

Preventing Juvenile Delinquency – Lessons from Japan –

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1. Introduction

Juvenile delinquencies have seriously challenged society, internally and externally. For delinquency, normally the society as a whole, particularly adults, would assume responsibility, instead of its juvenile perpetrator in fact. As such, the problem of juvenile delinquency cannot be and should not be settled by self-responsibility. However, we do not yet have a cure-all remedy. Besides, challenges change. So, we have to see the largest possible picture in terms of the problem with a view to finding a better solution. In this vein, the implementation of a comprehensive and comparative study on the problem is a part of our social responsibility for delinquency.

With over 600,000 copies sold, *Juvenile Delinquents Who Cannot Cut a Cake* is one of the best sellers now in Japan (Japan NEWS, 2020).¹ It discusses juvenile delinquents with developmental disabilities, intellectual disabilities, and borderline intellectual functioning² in

1- K. Miyaguchi, *Keiki no Kirenai Hikou Shounentachi*, Shinchousha, 2019 (in Japanese).

2- Developmental disabilities are a group of conditions due to an impairment in physical, learning, language, or behavior areas. These conditions begin during the developmental period, may impact day-to-day functioning, and usually last throughout a person's lifetime. As for intellectual disability, it refers to when there are limits to a person's ability to learn at an expected level and function in daily life. For many children, the cause of their intellectual disability is not known. See: "Facts About Developmental Disabilities", *Centers for Disease Control and Prevention*. Available at: <https://www.cdc.gov/ncbddd/developmentaldisabilities/facts.html>. Borderline intellectual functioning is not a psychiatric disorder, but rather a description of people who function between average cognitive levels and intellectual disability. Although persons with borderline intellectual functioning may function at a high-enough level not to be diagnosed with an intellectual disability. See: "Borderline Intellectual Functioning", *American Bar Association*, available at: <https://www.capitalclemency.org/mental-health-fact-sheets/borderline-intellectual-functioning/>.

juvenile classification homes and juvenile training schools. The title represents their cognitive dysfunction as unable to cut a cake even into three equal pieces. Everything looks distorted for them. The book is written by Dr. Koji Miyaguchi, who has been conducting research on the “comprehensive support for [delinquents] with developmental disabilities/intellectual disabilities.”³ The impressive success of Miyaguchi’s work reflects, in a way, how pervasive of an issue is juvenile delinquency in the Japanese society. Indeed, and despite a significant decrease in the number of juvenile delinquents since 2005 (The Japan Times, 2015), recent studies show that the public tends to assume otherwise (The International, 2020). Incidents such as the Kobe Child Murders of 1997,⁴ or else the Sasebo Slashing of 2004,⁵ took the whole country by storm and marked what is seemingly a lasting shift in how crimes committed by juveniles are perceived and, by implication, dealt with.

The increase in crimes committed by Japanese juveniles from the 1980s onwards is often attributed to the rapid modernization of the country in the 1970s (Yamamiya, 2003). The latter was accompanied by what has been described as a “dramatic transformation” of the Japanese way of life, marked by individualism and consumerism (*Ibid.*: 28-29). While the economic success that took place in the subsequent years was celebrated, modernization has also been associated with the rise of a “youth subculture” characterized by, *inter alia*, apathy, egocentrism, and violence (*Ibid.*). Furthermore, instances of other, yet equally sophisticated, social phenomena such as school-refusal/phobia (*tokokyohi*) or self-confinement (*hikikomori*), as well as bullying were rapidly increasing (Ferrari, O’Donnell, 2003: 40). *Tokokyohi*, for instance, refers to a condition in which a student, intentionally or otherwise, refuses to attend classes (Yoneyama, 2000: 77). It is usually

3- “K. Miyaguchi *et al.*, “Cognitive Training for Delinquents within a Residential Service in Japan”, *Youth Children and Youth Services Review*, Vol. 34, 2012, pp. 1762-1768.

4- The Kobe Child Murders (*Kōbe renzoku jidō sasshō jiken*, in Japanese) refers to a string of homicides that took place in Kobe, Japan in the beginning of 1997. 10-year-old Ayaka Yamashita and Jun Hase, age 10, were brutally killed by 14-year-old boy Shinichiro Azuma. The latter was provisionally released on March 11, 2004, which sparked severe criticism. In the aftermath of the Sasebo Slashing (see fn. 5), the criticism further intensified and calls for the minimal age of criminal responsibility to be lowered increased.

5- The Sasebo slashing refers to the murder, in June 2004, of 12-year-old Japanese schoolgirl Satomi Mitarai by her 11-year-old female classmate. Satomi died from loss of blood, as the perpetrator reportedly slit her throat with a knife during lunchbreak. See: Reuters, 2004. *Japanese girl, 11, cuts friend’s throat*. [Online] Available at: <https://www.theage.com.au/world/japanese-girl-11-cuts-friends-throat-20040603-gdxytq.html>.

accompanied by a complete withdrawal from the society, and *tokokyohi* students often display a tendency to commit violent crimes as well (Yamamiya, 2003).

In a word, juvenile delinquency can be defined as the act of engaging in unlawful behavior by an individual younger than “the age of majority.”⁶ The latter refers to the age at which the individual is regarded as an adult (Shoemaker, 2009: 3). In most countries, the age of majority is established at 18 (*Ibid.*), and any person under such age limit is considered juvenile and shall therefore be subject to special procedures. Under Japanese law, the age of majority, established at twenty years of age, “may be higher than in any other country.”⁷ Furthermore, Juvenile delinquency in Japan does not only include offenses and/or crimes punishable by law, by also acts considered unsavory and behaviors that are not criminal *prima facie*. These may include “stay[ing] away from [sic] home without good reason,” and frequenting “places of evil reputation.”⁸ Juvenile delinquency in Japan is regulated by two major pieces of legislation: the Child Welfare Law of 1947 (*Jido-Fukushi-Ho*), and the Juvenile Law of 1949 (*Shonen-ho*). The latter is considered as the backbone of the juvenile justice system, while *Jido-Fukushi-Ho* plays a rather secondary role (Yoshinaka, 1997: 302).

For those juvenile delinquents who cannot reflect on his/her past behavior at all, or do not understand the true meaning of apology, and cannot even undergo a mental conflict, it is suggested in the book, it is not only useless but harmful for them to force apology in a conventional manner to the victims and their families. Likewise, compulsory study would lead those juvenile delinquents who cannot distinguish the differences of different things to a distress to withdraw them into themselves. In such cases, conventional education would not help them to prevent recidivism. To treat the dysfunction, the author has developed his original succinct worksheets, different from those in Europe, instead of dosage.

6- Shoemaker, D. J., 2009. *Juvenile Delinquency*. New York: Rowman & Littlefield Publishers., p. 3.

7- Murai, 1998: (The age of majority in Japan was lowered from 20 to 18 in 2022. In accordance with the amendment to the Juvenile Law, in principle, Japan will no longer treat offenders aged 18 and 19 as minors. However, in some cases, according to the severity of the delinquency, those offenders may still be subjected to rulings by family court, such as: incarceration in a secured juvenile facility for up to three years; or probation for six months or two years under supervision of the court. This Research Report was completed before the amendment. See Magdalena Osumi, “Japan’s Revised Juvenile Law Takes Effect as Age of Adulthood Lowered to 18,” Japan Times, 2022, <https://www.japantimes.co.jp/news/2022/03/31/national/crime-legal/juvenile-law-changes/>.)

8- Murai, 1998: 2.

In relation to recidivism, the Ministerial Meeting Concerning Measures Against Crime in July 2012 has established the Comprehensive Measures for the Prevention of Repeat Offenses stipulating the mid- to long-term government efforts toward preventing re-offending. In the Comprehensive Measures, the Japanese Government has announced a numerical target of lowering the rate of recidivism within one year after release, for the first time, as the government efforts for re-offending prevention, by more than 20% in ten years .

The comprehensive measures focus on the following three points of view:

- 1- The first is the implementation of efforts according to the characteristics of each target person. In order to effectively prevent the repetition of criminal offences , it is necessary to select among them the appropriate factors and to work on them effectively and intensively.
- 2- The second is the priority implementation of measures based on the analysis of factors of recidivism. To make the most of the human and material resources invested in preventing recidivism, it is necessary to choose effective measures and concentrate social resources on them.
- 3- The third is to set a goal as specific as possible and to create a mechanism to achieve it. Therefore, for the first time as a government plan, quantified targets have been set for reducing the number of repeat offenders.

The Re-offending Prevention Promotion Plan, which sets basic countermeasures and stipulates the comprehensive and systematic promotion of measures to prevent re-offending from creating a society where citizens can live in safety and peace, was announced, and took effect in December 2017. the Review Committee for the Re-offending Prevention Promotion Plan, chaired by the Minister of Justice, was established in February 2018 to discuss the matters listed in the Re-offending Prevention Promotion Plan Draft created by the Minister of Justice. Then, the Re-offending Prevention Promotion Act was enacted in December 2018.

Furthermore, it is declared that “an ensuring favorable public security is not only prerequisite for the success of the Tokyo 2020 Olympic and Paralympic Games, but also an important basis to enable women and the young to live comfortably and with assurance in the community. It is also an important issue that can be the ‘foundation’ for development of the localities”.

2. Juvenile Act in Brief

The Juvenile Act was enacted in 1948.⁹ It came to replace the old law of 1922 which was originally called 'the Law of Love' in view of its epoch-making or forward-looking character.¹⁰ The Juvenile Act emphasizes the educative function as a way of addressing serious problems of juvenile delinquency. It seeks "to subject delinquent juveniles to protective measures to correct their personality traits and modify their environment, and to implement special measures for juvenile criminal cases, for the purpose of Juvenile's' sound development."¹¹ To achieve this objective, the Juvenile Act provides for a hearing and decision of the family court, to which Juveniles shall be referred.¹² Thus, the family court was established as a judicial body to hear and decide on juvenile as well as domestic delinquency cases. All cases for juveniles under 20 are sent to the family court. It's rare that juveniles spend time in jail, and those under 16 cannot be sentenced to prison. Additionally, the unique system of 'volunteer probation officers' in Japan has been highly appreciated for its rehabilitative philosophy, which is "reflected by the presence of nearly 50,000 probation officers who assist professional officers."¹³ However, the Juvenile Act has been under constant review for revision, especially since the late 1990s,¹⁴ leading to the increasingly punitive rhetoric, policy, and legislation for juveniles in Japan; despite the fact that there is no evidence that more juvenile offenders are being committed to the adult courts.¹⁵

Japan's low crime rate is usually attributed to the informal social control by the family, school, neighborhood, and workplace, and consequently to the closely woven net of social control, interdependence, and rules to counteract delinquency and prevent its recidivism.¹⁶ But

9- Act No. 168 of 1948. Japan Government, *Japan Juvenile Code, 2018 Edition, Bilingual*, 2019.

10- N. Yoshinaka, "Historical Analysis of the Juvenile Justice System in Japan", *Hiroshima Hogaku*, Vol. 20, 1997, p. 296.

11- *Juvenile Act*, Article 1.

12- In the *Juvenile Act*, the term "Juvenile" refers to a person under 20 years of age; the term "adult" refers to a person of 20 years of age or older in Article 2 (1).

13- E. Fairchild and H.R. Dammer, *Comparative Criminal Justice Systems*, Wadsworth/Thomson Learning, 2006, p. 349.

14- "Tougher Juvenile Law Proves Divisive", *Japan Times*, March 29, 2014.

15- T. Ellis and A. Kyo, "Reassessing Juvenile Justice in Japan: Net widening or diversion?", *Asia Pacific Journal, Japan Focus*, Vol. 15, 2017, p. 1.

16- G. Foljanty-Jost (ed.), *Juvenile Delinquency in Japan: Reconsidering the 'Crisis'*, BRILL, 2003, pp. 221-222.

the prevention of juvenile delinquency is not that there is no problem. Instead, whenever a brutal juvenile crime occurs, the debate among citizens boils. In this regard, it is highly recommended by the researchers working on this issue to appoint that the discussion and debates on Juvenile delinquency cannot be conducted without considering the specificities of Japanese society and tracking of its socioeconomic transformations over History (Yamamiya, 2008). Thus, at the Ministerial Meeting Concerning Measures Against Crime, in December 2013, "Strategy to Make Japan the Safest Country in the World" was approved, confirming that "the question of how we should prevent the repetition of crimes and delinquencies is a major challenge for reducing the number of crimes, as well as for the construction of a society where people can live safely and in peace."¹⁷

3. Proceedings for Juvenile Delinquents: A Flow

Figure 1 below indicates the procedure for dealing with cases of juvenile delinquency in Japan. When juvenile suspects are arrested by the police, the cases are transferred to public prosecutors. If the latter suspects the juveniles of committing a crime or has good reasons to leave them to the decision of family court on pre-delinquency,¹⁸ the cases are transferred to the family court. Then, the family court would order investigators to conduct inquiries on the juveniles, including their dispositions and family backgrounds,¹⁹ and/or send them to a juvenile classification home. A juvenile classification home implements assessments of juveniles and submits the results to the family court. When a family court considers that a juvenile has no reason to undergo adjudication procedures or that it is not suitable to put through adjudication procedures, it elects dismissal without hearing. When the family court finds it reasonable to take adjudication procedures, it employs the process for adjudication. If deemed unnecessary to place the juvenile in protective custody, the court declares the juvenile not to be discharged. However, if deemed reasonable to place in protective custody, it decides to place the juvenile on probation or send to a juvenile

17- Ministry of Justice 2016.

