SHELTERING FOR EXAMINATION
(SHOURONG SHENCHA) IN THE LEGAL
SYSTEM OF THE PEOPLE’S REPUBLIC
OF CHINA

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SHELTERING FOR EXAMINATION (SHOURONG SHENCHA) 
IN THE LEGAL SYSTEM OF THE PEOPLE'S 
REPUBLIC OF CHINA*

Tao-tai Hsia** and Wendy I. Zeldin***

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I. Introduction

At its spring 1991 meeting, the United Nations Commission on Human Rights created the Working Group on Arbitrary Detention, whose five members are to investigate cases of arbitrary detention throughout the world.\(^1\) According to a participant in the deliberations preceding its formation, "The creation of the group represents a great leap forward in the Commission's protective work. Its mandate to 'investigate' gives it an unprecedented means of action, while the expansive term 'arbitrary' ensures that the group will have a heavy caseload."\(^2\) The group's terms of reference were agreed upon as investigation of "cases of detention which are imposed arbitrarily or otherwise inconsistently with the international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned."\(^3\) In human rights parlance, the term "arbitrary" has been broadly defined. According to what is described as the most authoritative definition,

'arbitrary' is not synonymous with 'illegal' and ... the former signifies more than the latter. It seems clear that, while an illegal arrest or detention is almost always arbitrary, an arrest or detention which is in accordance with law may nevertheless be arbitrary. The Committee [appointed by the UN Commission on Human Rights to study the right of freedom from arbitrary arrest, detention, and exile], therefore . . . has adopted the following definition: an arrest or detention is arbitrary if it is (a) on grounds or in accordance with procedures other than those established by law, or (b) under the provisions of a law the purpose of which is

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\(^1\)The session was held from Jan. 28 to Mar. 8, 1991. Reed Brody, "The United Nations Creates a Working Group on Arbitrary Detention," 85-4 American Journal of International Law 709–715 (Oct. 1991). There are five members in the group, one expert from each of the five regional UN groups (Western European and others, Eastern European, the Latin American and Caribbean, and African and Asian), Brody at 709, 711.

\(^2\)Brody, id. at 712. The author further notes that "investigation" . . . implies reaching some form of conclusion. Whether or not the new working group reaches a formal decision on each case submitted to it, it should be able, in its yearly report, to present more analysis of the cases than is the current practice of the other mechanisms." Id. at 714. Theme or "thematic" mechanisms refer to the working groups or rapporteurs of the UN Commission on Human Rights that are issue or theme-oriented rather than country-specific. For example, in addition to the Working Group on Arbitrary Detention, there are the Working Group on Enforced or InvoluntaryDisappearances and Special Rapporteurs on Torture and on Summary or Arbitrary Executions, Brody at 709.

incompatible with respect for the right to liberty and security of person.\(^4\)

Because no consensus could be reached as to whether to include within the working group’s mandate only persons held without trial or all those wrongfully deprived of liberty, the ambiguous word “detention,” used in the draft resolution, was retained. The Commission delegates agreed, however, that “the mechanism would not be limited to administrative detention, as some had suggested, but would cover all forms of detention, including judicially ordered detention.”\(^5\)

In light of the formation of the Working Group on Arbitrary Detention, it is especially timely to examine certain aspects of arbitrary detention in the People’s Republic of China (PRC). In the aftermath of events culminating in the massacre near Tiananmen Square on June 4, 1989, many people associated with the pro-democracy movement were taken into custody and held for extensive periods of time without being formally detained or being cases adjudicated by a court of law.\(^6\) The incarceration was often carried out by means of a measure known as “sheltering for examination” (shourong shencha). This extra-judicial, purportedly administrative, measure of detention gives public security organs (the police) rather broad leeway in incarcerating people; that is, powers beyond those conferred by normal procedures of arrest and detention prescribed in formal legislation such as the Code of Criminal Procedure,\(^7\) the Regulations of the PRC Governing Arrest and Detention,\(^8\) and the Regulations of the PRC on Administrative Penalties for Public Security (also translated as the Security

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\(^4\)Brody, supra note 1, at 713, quoted from “Study of the Right of Everyone To Be Free From Arbitrary Arrest, Detention and Exile,” UN Doc. E/CN.4/826/Rev.1, at 7, ¶27 (1984). The author points out that the UN Human Rights Committee has included a variety of actions within the prohibition against arbitrary deprivation of liberty, e.g., detention without a warrant, kidnapping of nationals resident abroad and their forced return to national territory, the arrest and detention of a person never charged with a crime but from whom information is sought, the prolongation of detention after completion of a sentence or after a judicially ordered release or after an amnesty, and, most notably, the detention of persons on account of their political opinions. Id. He gives citations to Selected Decisions of the Human Rights Committee Under the Optional Protocol for each of the above-named actions.

\(^5\)Brody, id. at 711.

\(^6\)A.M. Rosenthal, in "The Price for Silence," The New York Times, Sept. 28, 1990, at A27, stated: “...a new report from Asia Watch ... includes a list of about 1,000 Chinese political prisoners known to be under arrest. Nobody except the keepers of the Chinese gulag know how many thousands more have been arrested. They have vanished into a new hell of the 'disappeared.' Whether they are dead or still languishing is not known.”


\(^8\)Adopted at the Sixth Meeting of the Standing Committee of the Fifth National People’s Congress of the PRC on Feb. 28, 1979, and promulgated and effective the same date. The Chinese text is in Gong’an fagui hui bian 1950–1979 fa zhi 90 (Beijing, Masses Press, 1980) [hereinafter GFHB]. For the text in English, see LPRC at 47–49.
SHELTERING FOR EXAMINATION IN THE PRC

Administration Punishment Act). According to some outside observers, sheltering for examination "appears to be the most controversial form of administrative detention in China." After a brief overview of crime and non-crime in the PRC, this paper will attempt to describe the nature and scope of showrong shencha, present its origin and regulatory framework, contrast it with regular procedures of arrest and detention in the PRC, and set forth the views of Chinese jurists on its place in the legal system. Although the use of the measure by public security organs has a deleterious effect on the enjoyment of human rights in China, very few studies of sheltering for examination have been published until recently, due in part to the reluctance of Chinese authorities to make public the relevant documents on the subject.

II. Crime and Non-Crime in the PRC

Persons involved or perceived to have been involved in pro-democracy activities may be subject to a range of penalties, including regular criminal punishments, administrative punishments, and extra-judicial punishments as well as economic and social hardships. If the actions are deemed "counter-revolutionary," the penalties are particularly severe. Chinese law makes the broad distinction between crime and non-crime, but that distinction is often vague and sometimes goes unheeded. A crime, according to the Criminal Code of the PRC,

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refers to an act that endangers the sovereignty and territorial integrity of the state; endangers the system of the dictatorship of the proletariat; undermines the socialist revolution and socialist construction; disrupts public order; violates property owned by the whole people or collectively owned by the working people; violates the citizens' privately owned lawful property or infringes upon the citizens' rights of the person and their democratic and other rights; and any other act that endangers society and is punishable according to law.\(^{13}\)

A further distinction is made between intentional crime\(^{14}\) and negligent crime.\(^{15}\) A non-criminal act is an act "that is clearly of minor importance and little harm"\(^{16}\) or one that "results in harmful consequences due to unavoidable or unforeseeable causes rather than intent or negligence."\(^{17}\)

For those convicted of a crime, that is, for those whose cases have been handled by the judicial organs, the principal punishments that may be prescribed by a court under the law are public surveillance (or control, guanzhi), criminal detention (juyi), fixed-term imprisonment, life imprisonment, and the death penalty.\(^{18}\) Supplementary punishments, including fines, deprivation of political rights, and confiscation of property, which "may be imposed independently," can also be administered.\(^{19}\) In the case of a crime of counterrevolution, in essence a political crime, as its definition—"any act that is committed with the aim of overthrowing the political power of the dictatorship of the proletariat and the socialist system and endangers the People's Republic of China"\(^{20}\)—reveals, the penalty in some instances is not less than ten years' imprisonment and in very serious cases the death penalty may be applied. A common charge levied against the Tian'anmen activists was that of counterrevolutionary propaganda and incitement, which carries a regular punishment of not more than five years' imprisonment, criminal

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\(^{13}\) Art. 10. For the English translation, see 1 LPRC (1979–1982) at 90. The Criminal Code was adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, and became effective as of Jan. 1, 1980. The full text of the Code runs from pp. 87 to 119.

\(^{14}\) Art. 11, id.

\(^{15}\) Art. 12, id.

\(^{16}\) Id.

\(^{17}\) Art. 13, id. at 90–91.

\(^{18}\) Art. 28, id. at 93.

\(^{19}\) Criminal Code, art. 29, supra note 15 at 93. The following types of political rights may be withheld: "(1) the right to vote and to stand for election; (2) the rights provided for in Article 45 of the Constitution [of 1978; art. 35 of the 1982 Constitution—namely, the freedom of speech, of the press, of assembly, of association, of procession and of demonstration]; (3) the right to hold a position in a state organ; and (4) the right to hold a leading position in any enterprise, institution or people’s organization" (art. 50). The period of deprivation of such rights is to be at least one year but not more than five (art. 51), unless the offender has been sentenced to life imprisonment or death, in which case the deprivation is for life (art. 53), subject to certain conditions.

