

## **Quality and method of forensic psychiatry leave much to be desired: An investigation into the right to judicial protection <sup>1</sup>**

*On April 18<sup>th</sup>, 2003, the bodies of two young girls were found under a bridge. A suspect with mental disorder later admitted to kidnapping and murdering the girls. He was sentenced to 6-year imprisonment. His sentence was cut short on the grounds that his mental condition has improved. The following year, he was arrested again. This time he was charged with pummeling a lady to death. Control Yuan Members launched an own-motion investigation and found disparate psychiatric assessments among responsible hospitals, lapses in supervision by government agencies, and negligence by medical institutions tasked with post-sentence custody.*

Before the trial, four hospitals were called upon to assess Mr. Chen's mental state, resulting in different diagnoses, from "loss of mental capacity"<sup>2</sup>, "full mental capacity"<sup>3</sup>, to "with mental defect"<sup>4</sup>. These diagnoses influenced the decision making by Taiwan High Court and the sentence was thusly mitigated to a 16-year imprisonment on the grounds that Chen had mental instability and an extrajudicial settlement had been reached. Circumstances prevent the principle of plea bargain to be applied to Chen, because there had been suspicion of him kidnapping the girls. Together, the kidnap and the yet-to-be-discovered murder are tried as a single offence. Failing to consider the facts, Taiwan High Court reduced Chen's sentence from 16 to a 12 -year imprisonment, plus 2-year custody, citing Chen's confession as reason. The sentence was further reduced to 6-year imprisonment in response to the nationwide Sentence Reduction for Criminals in 2007. As Chen had been detained for 2,222 days (6 years) up to that point, the High Court decided that no further sentence remained to be served. On July 3, 2009, Chen was released and transported to Beitou Armed Forces Hospital to begin his two-year custody. A mere four months later, with the approval of Prosecutor Office's of the Taiwan High Court, Chen was discharged from the hospital. The Control Yuan investigation discovered that Beitou Armed Forces Hospital had expedited Chen's release by downplaying his medical record and potential danger, because his behavior was causing problems for hospital staff. Apparently, probation fails to deter repeat offences of highly dangerous criminals with mental instability; therefore shall never be used to replace protective custody as an alternative form of punishment.

Beitou Armed Forces Hospital have revised the standard procedure for criminal psychiatric evaluation and hospital check-ins and discharge, by setting up a special unit to review assessment of mentally unstable patients, as well as conducting evaluation prior to

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<sup>1</sup> Case no. 0990800945

<sup>2</sup> The National Taiwan University Hospital

<sup>3</sup> Taoyuan Mental Hospital of the Dept of Health

<sup>4</sup> Taipei Veterans General Hospital and Beitou Armed Forces Hospital

hospitalization and monthly assessment to determine early discharge or not. The Hospital will be required to provide a bi-monthly assessment report to the prosecutor office. The Ministry of Justice has urged all responsible prosecutors to provide sufficient reference materials; to apply for extended detention if further evaluation is necessary; and to summon evaluators for cross-examination so as to prevent potential fraud. In addition to the required training hours, the Ministry has demanded a medical certificate and a minimum 7-year experience in psychiatric medicine as prerequisites for mental evaluators. Physicians tasked with forensic mental assessment will be subject to the same internship as that of forensic scientists, with a minimum of twenty cases before taking part in the actual job. Teaching hospitals at regional level and above will be tasked with post-sentencing custody. The Department of Health will survey hospitals assigned to conduct forensic mental assessment to gain some insights into their challenges, standard procedure, and age of evaluation workforce. Result of the survey will be submitted to the Ministry of Justice for reference.