18- Pre-delinquency signifies a state in which juvenile delinquents have behavioral problems which may lead to crimes yet stopping short of committing crimes, but highly necessary to be taken into custody.

19- The majority of cases are dismissed, and the juvenile is immediately reintegrated into society, J. Hardung, "Japan's Juvenile Law: If Punishment is their Answer, They are Asking the Wrong Question", *Pacific Rim Law & Policy Journal Association*, Vol. 9, 2000, p. 144.

training school. If the family court finds it reasonable to impose criminal punishment on those who have committed a crime deserving the death penalty, penal servitude or imprisonment, it sends the case to public prosecutors. When those accused of killing the victims intentionally are 16 or older, the cases are sent to public prosecutors, who must indict them.

In a juvenile training school, rehabilitation is sought through receiving correctional education and rehabilitation support to reform themselves. Those who are decided by a family court to be placed on probation, or those who are provisionally permitted to be released from a juvenile training school are to receive guidance and assistance from probation officers and volunteer probation officers.

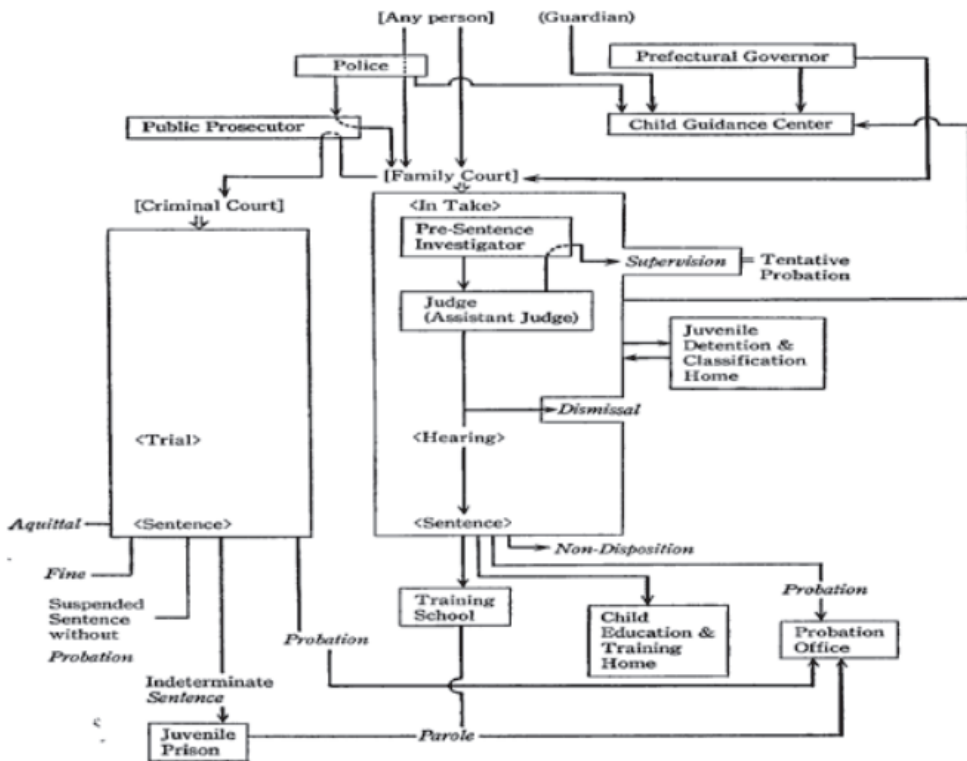


Figure 1: Flow of Juvenile Justice Procedure
Source: Murai, 1998: 4

The Moroccan experience has shown a real dedication and an example to follow when it comes to dealing with Juvenile delinquency, starting from the principle of guaranteed protection to children regardless

of their criminal History, it gave a special attention to minors all along the process. From the pre-trial, trial, to post-trial procedures. Giving reasonable guarantees to the respect of the child right. The pre-trial step is so sensitive and important in the Juvenile offense case it is meant to prevent taking the juvenile offenders to trial without the presence of clear evidence on the criminal offense. For instance, according to the Moroccan civil criminal law, special units are taking the task of investigating Juvenile offences they control areas that might constitute an epicenter of delinquency for minors (article 19 of the Moroccan civil criminal law) these special units have received special trainings to deal with minors, it should be noted that in spite of the existence of these special units this does not prevent normal units from reporting crimes conducted by Juvenile delinquents. the initial investigation is marked with certain caution. It has special provisions in respect of the Juvenile vulnerability, first, it the prohibition of placing delinquent's juvenile under investigatory detention (*hirassa nadaria*) for more than 48H (for adults it might get extended for 24 more hours by an order of the prosecutor). However, this stipulation based on the positive discrimination gets aborted when the authorities are unable to get the minor back to his family or if the safety of the minor requires a prolonged detention. the specificity of minors pushed the Moroccan legislator to change the term "*hirassa nadaria*" by "*muraqaba nadaria*" if the investigation is relative to minors. Additionally, minors are detained in isolated facilities. Secondly, there is always the possibility of subjecting the delinquent juvenile to a temporary guard system during the preliminary investigation period, in the same line The Moroccan legislator explicitly allowed the Public Prosecutor by the text of the Article 460 of the CCL to exceptionally order the of the detention juvenile during the preliminary examination period to the temporary guard system stipulated in Article 471 civil criminal law, if the necessity of the juvenile or his safety requires that, with the condition of not exceeding a period of fifteen days. Last, the authorities are under the obligation of notifying the juvenile's guardians, sponsors, person, or institution entrusted with his care of the action taken against him in line with the operative of the fourth paragraph of Article 460 of the civil criminal law.

In line with the requirements of Article 40 of the Convention on the Rights of the Child, the Moroccan legislator created seven judicial bodies in charge of juveniles, as Article 462 of the BC stipulates that: "Considering the powers conferred upon some courts by virtue of special provisions, the bodies in charge of juveniles in the Court of First Instance are : Juvenile judge, Juvenile chamber. As for the Court of Appeal, The advisor in charge of Juveniles, Juvenile delinquency chamber, Juvenile Misdemeanor Appeals, Juvenile Criminal chamber.

4. Revisions of Juvenile Act

The Juvenile Act and related laws have been revised. In particular, the maximum age of juvenile has been lowered (generally speaking). However, the definition of the age limit of a “juvenile” in Japan is neither clear nor consistent in the relevant laws. For purposes of smoking tobacco, drinking alcohol, driving a car, signing contracts, marriage, agreement on medical treatment, and the right to vote, for example, it varies from 18 to 20 years of age²⁰.

“Yamagata Mat Bullying Death Case” of January 1993²¹ and other cases highlighted the difficulties associated with determining facts when accused juvenile offenders deny alleged acts of delinquency²². Then, a proposal for the lowering of the age limit for referral to the public prosecutor from 16 to 14 was submitted. Finally, in 2000, the Juvenile Act was revised to change the age for prosecution by public prosecutor from 16 to 14²³.

Meanwhile, It has been suggested to consider whether it is better to deprive a certain segment of juvenile delinquents of the opportunity to receive education aimed at rehabilitation as provided by the Juvenile Act by lowering the maximum age of juveniles²⁴. Its proponents appear to think that “such an amendment would serve as a deterrent against

20- Ministry of Foreign Affairs of Japan, “Age Limitation Applied to Legal Competency in Japan”, *The Second Report of Japan under Article 44, Paragraph 1 of the Convention on the Rights of the Child (November 2001)*, <https://www.mofa.go.jp/policy/human/child/report2/definition.html#B>.

21- T. Watanabe, “Bullying Brings Despair, Death to Japanese Pupils”, *Los Angeles Times*, April 7, 1993.

22- This prompted the Minister of Justice to refer the feasibility of an amendment of the *Juvenile Law* aimed at rationalizing the fact finding procedure in juvenile proceedings. A bill proposed the introduction of an examination by a panel of judges for the determination of facts in juvenile proceedings, an extension of the maximum duration of the detention of juvenile suspects at a juvenile classification center for protective observation, attendance of a prosecutor at juvenile proceedings subject to a court decision, involvement of a court-appointed counsel in the event of a court decision to involve a prosecutor, and granting of a right to appeal to the prosecutor in the event of a no-action decision. S. Nawa, “Postwar Fourth Wave of Juvenile Delinquency and Tasks of Juvenile Police”, *Journal of Police Science*, Vol. 58, 2006, p. 8.

23- Act No. 168 of 1948 as amended by Act No. 153 of 2000. On the revision, see Police Policy Research Center, *Current Juvenile Police Policy in Japan*, Research Foundation for Safe Society, 2006, pp. 8-9. “Japanese Juvenile Justice”, *BBC World Service*, February 24, 2001, http://www.bbc.co.uk/worldservice/people/highlights/010223_japan.shtml. Cf. T. Ryan, “Creating ‘Problem Kids’: Juvenile Crime in Japan and Revisions to the Juvenile Act”, *ZJAPANR / J.JAPAN.L*, No. 19, 2005, <https://pdfs.semanticscholar.org/2d2f/673815dcb50f04bca4be0033fd6ba280c68e.pdf>.

24- “Juvenile Crime and Punishment”, *Japan Times*, May 28, 2015.

youth crime". In fact, T. Oka has statistically demonstrated that changes to the Juvenile Act acted as a deterrent for juvenile delinquency²⁵. It is also pointed, "[t]here is a belief that some minors commit offenses fully aware that they won't be held criminally responsible and instead will be protected by the Juvenile Law"²⁶. In cases of juvenile's intentional criminal act that caused death to the victim, moreover, new morbidly hideous motives for murder are deposed: "I wanted to kill someone, it didn't matter who"; and "there are lots of people I want to kill"²⁷.

Then, in 2007, a bill to lower again the maximum age of juveniles from 14 down to "approximately" 12 was proposed. The bill was first introduced in 2005 after a 12-year-old boy killed a boy in 2003 and an 11-year-old girl killed a female classmate in 2004²⁸. It led to revise the Juvenile Act in 2007²⁹.

But it is not necessarily clear which types of crimes would come under this revision. Thus, it is pointed out that "there is a fair bit of 'gray area' where the police and the public prosecutor can decide which way to handle each individual case"³⁰.

In this respect, "[d]espite a plethora of discourses upon youth justice among legal practitioners and academics in Japan", it is noted, "very few attempts have been made thus far at giving observers in other jurisdictions a better understanding of Japan's system of dealing with children and youths that are in conflict with the law"³¹.

Under Article 3 of the Juvenile Act, the juveniles over whom the family court shall have jurisdiction are categorized into a juvenile offender, law-breaking juvenile and pre-delinquents. While a juvenile

25- T. Oka, "Juvenile Crime and Punishment: Evidence from Japan", *Applied Economics*, Vol. 41, 2009, p. 3115.

26- "Changing the Juvenile Law", *Japan Times*, September 2, 2017.

27- M. Schreiber, "The Changing Motives behind Juvenile Crime in Japan", *Japan Times*, January 31, 2015.

28- "Juvenile Law Revision", *Japan Times*, May 25, 2007. As for the number of arrested juveniles, it has decreased from 103,224 in 2007 to 48,361 in 2014, i.e., to 47% of the number in 2007, S. Steele and Y. Ohmachi, "Japan's Declining Youth Crime?", *Asian Studies Association of Australia*, 2016, <http://asaa.asn.au/japans-youth-crime-wave-subsides-to-a-ripple/>.

29- Act No. 68 of 2007.

30- "Help for Parents Whose Children Run into Trouble for Use of Banned Substances in Japan", *Japan with Kids Forum*, 2008, <http://www.tokyowithkids.com/discussions/messages/8/369.html?1200982189>.