\(^{20}\) Art. 90, id. at 103. Counterrevolutionary crimes constitute Ch. 1 of the "Special Provisions" part of the Criminal Code (arts. 90–104).
detention, public surveillance, or deprivation of political rights and a punishment of not less than five years' imprisonment for serious cases.\textsuperscript{21}

Reform through labor is routinely the way in which a convicted criminal serves out a term of detention or imprisonment or even public surveillance.\textsuperscript{22} It is prescribed by a variety of legal norms, including Decrees of the National People's Congress and its Standing Committee; provisions in the Constitution, the Criminal Code, and the Code of Criminal Procedure; various administrative regulations, such as the Regulations Governing Labor Reform of the PRC (1954); various Notices and other documents issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice; and provincial regulations.\textsuperscript{25}

For persons who commit minor offenses that are not deemed criminal, various types of administrative sanctions may be applied by the public security organs. According to the formal law for such offenses, the Security Administration Punishment Act (SAPA) mentioned above, three types of penalties may be applied: warning, fine, or detention (\textit{jiuliu}) of from one day to fifteen days.\textsuperscript{24} Another penalty in the Regulations that is not included in this list is rehabilitation through labor, which may be given for prostitution, whoring, pandering or housing prostitution or whoring with a prostitute (art. 30), for gambling or facilitating gambling, or for making, duplicating, selling, lending, or distributing pornographic books, pictures, videotapes or other pornographic objects (art. 32).\textsuperscript{25}

Certain other types of sanctions applied to non-criminal offenses, such as reeducation and rehabilitation through labor (\textit{laodong jiaoyang}, referred to hereinafter simply as as rehabilitation through labor or as RRTL) and sheltering for examination, are also deemed administrative measures by the Chinese. However, there is some confusion as to their real legal status. As one Chinese commentator has noted in regard to rehabilitation through labor,

\begin{quote}
    The targets, scope, conditions, and requirements of rehabilitation through labor are not clear, and in handling concrete cases one would find it difficult to differentiate what should fall under rehabilitation through labor, what
\end{quote}

\textsuperscript{21}Art. 102, \textit{id.} at 105. The article applies to "Whoever, for the purpose of counterrevolution, commits any of the following acts ...: (1) inciting the masses to resist or sabotage the implementation of the state's laws or decrees; or (2) propagandizing for and inciting the overthrow of the political power of the dictatorship of the proletariat and the socialist system, through counterrevolutionary slogans, leaflets or by other means."

\textsuperscript{22}According to art. 41 of the Criminal Code, any person "sentenced to fixed-term imprisonment or life imprisonment shall serve his sentence in prison or another place for reform through labour. Anyone who is able to work shall undergo reform through labor." \textit{id.} at 95. Art. 34(1) provides that those subject to public surveillance are to "actively participate in collective productive labour or work," but unlike other convicts, "while engaged in labour" they are to "receive equal pay for equal work." \textit{id.} at 94.


\textsuperscript{24}Art. 6, 2 LPFR (1983–1986) at 272.

\textsuperscript{25}\textit{id.} at 278–279. In the case of prostitution, the authorities may also make the individual sign a statement of repentance.
under administrative punishment, and what should be considered a crime under the Criminal Code. As a result, there is confusion and sometimes one is substituted for the other.\textsuperscript{26}

The most important legal norms governing rehabilitation through labor are the Decision of the State Council on the Question of Reeducation and Rehabilitation Through Labor and the Supplementary Provisions of the State Council on Reeducation and Rehabilitation Through Labor.\textsuperscript{27} A third item, the Decision on the Handling of Escapee or Recidivist Labor Reform Convicts and Reeducation and Rehabilitation Through Labor Internnees,\textsuperscript{29} while not as important as the first-mentioned two items, actually has a higher legal status than the other two because it was adopted, not just approved, by the Standing Committee. In addition, there are three items that were enacted and promulgated by the State Council itself,\textsuperscript{28} various judicial interpretations and ministerial provisions,\textsuperscript{30} and some local regulations. None of the above-mentioned items are basic laws, however. Many of them, moreover, were not even made public.

The Provisional Measures on Reeducation and Rehabilitation Through Labor of 1982 prescribe that six types of offenders may be sent for reeducation and rehabilitation through labor. First among them are "counterrevolutionary elements and anti-Party, anti-socialist elements whose criminal conduct [zuixing, a term that should be reserved for criminal acts instead of being applied to a noncriminal offense] is minor and not serious enough to receive criminal punishment."\textsuperscript{31} In addition, those assigned to RRTL institutions generally must be from large or medium-sized cities or must have flowed (without authorization) from rural areas into the cities or certain other sensitive areas.\textsuperscript{32} Although the maximum period of assignment to

\textsuperscript{26}Bao Suixian, supra note 12 at 52.
\textsuperscript{27}They were approved by the NPC Standing Committee on Aug. 1, 1957, and Nov. 29, 1979, respectively. Bao Suixian, id. at 51. For an English translation, see 1 LRPC at 167-170.
\textsuperscript{28}Adopted by the NPC Standing Committee on June 10, 1981. See Bao Suixian, id.
\textsuperscript{29}The Notification on Merging the Two Measures of Reeducation and Rehabilitation Through Labor and Sheltering for Examination into Reeducation and Rehabilitation Through Labor, issued on Feb. 29, 1980 (see also below), the Report of the Ministry of Public Security on Doing a Good Job of Reeducation and Rehabilitation Through Labor Work, approved on Sept. 14, 1980; and the Notification on the Forwording of the Provisional Measures on Reeducation and Rehabilitation Through Labor Enacted by the Ministry of Public Security, of Jan. 21, 1982. Bao Suixian, id. The fact that NPC Standing Committee approval was not sought for these items indicates that they were not thought to be important enough to merit higher legal status, yet at least one of them, the first mentioned, is a cornerstone of the rehabilitation through labor system. This is but another example of the cavalier attitude toward law and legality in the PRC.
\textsuperscript{30}Bao Suixian lists six such items. Among them are the Measures on Rehabilitation Through Labor for Trial Implementation, adopted by the Ministry of Public Security in January 1982; the Notification on the Question of Cancelling the Urban Household Registration of Rehabilitation Through Labor Internnees, issued jointly by the Ministry of Public Security and the Ministry of Justice in March 1984; and Measures on Rehabilitation Through Labor Procuratorial Work of the People's Procuracies (for Trial Use) adopted by the Supreme People's Procuratorate in July 1987. Bao Suixian, supra note 12 at 51.
\textsuperscript{31}As translated in the report of the Far Eastern Law Division of the Library of Congress, "Forced Labor in the People's Republic of China," supra note 29 at 55. The categories are set forth under art. 10 of the Measures.
\textsuperscript{32}Id. at 54.
RRTL is three years, the term can be extended by as much as one additional year, so that it is possible for a person to be interned in an RRTL institution for four years.\textsuperscript{33}

Another Ministry of Public Security document points out that RRTL is only to be administered by institutions at the provincial level or their equivalent (autonomous regions and municipalities under the direct control of the central government) and in large and medium-size cities; districts and counties are not permitted to have such institutions.\textsuperscript{34} The document also states that RRTL institutions are only to admit offenders who are from large and medium-size cities; RRTL will not be applied to people who live in counties, towns, and villages, unless they roam to the big cities, to railroad lines, or to large factories and mines to commit crimes and there is a need to shelter them for examination. In that case, they shall be sent to the RRTL institutions but will be put in a brigade separate from the regular RRTL brigades to undergo examination.\textsuperscript{35} It should be noted that although the document may try to distinguish the two categories of internees, if those sheltered for examination and those assigned to RRTL are housed together, even if they are in different brigades there is a strong incentive for the authorities in charge to mix the two.

Finally, the Notification of the Ministry of Public Security and the Ministry of Justice Regarding Reeducation and Rehabilitation Through Labor and the Cancelling of Urban Household Registration (1984) states: “Persons in] cities and towns along railroad lines and other key channels of communication who consume commodity foodstuffs and are found to require reeducation and rehabilitation through labor are to be sent to undergo it.”\textsuperscript{36} Persons who have household registration are entitled to food rations and there is no need to buy foodstuffs; therefore, if someone is eating purchased food, he may be suspected of not having any household registration. In accordance with the above, the scope of persons admitted for RRTL is to include primarily those who live in large and medium-size cities, but also persons who eat commodity foodstuffs in the cities and towns along railroad lines and key communication channels. Thus, it offers a convenient means of solving urban congestion.

\textsuperscript{33}Id. at 71. The three-year maximum time period is provided for in art. 13 of the 1982 Measures; the extension is covered in art. 58, ¶2.

\textsuperscript{34}Instructive Reply From the Ministry of Public Security Regarding the County and Town Sheltering and Rehabilitation Through Labor and Areas That Establish Rehabilitation Through Labor Institutions, issued July 31, 1980. See Zhongguo gong'an baixie quanshu [Chinese Encyclopedia of Public Security] 2:26 (Jilin, Jilin People’s Press, 1991) [hereinafter Encyclopedia]. The Supplementary Provisions of the State Council on Rehabilitation Through Labor, issued in 1979 (see supra note 27), also state that “Rehabilitation through labor [institutions] are to admit (shuaoying) people who are in need of going through rehabilitation through labor in large and medium-size cities.”

\textsuperscript{35}The Party Central Committee and the State Council approved a document in 1980 to the effect that those who live in rural areas who roam to urban areas as well as to railroad lines, large factories, and mines to commit crimes, after having gone through sheltering for examination and being found to meet the requirements for undergoing RRTL can also be sent to an RRTL institution. Encyclopedia, supra note 34 at 957. Whether this document and the 1980 Instructive Reply are one and the same is unclear.

\textsuperscript{36}Cited in Encyclopedia, id.
The use of reeducation and rehabilitation through labor precedes that of sheltering for examination by a few years (it apparently began in 1956), but their histories are parallel. The two measures are often closely related, as an examination of measures relating to sheltering for examination will reveal.

