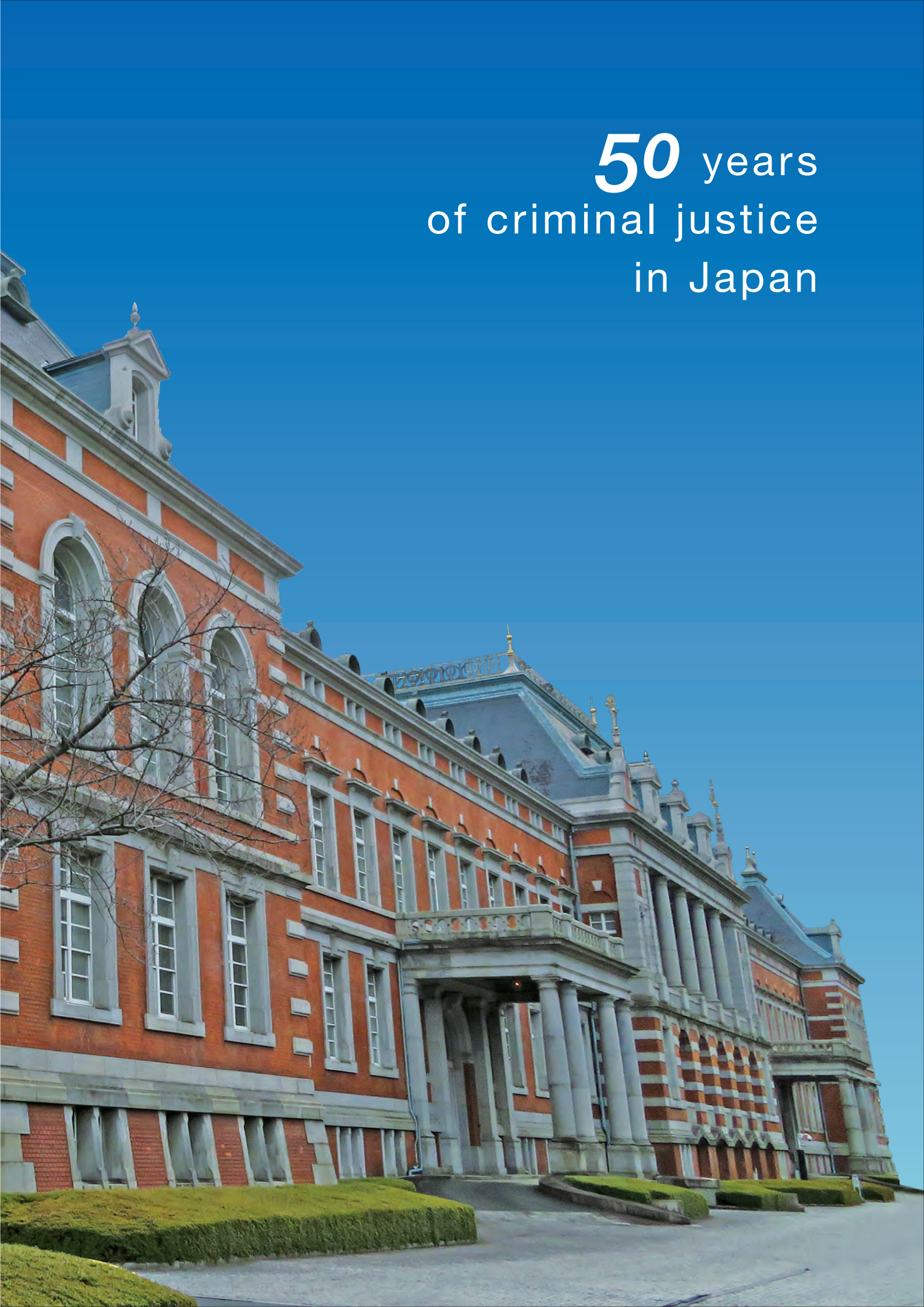
# 50 years of criminal justice in Japan



# The Red-Brick Building

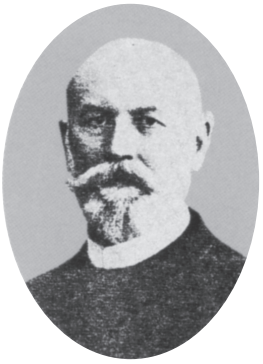
The building shown on the cover is the Red-Brick Building of the Central Government Office Complex No. 6, which served as the main building of the Ministry of Justice until 1990.

