

# CRIMINAL JUSTICE IN JAPAN

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**UNAFEI**

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# CRIMINAL JUSTICE IN JAPAN

## CHAPTER 1 STRUCTURE AND ORGANIZATION OF THE CRIMINAL JUSTICE ADMINISTRATION

### I. POLICE

#### A. Overview

The police are the primary investigative agency in Japan. Police responsibilities under the Police Act include “protecting life, person, and property; preventing, suppressing, and investigating crimes; apprehending suspects; traffic enforcement; and maintaining public safety and order.”

Actual police duties are executed by prefectural police organizations, while the national police organization undertakes: the planning of police policies and systems; control of police operations on national safety issues; and co-ordination of police administration.

As of 2017, the authorized police strength is 296,667 nationwide, of which 7,848 belong to the National Police Agency and 288,819 to the prefectural police forces.

#### B. National Police Organization

The National Public Safety Commission and the National Police Agency [hereinafter NPA] constitute Japan’s national police organization.

##### 1. The National Public Safety Commission

The National Public Safety Commission is an administrative board that exercises administrative supervision over the NPA. The Commission is composed of a Chairman, who is a Minister of State, and five members appointed by the Prime Minister to a five-year term with the consent of both houses of the Diet. While the Commission is under the jurisdiction of the Prime Minister, the Prime Minister is not empowered to exercise direct command and control over the Commission. The rationale for adopting such a structure was to establish democratic administration of the police and to ensure its political neutrality.

The Commission formulates basic policies and regulations, co-ordinates police administration on matters of national concern, and authorizes general standards for training, communication, forensics, criminal statistics, and equipment.

The Commission appoints the Commissioner General of the NPA and the chiefs of prefectural police organizations, and indirectly supervises prefectural police organizations through the NPA.

##### 2. The National Police Agency

The NPA is headed by the Commissioner General, who is appointed by the National Public Safety Commission with the approval of the Prime Minister. The Commissioner General, under the administrative supervision of the Commission, administers the Agency’s operations and supervises and controls prefectural police organizations within the agency’s defined duties. NPA duties include planning and research on police systems; the national police budget; police communications; training; equipment; forensics; and criminal statistics.

The National Police Academy, the National Research Institute of Police Science and the Imperial Guard Headquarters are attached to the NPA. The National Police Academy holds training courses for senior police officers. The National Research Institute of Police Science conducts a broad range of analysis, identification and research work that requires specialized knowledge and skills in biology, medicine and



other disciplines. The Imperial Guard Headquarters provides escorts for the Imperial Family and is responsible for the security of the Imperial Palace.

### C. Local Police Organization

The Prefectural Public Safety Commission and the Prefectural Police Headquarters constitute the local police organization. Each of the 47 prefectures of Japan has one Prefectural Public Safety Commission and one Prefectural Police Headquarter.

#### 1. The Prefectural Public Safety Commission

The Prefectural Public Safety Commissions are under the jurisdiction of elected prefectural Governors. The Commissions have three to five members who are appointed by the Governors with the consent of the prefectural assemblies.

The Commissions exercise administrative supervision over the prefectural police by formulating basic policies and regulations for police operations. However, they are not authorized to supervise individual investigations or specific law enforcement activities of the prefectural police.

#### 2. Prefectural Police Headquarters

Prefectural Police Headquarters take charge of executing the actual police duties of protecting life, person, and property; preventing, suppressing, and investigating crimes; apprehending suspects; traffic enforcement; and maintaining public safety and order. The Prefectural Police Headquarters for Tokyo is called the Metropolitan Police Department and is the largest such prefectural headquarters in Japan.

Police stations are under the command of their respective Prefectural Police Headquarters, and as of 2017, there are 1,163 police stations nationwide. *Koban* (police boxes) and *Chuzai* (residential police boxes) are subordinate units of police stations, and as of 2017, there are 6,256 *Koban* and 6,380 *Chuzai* nationwide.

## II. PROSECUTION

### A. Qualification

In Japan, judges, public prosecutors, and private attorneys have the same qualifications. To become a qualified lawyer in Japan, in principle, applicants must pass the National Bar Examination, complete a period of apprenticeship at the Legal Training and Research Institute managed by the Supreme Court, and pass the final national exam.

In the past, there were no eligibility requirements for the National Bar Examination, and the ratio of successful candidates was approximately 2 to 3 percent.



Tokyo Metropolitan Police Department

However, the system has been changed as a part of extensive judicial reform in Japan with an aim to increase the number of legal practitioners.

Under the current system, in order to become a qualified lawyer, candidates must first complete graduate level legal studies at an approved law school or pass the preliminary examination, which substitutes the completion of law school, and then pass the new National Bar Examination. The success rate for the current Bar Examination is substantially higher than that of its predecessor. In 2018, 1,525 candidates passed the Examination, and its success rate was 26.2 percent. Following the Bar Exam, candidates must take a one-year course as a legal apprentice at the Legal Training and Research Institute, and then pass the final national exam.

Judges or public prosecutors who resign their positions can become private attorneys, and most retirees from the judiciary and prosecution do in fact become private attorneys. Similarly, a private attorney also can become a judge or a public prosecutor. As of 2017, there were about 2,775 judges (including assistant judges), 1,964 public prosecutors and 38,980 private attorneys in Japan.



Ministry of Justice & Public Prosecutors Office

## **B. Organization**

The Prosecution service is a part of the Ministry of Justice. The Prosecution service consists of the Supreme Public Prosecutors Office (headed by the Prosecutor-General), eight High Public Prosecutors Offices (headed by a Superintending Prosecutor), 50 District Public Prosecutors Offices (headed by a Chief Prosecutor) with 203 branches, and 438 Local Public Prosecutors Offices (also headed by a Chief Prosecutor). The different levels of public prosecutors offices correspond to comparable levels in the courts.

As of 2018, there were 1,927 public prosecutors, about 768 assistant public prosecutors,<sup>1</sup> and about 9,000 prosecutor's assistant officers. Regarding the size of District Public Prosecutors Offices, the average office has about ten public prosecutors. The smallest has only five public prosecutors, and the largest has more than 200. Each office has a Chief and a Deputy Chief Prosecutor who supervise investigation, prosecution and trial. Thus, for example, in the smallest office, only three public prosecutors actually investigate and prosecute cases. In small offices, the public prosecutor who investigates and indicts a suspect is the same person who handles the trial. In contrast, in large offices, different public prosecutors carry out these duties, working either in the investigation department (usually entitled the "Criminal Affairs Department") or the trial Department.

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<sup>1</sup> Assistant public prosecutors are prosecutors that are selected by a special examination (different from the National Bar Examination) conducted by the Ministry of Justice. The requirement to take this examination is to serve for a certain amount of years as government official such as prosecutor's assistant officers, police officers and court clerks. As a rule, they are assigned to Local Public Prosecutors Offices.

### C. Functions and Jurisdiction

Public prosecutors exercise such functions as investigation, prosecution, requesting the proper application of law by courts, supervising the execution of judgments and other matters which fall under their jurisdiction. When it is necessary for the purpose of investigation, they can carry out their duties outside of their geographic jurisdiction.

### D. Status (Independence and Impartiality)

Prosecutorial functions are part of the executive power vested in the Cabinet,<sup>2</sup> which is responsible to the Diet in the exercise of its powers. On the other hand, prosecutorial functions have a quasi-judicial nature, and the public prosecutors have a status equivalent to that of judges in terms of qualifications and salary. They are considered impartial representatives of the public interest, and their independence and impartiality are protected by law. Aside from disciplinary proceedings, they cannot be dismissed from office, suspended from the performance of their duties, or suffer a reduction in salary against their will, with limited exceptions<sup>3</sup>. The Prosecutor-General, the Deputy Prosecutor-General and the Superintending Prosecutors are appointed by the Cabinet, and other public prosecutors by the Minister of Justice. Their retirement age is 63 (65 for the Prosecutor-General).

By law, each public prosecutor holds an independent public office and has the authority to exercise prosecutorial power independently. This means that they exercise their functions in their own name, not as a substitute for the Chief Prosecutor. However, in order to maintain impartial and consistent exercise of prosecutorial power, in practice, public prosecutors are required to consult with, seek guidance and advice, and obtain approval from their supervisors when making important decisions. Depending on the gravity or the difficulty of the issues involved, multiple layers of approvals, sometimes up to the Prosecutor General, may be required.

Further, since the public prosecutors exercise executive power, the Minister of Justice should have the power to supervise public prosecutors. On the other hand, prosecutorial functions have a quasi-judicial nature, inevitably exerting an important influence on all sectors of the criminal justice system, including the judiciary and the police. If those functions were subject to political influence, the integrity of the entire criminal justice system would be jeopardized. To harmonize these requirements, the Public Prosecutors Office Law Article 14 provides that the Minister of Justice may control and supervise public prosecutors generally<sup>4</sup> in regard to their functions. However, in regard to the investigation and prosecution of an individual case, he or she may control only the Prosecutor-General. The Minister of Justice cannot directly control the decisions of an individual public prosecutor in the investigation and prosecution of individual cases. Moreover, the Minister's power to control the Prosecutor-General in an individual case has been exercised only once in 1954, and since it was highly criticized by the public (see below), the power to exert political influence on investigation and prosecution for individual cases is not used in practice and a culture that rejects such interference has been firmly established among prosecutors.

#### **Triggering incident to establish political independence of the public prosecutors**

##### **(Feature) – the shipbuilding scandal case**

In 1954, the Special Investigation Department of the Tokyo District Public Prosecutor's Office, which had been investigating cases of corruption between the shipping and shipbuilding industries and key government figures, decided to arrest the Secretary-General of the Liberal Democratic Party (the ruling party at the time) on bribery charges. The Minister of Justice, who also belonged to the ruling party, then exercised his authority and instructed the Prosecutor General not to arrest the Secretary-General. As a result, the public prosecutor in charge of the case declined to arrest the Secretary-General, and consequently it led to the termination of the investigation. However the Minister's exercise of his authority caused public outrage when reported in the media, and the Minister was forced to resign.

<sup>2</sup> The Cabinet consists of the Prime Minister and the Ministers of State. Not less than half of the Ministers must be chosen from the members of the Diet (Constitution, Article 66 and 68).

<sup>3</sup> Public Prosecutors Office Law, Article 25. Exceptions are stipulated in Articles 22 (retirement age), 23 (physical or mental disability, etc.), and 24 (supernumerary officials).

<sup>4</sup> "Generally" means, for example, to set up general guidance for crime prevention, the administrative interpretation of laws and how to dispose of affairs related to prosecution to maintain their uniformity.

### III. COURTS

#### A. Structure

##### 1. Introduction

Article 76 of the Japanese Constitution vests all judicial power in the Supreme Court and inferior courts. No tribunal, organ, or agency of the executive branch can be given final judicial power. All criminal cases are heard and determined in ordinary judicial tribunals. All courts in Japan are incorporated into a unitary national judicial system. There are five types of courts: the Supreme Court, High Court, District Court, Family Court and Summary Court. As of 2018 there were approximately 3,000 judges within these courts, including assistant judges, and there were about 800 Summary Court judges. Approximately 22,000 other officers work in the judiciary, including court clerks, stenographers, and bailiffs.

##### 2. The Supreme Court

The Supreme Court, located in Tokyo, is the highest court in Japan and consists of the Chief Justice and fourteen Justices. The Supreme Court has one Grand Bench, consisting of all the Justices, and three Petit Benches, each consisting of five Justices.

The Supreme Court has appellate jurisdiction over final appeals and appeals against rulings specially provided for in codes of procedures. It ordinarily hears appeals against High Court decisions on the following grounds: (i) a violation of the Constitution or an error in constitutional interpretation, or (ii) adjudication contrary to precedents of the Supreme Court or High Courts. At its discretion the Supreme Court may also hear appeals against any case which involves an important point of statutory interpretation.

Article 81 of the Constitution empowers the Supreme Court, as the court of last resort, to determine the constitutionality of any law, order, rule or disposition. The Supreme Court exercises this power not by declaring constitutionality in a general way, but by rendering case-specific decisions.

##### 3. The High Court

The eight High Courts are located in eight major cities in Japan: Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo and Takamatsu. Each High Court consists of a President and other High Court judges. High Courts have jurisdiction over appeals against judgement in the first instance rendered by District Courts, Family Courts and Summary Courts as provided by law. Ordinarily, High Court cases are heard by a panel of three judges. However, insurrection cases, over which the High Court has original jurisdiction, are handled by a five-judge panel.



The Supreme Court Building



The Courtroom of the Grand Bench

#### 4. The District Court

There are fifty District Courts, each located in the cities of the respective prefectural governments. Each District Court's territorial jurisdiction encompasses the entire prefecture, except for Hokkaido, which is divided into four judicial districts because of its large size. District Courts have a total of 203 branch offices in major cities. District Courts have general jurisdiction over all cases in the first instance, except for those cases exclusively reserved for Summary Courts (crimes liable to fines or lesser punishment) and High Courts (crimes of insurrection). The majority of District Court cases are tried by a single judge. However, criminal cases involving possible sentences of imprisonment for a minimum period of one year or more should be handled by a panel of three judges (excluding cases subject to Saiban-In trials (trials by a mixed panel consisting of professional judges and lay judges)), in general. Other cases deemed appropriate can also be handled by a three-judge panel. The former are called "statutory panel cases", and the latter, "discretionary panel cases."

All District Courts and some of their branches hold *Saiban-In* trials for certain serious offences designated by law. See page 26 for details on *Saiban-In* trials.

#### 5. The Family Court

Family Courts and their branch offices are located in the same places as the District Courts and their branches. The Family Courts have jurisdiction over juvenile delinquency cases (involving persons under 20 years of age). Juvenile cases are handled by a single judge or a three-judge panel fully utilizing scientific reports prepared by Family Court investigating officers as well as reports prepared by experts of juvenile classification homes for detained juveniles. See page 39.

#### 6. The Summary Court

There are 438 Summary Courts throughout Japan. All cases are presided over by a single Summary Court judge. The Summary Courts' original jurisdiction is limited to: (i) crimes punishable with fines or lighter penalties (petty fine or misdemeanour imprisonment); (ii) crimes punishable with fines as optional penalties; and (iii) habitual gambling, running a gambling place for the purpose of profit, embezzlement, and crimes related to stolen property. Summary Courts may not impose imprisonment or heavier penalties except for certain offences as prescribed by law. With regard to theft, embezzlement, crimes related to stolen property, breaking into a residence, habitual gambling, and other minor offences prescribed by law, they may impose imprisonment for up to three years. Summary Courts also issue Summary Orders that impose fines. A vast majority of relatively minor cases are disposed of by Summary Order Procedure.

### **B. Judges**

#### 1. Appointment of Judges

The Justices of the Supreme Court are appointed by the Cabinet, except for the Chief Justice, who is designated by the Cabinet and appointed by the Emperor. The appointment of Justices is reviewed by the people at the first general election of members of the House of Representatives following their appointment. Justices of the Supreme Court retire at the age of 70.

All lower court judges are appointed by the Cabinet from a list of persons nominated by the Supreme Court. A judge's tenure is ten years, and judges can be re-appointed. Judges cannot be removed from office unless judicially declared mentally or physically incompetent to perform their official duties, or unless publicly impeached and removed from office. No executive organ or agency can take disciplinary action against judges. This power is vested only in the Court of Impeachment, a legislative body composed of Representatives and Councillors drawn from the Diet. As one of the checks and balances systems among the three branches of government, the Court of Impeachment may dismiss a judge if he or she neglects his or her duties to a remarkable degree, or if there has been misconduct, whether or not it relates to official duties.

## 2. Categories and Qualifications of Judges

At least ten of the fifteen Justices of the Supreme Court, including the Chief Justice, must be appointed from among those with distinguished careers as lower court judges, public prosecutors, practicing lawyers or law professors. However, the remaining five Justices need not be qualified as lawyers, as long as they are learned, have an extensive knowledge of the law, and are at least forty years of age.

Lower court judges are divided into judges and assistant judges. Assistant judges are appointed from among those who have passed the National Bar Examination, completed training at the Legal Training and Research Institute, and then passed the final qualifying national examination. To be appointed as a judge, one must have practical or academic experience of not less than ten years as a designated legal professional: an assistant judge, a public prosecutor, an attorney, or a law professor.

The assistant judge system aims to provide professional experience through on-the-job training before qualifying as a fully-fledged judge. For the first five years, the judicial authority of an assistant judge is restricted. He or she can serve as an associate judge of a three-judge panel but, as a single judge, can decide only limited matters such as detention at the investigation stage. After five years' experience, an assistant judge is qualified as a special assistant judge to preside over a trial in a single-judge court. The majority of judges are appointed from among assistant judges. Judges assigned to the High Court must be judges or qualified special assistant judges.

