



# On the Criminal Compulsory Appraisal in China and Its Improvement

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## Abstract

Criminal compulsory appraisal is not only not clearly stipulated in our laws, but also controversial in the theoretical circles. Through the legal combing and empirical analysis, it is found that the compulsory appraisal under the meaning of “the responsibility of specialized organs” exists in a large number of China's criminal judicial practice, and the compulsory appraisal under the meaning is more conducive to the restriction of the arbitrariness of the specialized organs, and the protection of the rights and interests of the parties. And then for the system status quo, put forward “ expand ‘absolute compulsory identification’, strict ‘relative compulsory identification’, legal ‘factual compulsory identification’ ”In order to improve the criminal compulsory identification system in China, we propose to expand ‘absolute compulsory identification’, strict ‘relative compulsory identification’, statutory ‘factual compulsory identification’.

**Keywords:** Appraisal Initiation; Mandatory Appraisal; Discretionary

## Introduction

Criminal mandatory identification, refers to the specific conditions, the specialized organs in the process of handling criminal prosecution cases, the identification process does not enjoy discretionary power to start or not, but must start the identification process of the special identification of the initiation of the type. As early as the beginning of this century or so, the criminal compulsory identification, because of its correct determination of the facts of the case as well as the rights of the person being prosecuted has a good safeguard effect, and is accepted by the civil law system countries. Although China's criminal law exists on the mandatory identification of the relevant provisions, but scattered everywhere, not a system; At the same time, there are still many things need to be improved. Because of the mandatory identification belongs to the identification of the initiation of the field of content, at present, the academic community for the problem mainly as the identification of the initiation of the right to the field of view of the solution, or part of

the matter as well as the whole of the criminal mandatory identification system for the outlook, and the lack of China's current criminal procedure in the mandatory identification of the existence of a systematic elaboration and discussion of the research. Compared with previous studies, this study takes China's criminal compulsory identification as a separate research object, based on the existing criminal law norms, supplemented by empirical methods, while arguing that the connotation of China's adoption of criminal compulsory identification, outlines the current situation of China's criminal compulsory identification, and puts forward corresponding recommendations for various types of criminal compulsory identification. Theoretically, to break the traditional far from China's criminal procedure status quo on the mandatory identification of research thinking, the establishment of China's criminal mandatory identification framework; in practice, will greatly ensure the correct determination of the facts of the case as well as the rights and interests of the prosecuted person to protect, to reduce the occurrence of false and erroneous cases due to the “should



be appraised but not appraised”.

### The Debate on the Concept of Compulsory Criminal Identification in China

China's law does not clearly stipulate the concept of criminal compulsory appraisal, the academic community for the definition of criminal compulsory appraisal has not yet reached a unified understanding. At present, around the meaning of “mandatory”, can be roughly two doctrines, that is, “the obligation of the appraised person” and “the responsibility of the specialized organs”.

#### Obligation of the Person to be Appraised

“Party obligation” [1-4], can also be called “compulsory measures”, refers to the conditions stipulated in the law, the appraisee must cooperate with the specialized agencies to identify, if necessary, the specialized agencies can take coercive measures against the will of the appraisee to identify. Compulsory identification of coercion manifested in the coercive force of the appraisee.

According to this doctrine, firstly, the purpose of compulsory identification focuses on empowerment. Under certain conditions, the specialized organs are empowered to infringe upon the rights and interests of individual citizens within certain limits, so as to ensure the smooth handling of cases and better achieve the purpose of punishing crimes. Secondly, the object of compulsory appraisal for the appraised person, the performance of the appraised person's rights and interests of the infringement. Again, the identification of the program is mandatory. Once the specialized organs decided to start the identification process, the appraisal must cooperate with the specialized organs for identification, cannot be refused; with the specialized organs for identification is a legal obligation, with irresistible. Finally, the means of identification of compulsory. Compulsory identification of compulsory measures as a means of safeguard, when the appraiser does not cooperate, if necessary, can take compulsory measures to the appraisal of the appraisee.

Compulsory identification in this sense is particularly represented by the system of “identification detention”. According to Article 224 as well as Article 167 of the Japanese Criminal Procedure Code, “When the investigating authority conducts a mental or physical appraisal of a criminal suspect, it shall request the judge to detain the suspect. The judge determines a time to detain the suspect in a hospital or other appropriate place” [5]. Once the judge decides to conduct a psychiatric or physical evaluation of the suspect, the suspect loses his or her personal freedom and must cooperate with the evaluator in the designated place.

#### Responsibility of Specialized Agencies

“Specialized authorities responsibility”, which can also be called “statutory identification initiation”, means that under the conditions stipulated by law, the specialized authorities do not enjoy discretionary power over the initiation of identification procedures, and must initiate identification procedures for identification.

Based on the criterion of whether or not the conditions stipulated in the law are completely clear, this doctrine can be divided into the “absolute legal doctrine” and the “relative legal doctrine”. The “absolute legal theory” believes that the conditions for the initiation of compulsory identification should be clearly and explicitly stipulated, thus completely excluding the discretionary power of the specialized organs [6,7]. On the other hand, the “relative legal theory” focuses on the mandatory nature of the initiation of identification, and does not require the law to clearly define the initiation conditions, but allows for the existence of certain vague provisions [8,9].

According to this doctrine, firstly, the purpose of mandatory identification focuses on the limitation of power. Under statutory conditions, it limits the discretion of specialized organs to initiate identification, thus striking a balance between punishing crimes and safeguarding human rights. Secondly, the object of mandatory appraisal is the specialized organs, which manifests itself as a constraint on the behavior of the specialized organs. Once again, the initiation of the appraisal procedure is inevitable. Under the conditions stipulated by law, the specialized organs to start the identification procedure belongs to the responsibility of the specialized organs, so the specialized organs do not enjoy discretionary power for the start of the identification procedure, must start the identification procedure. Finally, the mandatory identification emphasizes the participation of the parties. When the specialized organ should appraise but does not, the party concerned is allowed to carry out relief, raise objections or apply for reconsideration.

