

## **Session Two: The Role of Police and Prosecution in Juvenile Justice**

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# **ROLE OF THE POLICE IN JUVENILE JUSTICE IN JAPAN**

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## **I. INTRODUCTION**

The prevention of juvenile delinquency and the enhancement of the sound development of juveniles are important not only for juveniles themselves, but also for their families and communities. Additionally, they are also important for maintaining a sound and stable society. Reflecting changes in social conditions along with public awareness and life styles at that time, the number of juvenile delinquencies has either increased or decreased over the years from the post-war period to the present. Facing juvenile delinquency squarely, in changing times, the police authorities have been tackling this issue in different ways according to the causes as well as the conditions of the period.

For the sound development of juveniles, the Juvenile Law, the pivot of the juvenile legal system in Japan, aims to put youths that are delinquent on protective measures for personality correction as well as circumstantial adjustment, and specifies procedures of hearing, etc. in the Family Court. Concerned agencies, including the Police, are addressing this issue from their own respective standpoints in order to prevent delinquency and to protect juveniles.

The Police are vigorously promoting extensive activities to prevent juvenile delinquency and to enhance sound development. The Police are the agency with whom delinquent youths first come into contact and have a responsibility to ease the public's anxieties and to ensure a society where people can lead secure lives. They are thus putting the utmost effort, day and night, into tackling currently worsening juvenile delinquency problems in order to meet people's expectations.

## **II. RULES IN POLICE INVESTIGATIONS OF JUVENILE CASES**

Police investigations of juvenile cases are conducted properly in "the spirit of contributing to the sound development of juveniles" in compliance with the provisions of the Criminal Procedure Law and the Juvenile Law, and bylaws such as the Norms of Criminal Investigation (regulations of the National Public Safety Commission), the Outline of Police Activities to Juveniles (instructions from the Deputy Director-General for National Police Agency), etc.

In cases where "juveniles subject to the jurisdiction of the Family Court" (juvenile delinquents) are identified, the Police refer them to the Family Court, public prosecutors, Child Guidance Centers, etc., or send notification after due investigations or inquiries are carried out.

"Juveniles subject to the jurisdiction of the Family Court" includes three types:

- "juvenile offenders"(juveniles over 14 but under 20 who committed criminal acts)
- "juveniles suspected of illegal behavior" (juveniles under 14 years of age who are alleged to have violated any criminal law or ordinance)
- "pre-delinquents" (those who are deemed likely to result in future offenses or violations of criminal laws and regulations in light of their personalities or circumstances)

Since the investigation (or inquiry) of juvenile cases is supposed to lead to a procedure for protection and fosterage of juveniles in the Family Court despite having the nature of a criminal investigation, it should be conducted with “the spirit of contributing to the sound development of juveniles” and should cover personalities, behavior, background records, education, family backgrounds, friends or associates of delinquent youths as well as the facts, causes and motives for delinquency.

### **1. Principles of Criminal Investigation Conducted on a Non-Compulsory Basis**

The Criminal Procedure Law stipulates that the Police “can conduct necessary investigations in order to obtain a purpose. However, compulsory measures cannot be carried out unless otherwise specified in this Criminal Procedure Law.” Referring to the Norms for Criminal Investigation, it also states that “investigations must be conducted on a non-compulsory basis as much as possible”. In principle, criminal investigations should be conducted on a non-compulsory basis. This is no different from adult cases.

### **2. Interview of Juveniles**

When interviewing juveniles, considering that the Police must find not only the facts regarding the delinquency (criminal acts) but also the facts regarding the necessity for correctional measures as well as circumstantial adjustment (possible need for protection), delinquent facts and the need for protection must always be clarified. Hours, places, behavior, etc. are also taken into account in conducting an interview. Needless to say, an interview of a juvenile must be carried out on a voluntary basis for both adults and juveniles. But, especially in the case of juveniles, there is a danger that they might be easily influenced by someone’s suggestions or leading questions, etc. because they are not mature or stable enough in terms of either their mind or body. There are many cases where juveniles make an ambiguous confession and the voluntary nature of their response is called into question. Therefore, the voluntary nature and credibility in interviewing juveniles must be secured while evoking a sense of contrition and remorse.

### **3. Arrest, Custody and Detention of Juveniles**

Regarding the investigation of juvenile cases, the Norms for Criminal Investigation stipulates that “the measure of keeping a juvenile suspect in custody should be avoided as much as possible. In the case where a juvenile suspect is to be arrested, taken or escorted in unavoidable circumstances, the timing and method, in particular, must be considered carefully.” In response to this, the Outline of Police Activities to Juveniles regulates that “police officers should avoid arrest, custody and other compulsory measures for criminal juveniles as much as possible” and puts restrictions on compulsory measures including their arrest. In arresting juvenile suspects, as in the case of adults, the reasons and necessity for arrest, the nature of the case, the juveniles’ behavior, a guardian’s custodial ability, etc. must all be considered and careful consideration of the adequacy of arrest is essential. This is because the investigation of juvenile cases aims to enhance the sound development of youths and to put them on protective measures for personality correction as well as circumstantial adjustment if necessary. Thus it is natural to consider the magnitude of the impact that compulsory measures such as arrest could have on the mind and body of a juvenile.