Summary Court judges are selected by the Selection Board for Summary Court Judges. Full qualification as a lawyer is not required. In practice, they are appointed primarily from among learned and experienced court clerks. Assistant judges, after three years' experience, can be appointed as Summary Court judges.

## IV CORRECTIONS

### A. **Organization of the Correctional Administration**

In Japan, the Correction Bureau of the Ministry of Justice provides both adult and juvenile correctional services. Under the Director-General of the Correction Bureau, there are eight Regional Correction Headquarters which supervise the correctional institutions. Correctional institutions can be divided into penal institutions (prisons, juvenile prisons,<sup>5</sup> and detention houses) and juvenile correctional institutions (juvenile training schools and juvenile classification homes).

#### 1. Penal Institutions

As of 2018, there were a total of 184 penal institutions: 62 prisons, 6 juvenile prisons, eight detention houses, eight branch prisons, and 100 branch detention houses.

Prisons, juvenile prisons, and branch prisons are institutions for sentenced inmates. They provide various correctional treatment programmes that facilitate rehabilitation and resocialization of offenders. There are 9 women's prisons (including 4 branches)<sup>6</sup> and four medical prisons. The medical prisons are set up to function as special medical centres that receive inmates in need of special medical care. Ordinary medical care and hygiene for inmates are provided within general penal institutions.

Detention houses and branch detention houses are mainly for inmates awaiting trial, namely, defendants under detention and suspects under pre-indictment detention. Close attention is paid so that their rights, including the right to counsel and to a fair trial, are respected.

As of 31 December 2017, the total capacity of penal institutions was 89,310 (71,346 for sentenced inmates and 17,964 for pre-trial detainees), and the actual population was 53,233 (47,331 sentenced inmates and 5,902 pre-trial detainees).

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<sup>5</sup> A juvenile prison is not a juvenile correctional institution. It accommodates juveniles sentenced to imprisonment and sentenced adult inmates under 26 years old.

<sup>6</sup> One of which accommodates both female and male inmates.



Fuchu Prison



Tachikawa Detention House

## 2. Juvenile Correctional Institutions

As of 2018, there were 45 juvenile training schools, 49 juvenile classification homes, 6 branch juvenile training schools, and 3 branch juvenile classification homes. Juvenile training schools house juveniles referred by the Family Court and provide them with correctional education. Juvenile classification homes house juvenile delinquents placed under “protective detention” by the Family Court. During protective detention, an expert report on the juvenile’s personality and disposition is prepared, which will assist the Family Court’s decision-making.



Osaka Juvenile Classification Home



Kifunebara Juvenile Training School for Girls

### **B. Correctional Officials**

As of 2018, more than 23,000 officials were working for the correction service. The majority of correctional officials in penal institutions are employed from among those who have passed the examination for correction service. Education officials in juvenile institutions are employed from among those who have passed a specialized examination. Classification specialists (psychologists) are selected from among those who have passed the senior-level examination for psychological services.

## **V. REHABILITATION**

### **A. Organization and Function**

The Rehabilitation Bureau of the Ministry of Justice is responsible for the overall administration of rehabilitation services, the main aspect of which is to provide community-based treatment of offenders. The Bureau handles planning and policy-making which are then implemented by the 50 Probation Offices and eight Regional Parole Boards throughout the country.

There are eight regional Parole Boards that correspond to the jurisdictions of the High Courts. The main responsibilities of Regional Parole Boards are to make parole decisions for prison inmates and juveniles committed to juvenile training schools, and to revoke parole when the legal

requirements for revocation are met. They also decide when to terminate an indeterminate sentence imposed upon a juvenile offender (see page 34). The number of board members varies in each region from three to fifteen, and board decisions are made by a majority vote.

The front-line duties of community-based treatment are carried out by the Probation Offices, which are established corresponding to fifty district courts jurisdictions. Their main responsibilities include the following: (i) supervision of both adult and juvenile parolees and probationers; (ii) co-ordination of social circumstances, such as family relationship, residence, and job-placement, prior to release; (iii) urgent aftercare of discharged offenders; (iv) promotion of crime prevention activities in the community; (v) recommendation of volunteer probation officers; (vi) support for the victims of crime; and (vii) mental health supervision pursuant to the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity.

The National Offenders Rehabilitation Commission is a council attached to the Ministry of Justice. The Commission's functions are to make recommendations to the Minister of Justice regarding pardons and to review the decisions of Regional Parole Boards upon a complaint filed by a parolee or a probationer.

## **B. Personnel**

### **1. Probation Officers**

Probation officers are full-time government officials who engage in community-based treatment of offenders, such as supervision of parolees and probationers, and other duties of the Regional Parole Boards and Probation Offices. The Offenders Rehabilitation Act (2007) requires them to have a certain degree of competence in medicine, psychology, pedagogy, sociology or other expert knowledge relating to rehabilitation of offenders. As of 2017, there were 1,397 probation officers nationwide.

### **2. Rehabilitation Co-ordinators**

Rehabilitation co-ordinators are qualified psychiatric social workers, or other qualified persons, assigned to Probation Offices, who engage in mental health supervision and other responsibilities pursuant to the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity. Rehabilitation co-ordinators do not handle ordinary parole or probation cases. As of 2017, there were 187 rehabilitation co-ordinators nationwide.

## **C. Volunteers and the Voluntary Sector**

### **1. Volunteer Probation Officers**

Volunteer probation officers are citizens commissioned by the Minister of Justice who co-operate with probation officers in providing various rehabilitation services to offenders. Their main activities are: (i) to assist and supervise parolees and probationers; (ii) to co-ordinate the social circumstances of inmates; and (iii) to promote crime prevention activities in the community. They do not receive salaries; only a certain amount of their necessary expenses is reimbursed. As of 2017, 47,909 citizens were as Volunteer Probation Officers.

### **2. Entities for Offenders Rehabilitation Services**

There are several types of entities which are engaged in activities supporting offender's rehabilitation.

#### **(1) Offenders Rehabilitation Facilities (Halfway Houses)**

Halfway houses in Japan are officially termed "offenders rehabilitation facilities". They accommodate parolees, probationers, or other eligible offenders and provide them with necessary assistance for their rehabilitation such as: (i) help in obtaining education, training, medical care, or employment; (ii) vocational guidance; (iii) training in social skills; and (iv) improving or helping them adjust to, their environment.



As of 2017, there were 103 offenders rehabilitation facilities nationwide. Their total capacity was 2,385 and 7,771 offenders were admitted in 2017. The duration of stay for parolees and probationers in 2017 was as follows: one month or less (19.8%); more than one month to six months (69.3%); and more than six months (10.9%).

100 offenders rehabilitation facilities are run by juridical persons for offender rehabilitation services, a form of non-profit organization under the Offenders Rehabilitation Services Act. The government supervises and provides financial support to such juridical persons and other entities that operate offenders rehabilitation facilities.



Offenders Rehabilitation Facility (Halfway House)

(2) Rehabilitation Aid Association

As of 2017, 68 Rehabilitation Aid Associations existed throughout Japan. They provide offenders with temporary aid such as meals or clothing, and/or engage in “co-ordination and promotion services” for offender rehabilitation facilities, Volunteer Probation Officer Associations, and other volunteer organizations. “Co-ordination and promotion services” include providing monetary support, textbooks for training, and tools and materials for crime prevention activities.

(3) Employment Support Organizations

National Organization for Employment of Offenders, established in 2009, is a certified NPO which engages in employment support activities for released offenders, etc. The organization provides monetary supports to programmes carried out by the local-based job assistance service provider organizations set up in 343 locations nationwide (also certified NPOs). These local-based organizations carry out a variety of rehabilitation support activities, including programmes to provide monetary support to “cooperative employers” who assist in offenders’ rehabilitation by employing released offenders, etc.

3. Others

There are other notable volunteer organizations or forms of volunteering in Japan, such as (i) the Women’s Association for Rehabilitation Aid; (ii) Big Brothers and Sisters (BBS) Associations; and (iii) co-operative employers.

## CHAPTER 2 THE CRIME SITUATION IN JAPAN

### I. PENAL CODE OFFENCES

#### A. Trends in Penal Code Offences

The number of Penal Code offences reported to the police (including those where the police recognize the case *ex officio*) increased every year from 1996, marking a new post-World War II high each year, and peaked in 2002, when the number reached 2,854,061. However, from 2003, there was a continuous decrease and, in 2017, the number of reported Penal Code offences totaled 915,042, a 8.1 percent drop from the previous year.

Of the Penal Code offences reported in 2017, theft was the most prevalent, with 655,498 offences, constituting 71.6 percent of the total.

The number of cleared Penal Code suspects, crossing the 1,000,000 mark in 1998, increased every year from 1999, marking a new post-World War II high each year, and peaked in 2004, when the number reached 1,289,416. However, the number of cleared Penal Code suspects has decreased every year since 2005, totaling 215,003 in 2017, a 5.0 percent drop from the previous year.

The clearance rate of Penal Code offences, which used to be about 70 percent, showed a declining tendency from 1995. In 2001, the clearance rate was 19.8 percent, the lowest since World War II. However, the situation has improved since 2002, and in 2017 it reached 35.7 percent for all Penal Code offences.

As for the age distribution of suspects of non-traffic Penal Code offences (Penal Code offences excluding negligence in driving causing death or bodily injury etc.), those aged 65 or over accounted for 21.5 percent in 2017.

With regard to the gender of suspects cleared of non-traffic Penal Code offences, female accounted for 44,408 composing 20.7 percent of the total in 2017.

#### B. Trends in Some Major Crimes

The number of homicide cases reported to the police was decreasing from 2004, with 920 cases in 2017. The clearance rate for homicide remains steadily high and was 101.1 percent in 2017. (Because the remaining cases from 2016 were cleared in 2017, the clearance rate exceeded 100%.)

Reported cases of robbery reached 7,664 in 2003, the highest on record since 1951. Since then the number decreased, with the exception of 2009. The number of reported robberies was 1,852 in 2017, and the clearance rate was 82.1 percent.

With regard to theft, the number of reported cases has been decreasing since 2003, and the clearance rate has improved since 2002, with offences totaling 655,498 in 2017 and a clearance rate of 31.2 percent for the same year.

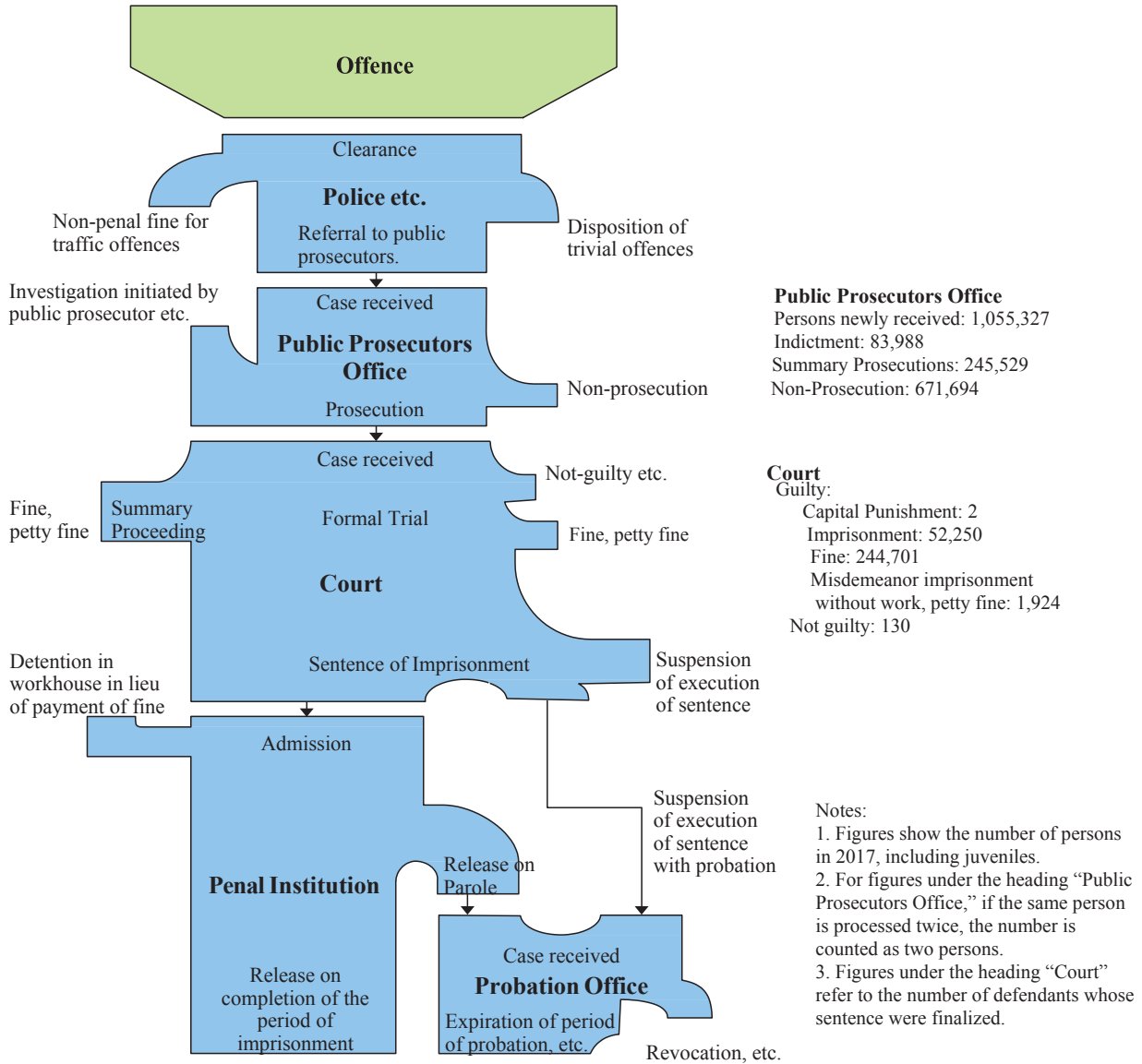
Concerning fraud, the number of reported cases has increased significantly since 2002, reaching a record high of 85,596 in 2005, the highest total since 1960. In 2017, the number was 42,571. The clearance rate reduced sharply from 1997 and recorded a post-war low of 32.1 percent in 2004. But the rate showed a recovery from 2005 and was 40.9 percent in 2017. In recent years, a major *modus operandi* in fraud cases has been “*Tokushu Fraud*” – confidence tricks targeting the elderly and designed to induce them to pay large sums of money to the offender.

### II. SPECIAL LAW OFFENCES

Recently, the total number of Special Law offenders newly received by the public prosecutors offices has generally been on a declining trend, and in 2017 totaled 377,503, which was a 6.1 percent decrease over the previous year. Of that number, Road Traffic Act violators accounted for 287,349 suspects (76.1 %), followed by alleged violators of the Stimulants Control Act, who numbered 16,059 (4.3 %).

## CHAPTER 3 CRIMINAL JUSTICE FLOW CHART

This chart shows the flow for criminal procedure for adult offenders in Japan. (Source for statistical data, White Paper on Crime 2018)



## CHAPTER 4 PRE-TRIAL CRIMINAL PROCEDURE

### I. INTRODUCTION

Japan is a unitary state, and the same criminal procedure applies throughout the nation. The Code of Criminal Procedure (hereinafter CCP), the Act on Criminal Trials Examined under the Lay Judge System, and the Rules of Criminal Procedure are the principal sources of law.

### II. CONSTITUTIONAL SAFEGUARDS

The Constitution of Japan has an extensive list of constitutional guarantees that relate to the criminal process. Article 31 provides that “no person shall be deprived of life, or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law,” while Article 33 states that “no person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offence with which the person is charged, unless he is apprehended, the offence being committed.” Further, as prescribed in Article 34, “no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.” Article 35 provides for the protection of one’s residence and property, stating “the right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.”

As for the trial proceedings, Article 38 provides that “no person shall be compelled to testify against himself,” and that a “confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.” It further provides that “no person shall be convicted or punished in cases where the only proof against him is his own confession.” As for the protection of some of the basic rights of the individual who is facing a criminal trial as an accused, Article 37 provides that “in all criminal cases, the accused shall enjoy the right to a speedy and public trial by an impartial tribunal; he shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense; at all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.” According to Article 39, “no person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.”

Finally, Article 40 provides that “any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.”

### III. INVESTIGATIVE AGENCIES

The police are the primary investigative agency in Japan. Officers of certain other administrative bodies, such as narcotics agents and coast guard officers, have limited jurisdiction to investigate certain type of offences, whereas police officers have general jurisdiction which covers all types of offences.