The Red-Brick Building was designed by German architects Hermann Ende and Wilhelm Böckmann. Covering an area of about 10,000 $m^2$, this three-floor brick structure was designed in a Neo-Baroque style and has a steeply pitched roof that lends the building an air of dignity and majesty. Work on the building commenced in 1888 as Japan went through a period of rapid modernization and was completed in 1895. The building was then used to house the Department of Justice (now the Ministry of Justice). The Great Kanto Earthquake struck on September 1, 1923, but measures taken to reinforce the earthquake-resistance of the building worked effectively such that it hardly sustained any damage. However, the bombing of Tokyo in 1945 burned down the building, leaving only the brick walls and floors intact. Repair and restoration work were carried out from 1948 to 1950 through creative and ingenious methods, in view of the scarcity of resources and supplies.

The new building (Central Government Office Complex No. 6-A) was completed in June 1990, and the functions of the main building of the Ministry of Justice were transferred over to this new building. Thereafter, large-scale conservation and restoration work were carried out from 1991 to 1994. As a result, the Red-Brick Building was restored to its original appearance at the time of its establishment. As one of the few buildings that have preserved the visual aspect of the Meiji era, the exterior of the building was designated as the national cultural property of Japan on December 27, 1994.

Today, the Red-Brick Building houses the Research and Training Institute of the Ministry of Justice and performs other functions.

**Hermann Ende**



**Wilhelm Böckmann**

**[Central Government Office Complex No. 6 (Left: Ministry of Justice, Right: Public Prosecutors Office) and the Red-Brick Building]**
**Address: 1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo**

# Foreword

This booklet is designed to archive Japan's efforts and progress in criminal justice on the occasion of the 14th United Nations Congress on Crime Prevention and Criminal Justice ("Congress"), to be held in Kyoto, Japan in March 2021.

The Congress is the largest UN conference on crime prevention and criminal justice, held every 5 years. Japan hosted the Fourth Congress in Kyoto in 1970, and after about 50 years, the 14th Congress will be held in Kyoto again. ("Kyoto Congress") The Kyoto Congress was originally scheduled on April 2020, but, due to the COVID-19 pandemic, postponed to March 2021.

At the Kyoto Congress, government representatives, criminal justice experts, and others from around the world will share the latest information on most recent topics on criminal justice and actively exchange their views by utilizing the online conference system. As greater attention may be drawn to the criminal justice system in the host country, the Kyoto Congress will be an excellent opportunity to showcase the Japanese criminal justice system to the participants and people across the world. Therefore, the Ministry of Justice (MOJ) has set up a project team to trace Japan's 50-year step in criminal justice.

This booklet consists of 4 parts. Part 1, "Overview of the Current Criminal Justice System", provides an overview of the present criminal justice proceedings, as well as current undertakings in the field of correction and rehabilitation. Part 2, "From the 1870s to 1960s – Modernization of Criminal Justice and Establishment of the Current Foundation", describes the period from the 1870s when the modernization of criminal justice begun, to 1970 when the Fourth Congress was held. Part 3, "Looking back over 50 Years, from 1970 to 2020", describes developments in criminal justice as well as domestic and overseas situation by the decade. Part 4, "Various Areas of Criminal Justice and Making through Changes over the Last 50 Years," describes major changes and developments witnessed within various fields of criminal justice over the last 50 years.

The project team was chaired by the Director of the Secretarial Division of the Minister's Secretariat and consisted of counselor-level officials from Criminal Affairs Bureau, Correction Bureau, Rehabilitation Bureau, and Research and Training Institute of the Ministry of Justice. The International Affairs Division of the Minister's Secretariat, served as a secretariat for the project team. The content of this booklet is based on information as of April 2020, original scheduled date of the Kyoto Congress.