31- N. Yoshinaka, "Recent Changes in Youth Justice in Japan", *Hiroshima Hongaku*, Vol. 33, 2010, p. 27.

offender is a juvenile who has committed a crime, a law-breaking juvenile is a child under 14 who has violated only laws and regulations of criminal nature. Cases of children under 14 are, however, sent to the child welfare agencies in conformity with the Child Welfare Act³². Only when child welfare agencies refer cases to the family court for protective measures may the family court deal with them. The concept of pre-delinquent is prescribed as juveniles who are likely to commit an offense or violate a law or a regulation of criminal nature in the future in light of their personalities or living environment and their tendency not to submit to legitimate supervision of the custodian³³.

The 2007 amendment of the Juvenile Act provides for the expansion of the police powers to investigate juvenile cases, the lowering of the age at which the juvenile may be placed in a juvenile reformatory, the reinforcement of protective dispositions and the appointment of attendants for juveniles³⁴.

After the revision of the Juvenile Act in 2008 to allow observation of hearing by the victims and their families, in 2014, the maximum prison term was raised from 15 to 20 years for minors who commit a serious crime before they turn 18³⁵. Furthermore, the supplementary provision of the revised Public Offices Election Act in 2015 to lower the voting age from 20 to 18 stipulates that consideration should be given to the age issue in the Civil Code and the Juvenile Act as well and that necessary legal measures should be taken³⁶.

The Moroccan legislator was concerned with juvenile justice and dealt with juvenile in a special way so as their trial, and the procedure applied to them in Articles 458 to 517 of the new law on the criminal procedure. This law was enshrined following the principles of juvenile protection and care approved in the provisions of international conventions and treaties ratified by the Kingdom of Morocco, such as the Child Rights Agreements and the Beijing Rules, considering the

32- Act No. 164 of 1947.

33- In the *Juvenile Act*, the term "custodian" refers to a person with a statutory obligation to have custody of and provide education to a Juvenile, or a person who has actual custody of a Juvenile in Article 2 (2).

34- "Japan: Juvenile Law Amended Again", Asia-Pacific Human Rights Information Center, 2007, <https://www.hurights.or.jp/archives/newsinbrief-en/section2/2007/06/japan-juvenile-law-amended-again.html>.

35- M. Ito, "Shifting the Scales of Juvenile Justice", *Japan Times*, May 23, 2015.

36- "Justice Ministry Mulls Lowering Juvenile Act Application Age to 17", *Mainichi*, December 20, 2016.

French experience in this regard, especially about the method of work and measures. Concerning the age of criminal responsibility and puts two different rules in respect to the age of the juvenile which is related to the criminal responsibility following a gradual logic, that to say, there is a differentiation between the Juveniles bellow 12-year-old and the Juvenile 12-18 ; the first are not held accountable for their actions (no criminal responsibility) while the latter category is considered partly responsible.

The Moroccan legislator has placed in its priorities the protection of the juvenile from delinquency as a preventive and rehabilitative method and its reintegration if it is subjected to the deviation, considering the best interest of the juvenile represented in ensuring the healthy growth of the juvenile in society to be a valid member in it.

To achieve this, a set of measures was stipulated, whether within the framework of the temporary guard system (Article 471) or within the framework of protection and discipline (Article 481). This does not mean that the legislator has completely excluded the penal theory of juveniles, because given the penalty an effective role in reducing crime and protecting society, especially when the juvenile reaches a certain age (12 years), during which he becomes able to distinguish and realizes the importance and role of punishment, but this punishment is exceptional and reduced to suit the seriousness of the crime and the personal circumstances of the juvenile

5. Controversies

The recent governmental policies on the revision of the laws relevant to juvenile delinquency seem largely to be in the direction of toughening the laws, by means of lowering the maximum age of juvenile, for example, in accordance with public opinion on cruel murder by juveniles³⁷, in spite of criticism from experts. Nonetheless, it may be true that “[j]uvenile crime in Japan has not captured public attention except for isolated cases of brutal murders, political assassinations, or similar “sensational” crimes”³⁸.

37- On the high-profile juvenile crime cases from 1997 to 2015, see D. Kikuchi, “High-Profile Juvenile Crime Cases over the Past Two Decades”, *the Japan Times*, May 23, 2015. In respect of public opinion on lowering the age of adulthood from 20 to 18, in response to the revision of the *Public Offices Election Act* (Act No. 100 of 1950), see “60% of Young People in Japan Back Plan to Lower Age of Adulthood to 18”, *Japan Times*, October 19, 2018. As regards public opinion on juvenile delinquency in wider perspectives, see “Japanese Juvenile delinquency”, *What Japan Thinks*, 2011, <https://whatjapanthinks.com/2011/02/09/japanese-juvenile-delinquency/>.

38- H. Fujiki, “Recent Trends of Juvenile Crime in Japan”, *Journal of Criminal Law and Criminology*, Vol. 53, 1962, p. 221.

J. Hardung critically comments that “[t]he juvenile justice system in Japan has successfully dealt with crime by focusing on the rehabilitation, not the punishment, of juveniles. The problem of juvenile crime in Japan did not arise overnight, nor can it be solved quickly. Rather than change the formal system in ways that disregard rehabilitation”³⁹. In the same vein, it is noted by T. Ryan that “in an age in which diversification and structural change are unavoidable realities, rehabilitation and reintegration are more important than ever to maintain social cohesion”⁴⁰.

Although it is often argued overseas that Japanese juveniles should be celebrated for their low level of offending, the Japanese media increasingly holds juveniles individually responsible for their acts and they are characterized as imprudent, irrational and violent⁴¹. While indeed brutality of juvenile delinquency gets temporarily a lot of social attention, the number of juvenile delinquents is steadily declining. In Japan, “the number of juveniles subject to police action in 2017 fell 4,719 from a year earlier to 26,797, the lowest number of cases seen in postwar years. The number of juveniles subject to law enforcement also fell to a record-low of 3.8 per 1,000 people within the same age bracket, largely reflecting a drop in theft cases”⁴².

According to the media, moreover, juvenile delinquents should be punished more severely, largely ignoring their psychological and other characteristics⁴³. As a result, the traditional concern with the welfare of juvenile delinquents has been mixed with an accent on punishment⁴⁴, while the get-tough movement has been criticized to have “an adverse effect on the practice of diversion because it would deteriorate social casework based on the educational function”. Moreover, it is noted that in spite of several provisions for special treatment of juveniles such as restrictions on arrest and detention and safeguards concerning police

39- J. Hardung, “Japan’s Juvenile Law: If Punishment is their Answer, They are Asking the Wrong Question”, *Pacific Rim Law & Policy Journal Association*, Vol. 9, 2000, p. 163.

40- T. Ryan, “Creating ‘Problem Kids’: Juvenile Crime in Japan and Revisions to the Juvenile Act”, *ZJAPANR / J.JAPAN.L*, No. 19, 2005, p. 186.

41- S. Steele and Y. Ohmachi, “Japan’s Declining Youth Crime?”, *Asian Studies Association of Australia*, 2016, <http://asaa.asn.au/japans-youth-crime-wave-subsides-to-a-ripple/>.

42- M. Ito, “Japan’s Juvenile Crime at Postwar Record Low, But Rising Marijuana Use Concerns Police Agency”, *Japan Times*, March 8, 2018. Cf. “Juvenile Crime and Punishment”, *Japan Times*, May 28, 2015.

43- “psychological and other characteristics” are referred to in Articles 6-2 (3) and 9 of the *Juvenile Act*. Article 25-7 of the *Child Welfare Act*.

44- M. Fenwick, “From Child Protection to Penal Populism”, in J. Muncie and B. Goldson (eds.), *Comparative Youth Justice: Critical Issues*, Sage, 2006, p. 146.

interviews under the Juvenile Law and the Police Rules on Investigation, “there is a strong doubt as to whether these are functioning effectively in practice to protect juveniles”⁴⁵.

Meanwhile, Article 61 of the Juvenile Act, which prescribes prohibition on the publication of personal information, has been intensively discussed. “No newspaper or other publication may carry any article or photograph from which a person subject to a hearing and decision of a family court, or against whom public prosecution has been instituted for a crime committed while a Juvenile, could be identified based on name, age, occupation, residence, appearance, etc.”, it articulates. When weekly magazine *Shukan Shincho* published, in the March 5, 2015 issue, the name and photo of an 18-year-old juvenile suspected of murdering a 13-year-old boy in Kawasaki, Kanagawa Prefecture in February 2015⁴⁶, the Japan Federation of Bar Associations proclaimed the publication of his name was “deplorable”, criticizing that it could affect the juvenile’s rehabilitation and integration into society. While on the other hand, an executive member of the National Association of Crime Victims and Surviving Families, believes the names should be revealed in cases where the crimes committed are serious, holding that harsh penalties are needed in order for the juveniles to understand the serious consequence of the crimes they committed. “We believe there is no difference between a crime committed by an adult and that of a minor”, the executive member asserts. “The damage caused is the same. There is no way these minors can be reformed without reflecting on the seriousness of the crimes they committed”. M. Takahashi, a lawyer who specializes in crime victims’ rights⁴⁷. It is reported, “[t]hirteen-year-old Uemura Ryōta was killed in the early morning of February 20, 2015, in Kawasaki by three older boys, reigniting calls for revision of the Juvenile Act. The cruelty and brutality of the murder also prompted calls for publication of the 18-year-old group leader’s name and photo, now prohibited under the Juvenile Act. Such a move may be related to the bill now being debated to lower the voting age in Japan from 20 to 18”⁴⁸.

M. Takahashi continues that the fundamental spirit of the Juvenile Law does not match the gravity of some of the crimes committed today,

45- H. Kuzuno, “Juvenile Diversion and the Get-Tough Movement in Japan”, *Ritsumeikan Law Review*, No. 22, 2005, pp. 1-21.

46- “Magazine Publishes Name, Photo of Kawasaki Murder Suspect”, *Japan Today*, March 6, 2015.

47- M. Ito, “Shifting the Scales of Juvenile Justice”, *Japan Times*, May 23, 2015.

48- “Will Tougher Laws Halt Violent Juvenile Crimes?”, *nippon.com*, April 13, 2015, <https://www.nippon.com/en/features/h00105/will-tougher-laws-halt-violent-juvenile-crimes.html>.

commenting on the clause “[h]earings shall be conducted cordially and amicably” in Article 22 of the Juvenile Act that “[h]ow do you prevent crime with a law that wants to resolve murder cases amicably?”⁴⁹. It’s true that the objective of the Juvenile Law is not to punish delinquent juveniles but to correct their personality and modify their environment for their sound development⁵⁰.

The disagreements may be caused partly by the difference of side as the victims and their families or the advocates of the rights of juvenile delinquents. According to H. Goto, “[t]he government and society, however, are responsible for both sides because we created an environment that turned them into victims and offenders”. Thus, she suggests that the focus should not be on the revision of the Juvenile Act to apply harsher penalties on offenders, but on the social environment that has caused the juveniles to commit delinquency.

As regards compensation, after the family court ruling, R. Take, a victim’s mother, filed for damages in a civil court against the juvenile offender and his parents. Take’s 16-year-old son was killed by a group of six boys in November 1996. Authorities refused to give her any details of the case, including the names of the offenders. It was only then that the victim’s mother, Take, was given access to the written testimonies and documents of her son’s case. The family court ordered the offender and his family to pay ¥80 million in damages, money she used to set up a fund in her son’s name, Takakazu, to support other victims of juvenile delinquency. Since then, ¥70,000 has been monthly paid into the bank account. That is the only connection Take can have with the offender, because she cannot know his whereabouts at all. “I hope by making the payment once a month he remembers what he did — he took a person’s life”, Take thinks. “There is no way I can ever forgive him, and I don’t want him to ever forget”⁵¹.

The problem is how can be the occurrence of juvenile delinquency decreased. From the standpoint, the following indications should not be underestimated. “Juvenile offenders have often been abandoned by their families and society, and they don’t care about consequences”. “These minors don’t care about other people, including themselves”, she says. “They are prepared to die and are not afraid to take the lives of others. There is no way that imposing harsher penalties (on these teens) would prevent them from committing a crime”⁵².

49- M. Ito, “Shifting the Scales of Juvenile Justice”, *Japan Times*, May 23, 2015.

50- *Juvenile Act*, Article 1.

51- M. Ito, “Shifting the Scales of Juvenile Justice”, *Japan Times*, May 23, 2015.

52- *Ibid.*

6. Procedure Before the Referral to Family Courts

Juvenile Offenders

When the judicial police official cleared a juvenile offender, who committed an offense which is punishable only with a fine or less severe penalty, the official shall refer the case to a family court under Article 20 of the Juvenile Act. In respect of an offense which is punishable by a more severe penalty such as death penalty or imprisonment with or without work, the judicial police official shall refer the case to a public prosecutor, unless the case was a violation of the Road Traffic Act and the administrative fine was paid in accordance with the traffic infraction notification system. A public prosecutor investigates the case and then refers it to a family court if there is probable cause to suspect that an offense has been committed or any other reason to subject the case to a family court hearing.

