorial authorities handle cases involving mentally ill persons, including two kinds of situations. In the first kind of case, the mentally ill person has the capability of limited criminal responsibility, and the procuratorial authorities apply the criminal procedure law to pursue their criminal responsibility. In the second kind of case, the mentally ill person does not have the capacity of criminal responsibility, but is eligible for compulsory medical treatment, and the procuratorial authorities apply to the people's court for a decision on this issue. In practice, in either case, the prosecutors are dealing with the issue of criminal prosecution or compulsory medical treatment, usually without regard to the fact that the person is a "patient" and do not consider how to prevent him from breaking the law again in the future. This is an *ex post facto* model. However, once a mentally ill person commits an illegal act, the procuratorial authorities cannot change the consequences of the harm to society that has been caused, no matter how to deal with him, whether by holding him criminally responsible or imposing compulsory medical treatment. The focus is not on punishing the mentally ill person, because the punishment is neither justified nor effective, the focus is on how to take preventive measures to avoid the recurrence of illegal behavior. The procuratorial authorities should change their approach and establish the "three-tier prevention" model in individual criminal or compulsory medical treatment cases to reduce the risk of repeat offenses by mentally ill persons, while using the experience gained in individual cases for the primary and secondary prevention of offenses by other mentally ill individuals.

### *5.2 Measures of the Intervention of the Procuratorial Authorities*

#### 5.2.1 Supervising Administrative Agencies to Perform their Statutory Duties

Based on the constitutional status as legal supervisory organs and the policy requirements of Communist Party of China, the procuratorial organs should actively participate in the comprehensive social management of violations committed by mentally ill persons and supervise the proper exercise of powers by relevant administrative agencies. According to Professor Songnian Ying, "the field of administrative law enforcement is extremely broad, complex and diverse, and there is an urgent need for procuratorial intervention." (Gong, 2019) The procuratorial authorities should actively explore implementing the "administrative procuratorial supervision" of the prevention of offenses committed by

mentally ill persons. Measures that can be taken include: (1) The procuratorial organs should participate in the existing leadership and coordination mechanisms for mental health work, and initiate institutional consultation with administrative agencies such as health administration agencies, social security agencies and public security agencies. The procuratorial organs should consult with the administrative agencies on the planning design, policy formulation and institutional construction for the prevention of offenses to ensure that medical, health insurance, social security and other policies are mutually compatible, practical and effective. Here is a case in practice: on December 13, 2021, the Zigui County Procuratorate in Sichuan Province filed an application for compulsory medical treatment in a case of intentional injury by a mentally ill person. In the process of handling the case, the prosecutor issued a recommendation to the local government for weaknesses in the control of mentally ill patients, asking it to use the case as a lesson and promote improvement. The prosecutor suggested that various departments of the local government should work together to integrate the management of mentally ill patients into the comprehensive management of social security and establish a community-based monitoring system. After receiving the prosecutor's recommendation, the local government implemented it and formulated a "Work Plan on Strengthening the Control of Mental Patients". Supervision of mentally ill patients is carried out jointly by town officials, village doctors, community police and guardians. (Liu, 2022) (2) Procuratorial organs should routinely inspect and supervise the performance of administrative agencies, medical institutions and local communities etc., in preventing violations committed by mentally ill persons. Does the public security agency carry out routine administrative control of serious mental patients as required? Does the health administration agency manage the medical registration and information entry of serious mental patients in medical institutions in accordance with the law? According to the need of legal supervision, the procuratorial authorities can carry out investigations, such as access to the work records of administrative agencies, interviewing the staff of administrative agencies, etc. If it is found that the administrative agencies did not perform their duties in accordance with the law, the procuratorial organ can promptly make a recommendation to rectify the violation. If the administrative agencies refuse to accept the supervision advice, the procuratorial organ may file public interest litigation with the people's court. It is noteworthy that Article 67 of the *Rules for Handling Public Interest Litigation by the People's Procuratorate* stipulates the scope of cases for public interest administrative litigation. Although it does not explicitly exclude cases of prevention of illegal behaviors of mental patients, it is not explicitly listed either. The prevention of illegal acts by mentally ill persons clearly involves significant social public interests. The rule should be amended to include cases in which the administrative authorities may have exercised their powers illegally or failed to act in preventing the illegal acts of mentally ill persons. (3) If, in the course of legal supervision, the procuratorial organs find that the staff of the administrative agencies are suspected of violating the *Supervision Law* by improperly performing their duties, should refer the case to the Supervision Commission and recommend that they should be held legally accountable.<sup>iv</sup>