February 2021

MOJ project team to archive 50 years of criminal justice in Japan

# Foreword

# Part 1 Overview of the Current Criminal Justice System

Part 1

# Overview of the Current Criminal Justice System



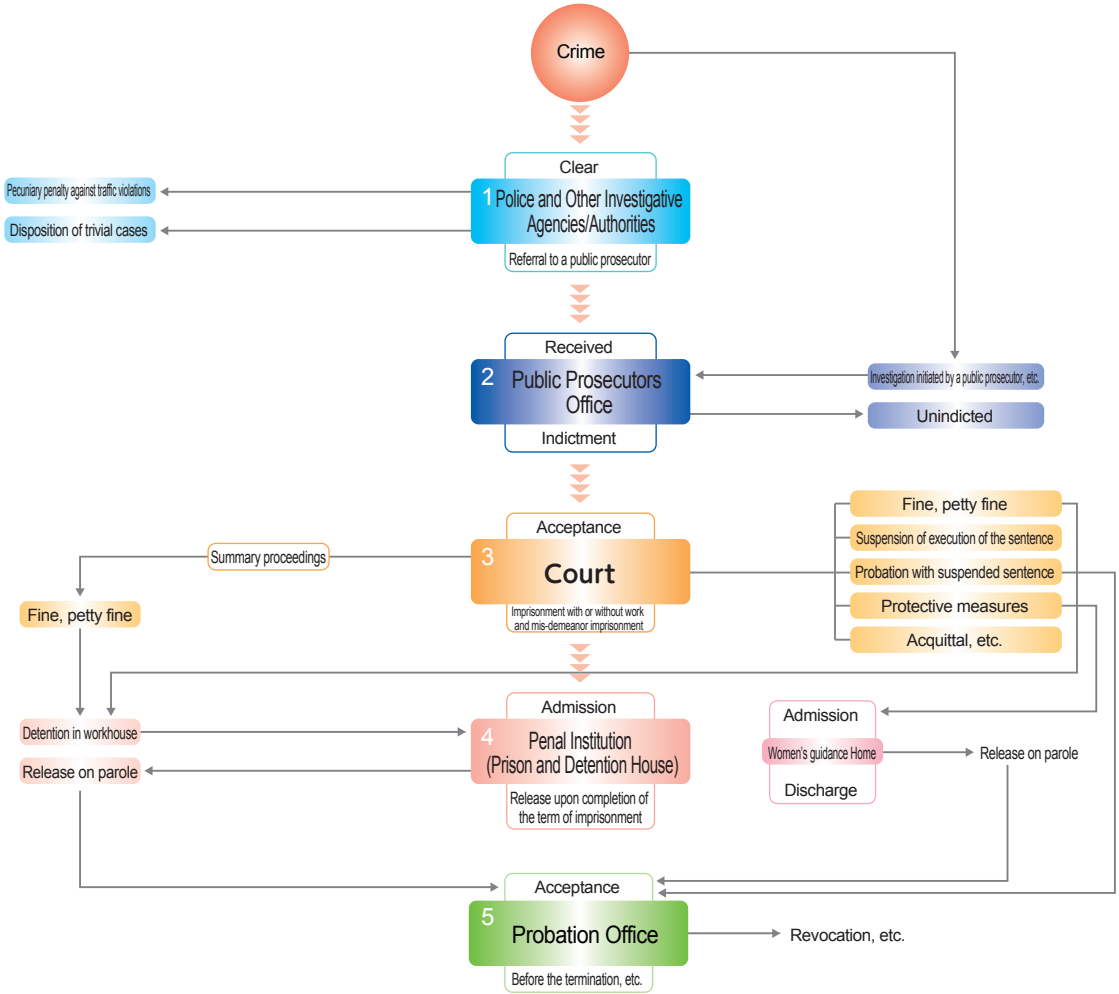
# Chapter 1 Criminal Procedure

## Section 1 Procedures for Adult Criminal Cases

### 1 Flow of Procedures

Figure 1-1-1 below shows the flow of procedures for criminal cases involving adults (persons of age 20 and above).

**Figure1-1-1 the flow of procedures for criminal cases involving adults (persons of age 20 and above)**




**(1) Police and Other Investigative Agencies/Authorities**

The police and other investigative agencies/authorities conduct necessary investigations and clear cases. In principle, all investigated cases are referred to public prosecutors.

**(2) Public Prosecutors Office**

Public prosecutors conduct necessary investigations of referred cases and, based on law and evidence, decide whether or not to prosecute the suspect(s). In some cases, the public prosecutors

conduct independent investigations in response to criminal complaints or accusations without any police involvement.