As for the reasons for arrest, in an ordinary arrest, the Criminal Procedure Law stipulates, “where there is a reasonable ground to suspect that the suspect committed a crime, the Police may arrest him upon a warrant of arrest issued in advance by a judge”. As to an emergency arrest without a warrant and arrest on the spot, requisites for each arrest are stipulated by law according to the category. There is no difference in handling juvenile and adult suspects. Bearing in mind that besides the reasons for arrest, the necessity for arrest also refers to a case where there is a suspicion of a possibility of absconding, destroying or altering evidence unless an accused is kept under restraint, the Criminal Procedure Law stipulates the above “... in light of a suspect’s age, background, as well as the gravity of the crime, the state and other circumstances.” Generally, since juveniles depend heavily on their guardians, are immature mentally and physically, and often not very capable socially and economically, it can be surmised that juveniles are less likely to destroy

or alter evidence than adults.

The decision on juvenile custody is basically made on the same basis as for adult cases. That is, the gravity of a case and its conditions, the presence of obstruction in the process of investigation such as escaping or the destruction or alteration of evidence, collusion, etc. along with age, background, health and other circumstances of a suspect must be taken into consideration (the Norms for Criminal Investigation). Also, when it is determined that there is no necessity for the detention of an arrested suspect, the suspect should be immediately released. When it is decided that there is a necessity for detention, a suspect must be referred to a public prosecutor along with the documents and articles of evidence within 48 hours of apprehension. So as to block contact with other suspects, a juvenile suspect must be separated from other suspects and thus a separation rule for the handling of adults and juveniles is provided. In a case where there are many juvenile accomplices, they must not be kept together in the same room and each suspect must be held separately. In the case where a juvenile suspect is kept in custody, the principle is that a guardian or a substitute should be contacted without delay. By doing this, a guardian or a substitute will be able to give adequate guidance to the juvenile during the period of recovery, protection and fostering after the case is closed.

As for a request for the detention of a juvenile, the Juvenile Law stipulates that this request must only be made in unavoidable circumstances. A decision on “unavoidable circumstances” shall be made according to each specific case while considering requests arising from the characteristics of a criminal case as well as a protection case. In practice, there are roughly three “unavoidable circumstances”: First, those related to physical reasons such as the capacity of nearby juvenile homes when placement in a remote home may hinder investigation. Secondly, those related to the personal circumstances of a juvenile; for instance, in the case where the same treatment as adults should be appropriate considering the age, record of delinquencies, character and conduct of a juvenile. Thirdly, those related to the performance of an investigation; a serious obstruction may occur due to the nature, gravity or complexity of the case, the involvement of many people, denial, other charges under investigation, etc. unless a suspect is placed in detention. The law also stipulates that a suspect should be placed in a detention house or a jail; a custody facility in a police station used in lieu of a detention house.

#### **4. Taking of Fingerprints and Photography of Juvenile Suspects**

Under the Criminal Procedure Law, the Regulation for Fingerprint Handling, etc., fingerprints and photographs of those juvenile suspects kept in detention must be taken. For those who are not kept in detention, the Law specifies that fingerprints and photographs must only be taken in unavoidable circumstances and only when consent is acquired from a juvenile suspect. Especially, in the case of juveniles of 14 or 15 years of age and for minor offenses, the necessity and voluntary nature must be carefully considered especially in acquiring consent. A guardian’s consent must be sought for a juvenile under 16 years of age.

#### **5. Open Criminal Investigation of a Juvenile Suspect**

“Open criminal investigation” is to publicize extensively the name, etc. of a suspect and to actively ask the public for their help. If the open criminal investigation of a juvenile suspect is conducted, his/her name and so forth would be known at the investigation stage. The Juvenile Law stipulates that “concerning a juvenile who is subject to the Family Court or an adult against whom public prosecution is instituted with a crime committed when he/she was a juvenile, articles or photographs that may indicate the identity of a person through their name, age, occupation, residence, features, etc. must not be placed in papers or other publications”. This regulation prohibits the placement of articles, etc. about a juvenile who is put on the Family Court procedure or a person against whom public prosecution has been instituted with a crime committed when he/she was a juvenile. It basically aims to give them an opportunity for rehabilitation in light of their future possibilities. It is therefore considered that this purpose should also be emphasized at

the investigation stage. Also, this Law specifies that juvenile proceedings should not be open to the public, thus aiming to protect immature juveniles and enabling them to rehabilitate themselves in the future. Furthermore, the Norms for Criminal Investigation or the Outline of Juvenile Police Activities also specify that inference of the juvenile in question must not occur by announcing the name, address or the name of their school, etc. In conformity with these regulations, it is considered that the open criminal investigation of a juvenile suspect should be basically avoided.