The vast majority of criminal cases are investigated by the police and referred to public prosecutors. As the police do not have the power to decide whether to prosecute, all cases investigated by the police must be sent to public prosecutors for disposition, except for very minor offences prescribed by prosecutorial guidelines as categories of cases that may be terminated at the police level subject to non-prosecution upon subsequent approval by a prosecutor.

A public prosecutor has the exclusive power to decide whether or not to prosecute, and Japanese law does not permit private prosecutions. Moreover, public prosecutors are fully authorized to conduct criminal investigations, and they actively supplement police investigation by directly interviewing witnesses and interrogating suspects. Prosecutors may also instruct police officers as they consider necessary during an investigation. Prosecutors can also initiate their own investigations. In particular, with

regard to politically sensitive or complicated cases, such as bribery or large-scale financial crime involving politicians, high-ranking government officials or corporate executives, prosecutors often investigate the case without any police involvement. This is called “independent investigation”. Special Investigation Departments established in the Tokyo, Osaka and Nagoya offices are designed to carry out such independent investigations. Also, several other large offices have “special criminal investigation departments” mainly dedicated to independent investigations.

#### **IV. INVESTIGATION PROCESS**

##### **A. Overview**

Japanese police and public prosecutors, to the extent possible, conduct criminal investigations without resorting to compulsory measures such as arrest, searches, and seizures. Even for serious offences, they gather as much information as possible on a non-compulsory basis and carefully evaluate whether an arrest is necessary or if the investigation should continue without arresting the suspect. In 2017, 63.9 percent of suspects of non-traffic offences were investigated and processed without arrest.<sup>7</sup>

The procedure after arrest is as follows:

- (1) When the police arrest a suspect, they must refer the suspect, along with supporting documents and evidence, to a public prosecutor within 48 hours; otherwise the suspect must be released.
- (2) Within 24 hours after receiving the suspect, the prosecutor must do either one of the following: apply to a judge for a pre-indictment detention; prosecute the case; or release the suspect.
- (3) If an application for pre-indictment detention is granted, a judge will issue a warrant, and the suspect will be taken into detention. Its duration is ten days, which may be extended for up to another ten days.
- (4) When the case is prosecuted within the authorized pre-indictment detention period, the pre-indictment detention is automatically converted to pre-trial detention. If the case is not prosecuted, the suspect must be released. Afterward, the public prosecutor decides whether to continue the investigation without arrest, or not to prosecute the case.

##### **B. Initiating a Criminal Investigation**

A criminal investigation is initiated when an investigative agency becomes aware that a crime has been committed. Although there is no limit on what could trigger this, typical causes determined by law include (1) discovery of an offender in flagrante, (2) autopsy of a body following unnatural death, (3) accusation by the victim or another person, (4) agency request, (5) admission of guilt, and (6) police questioning.

- (1) *Discovery in flagrante*  
Cases where the perpetrator is caught in the act of committing a crime, or where a person may be clearly deemed to have just committed a crime.
- (2) *Autopsy of a body following unnatural death*  
When a body is discovered and the cause of death is deemed highly likely to have been a criminal act, or when such a cause cannot be ruled out, the investigative agency must conduct an external autopsy. This is a non-invasive examination to assess the condition of a body. If, as a result of the external autopsy, a need is seen to delve further into the cause of death, a medico-legal or forensic autopsy is generally carried out by a doctor, pending the issue of a court warrant.
- (3) *Accusation by the victim or another person*  
Cases where the victim of a crime reports the crime to an investigative agency and seeks criminal proceedings against the perpetrator. Also, in cases where a person other than the victim reports the crime to an investigative agency and seeks criminal proceedings against the perpetrator.
- (4) *Agency request*  
Cases where an organization prescribed by law reports a crime to an investigative agency and

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<sup>7</sup> White Paper on Crime 2018, Ministry of Justice, Japan.

seeks criminal proceedings against the perpetrator.

(5) *Admission of guilt*

Cases where the perpetrator admits having committed a crime to an investigative agency before the crime is detected.

(6) *Police questioning*

Police officers may stop and question any person when suspecting that the person has committed some kind of crime or is about to do so, judging from unusual behaviour or the surrounding circumstances, or when deeming the person to know something about a crime that has been or is about to be committed. If it is disadvantageous to the person to be questioned there and then, or if the questioning causes a traffic obstruction, officers may ask the person to accompany them to the nearest police station for questioning.

### C. Arrest

As a general rule, a judicially issued warrant is required to arrest a suspect. Police officers designated by law and all public prosecutors are authorized to apply to a judge for an arrest warrant, and a warrant shall be issued if a judge deems that there exists sufficient probable cause to suspect that the person has committed an offence.

Japanese law does not recognize a class of offence, for which warrantless arrests are generally permitted. There are two exceptions to the judicial warrant requirement under the CCP, which are the following:

(1) *Flagrant Offenders:*

A flagrant offender (an offender who is in the very act of committing or has just committed an offence) may be arrested by any person without a warrant. When it appears evident that a person has committed an offence shortly before, and one of the prescribed legal criteria is met, such a person is also treated as a flagrant offender.<sup>8</sup>

(2) *Emergency Arrests:*

“When there are sufficient grounds to suspect the commission of an offence punishable by the death penalty, or imprisonment for life or for a maximum period of three years or more, and in addition, because of great urgency an arrest warrant from a judge cannot be obtained, a public prosecutor, a public prosecutor’s assistant officer, or a judicial police official may arrest the suspect after notifying the suspect of the reasons therefor.”<sup>9</sup>

When an offender is taken into emergency arrest, an application for an arrest warrant must be filed immediately after the arrest. If the warrant is not issued, the suspect must be released.

### D. Post-Arrest Procedure

Following an arrest, a police officer or a public prosecutor must immediately notify the suspect of the essential facts of the suspected crime, inform him or her of the right to counsel, and then offer an opportunity to present his or her explanation.

If the arrest was made by the police, the suspect, along with supporting evidence, must be referred to a public prosecutor within 48 hours, or the suspect must be released. After receiving the suspect, the public prosecutor must immediately inform the suspect of the essential facts of the suspected crime and offer further opportunity to present his or her explanation. This is an important step in the early stage of investigation as it is the public prosecutor’s initial opportunity to interrogate the suspect.

Within 24 hours of receiving the suspect, the public prosecutor must either apply to a judge for a pre-indictment detention; prosecute the case; or release the suspect. The police are not authorized to apply for pre-indictment detention: the application must be made by a public prosecutor. If the suspect was arrested by a public prosecutor and not by the police, the application for pre-indictment detention must be made within 48 hours after the arrest.

A judge will then review the file, take a statement from the suspect, and decide on the prosecutor’s

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<sup>8</sup> CCP Articles 212 and 213.

<sup>9</sup> CCP Article 210.

application. A pre-indictment detention warrant shall be issued if a judge deems that there exists probable cause to suspect that the suspect has committed the offence, one of the following conditions is met, and the judge does not consider it unnecessary.

- (1) The suspect has no fixed residence;
- (2) There is probable cause to believe that the suspect may conceal or destroy evidence; or
- (3) The suspect has fled or there is probable cause to believe that the suspect may flee.

If these conditions are not met, the judge will deny the prosecutor's application and order the immediate release of the suspect.

The duration of pre-indictment detention is 10 days and, upon application by a public prosecutor, a judge may grant an extension for up to another 10 days. Thus, the maximum length of pre-indictment custody is 23 days, including the initial 72 hours following the arrest. If the case is not prosecuted within the authorized period, the suspect must be released.

During pre-indictment detention, many suspects are detained in police jails instead of detention houses. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees allows such substitutions when approved by a judge.

## **E. Collection of Evidence**

Evidence can be either one of two categories: statements and non-statements.

### **1. Taking Statements**

When investigators take statements from witnesses and suspects, they will prepare a detailed summary of what has been said during the interview or interrogation. The summary will be read to or read by the interviewee for confirmation, and if agreed, it will be signed. Such written statements are admissible as evidence if the defense consents to their use, or they fit in one of the hearsay exceptions provided for in the CCP.

### **2. Interrogation of Suspects**

Police officers and public prosecutors may ask suspects to appear in their offices for interrogation, and suspects under arrest or detention are obligated to comply. However, Article 38-1 of the Constitution guarantees the right against self-incrimination, and Article 198-2 of the CCP requires investigators to notify the suspect, in advance of the questioning, that he or she is not required to make any statement against his or her will. In order to be admissible at trial, confessions must be voluntarily made. In this regard, CCP Article 319-1 provides that "confession made under compulsion, torture or threat, or after prolonged arrest or detention, or which is suspected not to have been made voluntarily shall not be admitted in evidence."

Details of statements made by suspects during questioning are compiled into written statements by investigating officers and used as evidence in trials. There, however, the admissibility of a confession made during questioning is often disputed, in that the confession may have been forced or induced by the investigating officer and not made voluntarily, among other reasons. Therefore, in practice, suspect interrogations are now video-recorded in many cases. Under the amendment to the CCP, which will enter into force by June 2019, video-recording of interrogations of arrested or detained suspects will be obligatory in cases of homicide and other serious offences subject to trial by lay judges (*Saiban-In*) and in cases in which public prosecutors conduct independent investigations (mainly by Special Investigation Departments and Special Criminal Investigation Departments). However, in practice, interrogations of suspects in these cases are already being video-recorded. Moreover, in practice, in most cases, interrogations by the public prosecutors are fully video-recorded where the suspect is arrested or in pre-indictment detention, and if the suspect deny the suspicions or the arrest/detention is for a serious crime. These recordings are used as means of verification, in case the voluntary nature of a confession made during questioning or its credibility is disputed at trial. In principle, everything is recorded from the time the suspect enters the room to the time the suspect leaves.

### 3. Searches and Seizures

In order to lawfully search for and seize evidence, a judicially issued warrant is required. The only exception to this requirement is for searches and seizures incident to arrest. According to Supreme Court precedents, a serious violation of search and seizure rules may result in the inadmissibility of evidence so acquired.



Public Prosecutor's Interrogation (moot)

#### **F. The Right to Counsel**

The right to counsel is guaranteed by the Constitution and the CCP. Suspects may retain a counsel at any time at their own expense. Confidential communication is guaranteed, and suspects under arrest or detention are entitled to meet with their counsel and to exchange documents or articles without any officials being present.

Previously, court-appointed counsel was available after indictment, but the availability of counsel was restrictive at the pre-indictment stage, depending on the gravity of the offence. However, a CCP amendment, effective since June 2018, expanded the rule: now, all suspects held in pre-indictment detention are entitled to ask for court-appointed counsel if they are unable to hire one because of indigence or other reasons.

Furthermore, the Bar Associations operate the *Toban-Bengoshi* system, which was introduced in 1990. *Toban-Bengoshi* means “an attorney on duty,” and when requested by an arrested person or his or her family, a *Toban-Bengoshi* will immediately visit the arrested person at the police station etc. to provide legal advice. This first visit is provided free of charge.

#### **G. Bail**

Suspects under pre-indictment detention are not bailable. When they are indicted, their legal status changes from a suspect to a defendant, and from that point on, they become eligible for bail. Bail must be granted except when:

- (1) the defendant is charged with an offence punishable by death, life, or a minimum term of one year's imprisonment;
- (2) the defendant was previously convicted of an offence punishable by death, life, or a maximum term of more than ten years' imprisonment;
- (3) the defendant has habitually committed an offence for which a maximum term of imprisonment of three years or more is prescribed;
- (4) there is probable cause to suspect that the defendant may conceal or destroy evidence;
- (5) there is probable cause to suspect that the defendant may harm or threaten the body or property of the victim or any other person who is deemed to have essential knowledge for the trial of the case or the relatives of such persons; or
- (6) the defendant's name or residence is unknown.

Likelihood of reoffending is not a valid ground for denying bail. When granting bail, the court is



required to set the amount of the bail bond. The court may also add other appropriate conditions, and in practice, bail is often subject to the condition that the defendant not contact co-defendants, witnesses, or victims.

## V. DISPOSITION OF CASES

### A. Responsibility for Prosecution

#### 1. Principle

Public prosecutors have the exclusive power to decide whether to prosecute,<sup>10</sup> and this system is called “monopolization of prosecution.” Japan does not have a system of private prosecution or police prosecution, and there are no grand juries. A court cannot try a case unless it is prosecuted by a public prosecutor.

#### 2. Exception

There are two exceptions to the monopolization of prosecution: quasi-prosecution<sup>11</sup> and compulsory prosecution following a recommendation by the Committee for Inquest of Prosecution (see Section E for details).

### B. Forms of Prosecution

There are two forms of prosecution: formal and summary.<sup>12</sup>

#### 1. Formal Prosecution (Indictment)<sup>13</sup>

Formal prosecution is a request to hold a formal trial, and it is made by filing of a charging instrument called a *Kiso-Jo*.<sup>14</sup> The charging instrument must contain a clear description of the facts constituting the offence charged. In order not to prejudice the court before trial, no evidentiary materials may be attached to a *Kiso-Jo*.

(Speedy Trial Procedure)

At the time of the filing of a *Kiso-Jo*, with the consent of the defendant, the prosecutor may ask the court to try the case by the Speedy Trial Procedure. The Speedy Trial Procedure is applicable when the following conditions are met:

- (1) The offence is not punishable by death, life, or a minimum of one year’s imprisonment;
- (2) The case is clear and minor; and
- (3) The examination of evidence is expected to be completed promptly.

When the application is granted, the case will be tried by a simplified and expedited procedure. The court is required to set an early trial date and, to the extent possible, render its judgement within one day. When sentencing the defendant to a term of imprisonment, the court has to suspend the execution of the sentence. When a case is tried by the Speedy Trial Procedure, the defendant shall not appeal a judgment on the ground that fact-finding was erroneous.

The Speedy Trial Procedure was introduced in October 2006 in order to enable prompt disposition of minor cases and early release of defendants. In 2017, speedy trial procedure was invoked for a total of 723 defendants, and the majority of the cases were for violations of the Stimulant Control Act and the Cannabis Control Act.

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<sup>10</sup> CCP Article 247.

<sup>11</sup> In other words, “Analogical Institution of Prosecution through Judicial Action.” (CCP Articles 262 to 269).

<sup>12</sup> The traffic infraction fine system (Pecuniary Penalty against Traffic Infractions) is a procedure under which a person who commits certain minor offences in violation of the Road Traffic Law is exempted from criminal punishment by paying a sum of money fixed by law as an administrative disposition. However, if violators fail to pay that fine, they are to be dealt with under a regular criminal procedure and are subject to criminal punishment by the court.

<sup>13</sup> The word “indict” or “indictment” used here means “an public action in criminal matters bringing a case to be tried in an open court”, unlike the one determined by the Grand Jury in the United States or cases to be tried in the Crown Court in the United Kingdom.

<sup>14</sup> CCP Article 256.

An example of a *Kiso-Jo* (translated into English) is included below:

Kiso-Jo (Charging Instrument)

The following case is hereby prosecuted.

14 May 2017

Tokyo District Public Prosecutors Office  
Public Prosecutor, KOUNO, Ichirou (his seal)

To Tokyo District Court:

**Defendant**

Permanent Domicile: Yoshida 823, Kawami-cho, Tama-gun, Fukuoka Prefecture

Present Address: Room Number 303, 1-2-3, Akihabara, Chiyoda-ku, Tokyo

Occupation: None

Under Detention

HIGASHIYAMA, Haruo (The defendant's name)

17 April 1957 (The defendant's birth date)

**Alleged Facts**

At around 11 p.m. on 23 April 2017, on a street located in 2-4-7, Minami, Shibuya-ku, Tokyo, the defendant, with intent to kill, stabbed MORITA Toshikazu (24 years of age) in the chest with a knife, thereby causing the death of Morita, who died from blood loss attributable to the stab wound in the chest, at around 11:58 p.m. on the same day, at YAMADA Hospital located in 3-1-23, Takao, Meguro-ku, Tokyo

**Charged Offence and Applicable Penal Statutes**

Homicide

Penal Code Article 199

## 2. Summary Prosecution (Request for a Summary Order)

A public prosecutor may prosecute a case in the Summary Court and ask for a summary order, which is an order by a Summary Court sentencing the defendant to a fine not exceeding one million yen, or a petty fine. In order to file a summary prosecution, a written consent by the defendant is required. There will be no oral hearing or trial; a Summary Court judge will examine the case file sent from the prosecutor, and issue an order on that basis. A party dissatisfied with the order may, within 14 days, apply for a formal trial. In practice, summary prosecution is used in cases where the case is not of a serious nature and where the suspect admits the allegation.