**(3) Court**

The court conducts a trial in a courtroom open to the public. If the defendant is found guilty, the court renders the sentence, such as fine, imprisonment with or without work or capital punishment. In cases where the sentence is imprisonment with or without work for not more than three years, the sentence may be suspended depending on the circumstances, and the sentenced person may be placed on probation during this period of suspension. Summary proceedings may be held for relatively minor cases if there is no objection by the suspect.

**(4) Penal Institutions (Prisons and Detention Houses)**

If a conviction becomes final without suspension of the sentence, the punishment is then carried out at the direction of the public prosecutor. Imprisonment with or without work and misdemeanour imprisonment are, in principle, carried out at a penal institution. Penal institutions are composed of prisons and detention houses, and prison is the main body engaging in the reformation and rehabilitation of sentenced inmates. This is done through the provision of correctional treatment, which helps the inmates successfully reintegrate into society upon release. Persons who are unable to pay a fine or petty fine in full are detained in workhouses attached to penal institutions.

**(5) Probation Offices**

Even before completing the term of custodial sentence, person may be released early on parole at the decision of the Regional Parole Board. Parolees are placed on parole supervision during the period of their parole.

Persons whose sentences have been suspended with probation are also released on probation during the period of suspension. Persons who are placed on probation/parole receive supervision and support for self-reliance living from probation officers as well as volunteer probation officers, who are citizen volunteers, for probationers'/parolees' rehabilitation and reintegration into society.

## 2 Investigations

**(1) The Principle of Non-compulsory Criminal Investigations and the Principle of Warrants**

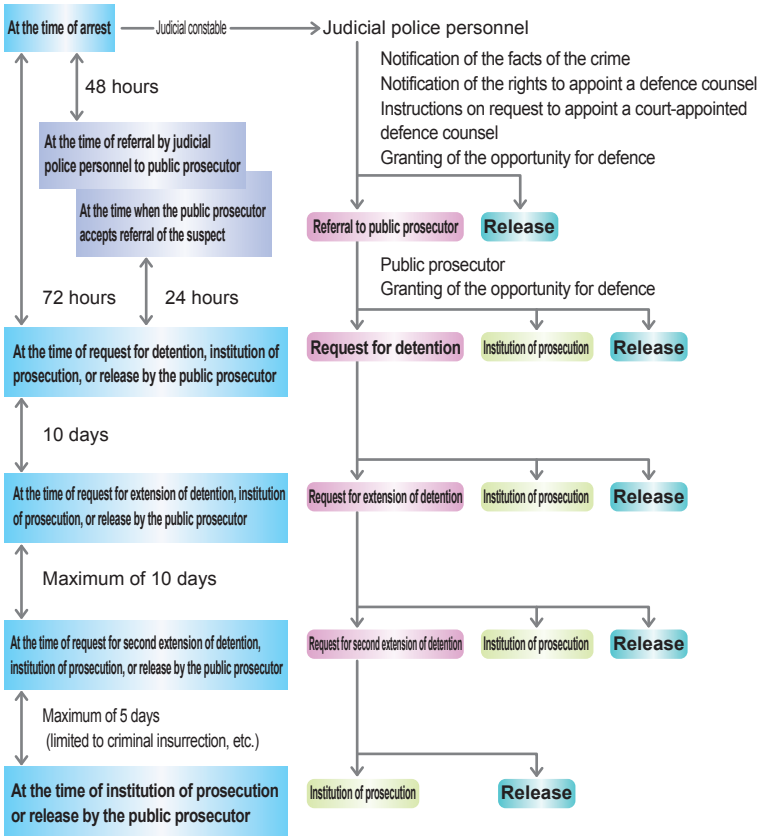
In principle, investigations are conducted through non-compulsory measures (principle of non-compulsory criminal investigations). Typical examples of investigation based on this principle involve: interviewing witnesses or questioning suspects by asking them to appear voluntarily; requests to voluntarily produce evidence; inspections at the site of the incident or accident on public roads and requests for expert examinations. When further investigation requires compulsory measures, such as the arrest of suspects to prevent the concealment or destruction of evidence or the flight of the suspect, forcible entry into a person's residence to conduct searches in order to secure evidence, or forcible seizure of a person's belongings, there must be a separate warrant issued by a judge clearly indicating the subject of such measure. There are some exceptions in cases that involve the arrest of flagrant offenders and others.