However, as in the cases of suspects alleged to have committed vicious crimes such as a series of murders or who are likely to commit another crime, there are special circumstances where requests can be made in the public interest for the protection of society. Where it is feared that a juvenile suspect may commit suicide and they need to be protected at once, there are also special circumstances. It is considered that the open criminal investigation of a juvenile suspect can be carried out after considering such exceptional circumstances of the offense as well as the potential to escape, a suspect's personality and other possible investigating measures.

### **III. FUTURE TASKS IN INVESTIGATION OF JUVENILE CASES**

It is the Police that make the initial contact with juvenile delinquents. The investigation period in juvenile cases is thus extremely important to ensuring fairness in juvenile proceedings. It is essential that the Police take a firm position against vicious delinquencies, clarify facts and then make delinquents understand the social consequences of their crimes and the victims' suffering. The Juvenile Law was partially amended and became effective this April, and the new law includes a review of the handling of juvenile cases, etc. conducting fairer fact findings in juvenile proceedings and introducing a system to take care of victims. In the expectation that criminal court cases against juveniles will increase and that fact finding will be conducted with an even closer attention to detail in juvenile proceedings due to this amendment, a more thorough basic investigation along with a closer and fairer investigation will be sought in the future including striving to gather more extensive evidence, etc. Also, in order to take prompt and unerring action on increasingly complicated and tough juvenile cases and to maximize the limited investigation capacity, it is essential to strengthen the investigation system for juvenile cases.

#### **1. Promoting a Closer and Fairer Investigation of Juvenile Cases**

What should be clarified through the investigation of juvenile cases is basically no different from that of adult cases. But, taking the characteristic features of juveniles into consideration, an even closer and fairer investigation is required for juvenile cases. Recent juvenile cases indicate that: atrocious and violent crimes as well as complicit crimes are on the increase and the crimes themselves are becoming more complex. The cases where persons involved arrange their stories in advance so as not to contradict each other and fake alibis are also increasing. Therefore, in order to ensure proof in juvenile cases, not just by taking the statements of juveniles, the police need to obtain evidence to support the statements, secure objective evidence, and review inconsistencies in investigation documents, etc. Therefore, in order to provide uniform and objective guidance, etc. on juvenile cases, investigative supervisors are placed in the Juvenile Division of the Prefectural Police Headquarters and give individual and specific guidance on each case. In addition, general education is provided to investigators as well as other staff members on a daily basis.

#### **2. Strengthening Investigating Capacities of Juvenile Cases**

Recent juvenile cases are becoming more atrocious and the number of juveniles under arrest is reaching that of adults, which means that the influence of juvenile delinquency under public security is now immense. However, the system of police dealing with juvenile cases is not necessarily well organized. Based on this situation, the Police are constantly endeavoring to set up and extend Juvenile Case Special

Investigation Branches, etc. at the Police Headquarters or to introduce a system for designating investigators of juvenile cases, etc. by increasing the number of investigators for juvenile cases through relocating personnel. Furthermore, strengthening the cross-sectional investigating capacity has been pushed forward by addressing the further improvement of investigator's skills and by taking every opportunity to educate not only investigators of juvenile cases but also investigators in other divisions about investigative procedures as well as the characteristics of juvenile cases.

### **3. Dealing with Victims of Juvenile Cases**

The amended Juvenile Law includes a system in the Family Court of notifying an alleged juvenile's name, proceeding results, etc. to a victim's family. Society's rapidly growing interest in crime victims has forced the police authorities to put more emphasis on care for the victims among the numerous activities of the Police. The needs of crime victims for more information on investigations are no different regardless of adult or juvenile cases. Similarly, whether a victim is an adult or not has no bearing on the Police's approach to victims of a crime. Under the Juvenile Law, the means of acquiring information is limited to victims of juvenile crimes in contrast to those of adult cases, due to its special nature of non-publicity in juvenile proceedings. However, while considering possible obstructions in the process of investigation, the honor of persons concerned, the protection of privacy, the suspicion of harming juveniles' sound development, etc., special efforts are being constantly made to emphasize the feelings of victims and to meet their demands as much as possible.

## **IV CONCLUSION**

The Police are applying all their energy to tackling worsening juvenile delinquency both in terms of quality and quantity in order to enhance the sound development of juveniles. The question of how to deal with delinquent juveniles and then how to rehabilitate them is shared amongst all the agencies concerned with juvenile cases. The Police, as the agency responsible for making the initial contact with a delinquent, needs to fulfill its duty while working closely with other agencies for the sound development of juveniles.