Due to the common law system to take the party system, emphasize the role of the parties in the discovery of facts, while the appraiser as a witness, the start of the appraisal process as well as the selection of the appraisal are regarded as the parties to the individual's rights, and therefore does not provide for the specialized agencies must be initiated by the identification of the mandatory appraisal system; while the civil law system will be regarded as the judge's assistants, appraisal procedures to start with or without the appraisal of the appraisal of the commission by a specialized agency to decide. Specialized organs to decide. Therefore, in order to inhibit the discretionary power of the specialized organs in a certain procedure, to prevent the abuse of the specialized

organs of the right to start identification, Russia and Germany have established a mandatory identification system. Article 196 of the Russian Code of Criminal Procedure states: "The appointment of a judicial appraisal is mandatory in one of the following cases: (1) for the purpose of determining the cause of death; (2) for the purpose of determining the nature and procedure of damage to health; (3) for the purpose of ascertaining the criminal responsibility of a suspect or criminal defendant or his or her ability to independently safeguard his or her rights and lawful interests in criminal proceedings when there are doubts as to his or her criminal responsibility or ability to independently defend his or her rights and lawful interests in criminal proceedings. when doubt arises, in order to determine the psychological state or physical condition of the suspect, criminal defendant; (4) in order to determine the psychological state or physical condition of the victim when doubt arises about the victim's ability to correctly understand the circumstances meaningful to the case and the ability to provide a confession; (5) when the age of the suspect, criminal defendant, or victim is meaningful to the criminal case and there are no confirming document or such a document raises doubts, in order to establish his or her age" [10]. The German Code of Criminal Procedure provides for matters for which an expert must be engaged. These are: (1) when the defendant is admitted to a psychiatric hospital for the purpose of observing his mental state; (2) if it is deemed necessary to transfer the defendant to a psychiatric hospital, a place of confinement or a place of protection; (3) in the case of a post-mortem examination or an autopsy of a dead body; (4) when there is a suspicion of intoxication; and (5) in cases of counterfeiting of money or securities.

### **Empirical Analysis and Theoretical Clarification of the "Specialized Organ Responsibility Theory" of Mandatory Criminal Identification**

- The existence in practice of a large number of mandatory criminal identifications in the sense of the "doctrine of the responsibility of specialized agencies".

Under the theory of "responsibility of specialized organs", mandatory identification can be divided into absolute mandatory identification and relative mandatory identification, based on the criterion of whether the law specifies the specific conditions or not. Because whether it is absolute mandatory identification or relative mandatory identification is provided by law, it can be jointly referred to as legal mandatory identification. In addition, China's judicial practice, there is also a special situation: although the law does not provide for the identification must be initiated, but the specialized agencies in handling certain cases will often start the identification process, this situation we call the fact that mandatory identification.

**Absolutely Mandatory Identification:** Absolute compulsory appraisal refers to a type of criminal compulsory appraisal in which the specialized authorities must initiate the appraisal procedure under specific conditions specified in the law. First, at the filing stage, injury cases must be initiated with an injury evaluation. According to the "public security organs law enforcement rules (third edition)" (hereinafter referred to as "law enforcement rules") article 23-02 provisions, for injury cases, the public security organs in the acceptance of the case, the public security organs must be issued after the identification of injuries to hire the victim to carry out the identification of injuries; this is a procedural matter must be carried out for the identification of the matter of the initiation of the public security organs do not have the power of discretionary power, the victim did not apply for the initiation of the necessary and cannot refuse the identification, all parties must be in accordance with the provisions of the law with the identification process. The public security organs have no discretionary power over the initiation of identification in this matter, and the victim has no application for the initiation of identification. In addition, according to article 13-07, paragraph 3, of the Law Enforcement Rules, even if it is difficult to determine the jurisdiction to file an injury case, the case must first be handled by the department that first accepted the case and then transferred to the jurisdiction after the identification of the injuries, which means that under any conditions, the injury case must be initiated with the identification of the injuries at the time of the filing of the case.

Secondly, during the investigative stage, the identification of the person of the deceased victim, as well as the seizure and retrieval of valuable property, must be carried out by means of an appraisal. With regard to the human body, the identification of the person of the deceased victim must be carried out by means of an appraisal. Law Enforcement Rule 18-07, subparagraph 2, and Article 217 of the Public Security Procedural Provisions simultaneously provide that, "In the event of the death of a victim, the victim's identity shall be determined through identification by the victim's next of kin, or through the taking of biological samples for identification". The identification of a deceased victim must be done by means of identification as well as appraisal. So can we take only one way to determine the identity without identification? We think not, because the emergence of the article has a factual background, the 1998 "public security procedural provisions" does not provide for the determination of the identity of the death victim, but since then there have been famous wrongful convictions. In the She Xianglin case, the investigators did not take biological samples for identification, but relied on Zhang Niansheng's (the "victim's" brother) identification to determine the identity of the woman's body, which ultimately led to the emergence of the "return of the dead" wrongful death case

[11,12]. In the case of Zhao Zuohai, investigators also relied solely on the identification of Zhao Zuoliang (the nephew of the “victim”) to determine the identity of the male body, which led to Zhao Zuohai’s imprisonment for more than 10 years for nothing [13]. Therefore, in 2012, the Public Security Procedural Provisions were amended to include a new provision on the manner of determining the identity of the victim; therefore, we believe that the determination of the identity of the deceased victim should be by means of both identification and appraisal. With regard to property: Valuable property seized or retrieved must be identified. Section 230 of the Public Security Procedures Regulations and Rule 20-01 of the Law Enforcement Rules both provide that seized cash, gold, silver, and other valuable property shall be promptly identified and valued. At the same time, according to article 21-01 of the Law Enforcement Rules, such valuables seized must also be appraised and valued in a timely manner.