Juvenile offenders under 14 and pre-delinquents

A person who discovers such 'aid-requiring child' as a child without custodian or a child for whom the custody of his/her custodian is found inappropriate, other than a juvenile offender, must notify a Welfare Office or child consultation center established by the municipal or prefectural government, under Article 25 of the Child Welfare Act.

As regards juvenile offenders and pre-delinquents under 14, measures prescribed in the Child Welfare Act are applied in preference to direct referral or notification to the family court, which may subject the juvenile to a hearing only when a prefectural governor or the child consultation center's director refers the juvenile to the family court. Police officers may investigate a case when there is probable cause to suspect that a juvenile under 14 has committed an offense. The police shall refer the case to the child consultation center's director if, as a result of the investigation, they consider that the act of the juvenile involved a specific serious offense under Article 6-2 of the Juvenile Act. The prefectural governor or child consultation center's director refers the juvenile to a family court, under Article 18 of the Juvenile Act, if they deem it appropriate to subject the juvenile to a family court hearing. However, when juvenile offenders under 14 violate laws or regulations involving specific serious offenses, the prefectural governor or child consultation center's director is required, in principle, to refer the case to a family court.

A person who discovers a pre-delinquent aged 14 or older must notify a family court of the discovery under Article 25 of the Child Welfare Act. However, a police officer or the custodian of the pre-delinquent may directly notify a child consultation center if the pre-delinquent is under 18 and it is deemed appropriate to subject the juvenile to the measures under the Child Welfare Act rather than directly referring or notifying the family court on the pre-delinquent.

It is suggested to revise the provisions concerning the pre-delinquent juvenile to diminish its ambiguity and respond to the needs of the time, and to enhance “educative and protective functions of community, school, and family for misbehaving juveniles”⁵³.

7. Procedure in Family Courts

Investigation by Family Courts

A person who discovers a juvenile who should be subject to hearing of the family court shall notify the family court of the discovery, based on Article 6 (1) of the Juvenile Act. A family court is required to investigate any case referred to it. It can order a family court probation officer to investigate the case under Article 7 of the Juvenile Code. When dealing with an investigation, hearing and decision or other treatment of a juvenile protection case, constant effort must be made to protect the juvenile’s emotional stability with consideration and good will, while endeavoring to earn the trust from the juvenile and the custodian, etc. through the course of these actions, in conformity with the Rules on Juvenile Hearing and Decision⁵⁴.

53- T. Konishi, “On the Concept of the Pre-Delinquent Juvenile in Japan: Its Construction and the Impact”, *Waseda Bulletin of Comparative Law*, Vol. 25, 2014, p. 18.

54- *Rules of the Supreme Court* No. 33 of 1948, Article 1 (2).

(1949-2016)

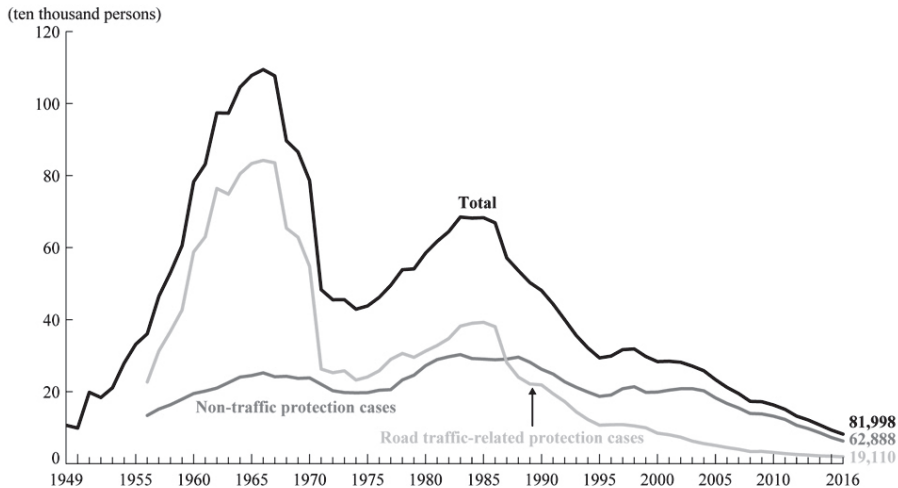


Figure 2: Juvenile protection cases: Juveniles received by family courts (http://hakusyo1.moj.go.jp/en/66/nfm/n_66_2_3_2_2_2.html)

Source: Annual report of judicial statistics

Assessment by Juvenile Classification Homes

A family court may implement measures for observation and protection of a juvenile within 24 hours from the time of the arrival, putting the juvenile under the observation and protection of a family court probation officer or referring the juvenile to a juvenile classification home, by a ruling if they are needed for the hearing of the family court, in accordance with Article 17 of the Juvenile Act.

Juvenile classification homes work to enhance their ability of assessment on juveniles for re-offending prevention by developing and introducing a new assessment method, “Ministry of Justice Case Assessment Tool” in order to grasp the possibility of re-offending and educational needs of each juvenile, based on the knowledge and techniques it has with medicine, psychology, pedagogy, sociology, and other expertise in order to contribute to the hearing at the family court⁵⁵.

Hearings at Family Courts

When the family court considers that a juvenile should be subject to hearing, it shall investigate the case involving juvenile. And when it is found appropriate as a result of the investigation, the family court should give a ruling for commencement of a hearing.

55- As of May 9, 2016, there are 53 juvenile classification homes. See “List of Juvenile Classification Homes in Japan”, *Hatena Blog*, 2016, http://nbakki.hatenablog.com/entry/List_of_Juvenile_Classification_Homes_in_Japan

The juvenile or the custodians can appoint an attendant, but they need permission of the family court to appoint someone other than an attorney at law as the attendant. The presiding judge may permit a relative or a teacher of the juvenile or other person whom the presiding judge finds to be appropriate to be present at the hearing⁵⁶. The family court may examine witnesses, or order to give expert opinion, or to make interpretation or translation under Article 14 of Juvenile Act, and may also inspect, seize or search. On the other hand, the family court may make a ruling of non-commencement of hearing as a result of the investigation.

Hearings should be conducted cordially and amicably, and encourage the juvenile to introspect about the juvenile's own delinquency. In principle, hearings should be closed to the public.

As regards the victims and their families, furthermore, they challenged the careful protection of juvenile offenders while the victims and their families were neglected under the Juvenile Act. The result was a demand for harsher criminal sanctions and a revision of the juvenile justice process. "We are not demanding harsher penalties", Ruriko Take, representing a group for victims' families of juvenile crime, says. "We are just asking for a punishment that is appropriate for the crime that has been committed". "For a long time, people only focused on protecting a juvenile offender's rights," she continues. "I am not dismissing the importance of educating these minors but other factors should also be taken into consideration. Back then, the victims and their families lacked support"⁵⁷. In fact, revisions to the Juvenile Law have gradually improved the situation for victims and their families. In 2008, the law was amended to allow them to attend family court hearings and to make statements during hearings and be informed of the details of any ruling, including statements made by the accused and his or her parents⁵⁸.

Now, a family court may allow the victims of certain serious cases to observe the hearing upon their request if the court finds it appropriate and unlikely to hinder sound development of the juvenile in light of the age of the juvenile, emotional state, the nature of the case, status of the hearing and other circumstances under Article 22-4 of the Juvenile Code. Prior to permitting observation of the hearing, the family court shall hear opinions from the attendant who is an attorney at law.

56- *Rules on Juvenile Hearing and Decision*, Article 29.

57- M. Ito, "The Other Side of Crime: 'Victims Left Behind'", *Japan Times*, March 17.

58- *Idem.*, "Shifting the Scales of Juvenile Justice", *Japan Times*, May 23, 2015.

The family court may, by a ruling after hearing the opinion of a public prosecutor, have a public prosecutor participate in a hearing for a case involving a juvenile offender concerning a designated serious crime including an intentional criminal act caused death to a victim when the court finds that the participation of a public prosecutor in the hearing of the family court is necessary to find the facts of the delinquency. The public prosecutor may inspect, and copy records and articles of evidence, attend the hearing, ask questions of the juvenile, witnesses and other concerned persons, and give opinions to the extent needed to contribute to finding the facts of the delinquency. In this procedure, if the juvenile has no attendant who is an attorney at law, the court shall appoint an attorney at law as an attendant. The extent of attendance of both public prosecutors and lawyers was extended by the 2014 revision of the Juvenile Act⁵⁹.

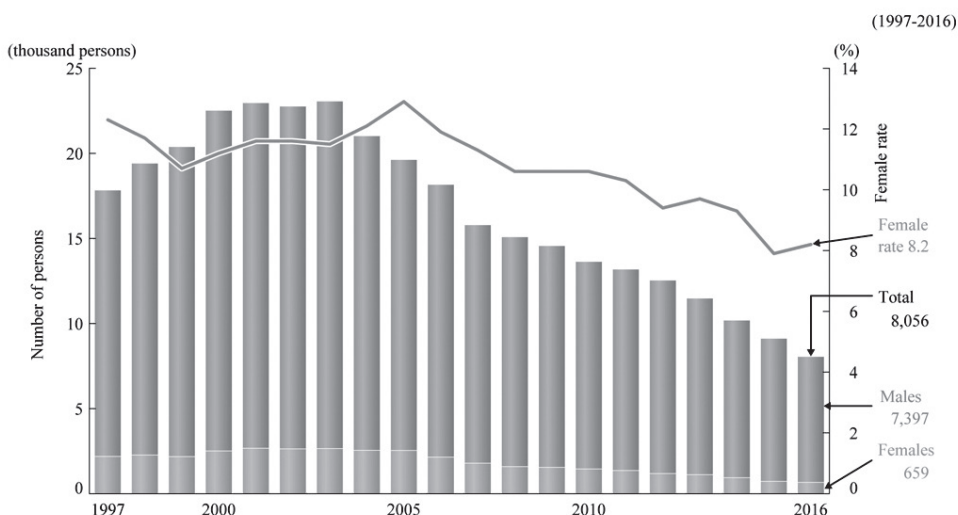
When it is found impossible or unnecessary to subject the juvenile under protective measures as a result of the hearing, the family court shall render a ruling not to subject the juvenile to educational and supervisory measures. On the contrary, when it is found appropriate to take measures prescribed in the Child Welfare Act, the family court shall refer the case to a prefectural governor or child consultation center's director. The family court shall, by a ruling, refer a case punishable by the death penalty or imprisonment to a public prosecutor of the public prosecutors' office that corresponds to the district court with the jurisdiction of the case. If the juvenile is 16 or older and committed an intentional criminal act that caused death to a victim, the family court needs to rule to refer the case to a public prosecutor. The family court shall, by a ruling, subject the juvenile to protective measures, which include placing the juvenile under probation by the probation office, referring to a children's self-reliance support facility or a foster home (limited to juveniles younger than 18), or a juvenile training school (generally limited to juveniles aged 12 or older) under Article 24 of the Juvenile Act.

The juvenile or the legal representative or attendant of the juvenile may lodge an appeal against a ruling imposing protective measures. In the case where a public prosecutor participated in the hearing by the ruling of the family court, the public prosecutor may file a request to a high court for acceptance of a case as the court of second instance. Next, the juvenile or the legal representative or attendant of the juvenile may appeal against a ruling made by the court of second instance to the Supreme Court under Article 35 of the Juvenile Act.

59- T. Kawade, *Juvenile Law*, Yuhikaku, 2015 (in Japanese), p. 374.

8. Juvenile Classification Homes

Before 2014, there was no independent law concerning operation and management of the juvenile classification home or treatments of juvenile inmates thereof, except for a few provisions in the former Juvenile Training Schools Act. In 2014, the Juvenile Classification Homes Act was enacted and the above matters have been conducted under this new law since then⁶⁰.



Note: "Juveniles newly committed to juvenile classification homes" excludes those juveniles taken back from an escape or being transferred from another institution.

Figure 3: Juveniles newly committed to juvenile classification homes (male/female) and female rate

(http://hakusyo1.moj.go.jp/en/66/nfm/n_66_2_3_2_3_2.html)

Source: Annual report of judicial statistics

A Juvenile classification home confines juveniles who are referred by the family court when the court orders protective measures and conducts assessments of these juveniles based on the home’s expertise in medicine, psychology pedagogy, and more., in order to provide information relevant to the investigation and family court hearing. Juvenile offenders who committed serious and violent offenses or who need immediate protective interventions because of their deteriorated family or social environments usually enter juvenile classification homes⁶¹. Such assessments is conducted by interviews, psychological

60- Juvenile Classification Homes Act (Act No. 59 of 2014) entered into force on June 1, 2015, except those provisions referring to on-site facility audit and filing of complaints against auditors which entered into force on July 1, 2015.