III. Shourong Shencha Defined

A. Overview of the Nature, Scope, and Time Limits of Sheltering for Examination

"Sheltering for examination" (shourong shencha)\(^{37}\) is defined as an administrative measure used by public security organs to conduct compulsory examination of roving criminal suspects.\(^{38}\) The targets of the measure are in theory to be strictly limited to persons suspected of committing crimes while roaming from place to place or who have committed criminal acts but who refuse to reveal their name, address, and background.\(^{39}\) Among those targeted are drifters, repeat offenders, recidivists, or suspected participants in group criminal activities.\(^{40}\) Sheltering for examination is not to be used for those criminal elements who commit crimes in their local area, whose background is clear, and in regard to whom there is evidence to prove that they have committed the crime. Instead, the measures of detention, arrest, release on bail pending trial, or residential surveillance are to be applied.\(^{41}\)

The purpose of sheltering for examination is to hold in reformatory institutions the kinds of suspects described above, pending an investigation to determine the exact nature of their criminal activities.\(^{42}\) It should be noted that the places where the suspects are held, shourong suo, "shelters," are not for humanitarian purposes as the name might imply, nor are they akin to the special prisons established in civil law countries under peace preservation.

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\(^{37}\) Shourong means to take in, accept, shelter; shencha means to examine, look closely at; hence our decision to translate the phrase as "shelter(ing) for examination." Often when the term shourong shencha is translated into English, the nuance of mildness implied by it is lost. To translate shourong as detention has too harsh a connotation; normally, the term for detention in Chinese is jilu. Shencha, too, implies something milder than investigation, a kind of screening, a deliberation and decision whether to proceed with an action, hence "examination." The term for investigation in Chinese is usually diaocha. Even so, despite the fact that shourong shencha implies mildness of punishment, the measure is not mild, and so the use of the phrase deliberately masks its actual purpose.

\(^{38}\) According to Amnesty International article points out (supra note 10 at 9), a variety of viewpoints as to the definition and nature of sheltering for examination have appeared in Chinese legal circles, pointing to elements of contradiction and vagueness in the government documents on the subject. It cites the article in 1 Zhenguo bantan (1989) (supra note 12) in which the author Zhou Guojun sets forth three main viewpoints on the definition of sheltering for examination and five types of opinion on its nature.

\(^{39}\) According to provisions of the Notification of the Ministry of Public Security on the Strict Control and Use of Sheltering for Examination, issued on July 31, 1985, as described in Encyclopedia at 209.

\(^{40}\) Yang & Wei, supra note 12 at 29.

\(^{41}\) According to the 1985 Notification. Encyclopedia at 922.

\(^{42}\) Yang & Wei, supra note 12 at 29.
measures; rather, they are sequestered centers of incarceration for which secret regulations have been enacted.\footnote{See Wu Zuoren, "Tens of Millions of People Locked Up in Prisons Outside the Legal System," 153 Chengming (Contending) 89–92 (July 1, 1990), translated in Joint Publications Research Service, \textit{JPRS Report: China}, Oct. 31, 1990, at 3–7 [hereinafter \textit{JPRS}]. It may be noted that shelters, at least in name, differ from "detention houses" (\textit{tanshou suo}), for which there are separate regulations (promulgated on Mar. 17, 1990). For an English text, see Xinhua (Chinese), Mar. 23, 1990, as translated in Foreign Broadcast Information Service, \textit{Daily Report: China}, Apr. 16, 1990, at 34–36 [hereinafter \textit{FBIS}].}

The time limit of sheltering for examination is generally one month, but it can be extended to a maximum period of three months. Significantly, however, a 1985 Notification (\textit{see below}) stipulates that for persons who refuse to reveal their true name and address or to clarify their background, the time period for examination is to run only from the time when that information is disclosed. The above time limits for sheltering for examination contrast unfavorably with the fifteen-day limit for administrative detention and the two- to three-month general limit for criminal interrogatory detention.

It was stated above that \textit{shourong shencha} is supposed to be investigative in nature, not a form of administrative or criminal punishment. Therefore, in theory, if the evidence already shows that a suspect being investigated has violated the criminal law, he should be held in accordance with the provisions on criminal procedure and the arrest and detention regulations; the public security organ will then request the procuracy’s approval to make a formal arrest. If the person has committed an administrative offense in violation of the Security Administration Punishment Act, he should be handled according to its provisions (under which the punishments are generally a warning, a fine, or administrative detention). If a person’s offense is considered so minor as not to be criminally punishable, then he or she can be sent, depending on the circumstances, for reeducation and rehabilitation through labor, in accordance with the Decision of the State Council on the Question of Reeducation and Rehabilitation Through Labor and its Supplementary Provisions\footnote{Approved by the Standing Committee of the National People’s Congress on Aug. 1, 1957, and Nov. 29, 1979, respectively. A third document, the Decision on the Handling of Escaped or Recidivist Labor Reform Convicts and Rehabilitation Through Labor Internees, while not as central as these other two, actually has a higher legal status because it was adopted, not just approved, by the Standing Committee (on June 10, 1981). There are also State Council enactments, judicial interpretations, ministerial provisions, and local regulations that concern rehabilitation through labor.} and other related measures. If a person has committed a minor offense but refuses to reveal his identity or is suspected of committing criminal acts while roving about the country, he should be sheltered for examination.

B. Origins and Early Regulatory Framework

There is very little published material on \textit{shourong shencha}. In fact, only one legal document that covers the measure, issued by the State Council in 1980 (\textit{see below}), has appeared in the public domain. In this connection, it may also be noted that public security organs compile figures on arrests,
detentions, death sentences, labor reform, reeducation and rehabilitation through labor, and sheltering for examination. However, statistics on sheltering for examination, reeducation and rehabilitation through labor, as well as the number of juvenile delinquents undergoing the latter are considered to be public security secrets at both the state level (gong’an jimi, a highly important state secret) and the local or non-country-wide level (gong’an mimi, a regular state secret) and can only be made public with the approval of the authorities. Furthermore, information used in connection with sheltering for examination (and also reeducation and rehabilitation through labor) by the organs responsible for reviewing and approving a case is also considered a public security secret.

Sheltering for examination has been applied by public security organs since 1961, but its nature seems to have changed somewhat over time. To check the flow of people into the cities during the period of economic hardship brought on by the Great Leap Forward, the Central Committee of the CCP approved and transmitted the document “A Report on Resolutely Checking the Free Movement of Population” to party cells in the Ministry of Public Security and the Ministry of Internal Affairs. It provided that sheltering for examination was to be applied uniformly to all the freely floating population (ziyou liudong renkou) and that they were to be handled as follows. Those who refused to reform and whose origin could not be determined were to be kept together to engage in labor, so that they could be educated while being productive. During that time, their cases would be investigated and then handled by the authorities. Counterrevolutionary elements engaging in acts of sabotage, landlords, rich peasants, and other criminal elements were to be handled separately by the public security organs; they were to be arrested “according to law” and sent to camps for RRTL or their place of origin to engage in labor under the supervision of the authorities. In 1963, the Third Bureau of the Ministry of Public Security, in the “Work Report on Strengthening the Administration of Urban Public Order,” went a step further by pointing out that the method of sheltering for examination should be adopted in ferreting out roaming criminals (liucuan jian). However, the system adopted at this time was one in which the public security organs carried out sheltering for examination and the bureaus of civil affairs expended the funds to administer it.

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45 Encyclopedia at 241. Indeed, keeping records on sheltering for examination is considered one of the duties of the public security organs. Id. at 293.

46 Id. at 254.

47 Id. at 292. A public security secret is considered to cover matters related to public security work that cannot be made public or are yet to be made public or that during a certain period of time can only be known to a certain group of public security personnel.

48 Id. at 292.

49 Yang & Wei, supra note 12 at 29. The document was issued on Nov. 7, 1961.

50 Yang & Wei, id.

51 Zhou Guojun, supra note 12 at 36.
In August 1975, sheltering for examination was reaffirmed as an administrative measure for public security as a result of a conference held in response to the disorder that reigned along railroad lines due to the Cultural Revolution (1966–1976). To remedy the problem, the State Council subsequently approved "A Report on the Spirit of National Railroad Security Work." It prescribed that public security organs set up camps where roving criminal elements would be given education and engage in labor while an investigation of their activities was conducted. In furtherance of the spirit of the 1975 document, in 1978 the Ministry of Public Security issued the Notification on the Rectification and Strengthening of Sheltering for Examination Work Regarding Roving Criminal Elements. It has provisions on the types of persons to be held, the camps for holding them, and procedures for investigation and determination of their cases. The Notification is an internal document that has never been published. However, a description of it has been provided in the Chinese Encyclopedia of Public Security. It cites the Notification as stating that "the targets of sheltering for examination must be limited to elements suspected of currently committing crimes in roaming from one place to another or of having committed serious crimes in roaming from one place to another, and the scope should not be expanded at will." The procedure for review and approval of sheltering and examination "cases" is to be strictly observed by the various public security units concerned. The period of sheltering for examination "generally speaking shall not exceed one month." If there is a need for an extension due to the complexity of the case,
then the reasons for the extension must be clearly stated and they are to be collectively discussed by the leading personnel of the sheltering for examination institution. The request for an extension must be reported to the district and municipal public security bureaus for approval. The maximum [period] is not to exceed three months, however.