Once again, at the trial stage, the return of the victim’s lawful property should be identified. According to article 438 of the Interpretation of the Supreme People’s Court on the Application of the Criminal Procedure Law of the People’s Republic of China (hereinafter referred to as the Interpretation of the Criminal Procedure Law), the victim’s lawful property should be returned in a timely manner, but it must first be appraised and valued. Since the trial stage, part of the facts have been clarified, the evidence is indeed sufficient, in order to protect the legitimate interests of the victims, the property needs to be returned to the victims in a timely manner. The appraisal and valuation process is designed to ensure that the property returned is that of the victim, and to determine the value of the property at the time, so as to prevent the victim from objecting to the return of the property after the fact.

Finally, mandatory identification in special procedures. Article 302 of the Criminal Procedure Law provides that “mentally ill persons who have committed acts of violence, endangered public security or seriously jeopardized the personal safety of citizens, and who have been assessed through legal procedures as not being criminally responsible according to the law, and who are likely to continue to jeopardize society, may be subject to compulsory medical treatment.” At the same time, in accordance with article 632, paragraph 3, of the Interpretation of the Criminal Procedure Law, when the procuratorate files an application for compulsory medical treatment, the people’s court shall focus on examining “whether it is accompanied by a forensic psychiatric appraisal opinion and other evidence proving that the respondent is a mentally ill person who is not criminally liable under the law”. Accordingly, the identification of the person being pursued as a mentally ill person who is not criminally responsible is one of the conditions for the

initiation of compulsory medical treatment procedures; in other words, forensic psychiatric appraisal of the person being pursued is a precursor to the initiation of compulsory medical treatment procedures, so that in order for the specialized authorities to initiate the compulsory medical treatment procedures, the appraisal process must first be initiated.

**Relatively Mandatory Identification:** Relative compulsory identification refers to the specific conditions in the law is not clear, the specialized agencies must start identification procedures of a criminal compulsory identification. The difference between absolute compulsory appraisal and relative compulsory appraisal lies in whether the conditions stipulated in the law are clear; or in relative compulsory appraisal, the specialized authorities enjoy discretionary power to meet or not to meet the specific conditions, while in absolute compulsory appraisal, the specialized authorities do not enjoy discretionary power to meet or not to meet the specific conditions.

First, the principle of initiating an appraisal stipulates that an appraisal should be conducted when a specialized issue arises. Article 146 of the Criminal Procedure Law, article 248 of the Public Security Procedure Regulations, and article 23-01 of the Law Enforcement Rules all stipulate that, in order to ascertain the facts of a case and to resolve specialized problems in a case, an appraisal should be conducted. That is to say, the specialized organs should start the identification procedure when encountering specialized problems, but the law does not give a clear definition or provisions for specialized problems, and the most relevant provisions are only the provisions of the Supreme People’s Procuratorate on the provisions on several issues concerning the assignment and hiring of specialized knowledge to participate in the handling of the case (for trial use), Article 2 of which provides for the “specialized knowledge” and the “specialized knowledge” and the definition of “specialized knowledge”. In practice, whether an issue belongs to the specialized agencies often by the specialized agencies to judge, even if the parties to apply for the initial identification of the right, it is difficult to change the identification of the status quo, because of the identification of specialized issues continue to be monopolized by the specialized agencies. It can be said that the appraisal of the right to start the core is the right to identify specialized issues. In addition to the existence of specialized organs and the parties to the right to determine the speciality of the contradiction between the specialized organs of the right to determine the speciality of the contradiction between the specialized organs. Article 332 of the Procuratorial Rules provides that “where the people’s procuratorate considers it necessary to appraise certain specialized issues in a case and the supervisory organ or public security organ does not appraise them, it shall request the supervisory organ or public security organ to appraise

them. If necessary, the appraisal may also be conducted by the people's procuratorate, or the people's procuratorate may hire a person qualified to conduct the appraisal." This indicates that the procuratorate enjoys the procuratorial power to identify specialized issues, and that it may use its own procuratorial power to identify specialized issues to constrain the investigative and supervisory organs' power to identify specialized issues.

Secondly, when part of the evidence is in doubt, it should be authenticated. Article 108 of the Interpretation of the Criminal Procedure Law and article 23-06 of the Law Enforcement Rules provide that questionable audio-visual materials should be authenticated; at the same time, article 37-13 of the Law Enforcement Rules provides that questionable electronic data should be authenticated or tested. So whose doubt is meant here? Or who can ultimately determine whether the evidence is doubtful or not, and whether it is true and sufficient? In this regard, the Criminal Procedure Law, Article 162 provides that the public security organs of the end of the investigation of the case should be done to ensure that the evidence is true and sufficient; Article 176 even provides that the procuratorial organs to make the decision to prosecute the premise that the procuratorial organs that the evidence is true and sufficient. "Evidence is indeed sufficient with an eye to construction, and is mainly reflected in a positive and affirmative standard that applies to the use of evidence to prove the facts to be proved, and is an evaluation of positive proving activities" [14]. Therefore, in the stage of investigation and prosecution, where there is a lack of neutral discretion, whether a certain piece of evidence is true or not is often judged and determined by the specialized organs leading the stage; in addition, in the stage of trial, as the trial organ enjoys the right to determine the facts of the case, whether a certain piece of evidence is true or not is ipso facto determined by the trial organ ultimately. In conclusion, the specialized organs have the final authority to determine whether the evidence is in doubt.