## **V. RECOMMENDATIONS**

- (1) Juveniles under detention pending trial should be kept separate from adults and should be detained in a separate institution or in a separate part of an institution also holding adults.
- (2) Police officers, respecting children's rights, should be trained in the use of child-friendly interview techniques and procedures conducive to the best interests of children.

# ROLE OF PUBLIC PROSECUTORS IN JUVENILE JUSTICE IN JAPAN

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## **I. INTRODUCTION**

Japan has public prosecutors, who have the power to investigate criminal cases and institute prosecutions. Japan does not have a system of police prosecutions. The police must refer all criminal cases investigated to public prosecutors, and public prosecutors review the cases and decide whether or not to institute prosecution. Japan has no private prosecutions.

In Japan, a “juvenile” is defined as a person under 20 year of age in the Juvenile Law and is treated differently from an adult offender in criminal procedure. Although public prosecutors do not play any particular role in the rehabilitation process for juveniles, and deal with only juvenile offenders referred by the police, their role regarding fact-finding in juvenile criminal cases is significant.

Since criminal justice systems differ from country to country, I would like to touch upon the public prosecutors system briefly and point out some characteristics of the Japanese criminal justice system to facilitate your understanding before explaining the juvenile criminal justice.

## **II. PUBLIC PROSECUTORS**

### **A. Qualification**

In Japan, public prosecutors have the same qualifications for appointment as judges and private attorneys (practicing lawyers). Any person who wants to become a judge, a public prosecutor or a private attorney has to pass the National Bar Examination in principle, and then, take an 18-month training course as legal apprentices at the Legal Research and Training Institute managed by the Supreme Court. After graduating from the Institute, they are inaugurated as a judge, a public prosecutor or a private attorney. Every year approximately 120 apprentices become judges, approximately 60 to 80 apprentices become public prosecutors and approximately 800 apprentices become private attorneys.

### **B. Status of Public Prosecutors**

Prosecutorial functions are part of the executive arm of the government. On the systematic side, the Ministry of Justice is responsible for public prosecutors. However, the Minister of Justice cannot control an individual public prosecutor in order to secure the independent and impartial exercise of its power.

### **C. Organization**

Public Prosecutors offices are divided into four types: One Supreme Public Prosecutors Office (headed by the Prosecutor-General) corresponding to the Supreme Court, 8 High Public Prosecutors Offices corresponding to the High Courts, 50 District Public Prosecutors Offices and their 203 branches corresponding to District Courts and Family Courts, and 438 Local Public Prosecutors Offices corresponding to Summary Courts.

There are about 1,200 public prosecutors, about 900 assistant public prosecutors and about 9,000 assistant officials in Japan.

## **D. Functions**

The main functions of public prosecutors are as follows:

- 1) investigate criminal cases
- 2) prosecute criminal cases
- 3) present criminal cases in the trial court, prove the offence charged and request courts to make the appropriate application of the law to criminal cases

## **III. CRIMINAL PROCEDURE (ADULT CASES)**

### **A. Overview of Criminal Investigation Process**

In Japan, although both the police and the public prosecutors are authorized to conduct criminal investigations independently, the police in practice conduct the investigation initially and primarily in almost all cases. The police, however, do not have the power to finalize the criminal case and only public prosecutors have the power to do so by law. Therefore, the police must refer any case to public prosecutors with all documents and evidence.

After referral, the public prosecutor in charge of the particular case reviews and scrutinizes it, and interviews suspects and key witnesses by him/herself. If necessary, the prosecutor can give the police officer advice to collect further evidence. Afterward, he/she decides whether or not to institute a prosecution.

### **B. Criminal Procedure in Arrest Cases**

First of all, an arrest is not a prerequisite for referral to prosecutors or for prosecution in Japan. When the nature of the case is not so serious, the police and public prosecutors can conduct criminal investigations without arresting suspects, and even indict him/her without an arrest in any type of cases.

No one may be arrested without a warrant issued by a judge. Only in cases where the probability of absconding or the destruction of evidence is found as well as where there is probable cause that the suspect committed the alleged crime, can such a warrant be issued. There are two exceptions; an arrest of a flagrant offender and an emergency arrest. In the case where the police arrest a suspect, they must refer the case to a public prosecutor within 48 hours of arrest.

After the public prosecutor receives the case from the police, the prosecutor must interview the suspect referred and screen the case, and decide upon the necessity of pre-indictment detention. If necessary, the public prosecutor can request for a judge a pre-indictment detention order within 24 hours of receiving the case, and normally they do so.

The judge receiving the request reviews the case and may order the pre-indictment detention of the suspect for 10 days. The order is issued based on the same grounds as the arrest. The public prosecutor may request a judge an extension of the detention for up to 10 days, if necessary. The public prosecutor must release the suspect by the termination of the detention period unless a prosecution is initiated.