There are also a few indirect references to the 1978 Notification, such as the two Instructive Replies of the Supreme People's Court to Higher People's Courts, addressing the extent to which time spent by a person held for investigation can be used to offset his or her regular criminal prison term. According to the Instructive Reply of the Supreme People's Court Regarding

52 Yang & Wei, supra note 12 at 29.
53 Id.
54 Id.
55 An official document of this importance should have been published in the State Council Gazette, but it is not included there. Nor is it found in such comprehensive compilations as the Zhonghua Renmin Gongheguo fazhi quanshu [Complete Book of Laws of the People's Republic of China] (Wang Huaihan, et al., ed. Jilin, Jilin People's Press, 1989) [hereinafter FLQS].
56 Encyclopedia at 224.
57 Id.
Whether the Term Served by Criminals During the Period of Sheltering for Examination by Public Security Organs Can Be Used To Offset Regular Prison Terms (July 11, 1978), addressed to the Liaoning Higher People’s Court:

We have already received and read your request for instruction, Liao fa <1978> No. 20. The document is about whether the time served by a criminal during the period of sheltering for examination by the public security organ can be used to offset a regular prison term. We are in agreement with your view. That is, the time served during the period of sheltering for examination can be used to offset the regular criminal term. As to the method of calculation, one day served under sheltering for examination shall be used to offset one day of a regular criminal term. It is hereby replied.\(^{58}\)

The other Instructive Reply, addressed to the Yunnan Provincial Higher People’s Court, is on Two Specific Questions Regarding the Use of Time Served Under Sheltering for Examination by Public Security Organs To Offset Regular Criminal Terms (January 19, 1979).\(^{59}\) The first question had to do with whether the time spent under sheltering for examination by those who had already been sentenced to serve prison terms could be used retroactively to offset their criminal terms.\(^{60}\) Concurring with the lower court’s suggestion, the Supreme People’s Court held that “For those criminals who are currently serving criminal terms, the offset can be made; for those who have already served their terms, no adjustment need be made.” The second question had to do with calculating the offset for those who had been sheltered for examination several times before criminal sentencing. The higher court, again concurring with the lower court’s decision, replied that “only the last period of time served while sheltered for examination (that is, while sheltered for examination immediately prior to arrest and indictment) can be used to offset the prison term.”\(^{61}\) These Instructive Replies show that even though sheltering for examination has not been made part of the regular criminal justice system, the courts help determine, without codified authority, aspects of its application.

Time spent under sheltering for examination can also be counted against a subsequent term of reeducation and rehabilitation through labor, according to the 1979 Notification of the Ministry of Public Security on Time Spent in Sheltering for Examination Institutions Counting Towards the Term of

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58 FLQS at 146-147.
59 Id. at 147.
60 Although the Supreme People’s Court had apparently issued a document, (78) Fa han yan No. 14, regarding the question of offsetting prison time with holding time for those being held for investigation who had already been sentenced and were to serve prison terms, clarification was needed in regard to those who had already begun to serve their prison terms or had finished their terms before the decision was issued. Id.
61 FLQS at 147.
Reeducation and Rehabilitation Through Labor of a Reeducation and Rehabilitation Through Labor Element. Thus, if a person is given a term of reeducation and rehabilitation through labor after having undergone sheltering for examination, the period of RRTL will be counted as commencing from the day when the sheltering for examination was announced; that is, the days one spent under sheltering for examination prior to being sent to RRTL will be counted towards the period of RRTL on a one-to-one basis. This is but another indication of the close connection between the two measures. Again and again, it is mentioned that sheltering for examination can be used for persons who are later consigned to terms of RRTL.

C. The Main Legal Document Governing Shourong Shencha

In 1980, sheltering for examination was covered in a published State Council document, the Notification Regarding the Merger of the Two Measures of Forced Labor and Sheltering for Examination Into Reeducation and Rehabilitation Through Labor. The Notification states that “With the approval of the CPC Central Committee and the State Council in 1961, the Public Security organs have been imposing on light-offenders and suspects for roaming law-breakers the measures of forced labour and detention investigation. . . .” The Notification’s application to targets of sheltering for examination is described as follows:

Light offenders of uncertain origin who give names and addresses other than their own or light offenders who are also suspected of having broken the law in more than one place, on more than one occasion and with accomplices and need to be taken into custody [shall be sent to] places of reeducation through labour for investigation [and be put into a special brigade so an examination can be made]. [For] [t]hose who will not cause serious harm in society, [the investigation shall be carried out by adopting] the measures of awaiting trial on bail, living [in a residence] under surveillance, and so on [in accordance with] the stipulations of the Law of Criminal Procedure.

A comparison with the targets described in the 1978 Notification referred to above (p. 107) indicates that a change has occurred; the description set...
forth in the 1980 document is at once more detailed and more broadly applicable. The 1980 Notification further declares that since enforcement of the two measures showed that little differentiation could be made between persons subject to the two measures and persons undergoing RRTL, the existing forced labor and sheltering for examination institutions were to be converted into RRTL institutions in a "planned, systematic way." However, since sheltering for examination institutions still exist and notifications continue to be issued concerning them, it seems that this basic directive of the 1980 document was never actually carried out. Nevertheless, the 1980 State Council Notification is the only published legal document concerning shourong shencha; there is no duly enacted, formal law in regard to the practice.

D. Other Relevant Documents of the 1980s Concerning Shourong Shencha

The Party Central Committee, in its "Highlights of the National Conference on Political-Legal Work" of August 28, 1982, once again emphasized the importance of the measure of sheltering for examination for dealing with roving criminals. Through the years, the Ministry of Public Security has issued several other notices in connection with sheltering for examination that have remained unpublished.

In late 1983, the Notification of the Ministry of Public Security on Doing a Conscientious Job of Management of the Living Conditions of People Incarcerated in Temporary Detention Centers, Regular Detention Centers, and Sheltering for Examination Stations was issued. As with all the notices, the contents of this one serve in fact to indicate the shortcomings and abuses that exist in the system and that need to be remedied. The temporary detention centers, sheltering for examination stations, and the regular detention centers (which include temporary incarceration stations, or jianshi guanya zhan) are instructed to "first establish and improve all kinds of management systems to carry out revolutionary humanitarianism and civilized management." They are to see to it that the incarcerated are protected against the cold and ensure that they have adequate rations and eat hot, well-cooked, healthy food. Special attention is to be paid to the environment of the institution and to the health of the incarcerated. The leadership of public security organs at various levels is to strengthen leadership and

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67 Id. The Amnesty International (Sept. 1991) piece points out that the Notification does not name political dissidents as a target of sheltering for examination, unlike the law on reeducation through labor.
68 According to Zhou Guojun, supra note 12 at 56, in July 1980, in its "Official Reply to Questions Concerning County (xian) and Town (zhen) Sheltering and Rehabilitation and Reeducation Through Labor and Locally Run Rehabilitation and Reeducation Through Labor Centers" (Guanyu xian, zhen shourong laodong jiayang he disu jiben laodong jiayang suo wentsi de pifu), the Ministry of Public Security made even clearer stipulations regarding the targets of sheltering for examination. We have not seen this document.
69 Wang & Wei, supra note 12, at 29.
70 Conge on bu guanyu rensheng gaojiao kanhou suo juliu suo shoushen zhuan guanya renyuan shenghuo guanli de tongzhi, issued on Dec. 18, 1983. Encyclopedia at 225.
management of the temporary detention centers, regular detention centers, and sheltering for examination stations. If those incarcerated have frozen or starved to death as a result of the institution's neglecting its duties, the management personnel are to be held responsible for violating discipline and the law.

There is also a set of provisions specifically directed at sheltering for examination institutions. According to the Interim Provisions Governing the Work of Sheltering for Examination Institutions, issued by the Ministry of Public Security in 1984, a sheltering for examination institution is a place where the public security organs admit and hold people undergoing sheltering for examination. It is a special organ for controlling such persons and its primary mission is to conduct education along with the examination work and to maintain security. The Interim Provisions state that persons held under sheltering for examination are different from those who are kept in regular detention houses, who are incarcerated in accordance with the Arrest and Detention Regulations, and the methods of controlling them are different. In principle, persons sheltered for examination are allowed to receive visits, correspondence, and food and daily necessities from family members.

The Interim Provisions set forth the procedures to be followed in admitting people to sheltering for examination centers. Approval for sending a person to a sheltering for examination institution must first be obtained from the district or municipal public security organ. A document indicating approval by the responsible personnel of the public security organ authorized to give it must be presented to the institution; if there is no such document, then the institution is to refuse to accept the potential internee. Persons admitted to the institution must first undergo a certain preliminary examination. They are to be signed in, have a picture taken, and be fingerprinted. After the person has gone through the examination process, if it is found that he or she should instead be arrested, detained, sent to a reeducation-through-labor institution or to an institution for juvenile delinquents, or that the sheltering for examination should be lifted, then certain other procedures must be followed before the person can be sent on or released by the sheltering for examination institution. The exit document should indicate where the person is to be sent.

The Interim Provisions also address the matters of food, sanitary conditions, study, education, and labor for the internees and provide that the institutions are to have certain rules regarding patrols, security, examination, and financial matters. They forbid the use of sheltering for examination internees in managing their fellow inmates. They prescribe that it is necessary to enact rules for internees in the sheltering for examination institutions, and if the internees violate such rules, they are promptly to undergo criticism and education. While corporal punishment and insults are to be prohibited,

the Interim Provisions state that shackles may be used on internees who planned to use force to escape or to cause a riot. Except in the case of an emergency, the use of shackles must first be approved by the section head of the pre-trial department of the public security organ above the district or municipal level. If an internee has violated the Criminal Code, he is to be punished according to its provisions.

An important document that may now serve as the basis for sheltering for examination,\(^72\) is the Notification of the Ministry of Public Security Regarding Strict Control of Using the Means of Sheltering for Examination of 1985.\(^73\) The Notification purportedly aims at correcting the situation in certain places where the scope of the targets of sheltering for examination has been too broad and the period of incarceration too long, resulting in the "abnormal phenomenon" of sheltering for examination being used to supplant investigation and also punishment. The Notification points out that the use of sheltering for examination should be strictly controlled in order to rectify the existing problems. It also provides that the targets of the measure should include only those suspects who commit offenses while roaming from one place to another or those who have engaged in criminal activities but who refuse to reveal their true name and address or whose background is unclear. As was noted in the Overview above (p. 104), the Notification stipulates that sheltering for examination is not to be applied to local offenders whose background is clear and where there is evidence they committed a crime. In regard to the approval process, the Notification states that consigning a person to sheltering for examination must be approved by the party group or party committee of the public security organs at the county level and above (yet another indication of the lack of judicial independence in the PRC). Time limits are also set forth. For those suspected of committing offenses while roaming from one place to another, the facts are to be ascertained within one month. For complicated cases or cases that cross provincial or regional boundaries, for which the facts cannot be ascertained in one month's time, the examination period can be extended for one month with the approval of the next-level-higher public security organ. If the facts still cannot be ascertained and it is necessary to have the period further extended, the extension must be approved by the public security bureau at the provincial level or its equivalent (autonomous regions or municipalities

\(^72\) According to Amnesty International (Sept. 1991), supra note 11 at 8, "other articles in the Chinese legal press indicate that some documents issued by the government after 1980 now form the legal basis for shelter and investigation." AI mentions two documents cited in an article in the March 1987 issue of Fazue yanjiu (Studies in Law): Document No. 56 (1982) of the State Council and Document No. 50 (1985) of the Ministry of Public Security. It also notes that a document entitled "Notice on the Strict Control of the Use of Shelter and Investigation," issued by the Ministry of Public Security on July 31, 1985 and mentioned in a 1989 article, "may be another name for Document No. 50 (1985)." This would appear to be the case. The nature of the 1982 document remains unclear, however, unless it might be a May 12, 1982 set of measures issued by the State Council on the "shelter and dispatch" (shouwang qiansong) of roaming beggars.