Lastly, when the person being pursued may be mentally ill, he or she should be identified. Article 41-04 of the Law Enforcement Rules and article 342 of the Public Security Procedural Provisions stipulate that, in the course of handling violent cases, the public security authorities shall initiate a psychiatric appraisal of a criminal suspect when they believe that the suspect may be a mentally ill person who is not criminally liable; at the same time, according to the Interpretation of the Criminal Prosecution Law, article 638, the court of first instance shall initiate a forensic psychiatric appraisal of a defendant who may be eligible for compulsory medical treatment in the process of hearing a criminal case. At the same time, according to the Interpretation of the Criminal Procedure Law 638, the court of first instance, in the course of hearing a criminal case, shall initiate a forensic psychiatric

appraisal of the accused who may be eligible for compulsory medical treatment. So, is it only in cases of violence that the person being pursued may suffer from mental illness that an appraisal is carried out? Or is it the same as the identification of the pre-procedure of compulsory medical treatment? The answer is no. First, the scope of application is different. Article 333 of the Procuratorial Rules stipulates that "in the examination and prosecution, if it is found that the criminal suspect may be suffering from mental illness, the people's procuratorate shall conduct an appraisal of the criminal suspect in accordance with the relevant provisions of these Rules." This indicates that the identification of the person being pursued who may be suffering from mental illness is not limited to violent cases; secondly, the conditions of application are different. Compulsory medical procedures need to fulfill three conditions: committing violent acts that endanger public security or seriously jeopardize the personal safety of citizens, belonging to the mentally ill who are not criminally responsible according to the law, and having the possibility of continuing to jeopardize society. Therefore, in violent cases, may suffer from mental illness of the person being pursued for identification will not necessarily start compulsory medical procedures. Third, the application of mandatory different. For may be suffering from mental illness of the accused, the specialized agencies should be identified; but for whether the accused belongs to may be suffering from mental illness of this judgment, the specialized agencies enjoy discretion, if the specialized agencies think that the accused does not belong to may be suffering from mental illness of the situation, then it can not start the identification process. However, no conditions have been set for the initiation of identification as a pre-compulsory medical treatment procedure, giving the public security authorities the space to make their own judgments; that is to say, in order to initiate the compulsory medical treatment procedure, identification must be carried out, or else it will not be possible to initiate the compulsory medical treatment procedure.

**Compulsory identification of facts:** The implementation of mandatory identification refers to a type of criminal mandatory identification under specific conditions, although the law does not stipulate that identification must be initiated, but in practice the specialized agencies often initiate the identification process.

Here, we take the crime of currency counterfeiting as an example, and under the premise of making it clear that there is no law explicitly stipulating that the specialized authorities must initiate identification when dealing with cases of currency counterfeiting, we adopt a combination of procedural and manual methods to analyze and judge the relevant adjudicative documents, so as to explore the initiation of identification in cases of currency counterfeiting by the specialized authorities in practice. Specific operation:

the first step, program screening. Data source: Beida Faber Judicial Case Database; search method: first, set the search scope as “title”, then enter the keyword “crime of counterfeiting currency”, select “start searching”; after that, set the search scope as “title”, enter the keyword “judgment”, and select “search in results”; search results: The number of eligible cases is 234; the second step is manual screening. Data source: 234 cases screened out in the first step; screening conditions: whether the specialized organs start the appraisal procedure in handling cases of currency counterfeiting, appraisal of currency suspected of being counterfeited; screening results: the number of cases in which the appraisal of currency suspected of being counterfeited was not specified was 33, and the appraisal initiation rate was 86%.

After a thorough study of these 33 cases, they can be grouped into five categories on the basis of the reasons given in the judgements for not stating that a specialized authority had authenticated the currency suspected of having been counterfeited (cf. chart 1).

First, there is no object of identification, i.e., no counterfeit currency exists in the case. Although the Circular of the Supreme People’s Court on the Issuance of the Minutes of the National Symposium on the Trial of Financial Crime Cases by the Courts (hereinafter referred to as the Minutes of the Symposium on Financial Crimes) stipulates that “a person who counterfeits currency is guilty of the crime of currency forgery as long as the act of counterfeiting has been carried out, irrespective of whether or not all the printing processes have been completed; and that for those who have not yet manufactured a finished product, and who are unable to calculate the denomination of the counterfeiting or selling of the counterfeit currency, or the manufacture or sale of the plates used for counterfeiting the currency, the amount of the crime shall not be determined, and the penalty shall be decided on the basis of the circumstances of the crime.” However, according to the Measures for the Administration of the People’s Bank of China on Currency Identification and the Collection and Appraisal of Counterfeit Currency (hereinafter referred to as the Measures for Currency Identification), the plate samples used for counterfeiting currencies cannot be appraised like currencies, and do not belong to the appraisable objects. And (2019) 冀0402刑初269号 case, the defendant only buy and sell plate samples used for counterfeiting currency, so objectively cannot start the identification process. Second, the omission of records (2015) Fei criminal initial No. 407 case judgment, did not state that the evidence on which the judgment was based contained an appraisal opinion; but its second instance criminal ruling in the first instance court identified part, clearly recorded “the above facts, there are the original trial court cross-examination of the search transcripts, seizure