The suspect is in many cases detained in a police jail, which is substituted for a detention house, during the above-mentioned period. During the period of pre-indictment detention, the suspects have no right to bail, although bail may be granted after the indictment.

Japan has no examining judge or magistrate. The law enforcement agencies such as the police, and public prosecutors are responsible for criminal investigations. Even after the police refer the case to the



public prosecutor, the police generally continue to conduct criminal investigations such as interviewing the suspects and persons involved in the case, collecting any evidence. In addition, in almost all cases, the public prosecutor by him/herself also interviews the suspect and important witnesses directly.

All suspects have the right to remain silent and the privilege against self-incrimination.

With regard to non-arrest cases, there is no periodical limit on investigation.

All suspects have the right to counsel. However, under the present law, before the indictment, the suspect must hire his/her attorney by his/herself, although the Japanese government assigns a defense counsel to him/her after the indictment.

## **C. DISPOSITION OF CASES**

### **1. Monopolization of Prosecution**

Public prosecutors have the exclusive power to decide whether to prosecute. Japan has no grand jury or preliminary hearing system conducted by judges.

### **2. Institution of Prosecution**

There are 2 main forms of prosecution: formal procedure and summary procedure.

#### **a) Indictment**

The public prosecutor indicts a suspect, which is a formal charge procedure. The public prosecutor submits to the court only a bill of indictment including the defendant's name, age, address and the facts constituting the offense charged. No evidentiary materials may be attached to the bill of indictment so as not to prejudice a judge or judges before trial.

#### **b) Summary Procedure**

When the public prosecutor determines that the suspect deserves a fine not exceeding ¥500,000, and the suspect admits his/her guilt, the public prosecutor can choose the summary procedure. In that case, based on acceptance of the suspect, the suspect is charged to a summary court and no public hearing is held. The judge in the court examines in chambers the documents sent by the public prosecutors and decides whether to impose a fine.

### **3. Non-Prosecution**

#### **a) Insufficiency of Evidence**

It is clear that a public prosecutor should not prosecute a suspect without sufficient evidence. In Japan, in order to protect the fundamental rights of suspects and abide by the rules of impartiality, public prosecutors conduct case screening very carefully and decide on non-prosecution based upon "beyond a reasonable doubt" standard in practice. For that reason, the rate of acquittal stands at only 0.0054%.

#### **b) Suspension of Prosecution**

The public prosecutor has wide discretionary power and he/she can drop the case even when there is enough evidence to secure a conviction. This disposition is called "Suspension of Prosecution". This is the most remarkable characteristic of Japanese prosecution. This system is advantageous in disposing of cases flexibly based on all circumstances including the seriousness of individual offenses, the criminal tendencies of each suspect, the issue of compensation and the remedy of the victim's feelings, and moreover, in giving them the chance to rehabilitate themselves into society. It is observed that this wide discretionary power granted to public prosecutors has a significant role in promoting individualized justice and encouraging suspects' rehabilitation, and does work well.

## **D. CRIMINAL TRIAL PROCEDURES (ADULT CASES)**

### **1. Public Trials**

According to the Constitution, trials shall be conducted and judgments declared publicly. In addition, the accused shall enjoy the right to a speedy trial.

Japan does not have jury trials. Competent judges try all cases. A three-judge panel tries serious cases, and the others are tried by a single-judge.

### **2. Presumption of Innocence**

Japan adopts the adversarial system regarding the criminal trial procedure. Defendants are presumed innocent until proven guilty. Conviction must be established by evidence beyond a reasonable doubt. The public prosecutor bears the burden of proving facts relating to all material elements of the crime.

### **3. Trial Procedure**

Japan does not have an arraignment system. Therefore, even if the accused pleads guilty in the opening proceedings, the fact-finding process cannot be omitted.

Japan has the hearsay rule. Hence, witnesses must testify in courts, unless the defendant consents to his/her written statement.

The trial procedure is not procedurally divided into separate trial and sentencing stages.

## **IV. JUVENILE CASES**

### **A. Definition of Juvenile**

Persons who are under 20 years of age are defined as juveniles, according to the Juvenile Law in Japan. Persons who are under 14 years old are not criminally responsible for offenses in Japan.

### **B. Criminal Investigation Procedure**

At the criminal investigation stage, the criminal investigation procedure in relation to juveniles is basically the same as that for adult suspects.

The police can arrest juveniles, and then they must refer the case to a public prosecutor within the above-mentioned period like adult suspects. There is an exception that if the crime in question is punishable by a fine or lesser penalty, the police must refer the case directly to the family court.

Although juvenile suspects can be detained, the public prosecutor and the judge consider the necessity of his/her detention carefully. According to the Juvenile Law, public prosecutors shall not request a judge to detain the juvenile suspect unless unavoidable circumstances exist. Juvenile suspects under detention are kept separate from adults. In addition, juvenile suspects may be held in the Juvenile Classification Home instead of a detention house or a police jail because of appropriate protection of juveniles.