Summary proceeding is an important part of the Japanese criminal process. A vast majority of minor cases are disposed of by summary orders. In 2017, out of 329,517 prosecuted suspects, 245,529 (74.5%) were summarily prosecuted, whereas 83,988 (25.5%) were indicted for formal trials.<sup>15</sup>

### C. **Non-prosecution of Cases**

There are several grounds by which a public prosecutor decides not to prosecute. The most common grounds for non-prosecution decisions are insufficiency of evidence and suspension of prosecution. Other grounds for non-prosecution include, among others, “no offence committed<sup>16</sup>” and “expiration of statute of limitations.”

#### 1. Insufficiency of Evidence

Even if there is some evidence of guilt, public prosecutors will not prosecute unless conviction is very likely. The threshold varies among countries, and Japanese prosecutors are very careful and selective in screening cases. It is long established practice not to prosecute unless the prosecutor is certain of a conviction. In Japan, it is considered an irresponsible exercise of the prosecutorial powers, entrusted by the people to the public prosecutors, to compel a citizen to defend him or herself against criminal charges without the prosecutor being convinced that the evidence is sufficient to establish guilt. As a result, the actual conviction rate is 99.9 percent.

#### 2. Suspension of Prosecution

Japanese prosecutors have broad discretion whether or not to prosecute, and they are authorized to drop cases even when there is enough evidence to secure a conviction. This disposition is called “suspension of prosecution” and is provided for in Article 248 of the CCP, which reads “Where prosecution is deemed unnecessary owing to the character, age, environment, gravity of the offence, circumstances or situation after the offence, prosecution need not be instituted.”

The concept of discretionary prosecution contrasts with that of compulsory prosecution, which requires prosecution to be instituted whenever a certain quantum of evidence exists. Discretionary prosecution enables flexible dispositions in line with the specifics of each case such as the nature and seriousness of the offence committed, characteristics of the offender, and the victim’s feelings about the case. It is also a form of diversion that offers offenders an early opportunity to return to society and rehabilitate themselves.

The following is an illustrative list of factors considered by prosecutors in deciding whether to prosecute the case.

- (1) The gravity of the offence and the harm caused thereby;
- (2) The offender’s character, age, criminal history, and risk of reoffending;
- (3) The circumstances relating to the commission of the offence: for example, motive, provocation by the victim, existence of accomplices and the role played by the suspect; and
- (4) Conditions subsequent to the commission of the offence: for example, whether the suspect assumes criminal responsibility, whether and to what extent restitution has been made, whether apologies have been made and the victim’s feelings have been restored, whether civil settlements have been made between parties.

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<sup>15</sup> White Paper on Crime 2018, Ministry of Justice, Japan.

<sup>16</sup> This applies where, after investigation, there are sufficient reasons to believe that no crime has been committed by the suspect.

Suspension of prosecution is broadly utilized in practice: of the 1,063,320 suspects processed by public prosecutors in 2017, prosecution was suspended for 606,256 (57.0%) suspects.<sup>17</sup>

#### **D. Cooperative Agreements**

In June 2018, cooperative agreements were introduced in order to create a new measure to collect evidence while observing due process.

The public prosecutor and the suspect/defendant, upon the consent of the defense counsel, may enter into a written cooperative agreement. In this agreement, the suspect/defendant promises to cooperate with the investigation or prosecution (for example, by making a truthful statement during interview or interrogation and by testifying before the court) with regard to the criminal conduct of another suspect/defendant. In return, the public prosecutor may agree to make a lenient disposition (e.g. suspension of prosecution, prosecution of a less serious offence, or recommend a mitigated sentence to the court). Cooperative agreements are applicable only to certain financial and economic offences, drug offences, firearms offences, etc. as prescribed by law, and, if necessary, taking factors into consideration such as the gravity of the offence or the importance of the evidence that could be obtained through the witness's cooperation.

When the prosecutor, the suspect/defendant and the defense counsel reach an agreement, the prosecutor and the suspect/defendant have the obligation to carry out what had been agreed upon.

#### **E. Safeguards against Arbitrary Disposition**

##### **1. Committee for Inquest of Prosecution**

Committees for Inquest of Prosecution are lay advisory bodies that review non-prosecution decisions by prosecutors. Every district has one or more Committees, and they consist of eleven lay people randomly selected from among the district's voters. Their purpose is to reflect the general public's will in the process of making prosecution decisions.

Victims and certain qualified parties dissatisfied with a prosecutor's decision not to prosecute may request a review by the Committee. Upon such a request the Committee reviews the case and gives one of the following three recommendations: (i) non-prosecution is proper; (ii) non-prosecution is improper; or (iii) prosecution is proper. The last recommendation requires a super majority vote of eight out of eleven Committee members. Prosecutors generally have good reasons when they decline to prosecute, and during the five-year period of 2012-2016, out of 10,600 cases decided on the merits, 8,752 (82.6%) have resulted in a recommendation of "non-prosecution is proper."<sup>18</sup>

The recommendation is notified to the prosecution, and when the latter two recommendations are made, the prosecutor reopens the case. Upon reinvestigation, they may reconsider their previous decision and prosecute, or maintain their initial decision not to prosecute.

The Committee's recommendations were formerly purely advisory, but from May 2009, if the prosecutor's decision not to prosecute a particular case twice receives a recommendation of "prosecution is proper," a court will appoint an attorney, who will undertake the role of the prosecutor and prosecute the case in accordance with the Committee's recommendation. This is called "compulsory prosecution." However, in practice, the recommendation of "prosecution is proper" has not been given so frequently. Since May 2009, there have been ten cases of compulsory prosecution (as of December 2017).

##### **2. Quasi-Prosecution**

Quasi-prosecution is a procedure applicable to offences of "abuse of authority" by certain government officials. If a person who has filed a complaint or accusation of such offences is dissatisfied with the public prosecutor's decision not to prosecute, the person may apply to a District Court to commit the case to trial. This system is intended as a safeguard against unreasonable non-prosecution decisions by prosecutors. However, in practice, prosecutors usually prosecute if the offence is serious enough and there is sufficient evidence. Accordingly, the number of cases committed to trial has been few.

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<sup>17</sup> White Paper on Crime 2018, Ministry of Justice, Japan.

<sup>18</sup> Ibid.

## **F. Assistance and Protection for Crime Victims and Their Participation in the Criminal Justice Process**

### **1. Victim Notification Programme**

Victims of crime have legitimate interest in knowing the outcomes of the criminal cases arising from their victimization. In 1999, the prosecutor's office introduced the Victim Notification Programme to keep victims informed of the progress and outcomes of their cases. Notification is not automatic. As some victims prefer not to be contacted, notice is given to only those who have asked for it. (In addition, in cases where a complaint was filed, the public prosecutor has the obligation under law to notify the complainant, of the decision to prosecute or not prosecute, and upon the victim's request, the reason for non-prosecution when the case was not prosecuted.)

Information notified under the programme includes the following:

- (1) Disposition of the case (e.g. prosecution for formal trial, summary prosecution, non-prosecution or referral to the Family Court);
- (2) Venue and time of the trial;
- (3) The results of the trial (conclusion section of the judgment, status on appeal);
- (4) The perpetrator's custody details, the indicted facts, summary of the reasons for non-prosecution, and other matters similar to those listed in (1) to (3); and
- (5) The matters concerning the perpetrator after conviction is finalized:
  - Name and location of the prison where the perpetrator is imprisoned.
  - The possible schedule for release from prison (the scheduled date of release on completion of the sentence, parole) after the prison sentence becomes final.
  - Treatment of the perpetrator in prison (updates are given around once every six months).
  - The date when the perpetrator was actually released (release on completion of the sentence, parole).
  - The date when suspension of execution of the sentence was revoked.
  - The date when a decision was made for granting parole.
  - The date when probation was commenced and the scheduled end thereof.
  - Treatment during probation (updates are given around once every six months).
  - The date when probation ended.

### **2. Victim participation and victim protection at the trial stage**

#### Victim participation

Victims of crimes (including the victim's spouse, lineal relatives and siblings in cases where the victim has died) may, among others, take part in criminal trials as victim participants. As victim participants, they may, subject to the decision of the court, state their opinions on the facts of the case and the application of the law (including on sentencing), question defendants for the purpose of stating the opinion on the facts of the case and the application of the law, and of the victim impact statement (see below), and question witnesses for the purpose of challenging the credibility of the testimony regarding the aggravating or mitigating circumstances (except for matters related to fact-finding). Participation is only permitted in cases of serious crimes such as homicide, grievous bodily harm or rape.

#### Statement of opinion (victim impact statement)

Victims may, among others, state their feelings about the harm they suffered and other opinions on the alleged case.

#### Protection measures during trial

To lessen the burden on the victims when they testify in court as witnesses, or make a statement of opinion, they may be (a) accompanied by family members or counsellors, (b) shielded from the defendant and observers, (c) seated in a separate room and questioned via video link. The first two measures are available if the victim attends the trial as a victim-participant.

#### Measures to protect the victim's identity

In certain sensitive cases, there are procedures for protecting the victim's identity from the public, and in certain special cases, to the victim's identity is withheld from the defendant. Protection measures

include non-disclosure of the victim's name, address and other personal information.

#### Judicial compromise

There is a procedure for criminal settlement whereby the defendant and the victim may reach an agreement in a civil dispute related to a criminal case; the content of that agreement is noted in the trial record of the criminal case.

#### Restitution Order

When a victim has filed a claim for payment of compensation with a criminal court, the criminal court continues to review the civil dispute after reaching a judgement of conviction in the criminal case, as an ancillary procedure, and makes a decision on compensation.

### 3. Compensation for crime victims

#### Crime victim benefits

The "Act on Support for Crime Victims, etc. Such as Payment of Crime Victims Benefits" provides victims or families of deceased victims with crime victim benefits when compensation for damages is not received from the perpetrator. Eligible beneficiaries include victims who suffered serious injury or disability or surviving family of a person who died due to homicide or an intentional criminal act.

#### Recovery of damages from confiscated assets

The "Act on Recovery Payments to be Paid from Assets Generated from Crime" provides victims etc. with the right to recover damages from crime proceeds, or the equivalent value thereof, confiscated in the criminal proceedings including assets recovered from foreign countries.

#### Damage-recovery benefit system

The "Act on Damage Recovery Benefits Distributed from Fund in Bank Accounts Used for Crimes" pays damage-recovery benefits to victims of crimes such as fraud involving bank account transfers. It provides a procedure to nullify the perpetrator's deposits and distribute them as damage-recovery benefits to the victims.

### **International Cooperation in Criminal Matters**

#### 1. Extradition

The requirements and procedures for extraditing fugitives from Japan are provided in the Act of Extradition. Pursuant to the Act, the requirements for extradition are that the offence in question must not be a political one, that the offence must be punishable by death, imprisonment for life or for a long term of three years or more, that the principle of dual criminality is recognized, that there is good reason to believe that the person in question has committed the offence, and that the principle of reciprocity is guaranteed, among others. When the person in question is Japanese, he or she may in principle not be extradited to another country.

If there is a bilateral treaty, some requirements may be relaxed. Japan currently has extradition treaties with the USA and South Korea. Moreover, there are multilateral treaties with provisions on extradition to which Japan is a party, such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption.

#### 2. Assistance in criminal investigation

The requirements and procedures for assisting in a criminal investigation when a request for assistance has been received from another country are set forth in the Act on International Assistance in Investigation and Other Related Matters. Under the Act, the requirements for assisting in investigation are that the offence in question must not be a political one, that the principle of dual criminality should be recognized, and that the principle of reciprocity should be guaranteed, among others. Requests for assistance shall be made to the Minister of Foreign Affairs, which will be transmitted to the Minister of Justice.

Where there is a relevant bilateral or multilateral treaty, some requirements may be relaxed and a request may be made between the central authorities (in Japan, the Ministry of Justice for incoming and outgoing requests, and also the National Police Agency for outgoing requests). Japan currently has concluded bilateral and multilateral treaties with the USA, South Korea, the People's Republic of China, Hong Kong, the EU and the Russian Federation. Moreover, a State Party to a multilateral treaty to which Japan adheres and which prescribes that it may be used as a legal basis of mutual legal assistance, may base its request to Japan on that treaty in accordance with the treaty requirements. Applicable multilateral treaty includes: the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption, and Convention on Cybercrime .

## CHAPTER 5 TRIAL PROCESS

### I. SOME BASIC PRINCIPLES AND CHARACTERISTICS

#### A. Presumption of Innocence

Every criminal defendant is presumed innocent until proven guilty. The standard of proof is “beyond a reasonable doubt”: a preponderance of evidence, as used in civil proceedings, is not sufficient to sustain a criminal conviction. The burden of proof is on the public prosecutor. Unless the prosecutor establishes every element of the offence beyond a reasonable doubt, the defendant must be acquitted or may be convicted only of a lesser included offence.

#### B. Public Trials

Defendants have the right to a speedy and public trial by an impartial tribunal (Article 37-1 of the Constitution). Trial must be conducted, and judgement must be announced, publicly. Exceptions are permitted only under very limited circumstances.

The trial opens with the judge(s) and a public prosecutor in attendance. The defendant has the right and duty to be present. As a general rule, trials cannot open without the presence of the defendant, but this obligation may be exempted in certain minor cases. Moreover, when a defendant in detention refuses to appear without justifiable reasons and certain other conditions are met, the court may proceed without the presence of the defendant.



Criminal Trial (moot)

#### C. Right to Remain Silent

The defendant has the right to remain silent: he or she may remain silent at all times or answer some questions and refuse others. In practice, most defendants voluntarily answer questions asked by the defence counsel, the public prosecutor, and the court.

#### D. Right to Counsel

Defendants have the right to the assistance of competent counsel. If the defendant is unable to secure counsel, counsel will be appointed by the court. In Japan, the availability of court-appointed counsel is not limited to indigent defendants.

Trial proceedings cannot be held without the presence of counsel if: (i) the defendant is charged with an offence punishable by death, life imprisonment, or a maximum term of more than three years' imprisonment; (ii) the case has been referred to pretrial conference procedure; or (iii) the case is tried by the speedy trial procedure.



### E. Adversarial Procedure

The Japanese criminal trial is a hybrid of the European and Anglo-American systems, with much greater emphasis on the Anglo-American adversarial model. While the court maintains control over the proceedings, it is the parties, especially the prosecutor, that take the active and leading role in developing the facts of the case. The court cannot try a case unless prosecuted by the public prosecutor, and the defendant cannot be convicted of an offence greater than the one charged in the prosecutor's charging instrument.

### F. No Arraignment

There is no system of arraignment as exists in the Anglo-American countries. A plea or admission of guilt by the defendant will not waive trial, and the prosecutor is still required to prove the defendant's guilt beyond a reasonable doubt.

### G. Single Stage Procedure

Some countries divide the criminal proceeding into two stages: the determination of the defendant's guilt or innocence, and the sentencing. The Japanese criminal procedure is different, and like many countries in Europe, combines these two stages into one. Evidence relevant to the defendant's guilt and evidence relevant to sentencing will be heard during the trial, and a single judgement setting forth the facts found by the court and specifying the sentence to be served, or that which acquits the defendant, will be announced.

## II. *Saiban-In* Trials

*Saiban-In* is a recently created word used to describe the "lay judges" who participate in *Saiban-In* trials. The *Saiban-In* trial was introduced by the Act on Criminal Trials Examined under the Lay Judge System, which came into force on 21 May 2009. As a general rule, and practically in all cases *Saiban-In* cases are tried by a mixed panel consisting of three professional judges and six *Saiban-In*, although panels may consist of one professional judge and three *Saiban-In* exceptionally.

*Saiban-In* are randomly selected for each case from among the voters through a procedure similar to jury selection in some other countries. *Saiban-In* collaborate with professional judges to decide on issues of fact and sentencing. Each *Saiban-In* and professional judge has equal voting power. Procedural issues and matters of legal interpretation are left to the professional judges.

*Saiban-In* trials will be held for (i) offences punishable by death or imprisonment for life; or (ii) intentional conduct resulting in the victim's death, for which a minimum term of one year's imprisonment is prescribed. Such offences include homicide, rape/robbery resulting in death or injury, arson of an inhabited residence, and certain serious offences. For these offences, *Saiban-In* trial is mandatory, and defendants may not waive it and request a bench trial.



Court Room for *Saiban-In* Trial  
(Photo provided by Supreme Court)

### III. TRIAL PROCEEDINGS

#### A. Procedure before Trial

##### 1. Introduction

In Japan, the charging power belongs exclusively to the public prosecutor, and a formal charge is presented in the form of a written charging instrument called *Kiso-Jo*, prepared by a prosecutor. The *Kiso-Jo* has to contain a clear description of the elements of the offence charged, and no evidentiary material may be attached to it.