lists, the search site photographs and photographs of the counterfeit currency, the physical evidence involved in the case of the hydraulic press, the pump photographs, The above facts are confirmed by evidence such as the contract of purchase and sale, the certificate of authenticity of counterfeit currency and income vouchers of counterfeit currency, and the confessions of the defendants Qian Wei, Qian Mang and Xu Shibin”. This shows that in the process of the first instance case has been initiated identification procedures. Third, the existence of alternative evidence. According to the “currency identification methods” article 4 paragraph 1 of the provisions, “the identification referred to in this method refers to the financial institutions in the process of handling deposit and withdrawal, currency exchange and other business processes, the authenticity of the currency to determine the behavior.” Article 6 provides that the People’s Bank of China and financial institutions identify currency, and collect as well as identify counterfeit currency. Currency seizure is divided into two stages, first identifying the currency as counterfeit and then seizing the counterfeit; this indicates that the currency seizure voucher has the function of proving that the currency is counterfeit. In addition, due to the provisions of Article 21, only the collected person on the currency collection objection to start the currency identification procedures, when the collected person has no objection, the currency collection voucher plays the role of currency authenticity appraisal of the opinion of the role of the currency to prove that the collection of the currency for the counterfeit currency. Fourth, evidence-free facts. According to the provisions of Article 401 of the Procuratorial Rules, according to the people’s court effective decision confirmed and not in accordance with the trial supervision procedures to re-trial of the facts do not have to put forward evidence to prove; has been in the other decision after the legal appraisal of the facts confirmed as fake currency and has not been re-trial to overthrow the facts, the other decision can be directly determined by the existence of the facts related to the fake currency. For example, in Liu Jiale’s first instance criminal judgment of the crime of counterfeiting currency, it directly sets out (2018) E0607 criminal judgment No. 17 and (2017) Gan0923 criminal judgment No. 196 as the evidence to determine that Liu Jiale’s facts of the crime of counterfeiting currency, of which (2018) E0607 criminal judgment No. 17 is explicitly identified to confirm the existence of the fact of counterfeit currency. However, due to the limited means and data, (2020) chuan 0114 criminal case 345 and (2018) su 1281 criminal case 713 can’t clearly identify the related cases, therefore, for the two cases are based on the related cases as a basis for the direct determination of the facts of the case is doubtful. Fifth, the contents of the cases have not been made public. Since the contents of the relevant cases have not been made public, we are temporarily unable to determine whether the appraisal process has been initiated during the handling of the cases.

Type of Cause	Number	Case Number	Specific Reasons for Non-appearance of An Appraisal Opinion
No object of Identification	1	(2019) JI 0402 The First Instance of Criminal Case No.269	No counterfeit currency in the case
Omission	2	(2015) Fei The First Instance of Criminal Case No.407	The existence of an expert opinion on the basis of which the decision was not set out in the judgment of first instance
Alternative Evidence Exists	3	(2016) E 0703 The First Instance of Criminal Case No.22	The People's Bank of China Ezhou City Central Sub-branch confirms in accordance with the law that it has seized the above seized counterfeit currencies handed over by the investigating authorities.
	4	(2020) Chuan 1923 The First Instance of Criminal Case No.39	Defendant Chen Xiaojing was caught in possession of 131 pieces of counterfeit RMB when she went to the Xiping Street Savings Office of the Pingchang County Branch of the China Postal Group Company and asked to store
	5	(2020) Yue 1972 The First Instance of Criminal Case No.84	Counterfeit currency seizure vouchers issued by the People's Bank of China
	6	(2018) Jin 0802 The First Instance of Criminal Case No.474	People's Bank of China Counterfeit Currency Collection Slip and People's Bank of China Yuncheng City Central Sub-branch Counterfeit Currency Revenue Voucher
	7	(2019) Liao 1202 The First Instance of Criminal Case No.44	People's Bank of China Tieling Central Sub-branch Issues Fake RMB Confiscation Receipt
	8	(2017) Wan 1322 The First Instance of Criminal Case No.277	In the related case (2017) Yu 1503 The First Instance of Criminal Case No.44, it has been confirmed through identification that its <u>unstream purchase of calcined coins</u>
	9	(2018) Su 0508 The First Instance of Criminal Case No.130	In the related case (2018) E 0607 The First Instance of Criminal Case No.17, it has been authenticated and proved to be counterfeit
Disproof Fact	10	(2020) Chuan 0114 The First Instance of Criminal Case No.345	Jiang (another case) met "Lao Xie" (at large) on the Internet and agreed that "Lao Xie" would provide the equipment, tools and technology for manufacturing counterfeit currency, and that defendant Lei Lin and others would provide the premises and labor, and agreed on the way to share the profits after <u>making counterfeit currency</u>
	11	(2017) Shan 0831 The First Instance of Criminal Case No.3	In the related case (2016) Shan 0831 The First Instance of Criminal Case No.47, it has been authenticated and proven to be counterfeit
	12	(2018) Su 0382 The First Instance of Criminal Case No.19	In the related case (2017) Su 0382 The First Instance of Criminal Case No.986, it has been authenticated and proven to be counterfeit
	13	(2018) Su 1281 The First Instance of Criminal Case No.713	Defendant Guo sold a set of electronic proofs of the RMB 20 denomination to Xiao (to be dealt with separately) for RMB 800. The proofs were used by Xiao to manufacture counterfeit currency in Henan Province and in Dainan Town.
	14	(2018) Nei 0302 The First Instance of Criminal Case No.486	In the related case (2018) Yu 0425 The First Instance of Criminal Case No.79, it has been authenticated and proved to be counterfeit
The content of the case has not been made public	15	(2016) Min 0802 The First Instance of Criminal Case No.998	The content of the case has not been made public
	16	(2017) Min 0802 The First Instance of Criminal Case No.838	The content of the case has not been made public
	17	(2017) Jin 0830 The First Instance of Criminal Case No.189	The content of the case has not been made public
	18	(2017) Chuan 08 The First Instance of Criminal Case No.53	The content of the case has not been made public
	19	(2019) Shan 0526 The First Instance of Criminal Case No.45	The content of the case has not been made public
	20	(2020) Wan 1623 The First Instance of Criminal Case No.299	The content of the case has not been made public
	21	(2021) Yue 0608 The First Instance of Criminal Case No.107	The content of the case has not been made public
	22	(2018) Wan 1003 The First Instance of Criminal Case No.56	The content of the case has not been made public
	23	(2019) Zhe 0109 The First Instance of Criminal Case No.1762	The content of the case has not been made public
	24	(2019) Shan 0625 The First Instance of Criminal Case No.157	The content of the case has not been made public
	25	(2018) Yu 0153 The First Instance of Criminal Case No.391	The content of the case has not been made public
	26	(2018) Shan 0625 The First Instance of Criminal Case No.52	The content of the case has not been made public
	27	(2018) Chuan 1502 The First Instance of Criminal Case No.141	The content of the case has not been made public
	28	(2020) Chuan 11 The Last Instance of Criminal Case No.45	The content of the case has not been made public
	29	(2018) Min 0681 The First Instance of Criminal Case No.779	The content of the case has not been made public
	30	(2020) Wan 1623 The First Instance of Criminal Case No.229	The content of the case has not been made public
	31	(2019) Shan 0802 The First Instance of Criminal Case No.167	The content of the case has not been made public
	32	(2019) Jin 1122 The First Instance of Criminal Case No.74	The content of the case has not been made public
	33	(2019) Yu 0102 The First Instance of Criminal Case No.161	The content of the case has not been made public