The judge, who is not involved in investigation, and is independent from the investigative agency is responsible to check stringently based on evidence, if the legal criteria have been met for issuing warrant and granting approval for the police or prosecutors to utilize compulsory measures such as arrest, search or seizure.

## (2) The Conditions and Period of Arrest and the Detention of Suspects

**a. Figure 1-1-2 below shows the flow of procedures of holding suspects in custody after arrest by judicial police officers.**

### Figure 1-1-2 Procedures from arrest to prosecution




With the exception of arresting a flagrant offender, an arrest is carried out based on a warrant (arrest warrant) that is issued upon review by a judge who finds that there is a probable cause to suspect that the suspect has committed a crime. When the police arrest a suspect, they are required to immediately inform the suspect of the essential facts of the alleged crime, as well as his or her right to appoint a defence counsel. They must also give the suspect an opportunity to explain his or her side of the story, and if they find no need for further detention, they must release the suspect.

In the event that detention is deemed necessary, the police are required to refer the suspect to the public prosecutor within 48 hours from the point at which the suspect was taken into custody.

When the public prosecutor receives a suspect referred by the police, the prosecutors are required to provide the suspect an opportunity to provide an explanation. If the prosecutor finds there is no need for detention, the suspect is released. When there is a need for detention, a request for detention must be made within 24 hours from the point of the receipt of the suspect and within 72 hours from the point of holding the suspect in physical custody. The judge who receives the request for detention informs the suspect of the alleged facts of the crime and listens to the statement of the suspect. The detention warrant is issued if the judge finds that there is a probable cause to suspect that the suspect has committed the offence in question and that there is a risk of his or her concealing or destroying evidence or fleeing from justice.

In principle, suspects may only be detained for 10 days, but this period may be extended up to

another 10 days if the judge finds that there is reasonable cause to prolong the detention period.

Hence, as explained above, the maximum period of time during which a suspect may be held in custody is 23 days, which is subject to several rounds of review by judges from the point of the arrest to the point of the indictment. This timeframe applies in the same way to any complex and serious cases which require extensive investigations. The public prosecutor normally conducts and finishes necessary investigations during this period to make the decision on whether or not to prosecute the suspect based on the perspectives which will be mentioned below in paragraph 3.

In cases where there is a probable cause to suspect that the suspect committed a crime other than the crime for which he or she has been arrested or detained, and the requirement for arrest and detention is satisfied, the suspect can be held in custody for that case. However, the system prevents unnecessary arrest and detention of suspects by ensuring that each case undergoes review by the judge as to the permissibility and necessity of the detention of the suspect.

**b. The Current Practice of Arrest and Detention**

As explained earlier, the principle of non-compulsory criminal investigation requires the arrest and detention of suspects to be carried out only when inevitably necessary, and in a majority of cases, investigations are carried out without holding suspects in custody. The percentage of cases in which the suspects were held in custody (cases in which suspects arrested by the police or other authorities and referred to public prosecutors and cases in which suspects are arrested by prosecutors) out of all cases disposed by public prosecutors offices (with the exception of negligent driving causing death or injury cases and road-traffic-related violations cases) has remained at approximately 36%.

**(3) Right to Appoint Defence Counsel and Measures to Ensure Proper Questioning of Suspects**

Suspects are entitled to appoint defence counsel at any time. If the detention warrant is issued against the suspects, they are also entitled to have a court-appointed defence counsel when the suspect himself/herself is unable to hire their own counsel due to lack of financial resources.

With regard to the investigative questioning of suspects, legal framework to prevent abusive or improper questioning, such as coercing confession, is in place. Firstly, the Constitution and the Code of Criminal procedure ensure suspects their right to remain silent. The Constitution clearly prohibits any forced or otherwise improperly obtained confessions to be used as evidence against the suspect, and the defendant cannot be found guilty if the only evidence against him/her is his/her own confession. While defence counsel are not entitled to be present at the investigative questioning of suspects, several measures to prevent improper questionings are in place, including the right of suspects to meet their defence counsel and receive advice from them in private. Audiovisual recording of investigative questioning of suspects is mandatory in certain cases and it is a common practice in the public prosecutors office to record the questioning even in cases that are not mandatory. The police are also increasing such recording as well.