\(^73\) Gong'an bu guanyu yangge tongzhi shewang shencha shouduan de tongzhi, issued on July 31, 1985. Encyclopedia at 209.
under the direct control of the central government, which have the same status as provinces). However, the total examination period is not to exceed three months. For persons who will not reveal their true name and address or whose background is not clear, the time period for examination is to be determined in accordance with the above stipulation, but it is to run from the time when the true name and address are revealed. This, of course, offers a major loophole for the public security organs, since it leaves to their discretion the decision of whether any information provided by the suspect is true or not. In other words, they might choose not to believe the suspect and keep him or her on well beyond the limit. The Notification emphasizes that it is strictly forbidden to curse, beat, or humiliate persons held under sheltering for examination and forbids forced confessions, “so that they can enjoy all kinds of rights in accordance with the law.” The Notification also addresses the question of how to handle incarcerated persons after the examination process has been concluded.

In its “Notification on Conscientiously Rectifying Sheltering for Examination Work” of 1986, the Ministry of Public Security, while fully affirming the important role played by sheltering for examination in the struggle of “dealing a heavy blow” to criminals, at the same time pinpoints problems that had appeared in specific instances and indicates forceful measures for rectifying sheltering for examination.75

The issues addressed in the various notifications are a clear indication of persistent problems with the measure of sheltering for examination, even though they attempt to present a picture of how it should work in theory.

IV. Related Non-Criminal, Non-Administrative Forms of Detention

Two measures that also involve “sheltering” (shourong) but which are not considered forms of administrative detention are shourong qiansong (shelter and dispatch) and shourong jiaoyang (shelter and reeducation and rehabilitation). In regard to the former, it was indicated above that one of the original aims of sheltering for examination was the control of “freely roaming population,” be they non-criminal or criminal elements. As the system of sheltering for examination has developed, certain other measures for handling the non-criminal floating population of beggars and other itinerants, be they juveniles or adults, have apparently become differentiated. (Nevertheless, the system of shelter and dispatch does feed into that of sheltering for examination, as a 1984 Notification described below illustrates.) By

75 Zhou Guojun, id. Zhou does not set forth the problems or the measures that were to be adopted to remedy them.
contrast, roaming criminals (youths or adults) are often sent to reeducation through labor institutions.\textsuperscript{76}

Before turning to a description of these measures, however, it may be useful first to consider China’s system of household registration, since persons who roam about freely, as described above, are often in contravention of China’s rules of residency.

A. Household Registration in China

Freedom of residence is not a right guaranteed under the Constitution of the PRC.\textsuperscript{77} According to the Regulations on Household Registration of the People’s Republic of China,\textsuperscript{78} a citizen must register as a permanent resident in the locality where he regularly resides, and a citizen can only be registered as a permanent resident of one place.\textsuperscript{79} Depending upon the gravity of the circumstances, if any of the following conditions apply, administrative penalties for public security may be given or criminal responsibility investigated: 1) failure to register residency according to the household registration regulations; 2) false reporting of residency; 3) forging, altering, transferring, lending, or selling residency documents; 4) assuming another person’s residency; 5) failure on the part of hotel managers to handle the registration of guests according to stipulations.\textsuperscript{80}

The household registration system entails the acquisition of a form of identification. Within thirty days of reaching the age of sixteen, a Chinese citizen residing in the PRC must apply for and obtain a resident identity card.

\textsuperscript{76}The Chinese government has for a long time paid serious attention to the problem of social disorder caused by criminals who travel from one province or region to another committing crimes. For example, the authorities’ concern was voiced in a document issued on Dec. 21, 1981, by the Ministry of Public Security, the Notification of the Ministry of Public Security Approving and Forwarding the Views of the Third Bureau on Concentrating on Dealing a Blow to Roaming Convicts. The Notification targeted five types of persons: roaming recidivists and roaming convicts who had committed serious crimes; the leaders of roving criminal gangs; escaped labor reform convicts; criminals who had not yet been convicted; and wanted convicts and escapees. The Notification emphasized that the concerned organs should launch a unified effort to fight against such criminals, by conducting in-depth investigations and study of the evidence of their criminal activities, by concentrating their efforts during certain periods and using superior forces, and by relying upon the masses. Such efforts were to be organized within each province and their equivalent. The public security and investigative units were to work closely with the labor reform organs, RRTL organs, detention houses, juvenile delinquent control institutions, pre-trial units, and railroad and other transportation public security units. Encyclopedia at 233.


\textsuperscript{79}Art. 6, id. at 145.

\textsuperscript{80}Art. 11, id. at 146.
from the residence registration organ of his place of permanent residence. Public security organs are responsible for printing, issuing, and controlling resident identity cards. If a citizen changes residence from one administrative district to another in a municipality or within the county of a specific administrative division, he need not renew the resident identity card; but upon moving out of a municipality or county, a citizen must renew the card during residence registration in the new area of residence.

Administrative penalties may be meted out for acts that violate the PRC’s laws and regulations regarding residency. Over the years, many migrants from rural areas, seeking to improve their lot or to flee natural disasters such as floods or earthquakes, have flowed to urban areas in disregard of the residency rules. According to one account,

For every 20 persons in China, one is on the move, and the country’s 50 million-strong flowing army is still expanding. The total daily flow of people in 23 Chinese cities with over 1 million inhabitants has topped 10 million, among which Shanghai has 1.53 million; Beijing, 1.3 million; Guangzhou, 1.1 million; and Chengdu, 530,000. Among the flowing population, 85 percent are peasants, who are ‘looking for jobs’ everywhere and can be seen in the streets, alleys, and train stations on piers and bridges. These people are called the ‘blind flow’ in China.

The authorities have sought to control the flow of population by a variety of measures. For example, article 29 of the Security Administration Punishment Act (SAPA) states:

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82 Art. 5, Identity Card Regulations, id. at 188; 48.

83 Art. 11, Identity Card Rules, Statutes; Related Regulations, at 51–52, supra note 81.


85 The authorities have sometimes abused their power over illegal migrants. A recent article in the South China Morning Post reported that “Rural migrants to Beijing are being beaten, subjected to arbitrary fines and detained without trial by local police officers in the city,” according to migrants and police sources. “Migrants have been detained for several days, usually on the pretext of not carrying their temporary residence cards, and often subjected to beatings by local officers, occasionally with electric cattle prods. . . .” Geoffrey Crothall, “Rural Migrants to Beijing Reportedly Beaten,” South China Morning Post, Oct. 9, 1991, at 10, as carried in FBIS, Oct. 10, 1991, at 22–23. See also an article by the same author concerning the treatment of migrants to Shanghai from flood-stricken areas, South China Morning Post, Oct. 18, 1991, at 13, as carried in FBIS, Oct. 22, 1991, at 31–32.

86 Referred to above, supra note 9.
Whoever commits one of the following acts, from item one to item three, in violation of residence control or administration of resident cards shall be fined a maximum of fifty yuan or given a warning; whoever commits an act in item four or item five shall be fined a maximum of one hundred yuan or [given a warning]: (1) failing to register for residence or apply for a resident card according to regulations, in disregard of the notice of the public security organs; (2) faking a residence registration or assuming another person’s residence registration or resident card; (3) deliberately altering a residence certificate; (4) failing to register hotel guests according to regulations; (5) failing to report and register lodgers according to regulations in letting a house or bed to another person.\textsuperscript{87}

Recently, moreover, rules have been adopted requiring the transient population to show “family planning cards” when they seek employment or apply for residence permits or business licenses.\textsuperscript{88} The aim is to exert more control over the birthrate of itinerant tradesmen and workers who are constantly on the move. The card must reveal the holder’s marriage status, number of children, and (for married couples) birth control measures being used.

\textbf{B. Sheltering and Dispatch}

Another set of provisions to control members of the floating population is the Measures of the State Council Regarding Sheltering and Dispatch of Roaming Beggars.\textsuperscript{89} According to these Measures, sheltering and dispatch is directed at beggars who have drifted into urban areas from the countryside, at resident urban beggars, and at the homeless (persons who live on the street and have no means of livelihood). Sheltering and dispatch work is to be handled by civil affairs and public security units. The Measures provide that sheltering and dispatch stations (shourong qiansong zhan) are to be established in large and medium-sized cities, in the open cities, and in other areas that are major traffic arteries, where roaming beggars are numerous, so that the sheltered can be promptly dispatched to the place of their original household registration. The sheltering and dispatch station handles the work of both receiving and transferring the itinerants; arrangements to settle the sheltered persons back in the community are to be handled by the local

\textsuperscript{87}2 LPRC (1983–1986) at 278. Note that the LPRC text mistakenly has “fined” for “warned” (jinggao), hence our bracketed wording.

\textsuperscript{88}Zhu Baoxia, “Birth Control Card for Roaming Workers,” China Daily (in English), Dec. 27, 1991, at 1, as carried in FBIS, Jan. 3, 1992, at 36. According to this article, China’s transient population numbers about 70 million and one-fourth of the group are women of child-bearing age between 15 and 49.

