

# Proof Problems in Assessment of Capacity for Criminal Responsibility for Offenders with Drug-Induced Mental Disorders

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## Abstract

Forensic assessment of capacity for criminal responsibility of offenders with drug-induced mental disorders is very complicated and challenging. The *Guidelines for assessment of capacity for criminal responsibility of offenders with mental disorders (SF/Z JD0104002-2016)* by the Ministry of Justice, PRC, was issued in order to standardize the assessment in this kind of cases. Both evidence and proof problems related to this regulation were discussed. Drawn on practice experience and judicial proof theory, the author argued that the principle of presumption of not-drug-induced mental disorder and the proof standard of beyond a reasonable doubt shall be followed in psychiatric assessment of this kind of cases. Comments on this regulation are made as well.

**Keywords:** Drug-induced mental disorder; Capacity for criminal responsibility; Forensic assessment; Evidence; Proof

## Introduction

In recent years, the number of criminal cases of drug-induced mental disorders has been increasing [1,2] resulting in an increase in the number of capacity for criminal responsibility evaluation cases. However, the evaluation of such cases is still confused [3]. In order to improve the consistency and standardization of forensic psychiatric evaluation, the Ministry of Justice, PRC, published the *Guidelines for assessment of capacity for criminal responsibility of offenders with mental disorders (SF/Z JD0104002-2011)* in 2011, and revised it (SF/Z JD0104002-2016) in 2016, Article 5.2.5 of which made more detailed provisions: "For persons with drug-induced mental disorders, if they involuntary ingested drugs, assess their capacity for criminal responsibility in accordance with Article 5.1; For those who voluntary ingested drugs, if mental symptoms affected their ability to appreciate or control, it is inappropriate to assess their capacity for criminal responsibility, a medical diagnosis may be made and their mental state at the time of the crime can be explained." In such cases, even if the evaluate was in a psychotic state such as hallucinations and delusions at the time of the crime, committed the crime under the control of psychotic symptoms, and lost the ability to appreciate and control, if the diagnose of "drug-induced mental disorder" was made, he should bear criminal responsibility. Thus, the importance of the diagnosis of "drug-induced mental disorders" is self-evident. However, by in-depth analysis of Article 5.2.5, we find that from the perspective of proof and proving, there are many difficult problems for forensic psychiatrists.

## Special tasks of forensic psychiatrists

According to Article 5.2.5, there are three proof tasks for forensic psychiatrists to complete in the evaluation of capacity for criminal responsibility in such cases. They are: (1) to determine/prove that the evaluate has mental symptoms (2) to determine/prove that the above-mentioned mental symptoms are caused by drug use. (3) to determine/prove that the evaluate is a "voluntary" drug user. Forensic psychiatrists are quite familiar with task 1. For task 2 and 3, the evidence and proof problems faced by psychiatrists, such as who should bear the burden of proof? What is the proof standard? Is there any presumption? And how

to examine the evidential qualification and probative force of the evidential materials on which the diagnosis and capacity for criminal responsibility is based? are different from those with not-drug-induced mental disorders.

### Distribution of burden of proof

whether the mental disorder is caused by the use of drugs, and whether there is a causal relationship between the use of drugs and the occurrence of mental disorders is often unclear, who bears the burden of proof in such circumstances? In the assessment of capacity for criminal responsibility in common criminal cases, the claimant bears the burden of proof [4]. But in cases of “drug-induced mental disorders”, according to the principle that the suspect should not be forced to incriminate himself in criminal proceedings, [5] it is obviously inappropriate for the evaluate to prove that his mental disorder is caused by drugs. The possible choice, then, is for the case handling units or the expert, or for both to share the burden of proof. Either way, new problems will arise.

### Presumption in evaluation

The presumption of not insanity has become the consensus of forensic psychiatrists [6]. What presumption should be followed to prove whether mental disorder is caused by drugs? Obviously, different presumptions may lead to completely different expert opinions for the same case. Based on the complexity of the etiology of mental disorders, the complexity of the role of drugs as pathogenic factors in the occurrence of mental disorders, and the seriousness of the legal consequences of diagnosis of drug-induced mental disorders for the evaluate, the presumption that mental disorders are not caused by drugs should be followed in forensic assessment of such cases.

### Proof standard in evaluation

One of the diagnostic criteria for mental disorders due to psychoactive substances is “it is reasonable to infer that mental disorders are caused by psychoactive substances entering the body”[7]. So, how should we understand “reasonable” in the evaluation practice? In other words, what standard of proof should be used to make a diagnosis? Considering its criminal nature, the complexity of the relationship between drug use and mental disorders, and the serious legal consequences of the diagnosis of “drug-induced mental disorders”, the proof standard of beyond a reasonable doubt should be adopted in the evaluation. The diagnosis of “drug-induced mental disorder” cannot be made just because the mental disorder is suspected to be caused by drug use.

### Examination of evidence in evaluation

Forensic psychiatrists need to examine the evidence qualification and probative force of evidence materials. Generally speaking, in the forensic expertise of psychiatry in criminal cases, the evidence faced by forensic psychiatrists is mainly submitted by the case-handling unit, and the legality of the evidence and other evidence qualifications are not the main problems What forensic

psychiatrists should pay attention to is the probative force of evidence. Study results showed that forensic psychiatrists think that the probative power of laboratory evidence is higher than the statement of the insider and the evaluate himself. In terms of evidence of drugs entering the body [8].

### Proof of voluntary drug use

The question of “voluntary” intake seems clear in most cases, but in practice the problem may not be as easy to judge as imagined. The first important problem we face is the definition of “voluntary”. For example, is it “voluntary” to take it voluntarily without knowing it at first? Is it “voluntary” to have a history of drug abuse and then take the initiative to give up drugs, but then have mental symptoms? In addition, what are the requirements and norms for evidence to determine that it is a “voluntary” intake? What kind of proof standard should be adopted, etc. It can be seen that there are also many outstanding problems for the examiner in determining/proving that the evaluate belongs to “voluntary” intake. It should be said that the determination of whether the identified person is a “voluntary” drug user is not a medical diagnosis problem, or even a medical problem. The psychiatrist’s judgment on this issue is no more professional and authoritative than that of the case handlers or insiders.

### Conclusion

The newly revised *Guidelines for the assessment of capacity for criminal responsibility of persons with mental disorders (SF/Z JD0104002-2016)* made more detailed provisions on the evaluation of capacity for criminal responsibility of persons with drug-induced mental disorders. This provision actually causes many theoretical troubles and practical problems, which increases the burden of forensic psychiatrist. it is recommended that the case handling units or the expert, or for both to share the burden of proof, the presumption of “not drug-induced mental disorder “shall be followed, the proof standard of “beyond a reasonable doubt” should be adopted, more attention should be paid to laboratory evidence. etc.

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