## 3 Institution of Prosecution

In principle, only public prosecutors have the authority to institute prosecution for criminal cases. The public prosecutors have an established practice that they initiate prosecution only when there is a high probability of a conviction based on adequately presented evidence. This practice avoids imposing undue burden on an innocent person from standing at trial as a defendant. For this reason, public prosecutors do not institute prosecution if they find insufficient evidence to establish the elements of the crime

beyond the reasonable doubt. Even when the public prosecutor deems the evidence to be sufficient, public prosecutors have the discretion to avoid instituting prosecution (which is called *kiso-yuyo*, suspension of prosecution), based on the personal attributes, age and circumstances of the suspects, as well as the gravity and circumstances of the offence.

According to statistics for 2017, as for Penal Code offences, public prosecutors indicted 37% of cases, while 63% of them remained unindicted with no criminal trials held. Owing to the careful indictment decisions made by the public prosecutors, the conviction rate for indicted cases exceeded 99%.

## 4 Trial Proceedingss

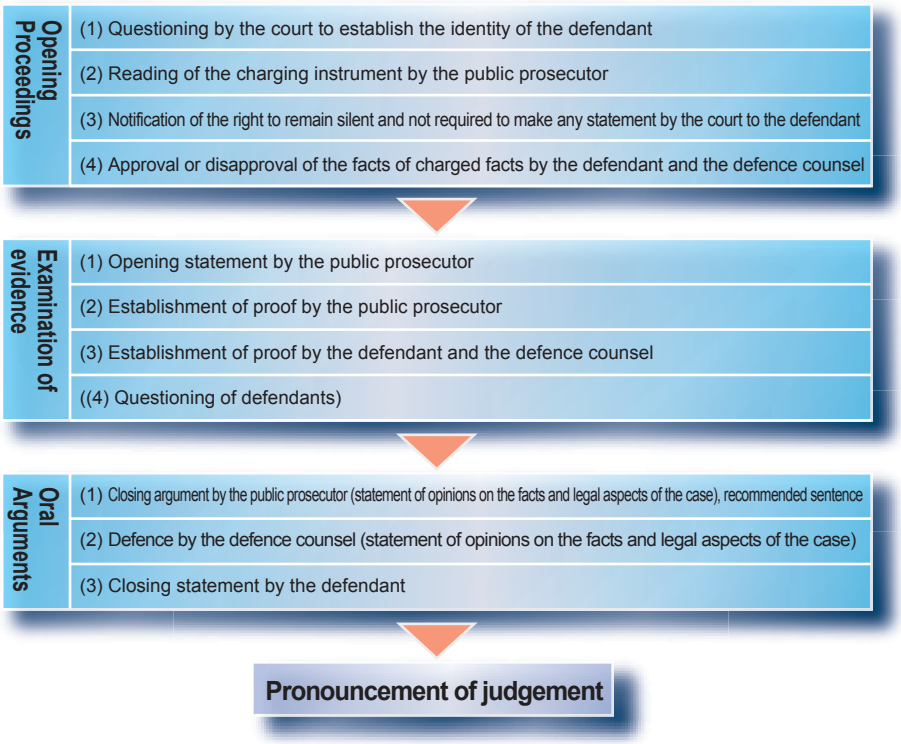
### (1) Overview

Trial proceedings for a criminal case commence when a public prosecutor institutes prosecution by submitting the charging sheet to the court.* A public prosecutor may, with the defendant's consent, prosecute a case in the Summary Court and request a sentence of a fine not exceeding one million yen or a petty fine. Majority of the trials of first instance are conducted by a court comprising either one or three judges (depending on the gravity of the indicted offence). In the trials for certain serious cases, a *saiban-in* trial is convened (See Part 3, Chapter 4) by a panel comprising three professional judges and six members of the public (*saiban-in*). In any event, trials are held in an open court where it can be observed by anyone. The court hears the argument of both the prosecution and the defence, and upon examining the evidence and the witnesses, renders an order of conviction or acquittal of the defendant in the indicted case. If found guilty, the court decides and pronounces the sentence to be imposed on the accused.