Criminal cases are tried by a judge, a three-judge panel, or a mixed panel of three professional judges and six lay judges (*Saiban-In*), depending on the nature of the charge.

##### 2. Pretrial Conference Procedure

After the indictment and before trial, the court may set the case for pretrial conference procedure, by hearing the opinions of the prosecutor and the defence. Cases that will be tried by a *Saiban-In* court must be referred to pretrial conference procedure. Through this procedure, the parties prepare and clarify their arguments and disclose evidence, the court makes necessary rulings, and the parties and the court plan for the upcoming trial.

The prosecutor and the defence counsel are required to disclose to the other party evidence they intend to introduce at trial. Moreover, pretrial conference procedure involves two kinds of disclosure of evidence by public prosecutors in response to requests from the defence. The purpose of these specific disclosures is to clarify the claims due to be made at trial, the evidence to be submitted, and the issues of the case.

(1) The first disclosure is required for specific categories of evidence, such as exhibits, inspection reports, spot investigation reports, written statements of expert opinions, written statements of the defendant or others, etc. under two conditions: (a) when it is deemed important in order to judge the credibility of specific evidence offered by the public prosecutor; and (b) when it is deemed appropriate, considering its necessity for preparing the defence and the possible harmful effects that could be caused by disclosing it. The purpose of this disclosure is to enable the defendant to determine a defence strategy once the prosecutor has indicated which evidence the prosecution will rely on at trial.

(2) The second disclosure is that the public prosecutor, upon the defence's request, must disclose other undisclosed evidence that is deemed connected with the defence (for example, an alibi, claims that there was no intent to kill, claims of self-defence, etc.) when the prosecutor deems it appropriate upon considering the extent of the connection, the necessity for the defence and the possible harmful effects that would be caused by disclosing it, such as personal or private information regarding the victim. This disclosure is required to identify key issues and evidence by having the public prosecutor make disclosure related to the claims, while making the defendant clarify the evidence he/she will rely on.

Also, public prosecutors usually disclose evidence voluntarily at an early stage of the pretrial conference procedure even if the evidence does not fit into the above conditions. This is done in order to conduct productive court proceedings.

Parties are required to clarify the arguments and defences they intend to present during trial and make offers of evidence to support them. Once the pretrial conference procedure has concluded, neither party is allowed to offer additional evidence unless it can be shown that the delay was unavoidable.

#### B. Trial

Trial can be divided into four stages: the opening proceedings, examination of evidence, questioning of the defendant, and the closing arguments.

##### 1. Opening Proceedings

At the opening of a trial, the court will address the defendant and ask that he or she identify him or

herself. Next, the charge will be read by the prosecutor attending the trial. After that, the court will advise the defendant of his or her rights and give the defendant and defence counsel an opportunity to make statements.

As explained earlier, the defendant has the right to remain silent and is not required to make any statement. In practice, however, most defendants make a statement and admit their guilt. In 2017, 88.2 percent of defendants processed in the District Courts admitted their guilt.<sup>19</sup>

## 2. Examination of Evidence

Examination of evidence begins with the prosecutor's opening statement, which outlines the facts he or she intends to prove at trial. Then, the prosecutor's evidence will be introduced. Real evidence will be displayed, testimony of witnesses will be heard, and documentary evidence will be read in full or be summarized. Admissibility of documentary evidence is limited. For more information, see section C on the hearsay rule.

Following the prosecutor's case in chief, the defence counsel will present its evidence in rebuttal.

As regards the testimony of witnesses, the party calling the witness will first question the witness, and the other party will cross-examine. The party calling the witness is entitled to ask follow-up questions, and at the end, the court will ask supplementary questions if necessary. Under limited circumstances, witnesses may be allowed to sit in a different room (or a different court under certain circumstances) connected to the court via video-link technology and give their testimony from that room.

## 3. Questioning of Defendants

Following examination of other evidence, the defendant will be placed under questioning: first by the defence counsel, then by the prosecutor, and finally by the court. Japanese defendants are not questioned as witnesses. They are not placed under oath, and they may refuse to answer any questions at any time. Despite their right to remain silent, however, most defendants voluntarily answer questions.

## 4. Closing Arguments

When all the evidence is heard, the prosecution and then the defence counsel will make their closing arguments. The arguments will cover issues of fact, law, and sentencing. Prosecutors make sentencing recommendations at the end of their closing arguments.

Starting in 2008, a system of victim participation was introduced in Japan. This system allows victims of certain serious offences or their bereaved families, with the approval of a court, to act as victim participants. Victim participants may also present their closing arguments.

## 5. Victim Participation at Trial

All due respect should be given to the wishes of crime victims or their surviving family members to take part in criminal trials of cases in which they have been victims. As such, their participation in criminal trials contributes to the restoration of their honour and their recovery from the damage suffered. To this end, a system of victim participation has been established and has been implemented since 1 December 2008. Under the system, victims or their surviving family members acquire the status of "victim participants" during trial proceedings, with the court's permission, and directly engage in certain parts of the trial.

Victims who may participate are victims of alleged incidents involving an offence that led to death or injury through an intentional criminal act, the offences of indecent assault and rape, offences of human trafficking, and others. These victims may participate in the following manner with the court's permission.

- Being in attendance on the date of the trial
- Stating opinions such as sentiments on the case

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<sup>19</sup> Annual Report of Judicial Statistics for 2017.

- Questioning witnesses (usually related to sentencing)
- Questioning the defendant
- Stating opinions on the finding of facts and the application of law (including sentencing)

To protect victims, devices to shield victim participants from defendants and/or observers are installed, while persons deemed suitable may be permitted to accompany the victim participants. Also, victims of limited financial means may ask the court to appoint an official victim participant attorney.

## C. **Rules of Evidence**

### 1. Hearsay Rule

Hearsay is an out-of-court statement not subjected to cross examination. Hearsay is inadmissible unless (i) the other party consents to its use; or (ii) it fits into one of the exceptions provided for in the CCP.

### 2. Hearsay Exceptions

#### (1) Consent

Consent is essentially a waiver of the right to confront and cross-examine witnesses. When these rights are waived, there is no further need to exclude the hearsay in question. In practice, consent is very widely used. As most defendants do not contest their guilt and their only interest is in sentencing, documentary evidence offered by the prosecutor, such as police reports, written statements of witnesses, and the defendant's confessions outside trial, are admitted with the defendant's consent. This practice enables speedy disposition of uncontested cases.

#### (2) An Example of Other Hearsay Exceptions: Written Statements Taken by a Public Prosecutor

When a witness is unavailable to testify at trial, written statements taken by a public prosecutor and signed by the witness may be admitted as hearsay exceptions. Likewise, if the witness takes the stand but the testimony differs from previous statements, prior inconsistent statements taken by a public prosecutor and signed by the witness may be admitted as hearsay exceptions, provided provided there are circumstances that afford the statements more credible than the testimony at trial.

### 3. Confessions

Under Article 38-2 of the Constitution and Article 319-1 of the CCP, confessions are inadmissible unless voluntarily made. The objectives of the voluntariness requirements are generally understood as follows: (i) to exclude false confessions; (ii) to protect the rights of the accused, especially the right to remain silent; and (iii) to exclude illegally obtained confessions. Furthermore, under Article 38-3 of the Constitution and Article 319-2 of the CCP, a defendant cannot be convicted if the only incriminating evidence is his or her confession.

### 4. Exclusionary Rule

According to Supreme Court precedents, serious violations of procedural rules can result in the inadmissibility of illegally obtained evidence. The application of the exclusionary rule is decided on a case-by-case basis, and factors taken into consideration include: the situation under which the illegality occurred; the seriousness of the violation of the law; the intention of the investigating officers, and the need to prevent future illegality.

#### **The admissibility of written statements of victims, witnesses or defendants made in the course of investigation as evidence at trial**

Written statements are documents substituting for spoken statements before the court during the trial proceedings (e.g. witness testimony), and they are hearsay evidence. In principle, therefore, they are not deemed admissible as evidence. However, even hearsay evidence may be deemed admissible if the defence consents, or when there is a high degree of necessity and credibility, as illustrated below.

One such exception is when the statement is a statement for the prosecution made by a victim or

witness, and (i) the person who made the statement is deceased, mentally or physically impaired, of unknown whereabouts, or resides abroad, and is therefore unable to testify, or has refused to testify under oath, or (ii) when the statement is substantially different from the testimony that was given in court and there are circumstances that afford the statement more credible than the testimony at trial (Article 321(1)2). Such special circumstances include cases when there has been a pronounced decline in memory due to the passage of long time or due to mental or physical impairment, or when the witness is an accomplice to the defendant or a person connected with the defendant and is reluctant to testify in person before the court, due to feelings such as fear of retaliation.

A written statement made by a defendant during a criminal investigation may be deemed admissible as evidence when (i) the content of the statement acknowledges a fact detrimental to the defendant, and (ii) the statement has been made voluntarily. (Article 322(1))

#### **D. Adjudication and Sentencing**

As stated earlier, a single judgement that sets forth the finding of the court and specifies the sentence to be served, or that which acquits the defendant, will be announced at the end of the trial. In 2016, the acquittal rate was 0.2 percent in District Courts and 0.14 percent in Summary Courts. The acquittal rate for contested cases was 3.48 percent in District Courts and 4.39 percent in Summary Courts.

#### **E. Length of Trial**

In 2016, the District Courts and Summary Courts disposed of a total of 59,103 cases. 91 percent of District Court cases were disposed of within six months of the initiation of prosecution, and 74.2 percent were disposed of during the first three months. 97.8 percent of Summary Court cases were disposed of within six months, and 89.8 percent were disposed of during the first three months. The average length required for disposition was 3.2 months in District Courts and 2.2 months in Summary Courts. District Courts held an average of 2.7 trial dates and Summary Courts an average of 2.2.<sup>20</sup>

The Act on the Expediting of Trials of 2003 provides that “the objective of expediting trials shall be to conclude the proceedings of the first instance in as short a time as possible within a period of two years.” A new trial procedure (Speedy Trial Procedure) applicable to certain uncontested cases was introduced in 2006 by an amendment to the CCP.

### **IV. APPEALS**

Appeals are classified as appeals against judgement in the first instance to the High Court, final appeals to the Supreme Court, and appeals against rulings specially provided for in codes of procedures. The first two lie against judgements, while the latter lies against decisions and orders. When both parties waive the right to appeal or all avenues for appeal have been exhausted, the judgement becomes final and enforceable. Contrary to the Anglo-American system, it is not unconstitutional to afford a right of appeal to a public prosecutor against an acquittal.

#### **A. Appeals to the High Court**

A party who is dissatisfied with the judgement of the first instance can file an appeal to a High Court. It is instituted by filing a written motion in the original trial court within 14 days after judgement. The ground for this appeal should be one or more of the following: (i) non-compliance with procedural law in the trial proceedings; (ii) an error in the interpretation or application of law which clearly influenced the judgement of the first instance; (iii) excessive severity or leniency in sentence; and (iv) an error in fact-finding in a guilty or not-guilty judgement. The High Court examines, in principle, only the written record of the case, including the documentary evidence examined by the court below, and considers the arguments of both the defence counsel and the public prosecutor. However, when deemed necessary, the High Court can examine additional evidence such as witnesses (including the same witnesses examined by the first

<sup>20</sup> The Trend of Criminal Cases in 2016, Criminal Affairs Bureau of the General Secretariat of the Supreme Court.

instance court), exhibits and written statements.

If there is no reversible error, the appeal will be dismissed. If there is reversible error, the High Court will vacate the judgement and remand the case to the trial court. If the High Court finds that a new decision can be made on the basis of the proceeding and evidence (including evidence examined at the appellate level), it may vacate the judgement below and, without remanding, enter its own judgement.

## **B. Final Appeals to the Supreme Court**

If unsatisfied with the High Court judgement, the parties can file a final appeal to the Supreme Court within 14 days after the judgement. The purpose of this appeal is to ensure proper interpretation of the Constitution and law. Therefore, the grounds for this appeal are limited to: (i) a violation of the Constitution or an error in interpretation or application of the Constitution; (ii) contradiction with Supreme Court precedent; and (iii) contradiction with High Court precedent, when no Supreme Court precedent exists.

However, as the court of last resort, the Supreme Court is authorized, at its discretion, to reverse lower court decisions on the following grounds: (i) there is a serious error in interpretation or application of law; (ii) the degree of sentence is extremely unjust; (iii) there is a grave fact-finding error which is material to the judgement; (iv) there is any reason which would support reopening of procedures; and (v) the sentenced punishment has been abolished or changed or for which a general amnesty has been proclaimed. The Supreme Court only examines the record of the case and never examines witnesses or defendants although the Supreme Court may hear arguments of the parties. When the Supreme Court concludes that there is no ground for reversal, it dismisses the appeal. If grounds exist, the Court will vacate the judgement below and either remand the case or enter its own judgement

## **V. EXTRAORDINARY REMEDIES**

Even after all avenues of appeals have been exhausted and the judgement has been finalized, it may still be set aside under very limited circumstances. There are two types of extraordinary remedies: *Saishin* (new trial) and *Hijo Jokoku* (extraordinary appeals).

A public prosecutor and a convicted defendant or his or her relatives may ask for a *Saishin* under limited circumstances, including when new evidence is discovered that clearly demonstrates that the defendant should be acquitted. The Prosecutor General may file a *Hijo Jokoku* appeal when it is discovered that a finalized judgement was in violation of law (for example, a fine exceeding the maximum amount authorized by law). *Saishin* or *Hijo Jokoku* may not adversely affect the position of the convicted defendant.

## **VI. PUNISHMENT**

### **A. Categories**

#### **1. Overview**

Principal punishments are classified, in descending order of severity, as the death penalty, imprisonment with or without work (the term of imprisonment shall be not less than one month), fine, misdemeanour imprisonment, and petty fine. Confiscation is a supplementary penalty, which may be imposed in addition to principal punishments. When items subject to confiscation cannot be confiscated, an order of collection of equivalent value may be imposed instead. The Special Narcotics Control Law and the Anti-Organized Crime Law both have special provisions designed to facilitate the confiscation of proceeds of crime

#### **2. Death Penalty**

The death penalty is not unconstitutional in Japan, but it is very sparingly used. In practice, its application is limited to homicide and robbery resulting in death. The death penalty cannot be imposed upon offenders who were under the age of 18 at the time of the offence. Executions are carried out by hanging.

### 3. Imprisonment

Imprisonment may be with or without work. The former involves obligatory work assignment while the latter does not. The length of imprisonment may be for life, or for a specific term. The maximum term authorized for a single offence is 20 years, but it can be extended up to 30 years under certain circumstances.

### 4. Fine, Misdemeanour Imprisonment without Work, Petty Fine

Fines range from ¥10,000 and upward, and the maximum amount differs for each offence. Misdemeanour imprisonment without work is confinement without work assignment for a period of one to 29 days, and petty fines range from ¥1,000 up to not more than ¥10,000. Persons unable to pay the full amount of a fine or a petty fine may, as a substitute, be detained in a workhouse in accordance with a daily rate fixed by the sentencing court.

## **B. Suspension of Execution of Sentence**

The court, when sentencing a defendant to imprisonment not exceeding three years or a fine not exceeding ¥500,000, may suspend the execution of the sentence for one to five years if one of the following conditions is met: (i) the defendant has not previously received a sentence of imprisonment or a greater punishment; or (ii) the defendant has previously received a sentence of imprisonment or a greater punishment, but five years have passed since the completion of that sentence.

If the offender, during the suspension period, is convicted of another crime and sentenced to imprisonment or a greater punishment, unless circumstances especially favourable to the offender are shown and certain other conditions are satisfied, the suspension will be revoked, and the offender will serve two sentences consecutively. If the offender maintains good behaviour and the suspension period passes without revocation, the entire sentence will automatically lose its legal effect at the end of the suspension period, and the offender will no longer have to serve the sentence. The sentencing court, when suspending the execution of a sentence, may place the offender under probation for the duration of the suspension.

On June 1, 2016, the law introducing a partial suspension of sentence came into force. This made it possible to opt for a punishment consisting of both an imprisonment and a suspended imprisonment sentence, whereas previously, the only options available were to serve the whole imprisonment sentence in prison (with the possibility of parole) or to suspend the whole imprisonment sentence (fully suspended sentence). An important aim of this new sentencing option is to reduce the risk of reoffending and facilitate rehabilitation in society. It is possible to enforce a part of the imprisonment term of the sentence and suspending the rest of it by the partial suspension. Offenders are incentivized to rehabilitate because further commission of a crime after release during the suspension period may, once revealed, result in reimprisonment by revocation of suspension. The suspension period lasts for a determined period of up to five years after the custodial portion of the sentence has been enforced; the probation period, severed on parole, lasts for the remaining period of the sentence. Thus, partial suspension of sentence can result in a longer probation period than a full custodial sentence with parole.