61- M. Takahashi, "Assessment of Juvenile Offenders at Juvenile Classification Homes in Japan", *Resource Material Series*, No. 78, 2009, https://www.unafei.or.jp/publications/pdf/RS_No78/No78_18PA_Takahashi.pdf.

tests and behavioral observations as well as by psychiatric examinations if necessary; the treatment guidelines for rehabilitation are drawn up through examination and diagnosis of the mental and physical condition of the juvenile and through understanding of the causes of delinquency. The home also conducts assessments at the request of the juvenile training school superintendent or probation office director for the enforcement of protective measures. Furthermore, the home provides advice using their expertise and techniques in consultation with the general public and school teachers on delinquency, bullying, and domestic violence, as well as the necessary support, in order to prevent delinquency and crime in the local community⁶².

The Act stipulates three duties of juvenile classification homes as below:

- (i) to conduct assessment of juveniles based on professional knowledge and skills
- (ii) to conduct observation and protection of juvenile committed to the homes for their sound development
- (iii) to provide support within the local community to prevent juvenile delinquency and crime

Also, in order for the homes to appropriately treat juveniles, the Juvenile Classification Homes Act has clarified the rights and obligations of juveniles and the authorities of the officials, and introduced complaint mechanisms such as filing a request for relief to the Minister of Justice. The Juvenile Classification Homes Act also aims to promote facility management that is open to society by establishing a visiting committee consisting of outside members corresponding to each juvenile classification home.

According to the Ministry of Justice, Juvenile classification homes are working to enhance their ability of assessment on juveniles for recidivism prevention by developing and introducing a new assessment method, "Ministry of Justice Case Assessment Tool" in order to grasp the possibility of recidivism and educational needs of each juvenile⁶³. The homes are also working to enhance the treatment for recidivism prevention by conducting assessment of juveniles under protective measures in response to requests from juvenile training schools, probation offices, etc. Furthermore, the home provides counseling and consultation services to juveniles and their families on various youth problems (delinquency,

62- *Ministry of Justice 2018*, p. 11.

63- Cf. M. Takahashi, "Assessment of Juvenile Offenders at Juvenile Classification Homes in Japan", *Resource Material Series*, No. 78, 2018, pp. 151-157.

misbehavior, family upbringing problems, troubles in a workplace or at school, problems with friends, etc.). Moreover, the staff of the home provides explanation about various topics such as delinquency, child-rearing, or educational and instructional methods for youth at workshops or lectures held at schools or youth related organizations⁶⁴. And, it is declared in the Plan, with the cooperation of relevant organizations including schools and private volunteers, the Ministry of Justice will improve the knowledge and abilities of juveniles committed in juvenile classification homes that are necessary for the sound development of juveniles by giving them the opportunity of learning or being exposed to cultural activities, etc.⁶⁵.

However, It is critically argued by C. Schwarzengger that “this ‘State as Parent’ model as practiced in Japan has some negative consequences as well: The due process guarantees are not up to the international standard as laid down in the UN Child Convention. Though the presumption of innocence is upheld in theory, in practice, if a case proceeds to the Family Court, the culpability is normally taken for granted”⁶⁶.

In the Moroccan legal arsenal **The secondary investigation** (The set of investigations carried out by the juvenile judge (at the level of the court of first instance) or the councilor in charge of Juveniles (at the level of the court of appeal) in order to examine the evidence and arguments, complete the remainder of them, and decide whether that evidence is sufficient to bring the offender to trial) In line with Article 40 of the Convention on the Rights of the Child, especially paragraphs 3 and 5, the Code of Criminal Procedure gave the juvenile judge or counselor in charge of juveniles the authority vested in investigative judges and enables them to conduct research in the light of which measures can be taken to ensure the protection and rescue of the juvenile. Likewise, it is not possible for a juvenile who has not yet reached 12 full years of age to be placed in a prison institution, regardless of the type of crime. Furthermore, a juvenile whose age ranges between 12 and 18 years cannot be placed in a prison institution unless it appears that this detention is necessary or it is impossible to take any other measures, and in this case the juvenile is kept in a juvenile facility isolated from the places where adults are placed, and the juvenile remains alone during the night as possible (Article 473) The legal protection of minors

64- Ministry of Justice, “Further Improvement of Juvenile Correction”, http://www.moj.go.jp/ENGLISH/m_hisho06_00048.html.

65- Ministry of Justice, *White Paper on Crime 2018*, p. 38.

66- C. Schwarzengger, “The Debate About the Reform of the Juvenile Law in Japan”, in G. Foljanty-Jost (ed.), *Juvenile Delinquency in Japan: Reconsidering the ‘Crisis’*, BRILL, 2003, p. 180.

is evident at this stage in the fact that the juvenile advisor can, according to Article 486 of the criminal law to subject the delinquent juvenile to the temporary guard system stipulated in Article 471 or to one or more of the protection or disciplinary measures stipulated In Article 481 after conducting a social search on the juvenile.

9. Probation by Family Court Decision

The family court may, by a ruling, place a juvenile under probation officer when it is deemed necessary due to a ruling for protective measures. In combination with the observation, the family court may implement the following measures.

- (i) Establishment of compliance rules and giving an order to implement them
- (ii) Determination of conditions and delivery to the custodian under the conditions
- (iii) Correctional guidance through commission to an appropriate institution, organization or individual

If the family court decides to place a juvenile under probation, the court may recommend either short-term probation or short-term probation for traffic offenses as appropriate for a juvenile whose level of delinquency has not advanced and thus can be expected to be improved or rehabilitated within the short-term. Probation is then carried out based on such recommendation⁶⁷.

At the same time, the family court may take appropriate measures against the custodian in order to raise awareness of responsibility of the custodian for custody of the juvenile and to prevent the juvenile from committing delinquency. The measures include delivering an admonition and giving guidance.

Based on the Re-offending Prevention Promotion Plan adopted in December 2018 by the Cabinet⁶⁸, the Ministry of Justice will enhance encouragement for custodians by promoting their understanding and cooperation regarding the treatment of subject persons, giving guidance and advice to improve the custodial ability of the custodian, asking custodians to participate in custodian meetings or giving advice when the custodian needs welfare support, while enhancing guidance and support for improving the relations between juveniles subject to

67- S. Kato, "Probation in Japan: Engaging the Community", *Irish Probation Journal*, Vol. 15, 2018, pp. 114-136.

68- Ministry of Justice, *Re-offending Prevention Promotion Plan*, 2018.

probation or juveniles committed in juvenile training schools and their custodians. In addition, when appropriate custody is unavailable from a custodian, the Ministry of Justice will give guidance and support for the juvenile's self-reliant life in society and use of the system of guardianship of a minor according to the situation of the juvenile⁶⁹.

10. Children's Self-Reliance Support Facilities or Foster Homes

Juveniles committed to children's self-reliance support facilities or foster homes are accommodated in these facilities or homes, which are open facilities for children requiring aid and are established in accordance with the Child Welfare Act. The term "children's self-reliant living assistance services" means services to provide daily life assistance and daily life guidance and employment supports⁷⁰. And, "foster parent" means a person, as found appropriate by the prefectural governor, who desires to take care a child without guardian or a child for whom the custody of his/her guardian is found inappropriate, who is called an 'Aid-requiring Child'⁷¹.

Under the 2009 revision of the Child Welfare Act, the 69 prefectural and municipal governments are required to publicly release information on abuse cases and their handling every year. However, since there were some local governments that did not release this information, the Mainichi Shimbun newspaper investigated. There were a total of 144 cases of abuse at child welfare institutions or foster homes in 2014 and 2015, according to the information gathered by the Mainichi Shimbun from 69 prefectural and municipal governments with child guidance centers. A child guidance center, established by a prefectural government, performs the services concerning welfare of children and shall have facilities of taking temporary custody of children where needed⁷². The revised law prescribes that if abuse by staff or foster guardians is found, they are required to report the case to the child guidance center or other related organizations. The Ministry of Health, Labor and Welfare had been releasing information like the number of reports from prefectural and municipal governments, but halted this practice after 2013. A representative from the ministry explained, "[t]his is because the clerical work is backed up"⁷³.

69- S. Kato, "Probation in Japan: Engaging the Community", *Irish Probation Journal*, Vol. 15, 2018, pp. 114-136.

70- *Child Welfare Act*, Article 6-2 (1).

71- *Ibid.*, Article 6-3.

72- *Child Welfare Act*, Articles 12-12-5.

73- "144 cases of abuse at public child welfare institutions in 2014 and 2015: investigation", *Mainichi*, August 19, 2017.

11. Juvenile Training Schools

The treatments of juveniles at juvenile training schools were based on the former Juvenile Training Schools Act which was enacted in 1948. In accordance with “A Proposal of the Expert Committee Considering Juvenile Corrections” in 2010, “Integrated Measures for Repeated Crime Prevention” in 2012 and “The Strategy to Make Japan the Safest Country in the World” in 2013, the new Juvenile Training Schools Act and the Juvenile Classification Homes Act were established in 2014⁷⁴. The objective of Juvenile Training Schools Act is to achieve appropriate management and administration of juvenile training schools, and to achieve reformation and rehabilitation and smooth reintegration into society of inmates by conducting, in accordance with their characteristics, appropriate correctional education and other treatment instrumental to their sound development, while respecting their human rights⁷⁵.

It is pointed that the recidivism rate of former residents of juvenile training schools in Japan is amazingly low compared to the facilities of other countries⁷⁶.

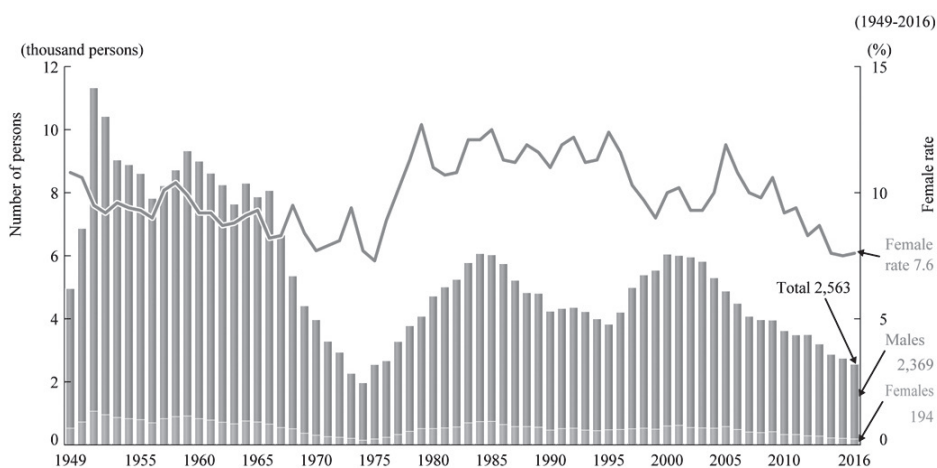


Figure 4: Juveniles newly committed to juvenile training schools (male/female) and female rate

(http://hakusyo1.moj.go.jp/en/66/nfm/n_66_2_3_2_4_1.html)

Source: Statistics on Juvenile correction and rehabilitation
Annual report of statistics on Juvenile correction
Annual report on statistics on correction

74- *Juvenile Training Schools Act*, Act No. 58 of 2014.

75- *Ibid.*, Article 1.

76- G. Foljanty-Jost (ed.), *Juvenile Delinquency in Japan: Reconsidering the “Crisis”*, Brill, 2003, p. 247.

Under the new Juvenile Training Schools Act, an 'Individual Plan for Correctional Education' is drawn up and implemented for each individual juvenile in detention. Based on the new Act, appropriate correctional education is conducted with the aim of achieving higher levels of recidivism prevention. The Individual Plan for Correctional Education determines the goals, content, implementation methods, and terms of correctional education to be implemented according to the juvenile's traits, such as age, physical and mental condition, and criminal tendencies, and provides lifestyle guidance, vocational guidance, school courses, physical education, and special activities according to the characteristics of each juvenile. In addition, in order to ensure smooth rehabilitation in society for juveniles who have difficulties leading independent lives after release, the school provides support for learning and working, securing of a place of residence, and continuous support in collaboration with medical/welfare institutions⁷⁷.

And the new Juvenile Classification Act makes it possible for juveniles in detention at Juvenile Training Schools to spend a certain amount of time at Juvenile Classification Homes in order to enable more detailed classification⁷⁸.