**Chart 1:** Thirty-three judgements in which no expert opinion appeared.

For the above cases of currency counterfeiting, we should take the appraisal in the sense of the result as the standard to judge whether the appraisal procedure is initiated (i.e., whether there is an appraisal in the sense of evidence in the litigation). Reasons are as follows: a, from the legal provisions and practice of the operational relationship between the perspective of the procedural significance of the appraisal to start as a criterion for the judgment contrary to the actual situation. As the law does not provide for the case of currency counterfeiting must start the identification process, so in practice for the authenticity of the currency of this specialized issue of a variety of ways to deal with, in addition to the normative significance of the appraisal of the opinion, there are evidence of currency seizure; therefore, the procedural significance of appraisal as a criterion for judging whether to start the appraisal, easy to currency seizure vouchers, such as the normative appraisal procedures and the evidence derived from the qualitative For documentary evidence, the wrong application of the rules of evidence review, which may lead to the case of factual error; Second, from the perspective of the identification of the initiation of the relationship between the appraisal and the appraisal opinion, the identification of the initiation of the appraisal process is a necessary condition for the appraisal of the opinion. From the perspective of the results, the identification process is to produce identification procedures, identification is the result of the identification process, so the existence of the identification opinion shows that the identification process has been carried out; however, not as long as the start of the identification process will inevitably produce identification opinion. According to the provisions of article 29 of the general rules of judicial appraisal procedures, judicial appraisal institutions in the appraisal process, will be due to the law of the six cases of termination of the appraisal; and appraisal institutions decided to terminate the appraisal, only need to notify the client in writing, and explain the reasons, return the appraisal material, and no longer issue appraisal opinions. Therefore, the results of the appraisal of the meaning of the standard to determine whether the appraisal process is more accurate. Then, the first category, due to the inability to identify, so do not count as not start the identification process; the second category, has proved to start the identification process; the third category, due to the currency collection vouchers essentially play the role of the identification opinion, from the point of view of the evidence can be counted as the start of the identification process; As for the fourth category, due to the fact that the facts have been confirmed by the appraisal of the other cases, belong to the exemption of facts, do not need to start the identification process. As for the fourth category, since the fact has been confirmed by appraisal in other cases, it is an exempted fact and does not need to initiate the appraisal procedure to prove the relevant facts, even if it is proved by quoting the appraisal

opinions in other cases. In addition, due to (2020) Chuan 0114 criminal case No. 345 and (2020) Chuan 0114 criminal case No. 345 related cases cannot be found, doubtful, and for the time being, it is recognized that no appraisal procedures have been initiated. In the fifth category, the cases could not be identified as having initiated an appraisal program due to their content not being made public, so these 19 cases were excluded from the data. In the end, the number of cases in which the appraisal procedure was initiated was 213, the number of cases in which the appraisal procedure was not initiated was 2, and the appraisal initiation rate was 99%. In summary, we can assume that specialized agencies often initiate the appraisal procedure in the course of dealing with the crime of counterfeiting currency.

### **“Specialized organs’ responsibility” is more suitable for the current situation of criminal justice in China**

At present, China does not have the need to establish a separate compulsory appraisal system in the sense of “party obligation”.

First, in criminal proceedings, the right of citizens to testify and the obligation to cooperate in testifying have indicated that citizens should cooperate in identification. Article 52 of the Criminal Procedure Law of the People’s Republic of China (hereinafter referred to as the Criminal Procedure Law) provides that “..... must ensure that all citizens who are related to the case or who have knowledge of the case are in a position to objectively and adequately provide evidence, and may be absorbed to assist in the investigation, except in special circumstances”. This is from the positive side, the specialized organs should cooperate with the identification of citizens to be supported on the conditions; at the same time, article 54, paragraph 1, “the people’s courts, people’s procuratorates and public security organs shall have the right to the relevant units and individuals to the cell phone, to retrieve evidence. The units and individuals concerned shall truthfully provide evidence”. Article 137 states, “Any unit or individual shall be obliged to hand over, at the request of the people’s procuratorate and the public security organs, physical evidence, documentary evidence, audio-visual materials and other evidence that can prove the guilt or innocence of a criminal suspect.” On the contrary, if the specialized authorities request the appraisee or the person concerned to provide samples in order to clarify the facts of the case, the appraisee or the person concerned should cooperate, that is to say, it is a legal obligation of the person concerned to cooperate with the specialized authorities in conducting the appraisal; therefore, there is no need to reiterate the mandatory appraisal procedure in this sense alone.



Secondly, there is a system of compulsory identification in criminal proceedings similar to, but not limited to, identification in the sense of “party obligation”. China’s criminal procedure law shows varying degrees of coercion in searches, inspections and post-mortem examinations. Article 136 of the Criminal Procedure Law provides that “in order to collect evidence of a crime and seize the perpetrator, investigators may conduct searches of the bodies, belongings, dwellings and other relevant places of criminal suspects as well as of those who may be concealing the perpetrator or evidence of the crime.” Article 132 states, “In order to determine certain characteristics, injuries, or physiological states of the victim or suspect, the person may be examined, fingerprint information may be taken, and biological samples such as blood and urine may be collected.” Article 131 states, “In the case of a corpse whose cause of death is unknown, the public security organs have the right to decide to conduct an autopsy and to notify the family of the deceased of its presence.” The above legal provisions all indicate that, once the specialized authorities decide to initiate the identification, the person to be identified or the relevant person should cooperate to provide fingerprint information, biological samples and other identification materials; in particular, in the autopsy, the specialized authorities to the relevant person’s instructions and notification of the obligation to inform rather than to seek consent, even if the relevant person refuses to cooperate, the specialized authorities still have the power to carry out the identification, which is a very prominent performance of the Compulsory.