The police and public prosecutors conduct criminal investigations basically in the same manner as an adult suspect, respecting the sound upbringing of juveniles.

Criminal investigations of juveniles are conducted expeditiously. Since juveniles grow up rapidly and change intellectually and mentally, unnecessarily delayed dispositions do not have the desired effect.

### **C. Disposition of Juvenile Cases**

In Japan, since the Juvenile Law upholds the educational goal of sound and wholesome development of juveniles rather than punishment, the family court handles all juvenile cases apart from those proceeded in the regular criminal courts.

For this reason, public prosecutors must refer all juvenile cases to the family court if there is enough evidence to show the juvenile committed the offense. The public prosecutor must also refer the case where there are grounds that the case is subject to a family court procedure even when there is no suspicion of an offense. Therefore, public prosecutors have no discretionary power to dispose of juvenile cases unlike the cases committed by adult suspects.

After the family court receives juvenile cases from the public prosecutor, it determines, through examination and hearing, whether the juvenile needs to be placed under any protective measures such as placement under probation or commitment to the Juvenile Training School. In this connection, one option the family court can choose is to refer the case back to the public prosecutor. In other words, the family court can refer the case back to the public prosecutor for prosecution in the criminal court when it finds it proper to do so in light of the nature and circumstances of the offence.

However, this refer-back of the case to the public prosecutor is, in reality, an exceptional disposition. The percentage of such refer-back cases was only approximately 3-5 % each year. By offense, traffic accident cases and violations of road traffic laws represented most of these cases.

The Juvenile Law, established in 1949, was amended and the amended law was put into force in April of this year. It stipulates that all juvenile suspects aged 16 or older who allegedly commit serious offences with intent, resulting in a victim's death, shall be referred back to a public prosecutor except where this is not proper when considering of all the circumstances.

Once the case is referred back to the public prosecutor, the prosecutor is obliged to prosecute the juvenile in the same manner as an adult offender. The trial procedure is the same as that for an adult defendant. The procedural safeguards such as the presumption of innocence, the right to remain silent, and the right to counsel are also guaranteed for juvenile defendants in the same way as for adult defendant.

However, a person who is under 18 years old at the time of the commission of an offense may not have the death penalty imposed. In that case, a juvenile defendant is sentenced to a penalty of life imprisonment. In the case where a juvenile is to be punished with imprisonment of which the maximum period is more than 3 years, he/she shall be given a sentence which prescribes the maximum and minimum periods, that is, no specific period of imprisonment is given.

### **D. Participation of Public Prosecutors in the Family Court Proceedings**

According to the previous Law, a public prosecutor was not allowed to participate in any proceedings conducted by a family court. In contrast, the amended law allows a public prosecutor to participate in such proceedings including attending hearings, if a court deems this is necessary. Therefore, in the complicated cases where a juvenile severely contests the charge on serious crime such as homicide, the public prosecutor can present evidence at the hearing. This amendment is aimed at improving the fact-finding process.

## **E. The Role of the Public Prosecutors in Juvenile Justice**

As mentioned previously, the public prosecutor deals with only juvenile offenders, and is not involved in any rehabilitation process of delinquent juveniles. However, since the finding of facts is obviously a prerequisite for determining appropriate disposition of cases, the role of the public prosecutor with respect to the fact-finding process is of vital importance. It appears to be increasingly difficult to conduct criminal investigations and to find out the true facts, taking into consideration the recent trends in Japan that the crimes committed by juveniles have become more complex, and in some cases many juveniles jointly commit serious offence.

On the other hand, it is equally important to note the protection of the rights of juvenile offenders. Considering the promotion of the well-being of the juveniles, the police officers and the public prosecutors also have to treat them in such a way as to avoid undue harm to them. In this regard, public prosecutors as legal professionals need to play a role to secure the due process of law and the protection of juveniles' rights.

# THE ROLE OF KENYA POLICE IN JUVENILE JUSTICE

**Mrs. Mary M. MWANGANGI**  
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*Honourable Judges of the High Court of Kenya,  
Our Distinguished Guests from UNAFEI, Japan,  
Participants,  
Ladies and Gentlemen.*

I am very happy to be here with you during this seminar. I am also pleased to see professionals from various fields gathered here to tackle issues of common interest. I wish in particular to acknowledge the presence of officials from UNAFEI, Japan who have come to share with us their experiences, knowledge and ideas. Like any other organization the Kenyan Police Force is always happy to receive suggestions and where appropriate effect changes. This seminar is, therefore, ideal because it provides a suitable arena for finding solutions to common problems based on practical experiences of professionals.

The Kenyan Police is a National Force established under chapter 84 of the laws of Kenya and its duties include:

- Maintenance of law and order
- Prevention and detection of crime
- Preservation of peace
- Protection of life and property
- Apprehension of offenders
- Enforcement of all laws and regulations with which the force is charged.