\textsuperscript{89}Guanwu yuan quyu xinkeng dila xia renwu shourong qiansong benfa, issued on May 12, 1982, in 12 articles. Encyclopedia at 1201. The information in this paragraph is based upon the Encyclopedia entry.
people's government of the place where the person's household registration is located. For the dispatch of persons between provinces, municipalities, and autonomous regions, the principle of accepting persons sent by the counterpart organ is to be followed. Persons sheltered for dispatch must observe the following stipulations. They must obey the order that they be sheltered and dispatched; faithfully reveal their name, status, family's address, etc.; and observe state laws as well as the regulations and the system of sheltering and dispatch stations.

In 1984, the Ministry of Public Security and the Ministry of Civil Affairs issued a Notification on the Strengthening of Sheltering and Dispatch Work. The Notification requires the civil affairs units and public security units in all areas to work closely together to record and make a thorough examination of each person who is sheltered for the purpose of being dispatched to the place of his or her original household registration. In order to conduct a good examination, the Notification provides that the public security organ is to send special personnel to work with the personnel of the sheltering and dispatch station in the area. If in the course of the examination it is found that the sheltered are criminal suspects, they along with any relevant material are to be taken over by the public security organ's sheltering for examination station, so that a more extensive examination can be made and the individuals handled in accordance with the circumstances. Those who do not reveal their true name and address or whose background is unclear, who have tried to hide their criminal conduct, or who are suspected of committing serious crimes can also be handed over to the public security organ to undergo the examination process. Persons examined by the public security organs who are found to fall into the category of roaming beggars can be sent to the sheltering and dispatch station under the civil affairs unit to be either sheltered or dispatched to their place of household registration. If the civil affairs unit finds that a person being held has tried to riot, to harm others, or to beat up the station personnel, it is to notify the local public security organ so that the person can be handled in accordance with public security control measures. Those persons who have violated criminal law are to be punished in accordance with the law by the public security organs. (This statement is very odd; if they have violated criminal law, they should be sent to court). The sheltering and dispatch stations of border regions are to ascertain the name, address, and background of people they have taken in who have crossed the regional boundary, and turn them over to the public security organs for examination and handling. The concerned public security and civil affairs units, after receiving correspondence or telegrams from a sheltering and dispatch station to transfer the sheltered to other localities, must assign a special person to conduct an investigation of the facts. The Notification provides that the results are to be promptly responded to so as

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90Issued on May 10, 1984. Encyclopedia at 230. The information in this paragraph is based on the Encyclopedia entry.
to facilitate timely investigations and “dealing a blow” to criminal elements. The civil affairs units’ sheltering and dispatch stations are to be staffed by civil police sent by the local public security organs. They are to be responsible for maintaining order and assisting in carry out the sheltering and dispatch work.

C. Sheltering and Reeducation and Rehabilitation

The measure of sheltering and reeducation and rehabilitation (referred to more simply as sheltering and reeducation below) is aimed at youth under 16 years of age who have violated the law but are not punishable under the Criminal Code and who either do not have relatives or guardians who can supervise and reform them or for whom it is deemed inappropriate that they be put in parental or guardians’ custody. Special temporary sheltering and reeducation institutions, staffed by personnel who are to give the youth under their care proper guidance and education so that they will not commit crimes, are to admit these young vagabonds, beggars, and perpetrators of illegal acts. Generally, the period of detention is not to exceed 15 days, and the maximum time limit for holding the youth and minors cannot extend beyond two months. Certain documents are to be used in sending the youth to the institutions. Among them are the Document of the Decision To Send a Juvenile Delinquent for Sheltering and Rehabilitation, which is to describe the person’s criminal act as well as the period for sheltering and rehabilitation, and the Document on the Reasons and Basis for Approval of the Decision To Send a Juvenile Delinquent for Sheltering and Rehabilitation [shourong jiaoyang liyou ji genju biao], an internal public security document to be used for processing those youth who are over 14 years of age but under 16 who have committed serious crimes and been admonished but who have not changed their behavior.

Sometimes, however, roaming youth can be sent not to sheltering and reeducation centers but to rehabilitation and reeducation through labor institutions. For example, the Instructive Reply from the Ministry of Public Security and the Ministry of Justice Regarding Youths from Other Areas Who Come to Beijing To Commit Crimes Being Sent to Sheltering and Reeducation and Rehabilitation Through Labor Institutions in the Place of Their Household Registration provides that the public security bureau of Beijing municipality shall, in accordance with procedures of sheltering and RRTL,

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91 Encyclopedia at 922.
92 Encyclopedia at 436. This entry, "Temporary Shelters for Juveniles and Minors," begins with the comment that Bulgarian law provides that juveniles and minors are to be admitted to temporary shelters to prevent them from committing crimes and to give them education.
93 Encyclopedia at 922. The approval documents are to have a column for age, under which the birthdate year and month are filled in so that the correct age can be calculated and legal responsibility ascertained. Another column is to contain the reasons and basis for placing the youth under sheltering and rehabilitation. Under it, a detailed description of the criminal acts is to be provided, evidential materials are to be attached, and the proposed period of rehabilitation is to be stated.
send to the justice units (judicial administrative organs, which are subordinate units of the Ministry of Justice at the local level) of the place of their household registration those young criminal elements under 16 years of age who came to Beijing from other areas to commit crimes, if they meet the requirements of sheltering and RRTL. That is, the youth should first be sheltered in Beijing by public security organs, following certain procedures of sheltering pending rehabilitation and reeducation through labor. Then the person should be sent to the area where his household registration is and the justice unit of that area will be responsible for implementing the reeducation through labor. Thus, sheltering can be used for people who are later transferred into the category of persons requiring reeducation through labor, a practice that is mentioned again and again.

V. Regular Provisions on Arrest and Detention

Before assessing the application of shourong shencha in practice, it may be of value first to review the regular procedures for arrest and detention for criminal acts and non-criminal (administrative) acts.

A prominent figure in Chinese legal circles, Yu Haocheng, who has been an outspoken critic of China’s legal system in the last few years, advocates that shourong shencha be abolished. In his words,

The reason is that the decision by an administrative organ to deprive a citizen of his freedom is in conflict with the provisions of the constitutional guarantee of citizens' right to personal freedom. Our 'Regulations Governing Arrest and Detention' stipulates [sic] that without approval of a procuratorial organ, a public security organ may not arrest people [art. 4], which is exactly meant to protect this citizens’ right from violation. Taking into custody [i.e., shourong shencha] is, in fact, arrest in a disguised form, and there are many questions in the process, during which citizens’ personal safety is not protected by law. This kind of action violates the Constitution and must be corrected.95

In the PRC, forms of detention may be divided into the broad categories of criminal, administrative, and judicial (that is, as provided in the Code of

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95Yu Haocheng, "Problems in the Reform of China's Political Structure and the Development of its Legal System," Wen Hui Pi (Shanghai, in Chinese), Jan. 14, 1989, at 4, as translated in JPRS, May 3, 1989, at 7. Yu has been a director and professor of the China Legal System and Social Development Research Institute. He has held the posts of secretary general and concurrently standing committee member of the China Law Society, director of the China Law and Social Development Institute, and deputy secretary general of the China Constitution Research Society. He was forced by higher authorities to retire from his position with the Ministry of Public Security as editor and editor-in-chief of their Masses Publishing House, 284 Ming pao yukan [Ming Pao Monthly] (Hong Kong, in Chinese) 29–31 (Aug. 1989), as translated in JPRS, Nov. 30, 1989, at 52–55. After the massacre near Tian'anmen Square, Yu himself was placed under some form of detention—perhaps under this very measure of sheltering for examination—for over a year.
Civil Procedure). For the present purpose, our main concern is with types of criminal detention and administrative detention. The former includes investigatory detention (jiliu); arrest (daibu) or detention pending the formal bringing of charges; criminal detention (jiyi), a penalty served in a detention house for minor offenses; and reform through labor (laodong gaizao), a penalty served in a prison or labor camp for serious offenses. In addition, there is the criminal punishment of control or public surveillance (guanzhi), imposed for minor offenses that do not entail imprisonment. Administrative detention, imposed by public security organs without judicial supervision, includes regular administrative detention (xingzheng jiliu, governed by the Security Administration Punishment Act (SAPA, as noted above), sheltering for examination (shourong shencha), and reeducation and rehabilitation through labor (laodong jiaoyang). How, exactly, does the legal system provide for the lawful criminal or administrative arrest and detention of citizens?

A. Criminal Detention (jiliu) and Arrest (daibu)

The Constitution of the PRC provides that “Unlawful detention or deprivation or restriction of citizens’ freedom of the person by other means is prohibited.” It is the public security organs, according to article 3 of the Code of Criminal Procedure (CCP), that “are responsible for investigation, detention and preliminary examination in criminal cases.”

To detain a person, the public security organ must in theory present a detention warrant. The individual’s family or work unit is to be notified of the reasons for the detention and the place of custody within twenty-four hours after the detention, unless “notification would hinder the investigation or there is no way to notify them.” However, according to the Arrest and Detention Regulations (ADR) and the Code of Criminal Procedure, a warrant for detention is not always necessary: the public security organ “may
in an emergency detain, before it has obtained a warrant, any active criminal
whose crime justifies his arrest or who is suspected of having committed a
major crime if the person falls into one of several categories. Interrogation
must occur within 24 hours after detention; if the person should not have been
detained, he is to be immediately released. In theory, detention before
formal arrest may last for no less than seven and up to ten days.