## **C. Outcomes of Court Proceedings**

### 1. Formal Trials

The following table shows the adjudication outcomes and the sentencing distribution of defendants whose cases were disposed of by courts of first instance (District Courts and Summary Courts) in 2016. The total number of defendants was 59,103. Of these, 57,578 were convicted, 113 were acquitted, and the conviction rate was 97.4 percent. Of 55,150 defendants sentenced to imprisonment, 33,742 (61.2%) received full suspension of execution and 1,007 (1.8%) received partial suspension of execution.<sup>21</sup>

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<sup>21</sup> Annual Report of Judicial Statistics for 2016. The Trend of Criminal Cases in 2016, Criminal Affairs Bureau of the General Secretariat of the Supreme Court. The figures are the number of the defendants whose cases were disposed of by courts of first instance. They differ slightly from those in the Criminal Justice Flow Chart on page 12, which shows the number of defendants whose cases were finalized.

Conviction	57,578		
	Death Penalty	3	
	Imprisonment (with work)	51,972 (100%)	
		Life	25 (0.05%)
		more than 20 years to 30 years	31 (0.06%)
		more than 10 years to 20 years	181 (0.35%)
		more than 5 years to 10 years	823 (1.59%)
		more than 3 years to 5 years	2,407 (4.63%)
		1 year to less than 3 years	36,751 (70.71%)
		6 months to less than 1 year	10,229 (19.68%)
		less than 6 months	1,525 (2.93%)
	Imprisonment (without work)	3,178	
	Fine	2,415	
	Misdemeanour imprisonment and Petty Fine	9	
	Exculpation of punishment	1	
Acquittals	113		
Others	1,412		

## 2. Summary Proceedings

In 2016, Summary Courts issued a total of 263,608 summary orders: 261,781 were for fines, and 1,827 were for petty fines.

### D. Parole

Inmates serving prison sentences may be released early on parole. Parole decisions are made by Regional Parole Boards upon application by the warden of the correctional institution where the inmate is housed: the inmate him- or herself is not entitled to apply for parole. Inmates must have served one third of their sentences (or ten years in the case of life sentences) before they become eligible for parole.

## VII. COMPENSATION FOR INNOCENCE

A defendant detained and subsequently acquitted is entitled to receive state compensation. Likewise, state compensation is required when the prosecutor decides not to prosecute a suspect who has been taken into custody, and there are sufficient reasons to believe that no crime has been committed by the suspect. Furthermore, suspects and defendants may sue the state for damages if they can prove that the authorities, intentionally or negligently, inflicted unlawful damages.

## VIII. SPECIAL PROCEDURES FOR JUVENILE CASES

The Juvenile Law of 1948 establishes a special procedure for juvenile cases. Juveniles are defined as persons less than 20 years of age, and the underlying philosophy of the law is that, for juveniles, education and rehabilitation are preferable to criminal punishment. While regular criminal cases are tried in District Courts and Summary Courts, juvenile cases are primarily dealt with in Family Courts.

The age of criminal responsibility in Japan is 14, and the following types of juveniles come under the jurisdiction of the Family Court:

- (1) Juveniles, 14 years or older, who have committed a criminal offence;



- (2) Juveniles, 13 years or younger, who have committed an act which would have been criminal except for the age requirement; and
- (3) Juveniles who are prone to commit crimes or violate criminal laws in light of their character, behaviour, or surrounding circumstances.

Family Court proceedings begin when a juvenile case has been received from one of various sources. In practice, they mainly come from the police and the public prosecutors. The Family Court will first make an inquiry into whether a juvenile hearing should be opened, and in doing so, the court will assign the case to a family court investigating officer, who will undertake a thorough social inquiry into the personality, personal history, family background, and environment of the juvenile. The court may also detain the juvenile in a juvenile classification home (“protective detention”). The maximum period of protective detention is four or eight weeks depending on the circumstances. During the detention period, the juvenile classification home conducts classification based on a comprehensive assessment of each juvenile delinquent and its report is submitted to the family court.

If, after inquiry, the court determines that there are no grounds or that it is inappropriate to open a hearing, the case will be dismissed without a hearing; otherwise, a juvenile hearing will be opened. The Juvenile Law requires that the hearing be conducted in a warm atmosphere. The hearing is not open to the public except for victims and their families, under limited circumstances and with permission of the court. Likewise, public prosecutors are generally not entitled to attend the hearing.

When the hearing is completed, the Family Court will either (i) place the juvenile under protective measures; (ii) refer the case back to prosecutors; (iii) refer the case to a child guidance centre; or (iv) dismiss the case upon hearing.

There are three forms of protective measures: probation, commitment to institutions established under the Child Welfare Act, and commitment to a juvenile training school.

Referral to public prosecutors takes place when the court determines that criminal punishment should be imposed. Juveniles aged 16 years or older who have committed an intentional act that resulted in the death of a victim should be referred to public prosecutors unless the court determines otherwise. Public prosecutors, as a general rule, are required to prosecute the cases referred to them from the court. Such cases will be prosecuted and tried in almost the same manner as offences committed by adult offenders. However, juveniles are generally punished by indeterminate sentences (a fifteen year maximum), and capital punishment may not be imposed on juveniles who were under 18 years old at the time of the offence.

Cases will be dismissed upon hearing when the court determines that there are no grounds or that it is not necessary to make any particular disposition.

## CHAPTER 6 CORRECTIONAL SERVICE

### I. INTRODUCTION

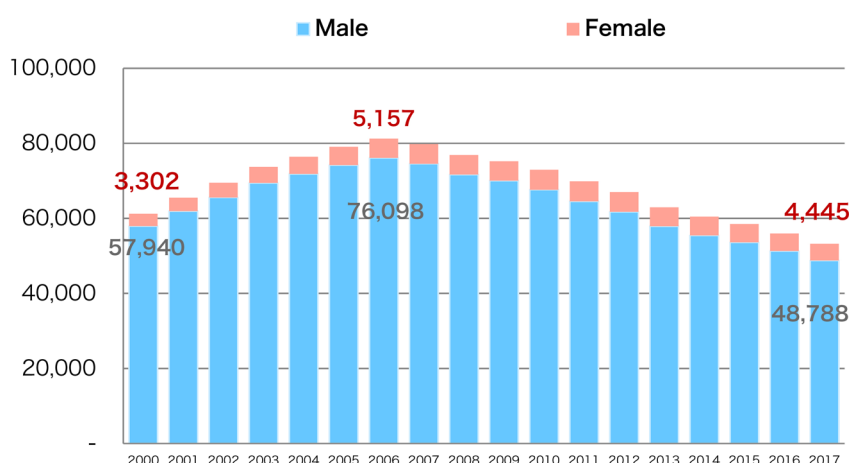
This chapter addresses the treatment of offenders in correctional facilities, as well as to the duties and functions of correctional officers. Correctional facilities include: i) penal institutions, ii) juvenile classification homes, and iii) juvenile training schools. Whereas penal institutions are mainly for adult offenders, juvenile classification homes and juvenile training schools are a part of the juvenile corrections system.

### II. TREATMENT OF INMATES IN PENAL INSTITUTIONS

#### A. Trends in the Inmate Population in Penal Institutions

The average population of inmates in Japanese penal institutions generally decreased from the end of World War II to 1992, when it numbered 44,876; however, it rose steadily between 1993 and 2007, when it reached 80,684, and it exceeded the capacity of penal institutions between 2001 and 2006. Because of construction and renovation of penal institutions and the decrease of the inmate population since 2008, this situation has changed. As of 31 December 2018, the total capacity of penal institutions is 89,310 (71,346 for sentenced inmates and 17,964 for pre-trial detainees), and the actual population was 53,233 (47,331 sentenced inmates and 5,902 pre-trial detainees).

**Fig. 1 Trend in the Year-end Population of Inmates in Penal Institutions**



(Source: Annual Report of Statistics on Correction)

#### B. Philosophy of the Treatment of Inmates

The Act on Penal Institutions and the Treatment of Sentenced Inmates stipulates basic principles on the administration of penal institutions and treatment of inmates as follows:

*The purpose of this Act shall be to conduct adequate treatment of inmates ... with respect for their human rights and in accordance with their respective circumstances, as well as to achieve the appropriate management and administration of penal detention facilities (i.e. penal institutions, ...).*

As regards the purpose of treatment of sentenced inmates, the Act provides as follows:

*Treatment of a sentenced inmate shall be conducted with the aim of stimulating motivation for reformation and rehabilitation and developing the adaptability to life in society by working on his or her sense of consciousness in accordance with his or her personality and circumstances.*

Further, the Act provides that:

*Upon treatment of an pre-trial detainee, special attention shall be paid to the prevention of his or her escape and destruction of evidence and to the respect for his or her right of defence, while taking into consideration his or her status as an pre-trial detainee.*

### **C. Correctional Treatment of Sentenced Inmates**

Correctional treatment of sentenced inmates consists of three main components: (i) work, (ii) guidance for reform, and (iii) guidance in school courses. In order to implement them effectively, the penal institutions conduct assessments of individual inmates, place them into separate groups, and determine the treatment guidelines for each inmate. In addition, various measures such as alleviation of restrictions, privilege measures, commuting to outside work, and day leave and furlough are provided.

#### **1. Assessment for Treatment**

Penal institutions conduct periodic assessment of inmates. The initial assessment takes place when their sentence has become final and binding. It is a comprehensive assessment and looks into various factors: physical and mental conditions; life history; academic background; employment history; membership of organized criminal groups; criminal tendencies; family and life environments; aptitude for jobs or education; life and future plans; and any other relevant matters.

There are two stages to the initial assessment. The first half is conducted in the penal institution in which the inmate is accommodated at the time of the finalization of the sentence. The focus is on determining the most appropriate penal institution for the inmate. The second half of the assessment is conducted in the penal institution to which the inmate has been transferred. This is a more detailed assessment that looks thoroughly into the inmate's background.

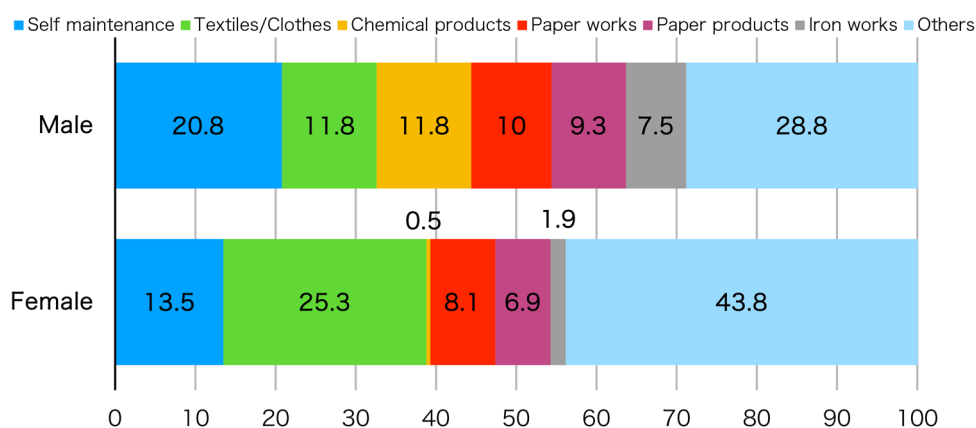
On the basis of those assessments, a treatment guideline, which provides the objective, the contents, and the methods of correctional treatment, will be determined for each inmate. The inmate's performance will be evaluated every six months and on an as-needed basis according to the treatment guidelines, which will be revised if necessary.

#### **2. Prison Work**

Inmates sentenced to imprisonment (with work) are obliged to engage in mandatory work assignments. Prison work is planned and organized so as to serve various objectives: facilitating social reintegration by providing vocational knowledge and skills; enhancing mental and physical health and the will to work; and encouraging inmates to become more conscious of their role and responsibility in community life.

Prison work in Japan is divided broadly into three categories: production work, vocational training, and self-maintenance work. Figure 3 shows the types of prison work, and the numbers of sentenced inmates and workhouse detainees assigned to each work type.

**Fig. 2 Ratio of the types of prison work for released inmates in 2017**



(Source: Annual Report of Statistics on Correction)

Inmates engaged in prison work receive incentive remuneration. It is not a wage paid according to the amount of work, but an incentive paid for the purpose of encouraging work and providing inmates with funds to prepare for life after release. The average remuneration paid monthly to one sentenced inmate in FY 2017 was 4,340 yen.

Sentenced inmates usually work within penal institutions, but those who satisfy the necessary conditions may be permitted to commute to a business establishment outside without the supervision of penal institution staff.



Vocational training

### 3. Guidance for Reform

Guidance for reform is provided in order to encourage sentenced inmates to take responsibility for their crimes, and to acquire the knowledge and lifestyle necessary for adapting themselves to life in society. There are two types of guidance: general guidance for all sentenced inmates and special guidance for inmates with certain difficulties.

General guidance is provided through lectures, interviews, and other available measures, and it aims (i) to make inmates understand the circumstances and feelings of crime victims; (ii) to let them develop a regular lifestyle and a sound perspective and point of view; and (iii) to make them understand information for life planning after release and develop a law-abiding spirit and behaviour.

As for special guidance, the following six programmes are currently provided: guidance for overcoming drug addiction; guidance for withdrawal from an organized crime group; reoffending prevention guidance for sex offenders; education from the victim's viewpoint; traffic safety guidance; and job assistance guidance.



Group work

### 4. Guidance in School Courses

Many sentenced inmates lack sufficient educational attainments to lead a productive life. For such inmates, penal institutions provide guidance in elementary school and junior high school courses, which include Japanese language courses and mathematics courses. Inmates who have not finished compulsory education may have a chance to study and to take junior high school equivalency examinations. For inmates whose progress in studies has been deemed particularly conducive to smooth re-entry into society, guidance in high school or university courses may be provided.

#### **D. Complaints Mechanism**

Inmates are allowed to file various forms of complaints, as follows.

##### 1. Claim for Review and Reclaim for Review

An inmate who is dissatisfied with the measures taken by the warden of the penal institution, such as restriction on correspondence and disciplinary punishment, may file a claim for review with the Superintendent of the Regional Correction Headquarters. Inmates dissatisfied with the Superintendent's determination may file a further claim for review with the Minister of Justice.

## 2. Report of Cases

An inmate who has suffered an illegal or unjust act by a staff member of the penal institution may report the case to the Superintendent of the Regional Correction Headquarters. The Superintendent of the Regional Headquarters shall confirm whether or not the case occurred and notify the inmate of the findings. If dissatisfied with the results, the inmate may report the case to the Minister of Justice.

## 3. Filing of Complaints

An inmate may file a complaint with the Minister of Justice, the inspector, or the warden of the penal institution with regard to any treatment he or she has received. The inspector is appointed by the Minister of Justice to conduct on-the-spot inspections at each penal institution at least once a year to ensure that the penal institution is appropriately administered.

### **E. Penal Institution Visiting Committee**

Each penal institution has a Penal Institution Visiting Committee, a third party committee composed of a maximum of ten members appointed by the Minister of Justice. The Committee studies the administration of its corresponding penal institution by visiting it and interviewing inmates, and provides its opinion to the warden. This system serves to ensure transparency in the administration of penal institutions, contribute to its improvement, and enhance the partnership between the penal institutions and the community.

In addition, every juvenile correctional facility (i.e. classification home and training school) also has its own visiting committee. The concept and purpose of such a committee is to ensure inmates' human rights in the correctional institutions.

### **F. Act on the Transnational Transfer of Sentenced Persons**

Japan has ratified the Council of Europe's "Convention on the Transfer of Sentenced Persons". The Convention has been signed by a total of 66 countries including Japan, the United States of America, Canada and the Republic of Korea, as well as the member states of the Council of Europe (46 countries). Besides this, Japan has also signed transnational transfer agreements with Thailand, Brazil, and Iran.

As regards domestic law, there is the Act on the Transnational Transfer of Sentenced Persons (2002). The agreement of both countries involved, the Minister of Justice's judgement of appropriateness and the consent of a person subject to transfer are all required for the person to be transferred under this law.

## **III. TREATMENT OF JUVENILES IN JUVENILE CORRECTIONAL FACILITIES**

### **A. Juvenile Classification Homes**

#### 1. Background

The Juvenile Classification Home Act, which comprehensively provides the duties and functions of juvenile classification homes, entered into force on June 1, 2015. Previously, there was no law on juvenile classification homes, but there were a few provisions that addressed juvenile classification homes in the former Juvenile Training School Act. Under the Juvenile Classification Home Act, juvenile classification homes have three main duties: 1) conducting classification of juveniles in response to requests from the family court, 2) providing appropriate treatment for juvenile inmates, and 3) supporting crime and delinquency prevention activities in the local community.