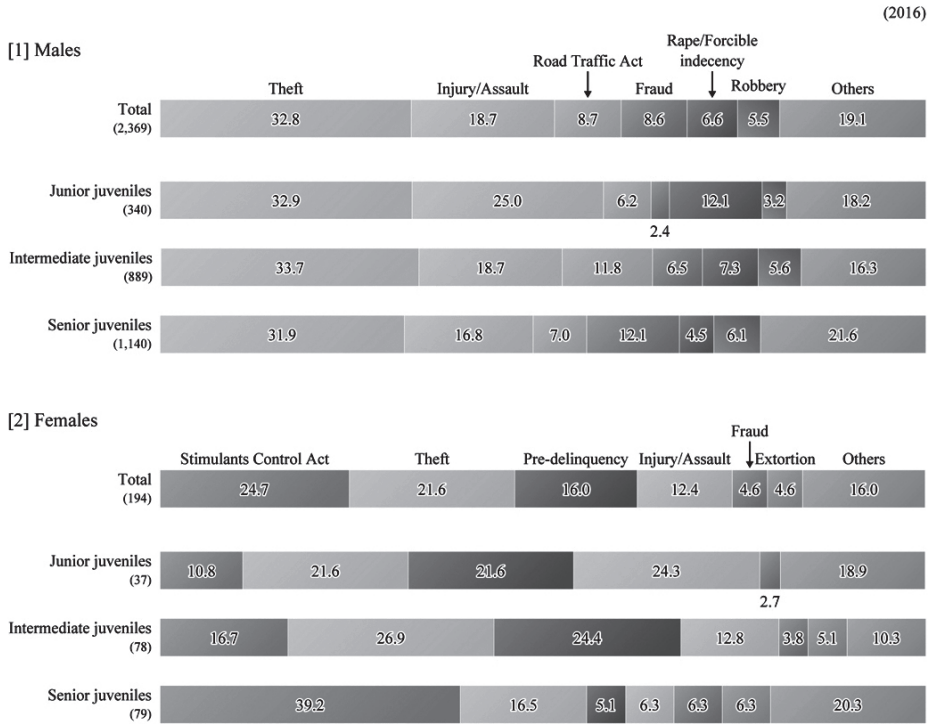
Types of juvenile training schools

Juveniles are categorized based on age, level of criminal tendency, mental and/or physical condition, etc., under Article 4 of the Juvenile Training School Act. The types of juvenile training schools are as follows:

- (i) Type 1 - Juveniles under protective measures of the age group roughly from 12 to under 23 and without severe disability in their mental/physical condition (excluding those categorized as Type 2);
- (ii) Type 2 - Juveniles under protective measures of the age group roughly from 16 to under 23 and without severe disability in their mental/physical condition, and with advanced criminal tendencies;
- (iii) Type 3 - Juveniles under protective measures of the age group roughly from 12 to under 26 and with severe disability in their mental/physical condition; and
- (iv) Type 4 - Juveniles who are committed to the juvenile training school for execution of punishment.

77- Ministry of Justice 2018, p. 11.

78- Ministry of Justice, *White Paper on Crime 2018*, p. 38.



Notes: 1. The figures are based on the age at the time of commitment. "Junior juveniles" includes those younger than 14 years old and "Senior juveniles" includes those who have reached 20 years old at the time of commitment.
 2. The figures in parentheses indicate the actual numbers of juveniles.

Figure 5: Juveniles newly committed to juvenile training schools, percentages by types of delinquency (male/female and by age groups) (http://hakusyo1.moj.go.jp/en/66/nfm/n_66_2_3_2_4_1.html)

Source: Annual report of statistics on correction

In reality, it is reported, there were a few juveniles who would not change their delinquent behavior despite the correctional interventions on their behalf. "It is critically important to understand the root cause of such non-response in order to improve the application of the treatment technique or perhaps to change the type of the interventions and/or their implementations altogether"⁷⁹.

Correctional Education Programs

The type of juvenile training school is specified by the family court with the decision to refer the juvenile to a juvenile training school.

79- Y. Yoshizawa *et al.*, "Evaluating Relative Effectiveness of Training School Programs to Probation on Recidivism of Japanese Juvenile", *Discussion Paper Series*, University of Tsukuba, 2007, p. 25, file:///C:/Users/Matsumoto/Desktop/juvenile%20violence/effectiveness%20of%20training%20school.pdf.

The superintendent of the juvenile classification home specifies the appropriate juvenile training school in consideration of the differences in correctional education programs assigned to different schools. Taking into account these opinions from the family court and the juvenile classification home, the director of the juvenile training school specifies which correctional education program the juvenile is to take. It is to be noted that if the family court, upon referring the juvenile to juvenile training school, and acknowledges the period of correctional education to be a short one and advised the school as such, the school is to assign either a short-term compulsory education program or a short-term social adaptation program for the juvenile.

Superintendents of juvenile training schools are to give inmates vocational guidance necessary to encourage them to work and help them acquire vocationally-useful knowledge and skills. Superintendents of juvenile training schools are to provide guidance in school courses for the inmate who has not completed compulsory education and who is deemed to be hindered from reformation and rehabilitation or from smooth re-integration into society due to a lack of academic background fundamental to social life. The Superintendents are also to provide inmates with necessary 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 cooperation⁸⁰.

Superintendents of juvenile training schools formulate a personalized correctional education program based on the results of investigation by interviewing with inmates or through other appropriate methods, while based on opinions of family courts or directors of juvenile classification homes if available, taking into consideration as much as possible preference of inmates, and their custodians or other persons deemed appropriate⁸¹.

Superintendent of a juvenile training school is to conduct performance evaluation for each inmate, in an integrative manner, in order to understand the effect of the correctional education, and the superintendent is to notify the results to the inmates, and the guardians. The superintendent is also to notify the life and physical and mental condition of the inmates to the inmate's custodian⁸².

80- *Juvenile Training School Act*, articles 26-28.

81- *Ibid.*, Article 34.

82- *Ibid.*, Article 35.

The superintendents are also to determine schedule of daily activities for inmates, such as schedule determining time slot for meals, sleeping, and other daily routine activities, time slot for correctional education and time slot set aside for leisure and have the inmates follow the schedule of daily activities. Correctional education is to be conducted by organizing inmates into appropriate groups, taking into consideration correctional education curriculum.

The superintendents may, when deemed necessary for smooth re-integration into society of inmates, and when deemed appropriate considering their condition of reformation and rehabilitation, have the inmate commute to places outside the juvenile training school and to receive guidance given by a “commissioned supervisor” who provides inmates with guidance without an escort of staff members of the juvenile training school. The guidance is called “out-of-school commissioned guidance”. It is to be carried out in accordance with an arrangement with the commissioned supervisor with regard to the contents and hours of the out-of-school commissioned guidance which the inmates are to receive, necessary measures for ensuring safety and health of inmates, and other matters necessary for the implementation of the out-of-school commissioned guidance.

Correctional facilities are supported by community volunteers, such as volunteer visitors and chaplains. Volunteer visitors are those who help reformation and rehabilitation as well as smooth reentry into society of inmates by means of counseling and guidance sessions, and music instruction, etc⁸³.

It is stated on the basis of investigation of the juvenile training school in Tama, Tokyo that “[y]oung offenders are encouraged to acknowledge the crimes they have committed before learning how to survive in the outside world after their release”⁸⁴. In the same vein, H. Katayama concludes, “[s]ocial conditions and public services for juveniles after release ... are not enough to prevent their recommitment of delinquency, considering the present situation of Japanese society. Only the juveniles and their parents are responsible for recommitting delinquency or not recommitting it”⁸⁵.

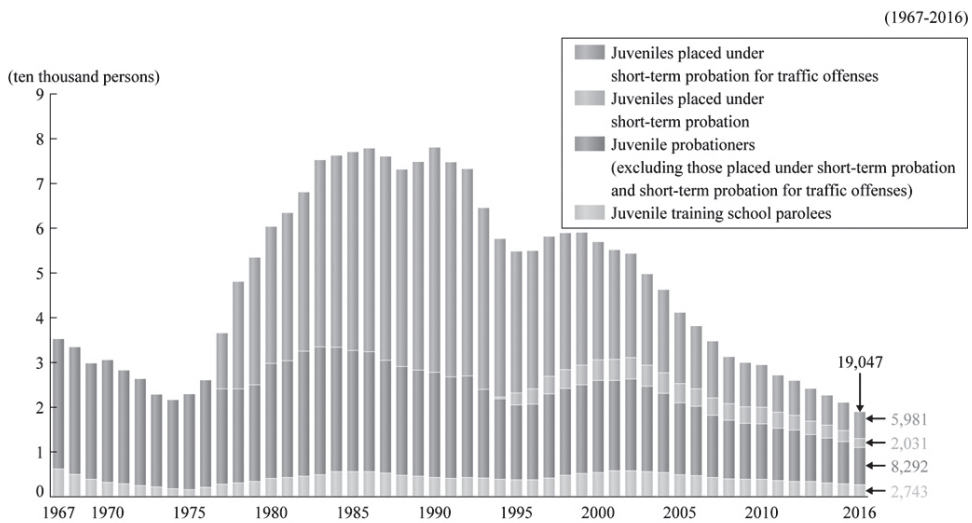
83- *Ministry of Justice 2016*, p. 33.

84- M. Ito, “Life Inside a Juvenile Correction Center”, *Japan Times*, May 30, 2015.

85- H. Katayama, “Treatment in Juvenile training Schools for Girls in Japan”, *Resource Material Series*, No. 90, p. 144.

12. Probation and Parole Supervision

Probation or parole supervision for juveniles subjects those juveniles placed on probation by a ruling of a family court (juvenile probationers) or those juveniles granted a discharge on parole from the juvenile training school (juvenile training school parolees).



Note: The figures for “short-term probation for traffic offenses” and “short-term probation” are shown since the categories of probation had started on 1977 and 1994 respectively.

Figure 6: Juveniles placed under probation/parole supervision (http://hokusyo1.moj.go.jp/en/66/nfm/n_66_2_3_2_5_1.html)

Source: Annual report of statistics on rehabilitation

A juvenile in a juvenile training school is to be released upon completion of his or her period of commitment but in certain cases, a family court may decide to extend the commitment if requested by the superintendent of the juvenile training school, for a period not exceeding the date on which the juvenile turns 23. In addition, a family court may also decide to continue to commit the juvenile to a medical juvenile training school if requested by the superintendent of the juvenile training school, for a period not exceeding the date on which the juvenile turns 26.

Conversely, a juvenile in a juvenile training school may be released on parole before the completion of the period of commitment by a decision made by the Regional Parole Board. If released on parole, the juvenile is placed under parole supervision after the discharge until the period of commitment is complete or until the discharge is granted by the Board.

Parole officers will generally oversee all prisoners via written surveys or interviews to find out where they would like to return to and reside, and to what extent they are willing to work. The aim is to release prisoners on parole so they can make efforts to reintegrate themselves into society under probation, instead of waiting for them to complete full sentences, after which they are unlikely to receive government support. Prisoners who do not have relatives to rely on and are not willing to work will be encouraged to enter rehabilitation facilities or accommodation provided by nonprofit organizations that aim to prepare them for living independently. If they agree, parole officers will make arrangements for lodging and employment support with Probation Offices and other entities. Whether or not a person is permitted release on parole depends greatly on if they have a residence to return to. Other factors include their attitude while incarcerated and how much they are willing to join society again. Individuals who end up not being allowed to leave on parole will be encouraged to use the Urgent Aftercare of Discharged Offenders system, a support framework for people who do not have money or a place to return to. However, people often avoid using the system because they have to directly file a request with the Probation Offices⁸⁶.

At the Probation Office, Probation Officers provide specialised treatment programmes for offenders who have specific criminal issues and risks. There are four specialised treatment programmes: a sexual offender treatment programme, a drug relapse prevention programme, a violence prevention programme and a drink-driving prevention programme⁸⁷

(as of December 31, 2016)

Category	Abusers of paint-thinner	Stimulant drug offenders	Problematic drinkers	Gang-related offenders	Motorcycle gangs	Sexual offenders	Mentally ill offenders	Junior high school students	School violence offenders	Unemployed offenders	Family violence offenders	Gambling or other addicts
Juvenile probationers	14 (0.1)	40 (0.4)	285 (2.5)	21 (0.2)	716 (6.3)	680 (6.0)	583 (5.1)	630 (5.5)	146 (1.3)	1,107 (9.7)	152 (1.3)	57 (0.5)
Juvenile training school parolees	13 (0.4)	86 (2.4)	127 (3.5)	10 (0.3)	381 (10.4)	259 (7.1)	439 (12.0)	48 (1.3)	40 (1.1)	1,001 (27.4)	94 (2.6)	110 (3.0)

Notes: 1. Juveniles may be assigned to multiple categories.