In regard to arrest, the Constitution declares that “No citizen may be
arrested except with the approval or by decision of a people’s procuratorate
or by decision of a people’s court, and arrests must be made by a public
security organ.” This is echoed by the Arrest and Detention Regulations,
which state: “No citizens of the People’s Republic of China may be arrested
except by the decision of a people’s court or with the approval of a people’s
procuratorate” (art. 2). Once approved, the arrest is to be carried out by a
public security organ; conversely, a public security organ may arrest an
individual only after obtaining the approval of the people’s court or the
people’s procuratorate (art. 4). In making an arrest, the public security
organ must have an arrest warrant (ADR, art. 5; CCP, art. 50) and read it
aloud to the person (ADR, art. 5). As in the case of detention, the person’s
family or work unit is to be notified within 24 hours of the reasons for the
arrest and the place of custody, with the same exceptions (ADR, art. 5; CCP,
art. 50), and interrogation must take place within 24 hours after arrest (ADR,
art. 12, CCP, art. 51).

Under the Code of Criminal Procedure, the time limit for conducting
an investigation of a criminal case once a person has been arrested is normally
not to exceed two months (art. 92, ¶1). In exceptional cases, an extension
of one month may be allowed with the approval of the people’s procuratorate
of the next higher level. However, under the 1984 amendment of the article,
this three-month limit was extended by another two months, to a total of five
months, for “major cases involving crimes committed by a group or major
and complex cases involving persons going from place to place committing

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103ADR: 1 LPRC at 48, GFHB at 88; CCP: 1 LPRC at 127–128, FLHB at 142. The wording of this phrase in the Code differs slightly from that in the Regulations.
104ADR, art. 6(6); CCP, art. 41(6). ADR: 1 LPRC at 48, GFHB at 88; CCP: 1 LPRC at 128, FLHB at 143. The wording of the item in the Regulations and the Code is exactly the same.
105ADR, art. 12, 1 LPRC at 49, GFHB at 89–90; CCP, art. 44, 1 LPRC at 128, FLHB at 143.
106ADR, art. 8, ¶1, 1 LPRC at 48, GFHB at 89; CCP, art. 48, ¶1, 1 LPRC at 129, FLHB at 144. The public security organ has three days to submit a request for approval of an arrest, but this period may be extended an additional one to four days "under special circumstances." Then the procuratorate has three days to approve arrest or not. The second paragraph of the article in both the Regulations and the Code provides that if the case is not handled in accordance with these procedures, by either of the two bodies concerned, the detainee or his family may demand his release and the public security organ or the people’s procuratorate is to release him immediately.
107Art. 37, ¶2, 1 LPRC at 12, FLHB at 13–14.
108The people’s procuratorate may apparently decide not only whether to approve arrest, but also whether to conduct "supplementary investigation." CCP, art. 47, 1 LPRC at 129, FLHB at 144.
crimes.\textsuperscript{109} The time limit may also be extended "[i]f in the course of investigation the defendant is found to have committed other serious crimes" (Amendment, art. 3),\textsuperscript{110} nor is "[t]he time period during which a defendant undergoes examination for determination of mental illness [to be] counted in the time limit for case-handling" (Amendment, art. 9).\textsuperscript{111} In particularly serious cases, the Supreme People’s Procuratorate may request the Standing Committee of the National People’s Congress to postpone the hearing of the case.\textsuperscript{112}

**B. Administrative Detention (xingzheng jilii)**

Acts that are "not serious enough for criminal punishment but [that] should be given administrative penalties" are to be handled in accordance with the Security Administration Punishment Act.\textsuperscript{113} Designed to maintain social order, SAPA gives public security organs the power to handle minor civil disputes, such as brawls and minor cases of property damage, by mediation (art. 5) and directly to impose warnings, fines, or administrative detention (art. 6). The maximum period of detention is 15 days (art. 6).

Among the acts considered to disturb public order are "spreading disruptive rumors [to incite] disturbances" and "making false reports of dangerous situations [to foment] chaos" (arts. 19, items 5 and 6, respectively). Certain forbidden activities, such as prostitution, growing narcotic plants, and gambling, entail automatic detention of 15 days (arts. 30–32). In some cases, it may be noted, those engaged in activities related to prostitution, gambling, or pornography may be sent for rehabilitation through labor (art. 30). If a person has to be summoned, the public security organ must issue a warrant (art. 34–1).\textsuperscript{114} After the person has been summoned, interrogation and investigation must be conducted within 24 hours "in complicated cases subject to detention" under the SAPA (art. 34–5). Those subject to detention are to be held in "a specified detention house over a specified time" (art. 35). Those who resist enforcement of the punishment may be compulsorily detained (art. 35).

It is evident that there are loopholes in the above-mentioned laws and regulations, such as the indefinite extension of detention time pending psychiatric evaluation, the proviso that notification of the detainee’s family or work unit may be delayed if it will hamper the investigation, and the inclusion of such vague expressions as “major and complex cases,” “other serious
crimes," "spreading rumors to incite disturbances," and so on. At least there is a legal framework, despite these flaws and the fact that the provisions are not always observed; in the case of sheltering for examination, there is not even a formal law to follow, and there are no guarantees even on paper of protection of individual rights.

VI. Sheltering for Examination in Practice

Unfortunately, in practice, sheltering for examination has led to a variety of abuses and problems. Thus, public security organs often use *shourong shencha* as a substitute for regular criminal arrest and detention and the scope of persons targeted is expanded. Some statistics indicate that those who meet the criteria of being roaming criminal suspects or criminals who refuse to reveal their identity constitute only 60% (and in some places, only 40%) of those taken in. In a study of 648 cases first categorized under sheltering for examination, 85.49% were later changed into those requiring arrest, reeducation through labor, or public security administration punishments or were not prosecuted at all. However, 355 of those cases, or 54.92%, involved people in the district or municipality and their names, addresses, and basic criminal activities were known; they were not roaming criminal elements. This indicates that the focus of sheltering for examination is on the local populace rather than on roaming criminal elements. Yet, Ministry of Public Security Notification of unknown date (possibly 1983) stipulates,

> Generally speaking, criminal elements who are local people ... cannot be sent to sheltering for examination institutions. If their criminal conduct is serious but they are not roaming criminals, there should be an on-the-spot criminal investigation and they should be handled in accordance with the

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115 See also Amnesty International (Sept. 1991), supra note 11 at 10–14, which addresses the abuses of the stated time limit and scope of sheltering for examination.
116Yang & Wei, supra note 12 at 31.
117Zhao Shiming, supra note 12 at 28. Zhao notes that 85.91% of the 355 cases were afterwards assigned to arrest, reeducation through labor, or public security administration punishments (*chī’àn guǎnzhì chūfèn*) or were not prosecuted. According to the *Fāwù dìdiǎn* [Legal Dictionary], certain civil law countries have in their criminal codes a chapter on "peace preservation measures" (or punishments). The contents of such chapters and also the name of the measures may differ slightly from country to country. The measures are usually applied to persons who, in the opinion of a judge, would endanger society. These persons are usually sent to special reformatories instead of regular prisons and they typically include the mentally ill, drug addicts, and so on. Although the Criminal Code of the Republic of China, enacted in 1935, has a chapter on peace preservation measures (*bào’àn chūfèn*) (ch. 12), the Criminal Code of the PRC does not. According to the former, the measures may be applied to mental cases, drug addicts, and juveniles (if a person is 14 years of age, he or she may be ordered to enter a reformatory). *Fāwù dìdiǎn* 533 (Shanghai, Shanghai Dictionary Press, 1980. Legal Dictionary Compilation Committee, comp.). For a bilingual text of the Republic of China measures, see 2 *Major Laws of the Republic of China on Taiwan* 1045–1049 (Taipei, Magnificent Publishing Co., 1991. James C. Liu, et al., comp.). In the PRC, the analogue of peace preservation punishments are the public security administration punishments under the SAPA. They apply to juveniles (persons between 14 and 18 years of age), the mentally disturbed, and drunks, among others (see Ch. 2, Types and Applications of Penalties).
law and cannot be sent to sheltering for examination institutions.\textsuperscript{118}

It also provides that "We cannot shelter for examination those who have committed ordinary crimes, much less innocent people."\textsuperscript{119} When the authorities have had trouble gathering evidence, some suspects charged with offenses such as rape and adultery have been sheltered for examination instead of being held under regular criminal detention.\textsuperscript{120} Some persons who have already been investigated and who should either be arrested and detained or sent for reeducation and rehabilitation through labor instead continue to be sheltered for examination. Or, in order to boost their figures during campaigns to crack down on crime, some public security organs will round up again those who had already been released after being sheltered for examination.\textsuperscript{121} Sometimes the measure has even been applied to parties in civil disputes who are accused of civil wrongdoing.\textsuperscript{122}

Public security organs also frequently flout the three-month limit set forth in the various notifications concerning the time period in which the investigation is to be conducted.\textsuperscript{123} That limit, it should be kept in mind, is rather generous, considering the fact that the time limit for administrative detention is 15 days and the time limit for criminal interrogatory detention is two to three months. Because the authorities do not have to observe the usual procedures prescribed by law, and because there is no formal law to adhere to, sheltering for examination is extremely expedient. It provides a convenient means of bypassing the time limits that would have to be imposed for investigation and evidence-gathering under regular detention procedures (which, however, are also known to be abused). It has been reported that "people have been held under this measure for more than three months without it being reported to the authorities; it is a common phenomenon."\textsuperscript{124} According to public security statistics for one city, from 1983 to 1987, only 27\% of the cases of persons being sheltered for examination were concluded within one month, while as many as 24\% took more than three months to conclude. Some public security units have reportedly failed to conclude 30 to 40\% of sheltering for examination cases within the prescribed period.\textsuperscript{125} In certain individual cases, persons were held for one, two, or as long as four years.\textsuperscript{126}

\textsuperscript{118} Zhao Shiming, supra note 12 at 28. Zhao only states that "the Ministry of Public Security stipulates" the quoted segment. Since the information is not in the 1986 Notification, he may well be citing the July 31, 1985, Notification.

\textsuperscript{119} Id.

\textsuperscript{120} Yang & Wei, supra note 12 at 22.