#### 2. Recent trends

The number of juveniles committed to juvenile classification homes by the family court for protective detention decreased after 2003 when 23,067 juvenile delinquents were committed. In 2017, 7,109 juveniles were committed to juvenile classification homes.

#### 3. Classification

- (1) Classification for the family court hearing

Juvenile classification homes conduct classification based on a comprehensive assessment of each juvenile delinquent and make a report which is submitted to the family court. Classification is carried out during the term of protective detention (within 2 weeks but subject to necessary extension up to 8 weeks in total. See page 34).

During this process, the problem areas of the juvenile's character and social environment that led to his/her commitment of the crime or delinquency are assessed and identified. Also, appropriate guidance addressing the identified problems is offered to improve the juvenile's situation. There are three measures in classification: psychological assessment, behavioural observation and medical checkup. Thus, classification is based on expert knowledge and skills of various fields such as medicine, psychology, pedagogy and sociology.



Interview for classification

#### (2) Classification for correctional treatment

When a family court judge decides to send a juvenile to a juvenile training school, the juvenile classification home where the juvenile resides has the authority to decide to which juvenile training school the juvenile shall be sent, taking account of factors such as the juvenile's individual needs for treatment based on his/her characteristics and whether the location of the juvenile training school is accessible to the juvenile's parents or guardians, who are expected to visit the committed juvenile.

In addition, the juvenile classification home recommends treatment guidelines for each juvenile. These recommendations are considered by the juvenile training school that takes custody of the juvenile. The guidelines include correctional education to be provided, issues related to security risks, parental circumstances and so on.

#### (3) Assessment tool for classification

The Correction Bureau of the Ministry of Justice has developed an assessment tool for juveniles, named the Ministry of Justice Case Assessment tool (MJCA), which has been implemented and used in juvenile classification homes since 2013 as a unified assessment tool. MJCA is based on Risk-Needs-Responsivity principles and plays an important role in the classification. It is used to estimate the juvenile's reoffending risk and other important elements for further treatment. MJCA also is used to assess and evaluate the effectiveness of correctional treatment in juvenile training schools.

MJCA refers to static and dynamic risk factors. Static risk factors, such as family history and history of delinquency, are unchangeable but are important in estimating juveniles' reoffending risk. Dynamic risk factors, sometimes called criminogenic needs, are changeable and important in specifying the problematic areas of the juvenile to address in his/her treatment.

#### 4. Working with community

Juvenile classification homes provide knowledge and skills through various activities for the local community to prevent delinquency and crime in the community at large. Juvenile classification homes undertake the following activities.

- 1) Consultation with juveniles, their family, school teachers, and so on
- 2) Dispatching experts as speakers/lecturers
- 3) Legal education for children and students



Group test for classification



Exercise

## **B Juvenile training schools**

### **1. Background**

In Japan, treatment of juvenile offenders has a long history of over 100 years focusing on their developmental and situational differences from adults. Current juvenile training schools have been operating since 1949 under the Juvenile Act and the Juvenile Training School Act. The new Juvenile Training School Act entered into force on June 1, 2015 and clarified the duties and functions of juvenile training schools to engage not only in correctional education but also in supporting juveniles' reintegration into society.

### **2. Recent trends**

The number of newly admitted inmates per year has decreased after 2000 when 6,052 juveniles were admitted. In 2017, 2,147 juveniles were admitted to juvenile training schools.

### **3. Classifications of juvenile training schools**

There are four classes of juvenile training schools, from Class 1 to Class 4, according to the juvenile's age, his/her criminal tendency level, and whether or not he/she has a serious physical or mental disorder.

- 1) Class 1: persons for whom protective measures are to be imposed; the person must not have a serious physical or mental disorder and must generally be between 12 and 23 years old.
- 2) Class 2: persons for whom protective measures are to be imposed, who have serious criminal tendencies, who do not have a serious physical or mental disorder, and who are generally between 16 and 23 years old.
- 3) Class 3: persons for whom protective measures are to be imposed, who have a serious physical or mental disorder and who are generally between 12 and 26 years old.
- 4) Class 4: persons who are to serve their imprisonment sentences in a juvenile training school.

### **4. Personalized correctional education programme**

Personalized correctional education programmes are the basis of correctional education. Each juvenile undergoes his/her own programme during the term of the commitment. Juvenile training schools design the programmes based on various information including the records of the family court and the juvenile classification home. As a result, the programme responds to and addresses each juvenile's risk, needs and responsibility.



## 5. Correctional education

Correctional education consists of five different measures:

- 1) Lifestyle guidance: guidance for juveniles to obtain basic knowledge and develop constructive attitudes for living independently after release. In addition, there are six types of specific guidance which address certain problematic areas such as drug abuse, sexual offending and so on.
- 2) Vocational guidance: guidance aiming at enhancing motivation to work and obtaining useful knowledge and skills for employment.
- 3) Guidance in school courses: guidance for juveniles who have not completed compulsory education or who wish to enter high school. The juveniles may have the opportunity to take the national examination for obtaining qualification equivalent to high school diploma.
- 4) Physical guidance: guidance to foster a healthy mind and body fundamental to living an independent life as a sound member of society.
- 5) Special activities guidance: guidance related to implementation of social contribution activities, outdoor activities, athletics, music, theatrical activities and other activities instrumental to enriching emotional stability and fostering a spirit of independence, autonomy and cooperation.



Group work



Special activity

## 6. Cooperation with custodians

Working together with the juvenile's custodians is critical to promote the juvenile's effective rehabilitation and reintegration into society. Juvenile training schools make efforts to encourage the custodians to be involved in the exercise of correctional education programmes to facilitate their understanding and cooperation. For instance, juvenile training schools conduct interviews and consultations with the juvenile together with his/her custodians, and encourage the custodians to participate in educational events.



Meeting with custodian

## 7. Supporting reintegration into society

Juveniles will re-enter society after the completion of correctional education in the juvenile training school. Planning ahead for release, juvenile training schools coordinate the living environment (mainly accommodation and employment) for each juvenile from an early stage after commitment. Juvenile training schools consider many factors such as those related to accommodation, employment, family relationships, and need for welfare and medical services.

## CHAPTER 7 REHABILITATION SERVICES

### I. PAROLE

#### A. Overview

Parole is a form of community-based treatment of offenders, and it aims to prevent reoffending and promote reformation, rehabilitation and smooth social reintegration.

When a person sentenced to imprisonment shows signs of substantial reformation, the person may be released early on parole by a decision of the Regional Parole Board after that person has served one-third of the sentenced term or 10 years in the case of a life imprisonment (See Article 28, Penal Code). More concretely, according to an ordinance issued by the Ministry of Justice, parole can be granted to inmates (i) who are deemed to have a sense of remorse for the offence they committed and are deemed to be willing to reform and rehabilitate themselves, (ii) have no likelihood of re-offending, (iii) it is thus deemed reasonable to place them under parole supervision for their own reformation and rehabilitation, and (iv) the general sentiment of society approves of that decision.

Parole decisions are made by Regional Parole Boards upon application by the correctional institution where the inmate is accommodated; inmates are not entitled to apply for parole. In addition, the Regional Parole Board may commence a parole examination on its own initiative.

#### 1. Parole Examination

When a parole examination is initiated, a board member visits the institution and interviews the individual. Later, three members of the board examine the case to evaluate whether the requirements for parole are met. The evaluation will consist of an examination of observations by the interviewer, information from the inmate's institutional record, the result of the pre-parole inquiry by the probation officers and probation office's report on the coordination of social circumstances. In addition, Regional Parole Boards are required to hear the opinions and feelings of the victims, if requested.

#### 2. Parole Decision

When the panel of three board members finds that the requirements are met, they will grant parole specifying the date of parole, place of residence during parole, and special conditions applicable to the parolee during the parole supervision period.

#### 3. Pre-parole Inquiry by the Probation Officers

Probation officers attached to Regional Parole Boards visit correctional institutions regularly for parole preparation. They collect information through interviews with inmates, case conferences with correctional officers, and examination of relevant correctional records. The result of this inquiry is submitted to the Board, and its copy is also sent to the probation office to provide the field officer with the pertinent data on potential parolees.

#### 4. Coordination of Social Circumstances

Coordination of social circumstances means that a probation officer or a volunteer probation officer (see page 9) ascertains the status of a place where an inmate of a correctional institution is due to live upon release (for example, by meeting the guarantor preferred by the inmate after release), arranges social circumstances such as accommodation and a place of employment, and works to create an environment suited to reformation and rehabilitation. This coordination starts soon after the inmate enters the correctional institution, and is implemented continuously until the point of release from the institution. The progress of coordination is

periodically reported to the Director of the Probation Office, the Regional Parole Board and the correctional institution. Social circumstances are taken into account in treatment within the institution, reviews for parole, and supervision after release on parole. Every year, coordination of social circumstances is initiated for around 50,000 inmates.

## **II. PAROLE AND PROBATIONARY SUPERVISION OF ADULT OFFENDERS**

### **A. Overview**

Both parole and probationary supervision are forms of community-based treatment of offenders. Probation is a court-imposed measure that places the offender or juvenile delinquent under the supervision and assistance of the probation office, while allowing them to remain in the community. As long as they abide by the conditions of parole or probation, parolee and probationer can avoid being committed to prisons or juvenile training schools.

Parolees are the early released offenders and juvenile delinquents who have been committed to prisons or juvenile training schools. Parole decisions are made by Regional Parole Boards (see page 8), and parolees are also placed on supervision and assistance of the probation office.

The probation office deals with the following four categories of individuals:

- (1) juveniles placed on probation by the Family Court (juvenile probationers);
- (2) juveniles released from juvenile training schools on parole (juvenile parolees);
- (3) inmates released from prisons on parole (adult parolees); and
- (4) offenders who are sentenced to a suspended sentence and were placed on probation by the court (adult probationers).

This section describes the status of the parole/probation supervision of adult parolees and probationers (The next section will describe the treatment of juvenile parolees and probationers).

#### **1. Adult Parolees**

An offender serving a prison sentence may be conditionally released on parole by a decision of the Regional Parole Board. An adult parolee shall be placed on parole supervision for the remaining term of the sentence (in the case of offenders released on parole from life sentences, probation runs for life). In 2017, of the 21,998 inmates released, 12,760 (58.0%) were released on parole.

#### **2. Adult Probationers**

Under certain circumstances, a sentencing court may suspend the execution of the sentence and may place the convicted offender on probation. In Japan, probation is not an independent sentencing option for adults; it is only used as a measure combined with the suspension of execution of sentence. The period of probation ranges from one to five years, corresponding to the period of suspension of the execution of sentence (including partial suspended execution of sentence) specified by the sentencing court (See page 32).

Of the 52,250 offenders sentenced to imprisonment in 2017, 32,263 (61.7%) had the execution of their sentences suspended, out of which 2,595 were placed on probation.

### **B. Parole and Probation Conditions**

Parolees and probationers are required to abide by the general and special conditions of parole or probation. Committing another crime is deemed as violation of the general condition. A failure to comply may result in adverse action such as parole revocation.

### 1. General Conditions

The general conditions of parole or probation are specified in the Offenders Rehabilitation Act. General conditions are imposed on all adult/ juvenile parolees and probationers alike, and they cannot be changed or withdrawn during parole or probation.

The general conditions are the following: (i) maintaining a sound attitude towards life; (ii) responding to summonses or interviews by professional and volunteer probation officers, (iii) providing relevant information when requested by professional and volunteer probation officers; (iv) residing at the designated or registered residence; (iv) obtaining the permission of the director of the probation office before changing residence or travelling for seven days or more.

### 2. Special Conditions

In addition to the general conditions, special conditions necessary for reformation and rehabilitation may be set for individual parolees and probationers. In the case of parolees, special conditions are determined by Regional Parole Boards on the basis of proposals by the director of the probation office. In the case of probationers, special conditions are determined by the director of the probation office based upon the opinion of the court.

Special conditions are chosen from among the itemized list in the Offenders Rehabilitation Act. Unlike the general conditions, they may be added to, changed, or withdrawn during parole or probation in accordance with changes in the circumstances of each person.

The examples of special conditions include: (i) prohibition of specific acts such as association with certain unfavorable persons, going to certain unfavorable places, reckless wasting of money for pleasure, and excessive consumption of alcohol; (ii) performing or continuing to perform certain acts such as engaging in work or attending school, and (iii) attendance at certain treatment programmes specified by the Minister of Justice.

### 3. Life and Conduct Guidelines

The director of a probation office may, if necessary, establish individual guidelines for life and conduct that contribute to the reformation and rehabilitation of parolees and probationers. Unlike the conditions, non-compliance with the guidelines does not result in adverse action against the parolees or the probationers.

## **C. Parole and Probationary Supervision**

### 1. General Framework

The purpose of parole or probation, as defined in the Offenders Rehabilitation Act, is to ensure the reformation and rehabilitation of the parolees and probationers through “instruction and supervision” and “guidance and assistance.”

“Instruction and supervision” is implemented by (i) maintaining contact with parolees and probationers and keeping track of their behaviour, (ii) giving necessary instructions or taking measures to ensure that parolees and probationers comply with the general and special conditions of parole or probation, and (iii) providing professional treatment designed to improve specific criminal tendencies.

“Guidance and assistance” includes (i) assistance in securing accommodation, (ii) assistance in receiving medical care, (iii) assistance in employment and vocational guidance,

(iv) improving and coordinating social circumstances, and (v) providing instructions on necessary life skills.

While the aim of “guidance and assistance” is to enable parolees and probationers to live independent and responsible lives, they may face acute financial difficulties that can hamper their reformation and rehabilitation. Under such circumstances, the director of the probation office may provide necessary “urgent aid” including medical care, meals, accommodation, clothes, and travel expenses. In 2017, 5,452 parolees and probationers received such urgent aid directly from probation offices, and 5,682 through persons commissioned by the probation offices.



Interview by a Probation Officer

## 2. Intake Interviews and Treatment Plans

Individuals placed on parole or probation are required to report immediately to the probation office that has territorial jurisdiction over his or her residence. At the office, an intake interview and initial risk and needs assessments will be conducted, and the probation officer will explain the framework of supervision, notify him or her of the conditions of parole or probation, register his or her residence, and draw up an individualized treatment plan.

## 3. Role of Probation Officers and Volunteer Probation Officers

Japanese probation officers are usually responsible for one or several local administration divisions (“probation district”), and they supervise all the cases within that division. In order to supplement their work, a volunteer probation officer (in this chapter, hereinafter “VPO”; see page 9) will be assigned to serve as a day-to-day supervisor for the parolee or probationer. In many cases, the VPO lives nearby the parolee or probationer, which makes regular contact much easier.

After receiving the treatment plan and other relevant information from probation officer, the VPO starts supervising the parolee or probationer. The VPO keeps in touch with the parolee or probationer and his or her family by means of visits and interviews and submits a monthly progress report to the probation office. While VPOs are entrusted with day-to-day supervision of ordinary cases, probation officers need to directly intervene in cases of high-risk or difficult individuals or in critical situations.

## 4. Day Offices

Probation officers regularly visit such venues as the municipal office, public hall, or youth centre located in the area of their respective areas of responsibility (“probation district”) and station all day. These visits are called “Day Offices.” Probation officers interview parolees and probationers, visit their homes, counsel their families, and consult with VPOs and other related parties such as school teachers, employers, and community agencies. This practice facilitates direct casework by probation officers and provides VPOs with closer supervision and consultation.

## 5. Progressive Treatment

Parolees and probationers are classified into four grades in accordance with the results of their initial risk and needs assessments. The grade determines the required frequency of contact and the criteria for the measures against the bad conduct. Parolees and probationers are upgraded or downgraded depending upon the outcome of treatment.

#### 6. Categorized Treatment

Categorized treatment is a system designed to effectively treat parolees and probationers effectively based on their particular problems. Treatment manuals are prepared for each category and are taken into consideration in setting up treatment plans for individual parolees and probationers. Currently, there are 13 categories: Solvents Abusers; Stimulant Drug Abusers; Offenders with Drinking Problems; Gang Members; Hot-Rodders; Sex Offenders; Mentally Disordered Offenders; Unemployed Offenders; Elderly Offenders; Junior High School Students; In-School Violence Offenders; Family Violence Offenders (including violence to partners and child abuse); and Offenders with Gambling Addiction.

#### 7. Treatment Programmes as Special Conditions

Structured treatment programmes are designed to address specific criminal tendencies and are designated by the Minister of Justice and as such may be included as a special probation condition for parolees and probationers.