2. The figures in parentheses indicate the percentages of juveniles in the respective treatment categories among the total numbers of juvenile probationers (excludes those placed on short-term probation for traffic offenses or short-term probation) or juvenile training school parolees as of December 31, 2016 (includes probationers/parolees yet to be categorized).

Figure 7: Juvenile probationers/juvenile training school parolees, by treatment categories

Source: annual report of statistics on rehabilitation the rehabilitation Bureau, Ministry of Justice

(http://hakusyo1.moj.go.jp/en/66/nfm/n_66_2_3_2_5_2.html)

86- T. Murakami, "Japan Justice Ministry to Assign Probation Officers to Prisons to Reduce Reoffending Rate", *the Mainichi*, October 3, 2019.

87- S. Kato, "Probation in Japan: Engaging the Community", *Irish Probation Journal*, Vol. 15, 2018, https://www.pbni.org.uk/wp-content/uploads/2018/11/Kato_Saki_IPJ.pdf.

There are 50 probation offices. Their major functions are to conduct probationary supervision over those juveniles placed on probation by decisions of the family courts, those released on parole from prisons or juvenile training schools and also those who are on probation with suspension of sentence⁸⁸. The probation offices are also engaged in activities to promote community-based campaigns to prevent crime and delinquency. Probation officers are full-time government officials of the Ministry of Justice who are assigned to either the Secretariat of the Regional Parole Board or to the Probation Office. Having expert knowledge of psychology, pedagogy or sociology, they engage in the work of rehabilitating juvenile offenders or re-offenders, by giving them guidance and assistance in everyday life, in collaboration with volunteer probation officers. They also take charge of work relating to the prevention of crime and delinquency and providing support for crime victims.

Under the 2007 revision of the Juvenile Act, family court judges have the power to sentence youth in violation of their parole to serve their remaining time in a juvenile training school⁸⁹. "This measure is to be taken for repeat offenders or those who have seriously broken the conditions of their parole. The first time parole is broken the juvenile will receive a warning, but should they breach the conditions of their parole a second time, the judge may send the youth to either a juvenile home for education and training or a juvenile reformatory"⁹⁰.

According to the Ministry of Justice, the activities of offender rehabilitation volunteers, such as the Women's Association for Rehabilitation Aid, the Big Brothers and Sisters Movement Association, and "Cooperative Employers" have been of a great help to rehabilitate offenders themselves and become law-abiding.

88- In June 2013, laws were promulgated providing for suspension of part of a criminal's sentence in the *Act for Partial Revision of the Penal Code* and the *Act for Partial Suspension of Sentence for Criminals Convicted of Drug Use, Etc.* The system makes it possible for the courts to grant a suspension of part of a sentence. Its aim is to prevent recidivism and help in their rehabilitation by enabling a period of treatment in prison, followed by a longer period of treatment in the society. Under this system, during the period of suspended sentence the offender is put under probation on a discretionary basis in the case of those who have no previous record of sentences heavier than imprisonment without work, and on a mandatory basis in the case of those convicted and sentence to prison for drug use. Ministry of Justice, *White Paper on Crime 2017*, p. 36.

89- *Juvenile Act*, Article 26 (4).

90- A. Schwertfeger, "'The Kid is a Criminal' v. 'The Criminal is a Kid': Cultural Impacts on Juvenile Justice in the United States and Japan", 2013, p. 21, <https://legalstudies.berkeley.edu/wp-content/uploads/2013/07/Alexandra-Schwertfeger-Sp13.pdf>.

Cooperative Employers

Cooperative employers are private-sector businesses that willingly offer employment to offenders or re-offenders regardless of their criminal record or history of crime, and cooperate in the offenders' rehabilitation⁹¹. In the Re-offending Prevention Promotion Act, the concept of cooperative employers means "employers that employ or intend to employ persons who have committed crimes, etc. for the purpose of cooperating with them in becoming self-reliant and re-integrating into society"⁹².

There are about 19,000 such cooperating business owners across the country who cooperate in this field. Cooperative employers understand the feelings of offenders and provide them with stable jobs, which serves as a tremendous contribution to offenders rehabilitation in society⁹³.

The re-offending rate of unemployed person is about 4 times higher than that of employed person. The rate of employed person is 7.5%. On the other hand, that of the unemployed is 29.8% in 2008-2012⁹⁴.

Thus, when the State concludes a contract wherein the State is a party and is to pay consideration for the provision of services, including the completion or operations of construction, or the delivery of goods conducted by a party other than the State, the State is to pay attention to increasing opportunities for cooperative employers to receive orders, while giving consideration to the proper use of the budget⁹⁵.

In conformity with Article 23 of the Re-offending Prevention Promotion Act, the State is also to take necessary measures, including financial or tax measures, in order to promote activities for the prevention of re-offending, carried out by volunteer probation officers' associations and by cooperative employers and other private bodies or individuals.

91- As regards the process of finding employment, see P. Gerritsen, "Re-offending and Reintegration in Japan", 2013, p. 37, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/77291/Thesis%20Re-offending%20and%20Reintegration%20Gerritsen%2C%20P%201729780.pdf?sequence=1>.

92- *Re-offending Prevention Promotion Act*, Article 14.

93- *Ministry of Justice 2018*, p. 38.

94- S. Imafuku,

95- *Re-offending Prevention Promotion Act*, Article 14.

Volunteer Probation Officers

Traditionally, Japan has a unique probation system which to prevent recidivism, by professional probation officers and volunteer probation officers⁹⁶.

Volunteer probation officers play effective and valuable roles in the Japanese offender rehabilitation system. As they are familiar with the situations and customs of their community, they are able to give effective guidance and assistance to juvenile offenders or re-offenders in the context of a normal social life in collaboration with probation officers. In addition, volunteer probation officials engage in crime prevention to promote prevention of crime and delinquency, and provide support for crime victims⁹⁷.

Volunteer probation officers are common people appointed by the Minister of Justice as part-time government officials in the reappointable term of 2 years. Age-limit for the first appointment is 66 and for reappointment is under 76. Their personal qualifications are⁹⁸:

- (i) Highly evaluated in terms of character and conduct in the community
- (ii) Enthusiastic and has enough time available to accomplish the duties
- (iii) Financially stable
- (iv) Healthy and active

The main activities of volunteer probation officials consist of: supervision/assistance of probationers and parolees; coordination of inmate's social circumstances; and promotion activities of crime prevention.

This system is originated in Japan, started about 80 years ago, and has attracted global attention. Other countries have already adopted it. The Third World Congress on Probation was held in Japan in 2017, with government officials and experts from more than 30 countries⁹⁹. In the

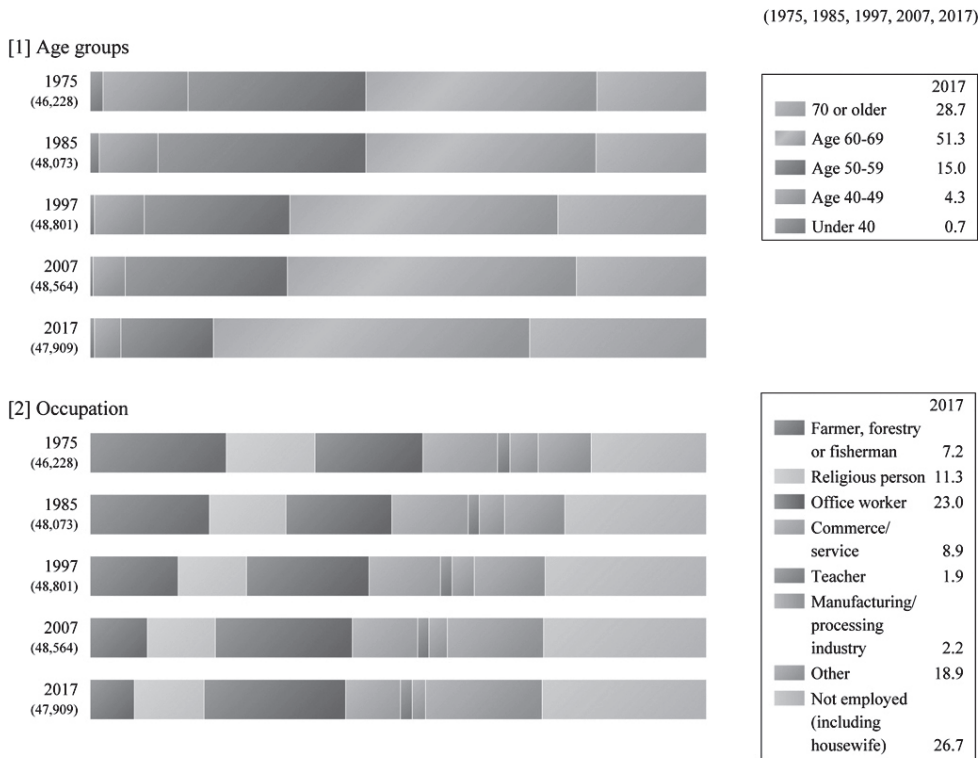
96- A. Watson and T. Yoshikai, "Prevention of Recidivism: Trends in Japanese Criminal Policy", *Daiwa Anglo-Japanese Foundation*, 2019, <http://dajf.org.uk/event/prevention-of-recidivism-trends-in-japanese-criminal-policy>.

97- Ministry of Justice, *White Paper on Crime 2017*.

98- *Volunteer Probation Officers Act*, Article 3.

99- The Third World Congress on Probation, September 13, 2017, "Opening Remarks", <http://www.moj.go.jp/content/001240403.pdf>.

Congress, attention was focused on the role played by volunteers and it was reiterated that the roles of the volunteer probation officers in the community is significant in the field of offenders rehabilitation. Because of the system, the re-offending rate among those on parole stands at less than 1%¹⁰⁰.



Notes: 1. The figures are as of January 1 of the respective years.
 2. The figures in parentheses indicate the actual number of persons.
 3. "Other" refers to those engaging in civil engineering/construction industry, social welfare service, etc.

Figure 8: Volunteer probation officers, percentages by age groups and by occupations

(http://hakusyo1.moj.go.jp/en/66/nfm/n_66_2_2_5_3_1.html)

Source: the rehabilitation bureau, ministry of justice.

Now various efforts are made in Japan to get more people to serve as volunteer probation officers in conformity with the Re-offending Prevention Promotion Act, prescribing in Article 23 that “[i]n order to promote activities for the prevention of re-offending, etc. carried out by volunteer probation officers’ associations and by cooperative employers

100- T. Ellis and A. Kyo, “Reassessing Juvenile Justice in Japan: Net Widening or Diversion?”, *Asia-Pacific Journal/Japan Focus*, Vol. 15, 2017, p. 8. G. Tamura, “The Role of Volunteers in Helping to Rehabilitate Criminals”, *NHK World-Japan*, November 1, 2017, <https://www3.nhk.or.jp/nhkworld/newsroomtokyo/features/20171101.html>.

and other private bodies or individuals, the State is to take necessary measures, including financial or tax measures”.

The number of volunteer probation officials is 47,914 as of January 2014. The maximum number fixed by law at 52,500. Their average age is 64.6, and the percentage of females is 26.0%¹⁰¹.

For the purpose of reinforcing the system of volunteer probation officers, the ‘Study Group on Improving the Volunteer Probation Officer System’ was organized in 2011, consisting of volunteer probation officers and academic experts. The next year, the group submitted a report, which contains specific recommendations on how the volunteer probation officer system should be improved, from the following perspectives¹⁰²:

- (1) securing of candidates to become volunteer probation officers and fostering of volunteer probation officers
- (2) improvement of the activity environment of volunteer probation officers
- (3) strengthening collaboration with the community
- (4) active roles for volunteer probation officer organizations
- (5) reconstruction of the offender rehabilitation system in disaster-affected areas of the Great East Japan Earthquake

The Ministry of Justice has taken the recommendations of the study group as earnest voices from volunteer probation officers and therefore makes efforts to put them into practice. In 2012, for instance, the Ministry of Justice has launched a compensation system for property damage suffered by volunteer probation officers in the performance of their duties. In 2013, budget has been established to enable all local volunteer probation officers associations to hold Volunteer Probation Officer Candidate Information Meetings to secure appropriate candidates to become volunteer probation officers. As the base of activities for volunteer probation officers, there are 446 “Offenders Rehabilitation Support Centers” as of 2015¹⁰³.

101- S. Imafuku, “The Significant Contribution of Volunteer Probation Officers and Other Citizens towards the Rehabilitation of Offenders and a Crime-Free Society in Japan”, *Workshop 4, The Thirteenth United Nations Congress on Crime Prevention and Criminal Justice*, Doha, Qatar, 12-19 April 2015, https://www.unodc.org/documents/congress/workshops/workshop4/PDFs/Panel3/04_Imafuku.pdf.