\textsuperscript{121} Id.

\textsuperscript{122} Id.

\textsuperscript{123} See also Amnesty International (Sept. 1991), supra note 11 at 10–12.

\textsuperscript{124} Yang & Wei, supra note 12 at 32.

\textsuperscript{125} Zhao Shiming, supra note 12 at 29.

\textsuperscript{126} Yang & Wei, supra note 12 at 32.
In addition, sheltering for examination is often improperly supervised. As a result, persons incarcerated under the measure are sometimes maltreated. Some attempt escape or commit suicide. Fights and forced confessions by torture are prevalent, and living conditions are often so bad that many people become sick and have no way to obtain medical treatment. In addition, some shelters are understaffed, with women guards, in particular, being insufficient.\footnote{Id. at 31–32.}

The above problems are attributed by Chinese criminologists to several factors.\footnote{Id. at 32.} First, public security organs ignore regular criminal procedures for arrest and detention. Second, final determination of cases is usually made by lower-level officials whose standards vary and who often lack a sense of responsibility in handling cases expeditiously. Third, many people held under this measure refuse to cooperate and, owing to a lack of staff to handle the cases, the time for holding the suspects continues to be extended. Fourth, in the absence of applicable legislation, the people's procuracy has not exercised its function of supervision over application of the measure. Instead, because there is no law, public security organs are unrestrained and unaccountable for their actions.

VII. Current Views of Sheltering for Examination

As was noted above, some Chinese political and legal figures have suggested that sheltering for examination be completely done away with. Some of the reasons they adduce may be summarized as follows.\footnote{Id. at 32.}

1) public security organs have not been vested by the Code of Criminal Procedure with the authority to exercise the function of sheltering for examination,

2) despite its purportedly administrative nature, sheltering for examination is “arrest in disguised form” and differs little in practice from compulsory measures prescribed under the Code of Criminal Procedure,

3) public security organs apply the measure to too broad a range of targets, and

4) during examination, torture is often used to extract a confession, which is a violation of a citizen’s personal rights.

Those in favor of shouchong shenchua offer a variety of reasons for the necessity of its being used. Some maintain that sheltering for examination is necessary because of the large number of serious crimes committed by roving repeat offenders and because the five kinds of compulsory measures

\footnote{Summarized reasons 1, 3, and 4 are presented in Zhou Guojun, supra note 12 at 35. See also Amnesty International (Sept. 1991), supra note 11 at 6.}

\footnote{Cf. Yu Haocheng, cited above.}
in the Code of Criminal Procedure do not cover such offenses. They cite statistics indicating that in one area 20 to 30% of criminal cases involved roving criminals who refused to reveal their identity or confess their crimes. Furthermore, they claim that public security organs would not be able to gather evidence and investigate such criminal acts within the prescribed time limit if they had to follow procedures provided in the Code of Criminal Procedure for regular criminal detention.

Proponents of sheltering for examination generally argue that it should be brought within the framework of the law, although they disagree as to what form it should assume. Some propose that it be made a part of formal law by being incorporated in the Code of Criminal Procedure. They acknowledge that insofar as there is no legal basis for shourong shencha, the measure is a threat to citizens' lawful rights and contravene the PRC Constitution's prohibition against unlawful detention or deprivation or restriction of a citizen's freedoms. Moreover, they admit that "this compulsory measure, although it is of an administrative nature, in practice is very little different from such compulsory measures as regular criminal detention and arrest set forth under the Code of Criminal Procedure." To avoid abuses and inconsistencies found in implementation of the measure, they believe provisions on sheltering for examination should be incorporated into Chapter VI of the Code, on "Compulsory Measures." They note that as early as 1983, the Ministry of Public Security had begun to draft a law on the measure, but because the use of shourong shencha is strongly informed by policy and impinges on the exercise of personal rights, democratic rights, and other rights, the drafting must be handled very carefully. This would seem to indicate that on the one hand, the Chinese authorities are well aware that the use of such a measure, even if written into law, creates a bad impression abroad (and apparently, in China), and on the other hand, they are not too eager to lose the flexibility that the measure as currently practiced allows them.

Others maintain that shourong shencha does have a definite legal status, established by the 1980 State Council Notification and by the "administrative interpretations" of the measure provided in the Ministry of Public Security

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131 These include summons (jichuan), release on bail pending trial (qubeo houkeben), and residential surveillance (jianshi jichu) (art. 38); arrest (daibu) (art. 39); and detention (jitu) (art. 41). CCP, 1 LPRC at 127–128, FLHB at 142–143.
132 Yang & Wei, supra note 12 at 31.
133 Id.
134 Yang & Wei, supra note 12 at 30. It may in fact be worse, since the regular measures at least prescribe relatively brief time limits and set down procedures for detention and arrest. Moreover, those held under sheltering for examination are often not treated any differently from regular criminal detainees.
135 They offer six suggestions on how this might be done on pages 35 and 56 of their article.
136 Yang & Wei, supra note 12 at 30.
notifications. One criminologist of this view believes it should not be elevated into a criminal compulsory measure, but should be made into a public security compulsory examinational measure (zhian qiang zhi shencha cuoshi), governed by a set of regulations (tiaoli) approved by the State Council for trial implementation. Another has proposed that the National People's Congress or its Standing Committee adopt laws and regulations on this topic on the basis of the [1980] Notification because sheltering for examination is a compulsory measure of an administrative nature that limits personal freedom and the period of detention, which can be as long as three months, is actually equal to or longer in length than periods of administrative detention, judicial detention, criminal detention, and arrest and detention.

He also contends that there must be an amendment made to the Constitution to provide for sheltering for examination.

VIII. Conclusion

Many persons seized by the public security officials in the aftermath of the events near Tian'anmen Square were detained under sheltering for examination; that is, they remained incarcerated for several months without being formally arrested, sometimes not even in sheltering for examination institutions but in prison facilities. Even businessmen suspected of foul play may become subject to sheltering for examination. For example, a Hong Kong businessman, Mr. Li Hou-ch'eng, who negotiated business for a Hong Kong company with dealings in Canton, was held in a shelter station in Canton for nearly two years under the measure because his signature was on a receipt for funds that another member of the company had stolen. More recently, it has been reported that sheltering for examination is being used to take into custody persons engaged in illegal publication activities, even

137 Zhao Shiming, supra note 12 at 28; Bai Yuxiang, supra note 12 at 55. As cited in Amnesty International (Sept. 1991) at 8, "[Bai Yuxiang] states that in June 1980, the Legislative Affairs Committee of the National People's Congress Standing Committee pointed out in another document that the 1980 Notice, referred to as Document No. 56 (1980) of the State Council, may be regarded as an administrative regulation which, while there is no formal legislation, can be the legal basis for shelter and investigation." It implies that since the chief point of that Notification has essentially been ignored, and since more recent government documents on sheltering for examination (e.g., the 1985 Notification) may now form its legal basis, it is arguable whether the 1980 document can be claimed as the legal basis for shouwang shencha.

138 Zhou Guojun, supra note 12 at 41.

139 Zhao Shiming, supra note 12 at 30.

140 "Li Hou-ch'eng, Who Was Incarcerated for Two Years Under the Chinese Communitis' 'Sheltering for Examination,' Is Released," Shih chieh jih paat, Oct. 20, 1991, at 3. The paper noted that between 200-300 people from Hong Kong had been incarcerated in China under the same measure.
though such persons are obviously not people who are roaming from one place to another.\textsuperscript{141}

The current climate in China of retrenchment of citizens’ freedoms is such that criminologists writing on the subject have made no attempt, as did Yu Haocheng, to call for the abolition of shourong shencha. There are some who advocate legalizing it, however, in pursuit of the goal of establishing a "socialist legal system with Chinese characteristics." Furthermore, while it may be small comfort, the very fact that articles pointing out the problems associated with the use of sheltering for examination could be published after the June 4, 1989, Tian’anmen massacre serves as a reminder that the present regime is not as rigid as Maoist rule during the anti-rightist campaign of the late 1950s or the Cultural Revolution of the mid-1960s and 1970s.

Since public security officials know that holding suspects for a long time does not conform to the provisions of the laws on arrest and detention, for expediency they resort to the measure of sheltering people for examination, which has never been formally codified. One major reason for not formalizing it is that to do so might fetter the public security organs and draw attention to an area of human rights that they would rather have left in obscurity; kept vague, it has given them more freedom of action. Therefore, it is doubtful that shourong shencha will be put into the form of law in the near future.

\textsuperscript{141}Reported by Zhongguo tongxun she, Dec. 25, 1991, as carried in both Ta kung pao, Dec. 26, 1991, p. 2, and Sing Tao Daily (Hong Kong), Dec. 26, 1991, p. 3. According to the news item, China recently cracked a major case involving illegal publications in 27 provinces (and their equivalent) and 85 counties and municipalities. There were 257 illegal publication units that were participating in illegal publishing, printing, distribution, and sale. The case involves the largest number of illegal publications confiscated thus far. A Coordination Task Force for Dealing a Blow to Illegal Publishing Activities revealed that the case is known as the "September 18 case" because it was cracked by public security organs in Zhenjiang (in Jiangsu Province) on that day and the Ministry of Public Security and the State Press and Publication Office paid special attention to it. The units involved illegally published 230 titles of books and periodicals and printed more than one and a quarter million copies of the items. According to the newspaper account, in different regions at present, 35 "criminals" have been sheltered for examination "according to law" in connection with the case. Sources indicate that the illegal publications have been characterized as follows: 1) they have a tendency to oppose socialism and to incite people to oppose socialism; 2) they have a certain sexual or corrupting content; 3) they have a feudal, superstitious content. The first-named feature would seem to indicate that the authorities are using the clamp-down as an excuse to silence dissidents. It may also be noted that the words shourong shencha were used in the headline of the Sing Tao Daily piece but not in that of the (China-backed) Ta kung pao item.
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