With regard to juvenile justice the role of the Police is first and foremost to prevent occurrence of crimes related to juveniles. This is done through patrols and educating the public during seminars and other forums.

The Force is structured in such a manner as to cover the whole country. Police stations, posts and patrol bases are located in various parts of the country so as to bring security closer to the people. In recent times the concept of community policing has also been introduced so as to tap support from the public. As a result we have noted that members of the public are now willing to report cases of offences against juveniles.

Cases against juveniles investigated by the Police include murder, assault, abduction, defilement, and incest among others. In this regard, when a crime is committed, the Police assume the role of investigators. This includes recording the report in the occurrence book. In cases where the offence is defilement, incest or other sexual related offences the Police escort the victim to a doctor for medical examination and treatment. Police Officers also collect from the doctor the victims blood sample, clothes including pants and petticoats, vaginal smears and take them to government chemists who conduct further tests. In the meantime, the scene of crime is visited and more evidence collected. The Police collect any items which belong to the victim or suspect at the scene. This includes clothing, shoes, hair and any other items that may have been left at the scene during the struggle. The exhibits collected are carefully handled, packed separately and labeled accordingly.

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\* This paper was presented on behalf of Mr. Philemon F. Aborgo, the Commissioner of the Kenyan Police.

Another role of the Police is to record statements from the victim and witnesses. Sometimes the victim may state that although she did not know the suspect before the assault she can identify him if she sees him. In such a case if the Police have a suspect, an identification parade is held to see whether the victim is able to identify the suspect. However the lack of one way glass during identification parades involving children is sometimes a handicap to investigations.

At times the juvenile is the offender. Offences committed by juveniles include stealing, trespass, possession of narcotics, assault and defilement among others. This is attributed to poverty, HIV/Aids orphans, drug abuse, etc. When the suspect is a juvenile the Police have a responsibility to inform the parents or guardian of the arrest as soon as practicable. The suspect (juvenile) should be released to parents or guardian on bond/or cash bail entered by the latter. Unless:

- The charge is murder or manslaughter or other grave crime;
- It is in the interests of the juvenile to remove him from association with an undesirable person;
- His/her release would defeat the ends of justice.

Our Police Standing Orders specify that a juvenile will not be placed in the same cells as adult prisoners whether male or female.

If the suspect is a female juvenile our regulations state that:-

- She should be searched by a female officer.
- Be placed in a separate cell and must never share a cell with males.
- If she complains of illness or injury or appears to be unwell a female police officer or a woman should visit and assist her.
- A male police officer will not enter her cell unless accompanied by a female or another police officer.
- The services of a wife of a police officer other adult female relative of a police officer should be obtained when no woman police officer is available.

Another role of the Police is that of taking the finger prints of the suspect to check his criminal records. This helps us to know whether the suspect is a first offender or whether he has a previous record of conviction, perhaps for a similar offence.

Thereafter a charge and caution statement is taken by an officer not below the rank of Inspector before the suspect is charged before court. If the suspect pleads not guilty the Police have a responsibility to bond the victim and witnesses to give evidence before court.

Another role played by the Police is that of a Court Prosecutor. If the accused is ultimately found guilty the Court Prosecutor fills in an appropriate Police form to record the conviction and the document is forwarded to the criminal records office (CRO) for record purposes.

Some of the problems encountered in the investigation of offences against children;

- Unwillingness of victims to report especially street children who feel that they have already committed an offence by being in the streets hence they fear the Police.
- Sometimes children believe adult perpetrators when told to keep a secret or are intimidated or bribed hence they do not file a complain with the Police.
- In case of incest family members sometimes conspire to conceal the crime hence lack of support for the child.
- Sometimes there is also cultural interference with the legal process hence issues are dealt within the community rather than making a report at the Police Station.

- In cases of defilement or incest, a complainant unknowingly destroys evidence such as having a bath or washing clothes.
- Lack of corroboration in evidence. Our laws require that the evidence of a child be corroborated by an adult. We are happy this is being addressed in the children's Bill.
- Sometimes it takes a long time to hear/finalize cases, hence unwillingness of the would be prosecution witnesses to assist the police.
- Lack of Police doctor. There is only one Police doctor, based in Nairobi.
- Some doctors are unwilling to fill P3 forms due to time consumed, travelling and accommodation expenses when attending court.
- Some doctors ask for money to cover their expenses which victims may not afford.

Dear Participants, one of our plans at the moment is to set up desks that are manned by specially trained officers to deal with cases related to women and children. At the moment a number of Police officers including court prosecutors have been trained in handling cases related to children. The training includes such topics as defilement, incest, abduction, among others. These officers are back to their Stations and we have noted improvement in the handling of victims of these crimes.