102- Ministry of Justice, “Stable Securing of Volunteer Probation Officers”, http://www.moj.go.jp/ENGLISH/m_hisho06_00049.html.

103- Ministry of Justice, *White Paper on Crime 2018*, p. 36.

The Re-offending Prevention Promotion Act¹⁰⁴, which, along with clarifying the responsibilities of the national and local governments, sets basic countermeasures and stipulates the comprehensive and systematic promotion of measures to prevent re-offending in order to create a society where citizens can live in safety and peace, was announced and took effect in December 2017. Moreover, the Review Committee for the Re-offending Prevention Promotion Plan, chaired by the Minister of Justice, was established in February 2018 to discuss the matters listed in the Re-offending Prevention Promotion Plan Draft created by the Minister of Justice, resulting in many meetings with relevant ministries and committees of private experts. A review committee was then held to compile a plan proposal, and after passing through the public comment, the Cabinet decided on the Re-offending Prevention Promotion Plan¹⁰⁵.

In the Re-offending Prevention Promotion Plan, it is reported, the promotion of activities for the prevention of re-offending by the cooperative citizens is facing the following challenges:

- (i) it has become difficult to carry out the activities of private volunteers as in the past due to reasons such as the aging of volunteer probation officers, decrease of the number of private volunteers, including volunteer probation officers, and change in the social environment as a result of rarefied human relationships in local communities
- (ii) it has become difficult for private bodies to secure necessary systems even if they intend to conduct activities for the prevention of re-offending, etc.
- (iii) the collaboration between criminal justice authorities and cooperative citizens is still insufficient

Then, the Re-offending Prevention Promotion Plan proposes specific initiatives. In the Plan, the Ministry of Justice declares to further enhance guidance according to the problems of the subject persons, through implementation of streamlining the contents of guidance corresponding to recent modes of delinquency, such as particular types of fraud, at juvenile training schools¹⁰⁶.

104- Act No. 104 of 2016.

105- Ministry of Justice, "Toward Japan as 'the Safest Country in the World'", p. 18.

106- Ministry of Justice, "Re-offending Prevention Promotion Plan", 2019, Section 6, http://www.japaneselawtranslation.go.jp/common/data/notice/083006_2_checked_2019-03-28-10-32-00.html.

It is emphasized by S. Kato that the system of volunteer probation officers is “not only an effective measure but also a historically valuable part of Japanese culture. It is important that, as Japanese society develops and lifestyles become more demanding, we do not lose sight of this legacy – the value, contribution and importance of volunteers and communities in the supervision and rehabilitation of our brothers and sisters who have been in trouble with the law”¹⁰⁷.

13. Parole Supervision

As regards Parole, it shall be given to a juvenile sentenced to imprisonment after the passage of the prescribed period¹⁰⁸. The organization that performs selective, specialized treatment in society in accord with the relevant specific problem is called National Center for Offenders Rehabilitation¹⁰⁹, while another organization that provides vocational training primarily in agriculture is called National Center for Offenders Job Training and Employment Support¹¹⁰.

Parole collectively refers to the measures to release a person who is incarcerated for execution of the sentence or protective measure before the expiration of sentence or period of incarceration, based on the decision of the regional parole board. More specifically, parole include¹¹¹:

- (1) parole from penal institution
- (2) release on parole from juvenile training school
- (3) release on parole from women’s guidance home
- (4) provisional release from penal institution or workhouse

107- S. Kato, “Probation in Japan: Engaging the Community”, *Irish Probation Journal*, Vol. 15, 2018, p. 136.

108- *Juvenile Act*, Articles 58-59.

109- Ministry of Justice, “National Centers for Offenders Rehabilitation” are established and operated in Kitakyushu and Fukushima City. p. 36.

110- “National Centers for Offenders Job Training” are established and operated in Hokkaido (Numata-cho) and Ibaraki (Hitachinaka City). *Ibid*.

111- Rehabilitation Bureau, Ministry of Justice, *Offenders Rehabilitation of Japan*, 2015, pp. 26-27.

Coordination of social circumstances is intended to help persons incarcerated in correctional institution to reintegrate into society smoothly through investigating into residences, employers and other circumstance for their rehabilitation and reintegration into society. Since social circumstances surrounding a person are major factors which led to them committing a crime or delinquency, it is significant to make their social circumstances more suitable. Methods for coordination of social circumstances are as described below¹¹²:

- (i) When a person is incarcerated in the correctional institution, probation officers of the probation office where that inmate is willing to live after his/her release and volunteer probation officers will start coordination of social circumstances.
- (ii) Probation officers or volunteer probation officers will conduct investigations / coordination into the prospect of living or social circumstances after release, based on the inmate's intentions, by visiting his/ her family or guarantor.
- (iii) Based on results of investigations and coordination, document material will be sent to the regional parole board and correctional institution, with an opinion of the director of the probation office on whether the inmate will be permitted to return to where he/she plans to reside after being released.
- (iv) The document material will be utilized for correctional treatment, and parole and other examination.

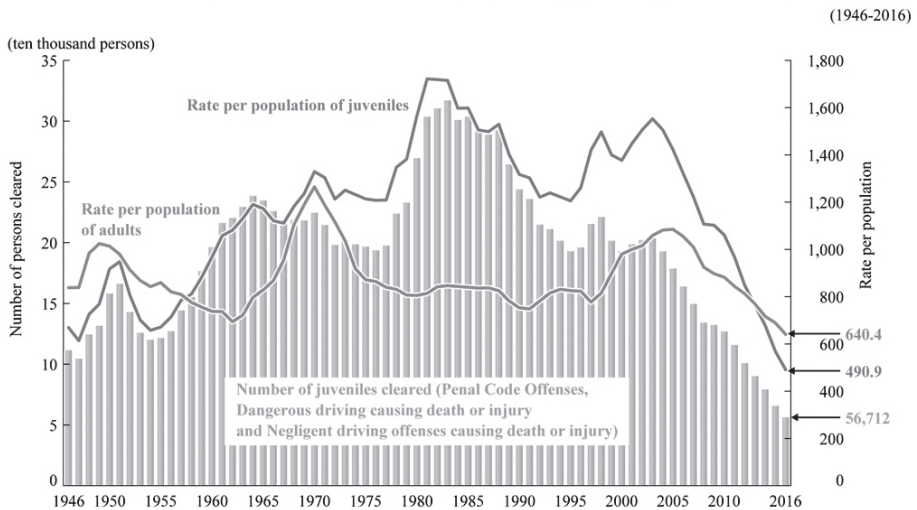
14. Criminal Procedure for Juveniles

Only when child welfare agencies refer cases to the Family Court for protective measures may the Family Court deal with them. Almost all the cases referred to the Family Court are those of juvenile offenders.¹¹³

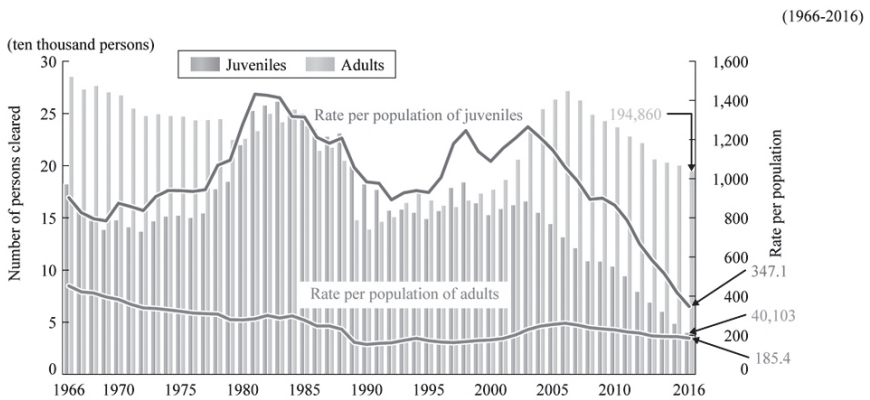
112- *Ibid.*, p. 28.

113- K. Hiroyuki, "Juvenile Diversion and the Get-Tough Movement in Japan".

[1] Penal Code Offenses, Dangerous driving causing death or injury and Negligent driving offenses causing death or injury



[2] Penal Code Offenses

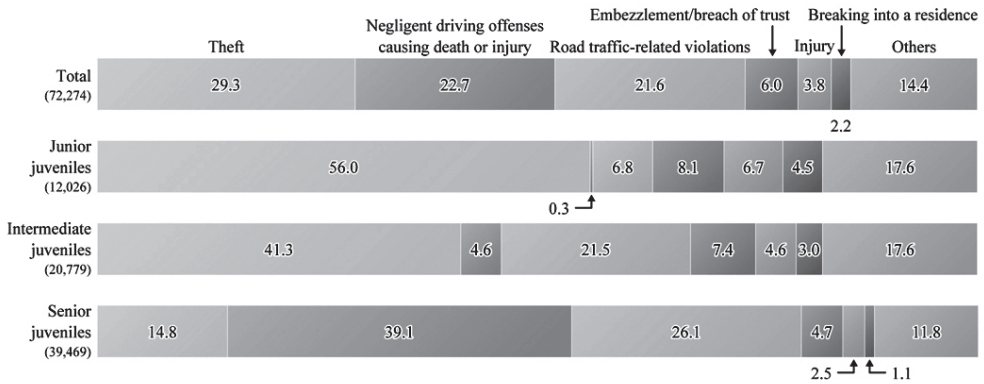


- Notes: 1. The figures are based on the age at the time of the offense. Those who were aged 20 or older at the time of clearance are counted as adults.
- 2. The figures include juvenile offenders under 14 who were guided by the police.
- 3. The numbers for years following 1970 in [1] do not include juvenile offenders of Negligent driving offenses causing death on injury.
- 4. "Rate per population of juveniles" and "Rate per population of adults" in [1] refers to the numbers of juveniles/adults cleared for Penal Code Offenses, Dangerous driving causing death or injury and Negligent driving offenses causing death or injury per 100,000 population of juveniles or adults respectively.
- 5. The numbers for years 2002-2014 in [2] include Dangerous driving causing death or injury.
- 6. "Rate per population of juveniles" and "Rate per population of adults" in [2] refers to the numbers of juveniles/adults cleared for Penal Code Offenses per 100,000 population of juveniles or adults respectively.

Figure 9: Penal Code Offenses, Dangerous driving causing death or injury, and Negligent driving offenses causing death or injury: juveniles cleared, rate per population (http://hakusyo1.moj.go.jp/en/66/nfm/n_66_2_3_1_1_0.html)

Source: Criminal statistics of the national police agency. The statistics bureau, ministry of internal affairs and communications (population data)

A public prosecutor must institute prosecution regarding a case referred to the public prosecutor by a family court if the prosecutor considers that there is sufficient suspicion to institute prosecution. The criminal procedure for prosecuted juveniles is basically the same as for adults. A court shall, by a ruling, transfer a case to a family court if it is found appropriate to subject the juvenile defendant to protective measures as a result of the examination of the facts.



Notes: 1. The figures are based on the age at the time of reception.
 2. "Embezzlement" includes embezzlement of lost property.

Figure 10 Juvenile offenders received by public prosecutors, percentages by types of offense and by age groups

(http://hakusyo1.moj.go.jp/en/66/nfm/n_66_2_3_2_2_1.html)

Source: Annual report on prosecution

If a juvenile is to be punished with imprisonment with or without work for a definite term, the juvenile must be given a sentence within the minimum and maximum imprisonment terms determined within the limit of said penalty (indeterminate sentence; the minimum and maximum terms cannot exceed 10 and 15 years, respectively) unless the execution of the sentence was suspended¹¹⁴.

If a person who is under 18 at the time of commission of an offense is sentenced to death, life imprisonment shall be imposed. If a person who is under 18 at the time of the said commission is sentenced to life imprisonment, imprisonment for a definite term may be imposed. In this case, the term of imprisonment imposed shall be neither less than 10 nor more than 20 years.

114- *Juvenile Act*, Article 51.

Regarding a Juvenile sentenced to imprisonment, excluding a person subject to execution of punishment at a juvenile training school, the punishment shall be executed in a specially established penal institution or a specially partitioned area within a penal institution or detention facility. Even after the Juvenile reached 20, the execution may be continued until the juvenile reaches 26.

A controversy over the application of death penalty to juveniles aged 18 and 19 used to be widely made especially in face of a brutal juvenile crime. While Takahashi believes the death penalty should be sentenced to killers of all ages in consideration of the mental state of the victims' families in the future, Hiroko Goto, a professor at Chiba University and an expert on the Juvenile Act, takes a juvenile's immaturity in decision-making ability more seriously¹¹⁵.

115- Quoted in M. Ito, "Shifting the Scales of Juvenile Justice", *Japan Times*, May 23, 2015.