Finally, from the perspective of judicial practice, the specialized organs of our criminal procedure need to be limited rather than empowered. China’s criminal procedure system is an *ex officio* criminal procedure system, in which the specialized organs have greater powers and the parties and other participants in the proceedings have fewer rights; thus, in the course of criminal proceedings, it is very easy for the phenomenon of public power infringing on private power to occur, and the same is true with regard to the taking of evidence. Zhang Jun, then Procurator General of the Supreme People’s Procuratorate, wrote in his Report on the Work of the Supreme People’s Procuratorate, published at the Second Session of the Thirteenth National People’s Congress, that “58,744 written corrections were made to investigative organs for illegal evidence collection and improper application of coercive measures, a year-on-year increase of 22.8 percent” [14]. Therefore, what the current legal norms of criminal procedure in China need to do more than anything else is to limit the powers of specialized organs in order to safeguard the rights of citizens, rather than to give specialized organs more power to infringe on the rights of citizens.

### **There is an Urgent Need to Establish a Mandatory Appraisal System in the Sense of “The Responsibility of Specialized Organs”**

First, the current situation of specialized organs’ exclusive right to initiate appraisals requires the Criminal Procedure Law to place certain restrictions on the specialized organs’ right to initiate appraisals. According to article 174, paragraph 2, of the Provisions on Procedures for Handling Criminal Cases by Public Security Organs (hereinafter referred to as the Provisions on Public Security Procedures) and article 169 of the Rules of Criminal Procedure for the People’s Procuratorates (hereinafter referred to as the Procuratorial Rules), the initiation of an appraisal shall be decided by the investigating authorities at the case-filing stage. Under article 218, paragraph 1, of the Procuratorial Rules, at the investigation stage, the initiation of identification is decided by the investigating authorities. Article 336 of the Procuratorial Rules provides that, at the stage of examination and prosecution, the initiation of identification shall be decided by the procuratorial authorities. According to article 196, paragraph 2, of the Criminal Procedure Law, at the trial stage, the initiation of identification is decided by the trial authority. In addition, although the supervisory authorities are not specialized organs in criminal proceedings in China, the investigation process is closely related to criminal proceedings and should therefore be given attention. According to article 27 of the Supervision Law of the People’s Republic of China, in the investigation procedure, the initiation of identification is also decided by the supervisory organ. In contrast, the person concerned only enjoys the right to apply for supplementary appraisal and re-appraisal, as well as the right to apply for an initial psychiatric appraisal as provided for in article 221, paragraph 3, of the Prosecution Rules. Therefore, from the perspective of equal confrontation between the prosecution and the defence, there should be some limitations on the specialized authorities’ right to initiate an appraisal.

Secondly, compulsory identification in the sense of the “duty of specialized authorities” is more broadly inclusive. The “duty of the expert” theory emphasizes that mandatory identification refers to “the ‘compulsory measures’ taken by the judicial organs against the parties” [1]. But this statement cannot explain in the case of the victim’s family objected to the dead victim (in the case of the identification of the death of the victim) to carry out post-mortem examination of the victim or to the victim’s family to take coercive measures; and this statement cannot cover the phenomenon of compulsory measures to the identification of property; even if the object includes property, due to the requirement of this statement to start the identification of the first and then take coercive measures, it is impossible to explain the first compulsory

measures, the first compulsory measures. It is impossible to explain the phenomenon of taking coercive measures to retrieve or seize property before conducting an appraisal. On the contrary, because the “specialized organs responsibility theory” for specialized organs, not concerned with the cooperation of the appraisee, the appraisal process whether to take coercive measures, so the above circumstances can be “specialized organs responsibility theory” included.

Finally, extraterritorial mandatory identification generally refers to mandatory identification in the sense of “the responsibility of specialized agencies”. As discussed above, the compulsory identification system is generally only civil law countries to provide for the law, and civil law countries on the understanding of compulsory identification is also “specialized agencies responsibility” in the sense of compulsory identification. And “the appraisee obligation” sense of compulsory identification, basically equal to Japan’s “appraisal lien” system, but “appraisal lien” of the concept of superior belongs to the “Compulsory investigation”, only because of its association with the identification program and ignore the nature of its investigation for independent research, cannot help but have the suspicion of putting the cart before the horse, it should be placed in the “compulsory investigation” under the general concept of research.

In the light of the foregoing, we believe that mandatory identification in the sense of the “doctrine of the responsibility of specialized agencies” should be adopted.

Improvement of Criminal Compulsory Identification in China

### **Expansion of Absolute Mandatory Identification**

China’s current absolute mandatory identification of a narrower scope, based on the correct identification of the facts of the case and the need to protect the rights and interests of the parties, we believe that from the following two directions to expand China’s criminal absolute mandatory identification.

First, the positive inclusion of matters of factual mandatory identification. Although the law does not stipulate that factual mandatory identification matters must initiate identification procedures, in practice, specialized agencies often initiate identification procedures for identification; at the same time, since the law is not binding on them, and they are summaries of practical experience, the practices of specialized agencies around the world vary widely, with some replacing the identification opinion with other evidence, and some directly proving it with the judgments of other cases. Therefore, from the perspective of unifying

the legal system, punishing crimes and safeguarding human rights, it is necessary to legalize the mature appraisal experience in practice, such as the appraisal of currency in cases of counterfeit currency, the appraisal of poison in cases of drugs, and the appraisal of the cause of death in cases of death, and so on.