Ladies and gentlemen, that in brief, is the role of the Police in Juvenile Justice. I wish to thank you most sincerely for inviting me to make a presentation in this seminar. I see this gathering as an indication of your support to our efforts of eliminating offences against children in our society.

Thank you.

# **THE ROLE OF THE CRIMINAL INVESTIGATION DEPARTMENT IN THE ADMINISTRATION OF JUVENILE JUSTICE**

**Mr. Joseph Kasili KUNDU**  
**Superintendent of Police, Kenya**

It is with great pleasure and appreciation that I take this opportunity to thank the organizers of this workshop – that is UNAFEI in conjunction with the Children Department in the Ministry of Home Affairs.

In our daily activities, we Prosecutors are faced with so many challenges, and rarely have to think about some of our important roles. This is therefore a good opportunity for us to be together and think of the administration of Juvenile Justice.

In many urban areas in Kenya, children are seen loitering in streets, in slums, in parks, markets and all sorts of areas. Most of them have no known means of subsistence; and they live on begging, picking, pick-pocketing, gambling, stealing, taking up small casual jobs and some times running errands. Most of them have never been to school or dropped out at a very low level, look miserable, are half naked or naked, and live in squalid conditions.

These delinquents if not reformed graduate into adult criminals who pose a great risk to our society. Incidents of juveniles at home with parents or guardians who rebel, against guidance and commit crimes individually or as per groups, are on the increase to the extent that juveniles have made head lines in newspapers.

Under the Children and Young Persons Act Chapter 141 of the Laws of Kenya a “Juvenile” means a person who is of the age of fourteen years or more and is under the age of sixteen years. However, under the convention of the rights of the child, the definition of a child is anyone under the age of 18 years. Therefore the word “child” is used interchangeably with the word “juvenile”. A child under the Kenyan Law is entitled to live with his guardians or parents.

However there is a child conduct that may cause a juvenile to appear in a court of Law and subsequently be separated from his parent or guardian. Such child is termed delinquent.

Juvenile delinquency, therefore, refers to the commission of faults, misdeeds and crimes by juveniles. Meanwhile, a “crime” is an act in violation of criminal law, committed without defence or excuse and penalized by the state as a felony, or misdemeanour. A criminal is, therefore, one adjudicated as such by the courts.

Other than delinquency, a child may enter the juvenile justice system in the case of need for care and protection, because there is no parent or guardian to stay with him or her.

The administration of juvenile justice involves a number of institutions, which include; the Police, Courts of Law, Probation Officers, Remand Homes and Approved Schools. Each of these institutions play a very important role in the administration of juvenile justice.

## **I. ARREST OF JUVENILES BY POLICE**

The Police arrest juveniles either upon a complaint against the Juvenile or through operations geared at netting idle and disorderly persons in the towns. The arrested juveniles are not mixed with adult offenders.



## **II. HANDLING OF JUVENILE CASES**

Not all forms of juvenile delinquency are necessarily crimes, and vice versa, not all crimes are delinquent behaviour. In the handling of juvenile delinquency, of the youth concerned, the necessary measures should be taken with and without conviction in a Court of Law.

## **III. JUVENILE COURTS**

According to the children and Young Persons Act Chapter 141 Laws of Kenya, a juvenile court consists of a permanent magistrate appointed by the Chief Justice for the purpose of hearing any charges against persons below the age of 18 years. This Juvenile Court has the jurisdiction to hear and determine a charge against a child or young person of any offence other than homicide.

A juvenile should be brought before a juvenile court for hearing and sentence if convicted. Even when he is found guilty of an offence other than homicide by any court other than juvenile court, the court shall remit the case to a juvenile court unless satisfied that it would be undesirable to do so. Generally specially, no charge against a juvenile will be heard by a court of summary jurisdiction which is not a juvenile court.

There is one juvenile court gazzetted, in Kenya, which is situated within Nairobi Central Business District. The court handles juvenile cases within Nairobi Area, Kajiado and Ngong.

## **IV. PROSECUTIONS**

The Prosecution is carried out by police officers, who have been trained in the handling of juvenile matters. The Juvenile Court is designed to provide a formal and solemn setting where unrelated or unauthorized persons are not allowed to be present. The Police prosecutors do not wear uniforms. They attend to the juvenile in civilian clothes to look friendly.

## **V. CONSTRAINTS FACED BY PROSECUTORS IN THEIR ROLE IN THE ADMINISTRATION OF JUVENILE JUSTICE**

Lack of child friendly cells at Police Stations is a major handicap. Section 6 of the Children and Young Persons Act require that persons under an age of 16 years, while detained at police stations, or while being conveyed to or from court, or while awaiting to attend or leave, court, should be prevented from associating with adverts charged or convicted of any offence. This is not possible without present facilities.

Lack of proper training on how to handle children issues.

Goodwill is required all round for the way forward.