

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,¹ 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.

¹ 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,² 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 exceptions³. 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 generally⁴ 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.

² 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).

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

⁴ "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,⁵ 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)⁶ 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).

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

⁶ 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.