### 5.2.2 Supervising the Guardians of the Mentally Ill Persons to Fulfill their Legal Obligations

The guardians of mentally ill persons have direct access to relevant information, are the first to know the signs of violations, and are directly responsible for preventing violations, so the procuratorial authorities should make efforts to supervise the fulfillment of their legal obligations. Procuratorial organs can establish information exchange mechanisms with public security agencies and health administration agencies to obtain information on registered mentally ill persons and their guardians. If the guardian of a mentally ill person fails to take him to a doctor, or fails to prevent and stop his behavior that endangers society and harms others, the procuratorial authorities should inform the public security authorities, who should order the guardian to "strictly supervise and treat" him in accordance with Article 13 of the *Public Security Administration Punishment Law*. The procuratorial authorities may also support the civil lawsuit filed by the person concerned who has suffered from the offense, in accordance with Article 15 of the *Civil Procedure Law*.<sup>v</sup> If, after investigation, the guardian of a mentally ill person is found to be suspected of abandonment or other criminal acts, the procuratorial authorities may refer the relevant clues or materials to the public security authorities and request them to open a case for investigation; if the public security authorities do not open a criminal case, the procuratorial authorities may exercise the power to supervise the opening of a case and notify the public security authorities to open a case for criminal investigation in accordance with Article 111 of the *Criminal Procedure Law*.<sup>vi</sup> The public security agencies should obey the supervisory opinion of the procuratorial authorities.

### 5.2.3 Supervising the Relevant Responsible Subjects in Criminal Proceedings to Fulfill their Duties

If the accused is suspected of committing a crime, but is identified in criminal proceedings by legal procedures as a mental patient who does not have the capacity of criminal responsibility or has only limited capacity of criminal responsibility, he may be held criminally responsible or be applied for compulsory medical treatment. At this point, there is also prevention of re-perpetration of crime, known as tertiary prevention. Mentally ill persons who are accused in criminal proceedings, especially when in custody, are entitled to appropriate medical conditions and timely medical treatment, as required by the constitutional principle of human rights protection.<sup>vii</sup> The procuratorial authorities should



include this in the scope of legal supervision and notify the public security organs or people's courts to rectify any violations. In addition, in compulsory medical procedures, mental patients have the right to appropriate and professional medical treatment, their human dignity, personal safety and other rights and interests shall not be violated. The procuratorial authorities supervise the implementation of the aforementioned compulsory medical treatment in accordance with Article 289 of the *Criminal Procedure Law*, and have the power to require compulsory medical institutions to perform their statutory duties, thus maximizing the effect of tertiary prevention of offenses by mentally ill persons.

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i In China, certain violations of the *Public Security Administration Punishment Law*, such as theft of relatively small amounts, do not reach the level of a crime because they are less socially harmful. Only violations of the *Criminal Law*, such as burglary, are called crimes. Acts committed by mentally ill persons in violation of the *Public Security Management Punishment Law* or the *Criminal Law* may not be liable because they do not have legal capacity, but their acts are all illegal or even criminal.

ii In China, certain local governments have developed specific mechanisms to implement this provision of the law. For example, in Rugao City, Jiangsu Province, the government stipulates that patients with specific mental disorders are to be hospitalized, and "individuals will not bear the related costs, the cost of inpatient treatment will first be paid through basic medical insurance and medical assistance, and any shortfall will be covered by special government funds."

iii This case is a legal aid case. I was assigned by the Legal Aid Center of Yuhui District, Bengbu City, Anhui Province, to provide legal aid to Mr. Guo, a mentally ill person in this case. After the trial, the Yuhui District Court decided to compel Mr. Guo to receive medical treatment according to the law.

iv China amended its *Constitution* in March 2018 and enacted the *Supervision Law* to build a new supervision system for all public officials exercising public power. The supervisory authorities have the authority to investigate and punish public officials who have abused their power or neglected their duties in preventing violations of the law by mentally ill persons.

v Article 15 of the *Civil Procedure Law* provides that "State organs, social organizations, enterprises and institutions, for acts that harm the civil rights and interests of the state, collective or individual, may support the injured unit or individual to bring a lawsuit in the people's court." Procuratorial organs can support specific parties in civil litigation based on this law.

vi According to Article 113 of the *Criminal Procedure Law*, the procuratorial authorities have the power to request the public security authorities to explain the reasons for not filing a criminal case when the public security authorities should have filed a case but did not do so. If the reasons are not valid, the procuratorial authorities have the power to notify the public security authorities to open a case for investigation, and the public security authorities should obey the supervision opinion.

vii Article 33 of China's *Constitution* states, "The State respects and guarantees human rights." The principle of human rights protection is also enshrined in the *Criminal Procedure Law*. The principle of human rights protection, which is the root of the interpretation and application of the criminal procedural system, is legally binding.

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