Second, the reverse excludes inefficient identification matters. Criminal procedure efficiency is the ratio of criminal procedure output to criminal procedure cost. China’s criminal procedure in the process of realizing the punishment of crime and protection of human rights, should also consider the efficiency of criminal proceedings, so for some of the appraisal of factual findings do not have much impact on the appraisal of the matter, the cost of appraisal of the appraisal of its obvious more than the appraisal output, should be prohibited from initiating the appraisal, to prevent undue delays in the litigation. China’s civil procedure has been stipulated, “the supreme people’s court on the trial of construction project construction contract disputes, the interpretation of applicable law (a)” article 28, “the parties agreed to settle the price of the project in accordance with the fixed price, one of the parties requesting appraisal of the construction cost of construction works, shall not be supported.” Article 29 provides that “the parties have reached an agreement on the settlement of the price of the construction project before the litigation, and the people’s court shall not permit a party to apply for an appraisal of the cost of the construction project during the litigation.” Article 31 provides that “the parties to some of the facts of the case are disputed, only the disputed facts for identification .....” Accordingly, can be combined with the criminal procedure case practice, in the absolute identification or relative identification in the establishment of proviso clause. For example, in the absolute mandatory appraisal of the return of the victim’s property, if the victim indicates to the specialized organ in person that he or she has no objections to the return of the property, the specialized organ shall not appraise or value the returned property.

### **Strictness of Relative Mandatory Identification**

Because in the relative mandatory identification, the specialized organs hold the power to determine the conditions for mandatory identification, some scholars believe that “the criminal procedure law does not stipulate the conditions for initiating the identification in the legislation, but only as a completely discretionary power” [6]. Therefore, in the relative mandatory identification, how to inhibit the specialized organs of the mandatory identification conditions of excessive discretion is a problem that needs to be solved. In this regard, we believe that the parties can be mobilized in terms of both procedures and criteria, thereby limiting the

discretionary power of the specialized authorities.

Procedurally, the specialized organ has the obligation to explain, and the party concerned enjoys the right to defend: if the specialized organ considers that the conditions are not met, the specialized organ shall explain to the party concerned, and if the party concerned has any objection, he/she shall enjoy the right to apply for reconsideration. Since compulsory identification is an interest conferred by law on the party concerned and a responsibility required of the specialized organ, if the specialized organ does not initiate compulsory identification, it is an infringement of the party's interests, so the specialized organ has an obligation to explain, and at the same time, the party concerned should enjoy the right to defend its interests. For example, in the relative compulsory appraisal that the person being prosecuted may be mentally ill, if the specialized organ considers that the person being prosecuted may not be mentally ill and that it is not a compulsory appraisal matter, the specialized organ should explain this to the person concerned, but the person concerned has the right to apply for a reconsideration if he or she considers that it is a compulsory appraisal matter. As to whom to apply for reconsideration, we believe that the application can be made either to the specialized organ that made the determination that the subject matter of the compulsory appraisal does not meet the criteria for compulsory appraisal or to the procuratorate, or, in the case of an application made by the investigative department of the procuratorate, to the procuratorate at the higher level of the organ that made the application.

In terms of criteria, a finding of non-compliance made by a specialized body should meet the standard of beyond reasonable doubt, while the party's application for reconsideration should provide prima facie evidence of reasonable doubt as to the reasons for the decision. When the specialized body makes a determination, it shall meet the standard of beyond reasonable doubt, i.e., it shall clearly prove that the matter is not of a specialized nature or that there is no doubt, whereas at that point the person concerned may provide evidence to prove or disprove this, in order to show that it may be of a specialized nature or that the evidence may be doubtful, or that the person being prosecuted may be suffering from a mental illness. In the party's application for reconsideration, must provide evidence to prove that the specialized authorities do not meet the conditions of the determination of the error, do not need to achieve clarity, only to give rise to the tendency that may be found to be possibly wrong. For example, for the specialized authorities that the pursued person may not suffer from mental illness and make the conditions do not meet the determination, and then the parties to provide the pursued person before and after the occurrence of the psychiatric case report, as well as past medical history records, etc., to achieve the "ordinary rational

person" are able to produce does not meet the determination of the tendency to be wrong, then the specialized authorities should be (b) Initiate identification procedures.

### Statutory Mandatory Identification of Facts

According to the above analysis, China's specialized agencies often initiate appraisal procedures in handling cases of currency counterfeiting, but because there is no law to regulate them, they are handled in a variety of ways. Therefore, from the perspective of harmonizing the legal system, it is necessary to incorporate the already mature matters of compulsory appraisal of facts into the statutory matters of compulsory appraisal.

However, should all factual compulsory identification be included in absolute compulsory identification? We believe that this is questionable. This is like whether all suspects and victims should be identified by age, should be treated differently according to the situation. For there is no evidence to prove, and directly affect the crime and non-crime, the crime and the key facts of the crime, should be included in the absolute mandatory identification; and for there is evidence to prove, but need to evidence to strengthen the facts, should be included in the relative mandatory identification.

In addition, should it be legalized on the basis of the type of case or on the basis of specific identification matters? We believe that it should be legalized according to the specific identification matters. Counterfeiting currency, for example, although the German Criminal Procedure Law will be "counterfeiting currency and securities cases" within the scope of mandatory identification, but according to the "Financial Crimes Symposium Summary" of the provisions of the crime of counterfeiting currency, we also include the production and sale of production templates for counterfeiting currency, and templates do not belong to the object of identification, therefore, from the objective whether to be able to Therefore, from the point of view of whether it is objectively possible to initiate identification, it should be stipulated that if there is any doubt about the authenticity of the currency in the case, it should be identified. By analogy, the mandatory identification of drug-related crimes should also provide for the identification of suspected drugs.

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