Currently, there are four designated treatment programmes: a sex offender treatment programme; a drug relapse prevention programme; a violence prevention programme; and a impaired driving prevention programme. As they form part of the special conditions, failure to participate can lead to adverse action.

These programmes are based on cognitive-behavioural theory, and they consist of one introductory session and five core sessions. By participating in these programmes, parolees and probationers are expected to understand their biases in thinking, to recognize the situations in which they are likely to commit the offence, and to develop skills to cope in such situations. Notably, a drug relapse prevention programme includes compulsory drug testing (either urinalysis or saliva test), and if the result is positive, it will be reported to the police unless the parolee or probationer voluntarily turns himself or herself in to the police.

The programme for violent offenders is tailored for individual delivery, while the programmes for drug offenders and sex offenders can be delivered either individually or in group sessions.

#### 8. Comprehensive Job Assistance Scheme

Secure employment is essential to social reintegration and rehabilitation of offenders and juvenile delinquents. To improve their employability and provide job placement assistance more effectively, the Ministry of Justice and the Ministry of Health, Labour and Welfare agreed to strengthen their coordination in the provision of services. For example, Public Employment Security Offices provides support in preparing for employment while the offender is still in prison. To ease the anxieties of potential employers, trial employment programmes and fidelity guarantee system are provided as well.

In 2017, of the 7,794 parolees and probationers who enrolled in the job assistance scheme, 3,152 secured employment.

#### 9. Offenders Rehabilitation Facilities (Halfway House)

Some offenders, despite their willingness to change and the progress they have made, may still not be eligible for lack of an appropriate place to return in the society. In such cases,

Offenders Rehabilitation Facilities can be one of the options as their place to return with necessary support (see page 9).

#### 10. National Centre for Offenders Rehabilitation

“National Centres for Offenders Rehabilitation” are established to provide assistance to offenders that have no appropriate place to return in the society. National Centres for Offenders Rehabilitation are national rehabilitation facilities attached to the probation offices established in order to provide such offenders with temporary accommodations as well as intensive supervision and sufficient employment support by the probation officers.

There are four National Centres for offenders rehabilitation. The offenders released from custody, including parolees, others released from prison and probationers, those who received suspended imprisonment sentence are accommodated in these facilities. Two of them mainly perform vocational agricultural education and training, and one of these two is specifically established for juveniles.

As of 2017, total capacity of four centres is 58.



Ibaraki National Centre for  
Offenders Job Training and  
Employment Support

#### 11. Self-Reliance Support Homes

Besides Offenders Rehabilitation Facilities (halfway houses), there are facilities registered with the probation offices called Self-Reliance Support Homes, which provides the parolees and probationers with accommodation, etc. Self-Reliance Support Homes are run by private corporations, groups and other businesses and can take various forms, including facilities managed by a business, detached homes, and apartments. Probation offices entrust the provision of accommodation, living guidance (independence preparation support), and whenever necessary, meals to the corporations, business or groups that operates these facilities.

As of 2017, 395 bodies are registered as Self-Reliance Support Homes. For FY 2017, the actual number of parolees and probationers accommodated is more than 1,547, and the total over time is more than 99,540.

#### 12. Community Life Stabilizing Support Centers

When offenders are released from a correctional institution, some have difficulty in living independently, owing to old age or disability, or they have nowhere to live after release. Probation offices undertake “special coordination” which enables these former inmates to enter social welfare facilities etc. in collaboration with prefectural Community Settlement Support Centers established by the Ministry of Health, Labour and Welfare. Several hundred former inmates complete special coordination every year. Just under half of them are elderly, around 30 percent have intellectual disabilities, around 30 percent have mental disorders, and just under 15 percent are physically disabled. Meanwhile, three-quarters of special coordination cases are linked to welfare facilities.

### 13. Social Contribution Activities

Social contribution activities include cleaning activities at public places and volunteer activities at welfare facilities. These have been implemented since FY 2011 as part of the treatment involved in parole/probation supervision, thereby helping offenders to acquire a sense of self-efficacy and develop greater moral awareness, and the ability to adapt to society through continued participation in social activities which benefit their local communities.

## **D. Termination of Parole and Probation**

Depending on the performance of the parolee or probationer, parole or probation may be terminated early (see page 44 for the regular period of each type of parole and probation), or in “failure cases,” adverse action such as parole revocation may be taken.

### 1. Measures for Good Conduct

#### i) Adult Parolees

Parole supervision for adult parolees runs for the remaining term of the sentence, and there is no early discharge from parole supervision.<sup>22</sup> This means that offenders released on parole from life imprisonment will be on parole supervision for life, which can be terminated only through pardon.

#### ii) Adult Probationers

As for adult probationers, the period of probation corresponds to that of the suspension of execution of sentence as specified by the sentencing court, and cannot be shortened. However, the Regional Parole Board, upon the proposal of the director of the probation office, may provisionally cancel the probationary supervision, in which case, the probationer will be treated as if not on probation.

### 2. Measures against Bad Conduct

#### i) Adult Parolees

If an adult parolee does not comply with the conditions, the Regional Parole Board, upon the proposal of the director of the probation office, may revoke parole<sup>23</sup>. When parole is revoked, the parolee is confined in a correctional institution for the remaining term of his or her original sentence from the date parole was granted.

#### ii) Adult Probationers

When an adult probationer does not comply with the conditions and the circumstances of non-compliance are serious, the director of the probation office shall submit a proposal in writing to the public prosecutor, who will then apply to the court for a decision to revoke the suspension of the execution of the sentence<sup>24</sup>.

## **E. Outcome of Parole and Probation**

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<sup>22</sup> Offenders paroled from indeterminate prison sentences may be discharged early from parole supervision. However, in Japan, indeterminate sentencing is applicable only to juveniles, and even then is rarely applied.

<sup>23</sup> Article 75 (1), Article 75(2), Offenders Rehabilitation Act.

<sup>24</sup> Article 26-2(2), Penal Code, Article 79, Offenders Rehabilitation Act.



The number of adult parole and probation cases terminated in 2017 is shown in the following Table.

<b>2017 Total</b>	<b>Adult Parole</b>	<b>Adult Probation</b>
Completion of term*	12,268 (95.3%)	2,414 (72.5%)
Terminated due to reoffending	560 (4.3%)	825 (24.8%)
Others**	48 (0.4%)	91 (2.7%)
<b>Total</b>	<b>12,876</b>	<b>3,330</b>

\* The parole or probation period passed without any adverse action being taken.

\*\* “Others” for adult parolees indicates completion of statute of limitations during suspension of parole supervision, and death, etc. “Others” for adult probationers indicates death, etc.

### **III. PAROLE AND PROBATIONARY SUPERVISION OF JUVENILES**

#### **A. Overview**

This section describes the status of the parole and probationary supervision of juvenile parolees and probationers.

##### **1. Juvenile Parolees**

A juvenile committed to a juvenile training school may be released on parole by a decision of the Regional Parole Board. The parole procedure is as same as for adults. (See page 43). However, the requirements for parole for juvenile-training-school residents differ from those for adult offenders: (i) the juvenile has reached the highest stage of treatment, and release on parole is appropriate for his or her reformation and rehabilitation; or (ii) release on parole is necessary for his or her reformation and rehabilitation.

Juvenile parolees are placed on parole supervision during the period of parole, which is, as a general rule, until reaching 20 years of age. In 2017, 2,469 juveniles were paroled from juvenile training schools, accounting for 99.8 percent of those who were released from juvenile training schools.

##### **2. Juvenile Probationers**

The Family Court, after a hearing, may impose a juvenile delinquent on a protective measure, and probation is one of the options available (see page 33). The legally prescribed period of probation for a juvenile probationer is until he or she reaches 20 years of age or for two years, whichever is longer. In 2017, the Family Court placed 16,899 juveniles on probation. This represents 26.8 percent of the juveniles whose cases were disposed of by the Family Court.

#### **B. Parole and Probation Conditions**

Parole and probation conditions for juveniles are the same as those for adult parolees and probationers (see page 45). However, systematic treatment programmes as special conditions (see page 47) are not yet provided to juvenile parolees and probationers (see the next section).

### C. Parole and Probationary Supervision

Parole or probationary supervision for juvenile parolees and probationers are basically the same as that for adult parolees and probationers. The general framework of parole and probationary supervision (see page 44), the methods of intake interviews and treatment plans (see page 46) and the roles of probation officers and volunteer probation officers (see page 46) are the same as those for adult parolees and probationers. Day offices (see page 46), progressive treatment (see page 46), categorized treatment (see page 47) and comprehensive job assistance schemes (see page 47) are applied to juvenile parolees and probationers as well as adult parolees and probationers. Regarding the National Centre for Offenders Rehabilitation (see page 48), one centre is established exclusively for juveniles (Numatacho National Centre for Offenders Job Training and Employment Support). Some Self-Reliance Support Homes (see page 48) accept juvenile parolees and probationers. Community Life Stabilizing Support Centers (see page 48) are also utilized to undertake special coordination for juvenile-training-school residents.

On the other hand, systematic treatment programmes as special conditions are not yet imposed on juvenile parolees and probationers. Probation offices may sometimes administer these treatment programmes with the juveniles' consent, but they are not obliged to participate in these programmes as conditions of parole or probation.



Numatacho National Centre for  
Offenders Job Training and Employment Support

Measures important for juvenile parolees and probationers are described below.

#### 1. Short -Term Programmes for Juvenile Probationers

Upon recommendation by the Family Court, juvenile probationers with relatively low criminal tendencies may be placed in programmes called “Short-Term Traffic Probation” or “Short-Term Juvenile Probation.” While the duration of probation is legally no different from ordinary juvenile probation, these programmes operate on the assumption that probation will be terminated early if the juveniles fulfill certain requirements.

Short-Term Traffic Probation requires juvenile probationers to attend group sessions such as lectures and discussions, and to submit monthly reports on their daily lives. Those who have satisfied these requirements are usually discharged from probation after three to four months.

Juveniles placed on short-term juvenile probation are required to submit monthly reports and to complete certain tasks assigned by the probation officer. These tasks are determined on an individual basis, and they may include “social participation activities” as described below.

#### 2. Social Contribution Activities/Social Participation Activities

Social contribution activities have been applied to juvenile parolees and probationers as well as adult parolees and probationers (See page 49).

Social participation activities have been implemented mainly for juvenile-training-school parolees and juvenile probationers and with the aim of fostering a appropriate socialization and enhancing their ability to adapt to society. Frequently implemented activities include “participating in cleaning and environmental beautification activities”, “participating in nursing care for the elderly, etc. and volunteer activities”, and “participating in creative activities, hands-on experience, and various classes, etc.”

### 3. Treatment of Juveniles Who Have Committed Heinous/Serious Offences

Juvenile parolees and juvenile probationers and who commit serious offences such as homicide, in many cases, have problems related to their predisposition and complex serious problems with family relationships, etc. They are therefore placed at the highest level of progressive treatment with the intensive involvement of probation officers to help them develop the ability to adapt to society and to encourage them to apologize to their victims by providing them with an atonement guidance programme.

### 4. Measures for Guardians

Probation offices provide the guardians of juvenile parolees and juvenile probationers with instruction or advice until juvenile parolee and the juvenile probationer reaches 20 years of age, thus ensuring that the guardians provide the appropriate supervision through understanding of juveniles’ living conditions etc. and rectify their behaviour that could obstruct juveniles’ reformation/rehabilitation. Probation offices also make information available that contributes to solving problems pertaining to the juvenile’s delinquency by holding meetings with guardians etc.

## **D. Termination of Parole and Probation**

Depending on the performance of the parolee or probationer, parole or probation may be terminated early (see page 50 for the regular period of each type of parole or probation), or in “failure cases,” adverse action such as parole revocation may be taken.

### 1. Measures for Good Conduct

#### i) Juvenile Parolees

For juvenile parolees, the decision on early discharge is made by Regional parole Boards upon the proposal of the director of the probation office.

#### ii) Juvenile Probationers

Juvenile probationers are discharged early when the director of the probation office finds it no longer necessary to continue the probation.

### 2. Measures against Bad Conduct

#### i) Juvenile Parolees

When a juvenile parolee does not comply with the conditions of parole, the Regional Parole Board, upon the proposal of the director of the probation office, may apply to the Family Court for a decision to recommit the parolee to a juvenile training school.

#### ii) Juvenile Probationers

When a juvenile probationer does not comply with the conditions of probation, the director of the probation office may issue official warnings. If the juvenile still does not comply and the degree of non-compliance is serious, the director may apply to the Family Court for a decision to commit the juvenile to a juvenile training school.

## E. Outcome of Parole and Probation

The number of juvenile parole and probation cases terminated in 2017 is shown in the following Table.

<b>2017 Total</b>	<b>Juvenile Parole</b>	<b>Juvenile Probation*</b>
Early discharge**	431 (15.1%)	7,940 (75.0%)
Completion of term	2,011 (70.3%)	1,156 (10.9%)
Terminated due to reoffending	410 (14.3%)	1,476 (13.9%)
others***	7 (0.2%)	12 (0.1%)
<b>Total</b>	<b>2,859</b>	<b>10,584</b>

\* Excluding special Short-Term Programmes for juvenile traffic offenders.

\*\* The parole or probation was terminated early for good conduct.

\*\*\* “Others” indicates death, etc.

## IV. AFTERCARE OF DISCHARGED OFFENDERS

Offenders released from custody but not subject to parole or probation may still need some form of aftercare support from the government. Examples of such offenders include (i) inmates released after serving the full term of their imprisonment sentences; (ii) defendants who received “suspension of execution of sentences without probation (see page 32)”; and (iii) suspects released by prosecutors on “suspension of prosecution (see page 20).”

The Offenders Rehabilitation Act authorizes the director of probation office to provide “urgent aftercare” to such discharged offenders, either directly or by commissioning appropriate persons to do so, when applied for by eligible offenders, to the extent necessary for their reformation and rehabilitation. Aftercare services that may be provided include medical care, meals, accommodation, clothing, education and training, travel expenses, vocational guidance, and referral to Public Employment Security Offices or Public Welfare Offices. The maximum period of aftercare is six months in principle but may be extended for up to another six months.

## V. PARDONS

A pardon is an action of the executive branch that officially nullifies punishment or other legal consequences of a crime. Though pardons are not measures for offender treatment, they can function as a stimulus and encouragement for behavioural change. It is particularly significant for offenders released on parole from life sentences, for they will be placed on parole supervision for life unless the underlying sentence is remitted by a pardon. The authority to grant pardons to specific individuals belongs to the Cabinet. Upon recommendation by the

National Offenders Rehabilitation Commission, the Minister of Justice asks for a Cabinet decision granting a pardon, which is then attested by the Emperor.

## **VI. MEASURES FOR CRIME VICTIMS**

In 2007, the Rehabilitation Bureau launched four measures for crime victims in relation to offenders' rehabilitation. The four measures are (i) system for hearing the victim's opinions during parole examination (victims may express their opinion regarding parole); (ii) system for conveying the victim's feelings on parole and probation (victims may ask the probation officer to convey their sentiments to parolees and probationers); (iii) victim notification scheme (certain information about parole and probation is notified to victims); and (iv) victim consultation and support service. As of 2017, 74 probation officers and 106 VPOs are assigned to work exclusively on victim support measures.

## **VII. MEDICAL HEALTH SUPERVISION**

The Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity provides for medical care and treatment of individuals who committed acts that would constitute offences of homicide, rape, robbery, arson, or injury (or attempts thereof) but who, for reasons of insanity or diminished capacity, were acquitted, received a reduced sentence with suspension of its execution, or were not prosecuted. Under the act, the court may commit such persons to a designated medical facility or order them to receive outpatient treatment.

Persons ordered to undergo outpatient treatment are placed under the medical supervision of a probation office. The purpose of the supervision is to ensure that the person continues to receive necessary medical treatment. Other responsibilities of the probation office include co-ordination of social circumstances and coordination of various institutions and organizations involved in the care and treatment of the person. These responsibilities are undertaken by rehabilitation co-ordinators (see page 9), and not by ordinary probation officers.

## **VIII. CRIME PREVENTION ACTIVITIES**

Various efforts are undertaken by the rehabilitation authorities to (i) raise public awareness of the importance of offender rehabilitation; (ii) improve social environments, and engage communities in the prevention of crime. As part of such efforts, an annual crime prevention campaign, called "Movement Towards a Brighter Society", is organized under the leadership of the Ministry of Justice. The campaign is carried out through the year, but in the campaign month of July, an extensive public relations programme is launched to advocate "The power of the community preventing crimes and juvenile delinquency, assisting rehabilitation of offenders".



Campaign for Junior High School Students

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