The procedural flow of trials of first instance is shown in Figure 1-1-3 below. In general terms, it consists of opening proceedings, examination of evidence, oral arguments and judgment.

* Upon defendant's consent, misdemeanour cases punishable by fine not exceeding one million yen or petty fine can be handled by the summary court in summary proceedings that examine only documented evidence.

## Figure 1-1-3 Trial proceedings




### (2) The Burden of Proof for Public Prosecutors and the Adversarial System

Public prosecutors bear the burden of proof, i.e. the responsibility at trial to prove beyond a reasonable doubt by evidence that the accused is guilty. If public prosecutors fail to prove beyond a reasonable doubt by clear and convincing evidence that the defendant committed the indicted offence, the defendant will not be found guilty. The defendant is presumed innocent until proven guilty (the principle of presumption of innocence).

When a suspect is prosecuted, the court receives only the charging sheet from public prosecutors. Evidence that has been gathered in the investigation or the written statements prepared during the investigation are not submitted at this stage. In principle, the court does not examine evidence *ex officio* (In other words, the court only examine evidence upon the request of the one of the parties to the case). The evidence that the court can refer to for fact finding of the criminal offence must be recognized by law as admissible. This includes evidence that is requested by public prosecutors, defendants or defence counsel to be examined by the court, evidence that is stipulated to by the parties, and sworn testimony in an open court. Any evidence that public prosecutors have requested to be examined must be disclosed to the defence counsel in advance.

With regard to the admissibility of evidence, the hearsay rule has been incorporated into Japan's criminal procedure law, which in principle prohibits use of out-of-court written and verbal statements. If the defence do not consent to the use of such statements, including documents as those of important eye-witness statements, public prosecutor must prove the facts by examining the witnesses in court, and the credibility of such testimony may be tested in cross-examination by defence counsel.

Unlike some of the common law countries, there is no guilty plea system that can impose imprisonment or other sentence without conducting a substantial examination of evidence because the defendant pleaded guilty, thus, even in cases where the defendant admits his own guilt, public prosecutors still bear the same burden of proof.

Hence, public prosecutors always bear a high burden of proof under the stringent limitations of admissibility of evidence, and this system of due process ensures that the innocent people are not wrongfully convicted. Based on this system, the court determines the facts of case based on the law and evidence, from a fair and neutral standpoint, and based on strict standard of proof, carefully decides whether or not to convict the defendant.

**(3) Ensuring the Appropriateness of Court Decisions**

The court does not receive any documents other than the charging sheet at the stage of indictment and commences the trial without any prejudice or prejudgment about the case. The court then decides whether the defendant is guilty or not guilty based on close examination of the arguments and the evidence presented by the public prosecutors, as well as the arguments and evidence presented by the defence.

The court is required to describe the reasons for its decision of guilty or not guilty in a written judgment. If the parties are not satisfied with the decision made by the court, they can appeal to a higher court and if there are any legal errors or flaws in logic or reasoning in the decision made by the court of first instance, these are corrected by the appellate courts. In this way, the appropriateness of court decisions is ensured through the review of the court's decision.

**(4) Detention and Bail after Prosecution**

In cases where a detained suspect is indicted, he or she may continue to be held in detention as a defendant (for period of two months from the institution of prosecution, which may be extended every month in cases where it is especially necessary to continue the detention).

However, the detained defendant may be released on bail (releasing the defendant from custody on conditions with the payment of the bail bond). When bail is requested by the defendant, it must be granted unless exceptions apply, such as the probable cause of concealment or destruction of evidence. Even when such exceptions apply, the defendant may be granted bail at the discretion of the court (or a judge, if prior to commencement of the trial) when it is deemed appropriate.

According to statistics for 2018, approximately 32% of the defendants who had been detained were released on bail. Furthermore, bail was granted for approximately 68% of the defendants who made the request.

**(5) Duration of Proceedings**

According to statistics for 2018, the average duration for proceedings in the first instance (the time taken from the acceptance of the case by the court until the disposition of the case) was about 11 months, including those cases that underwent pretrial arrangement proceedings, which are often undertaken for serious and complex cases.

# Section2 Flow of Procedures for Delinquent Youths

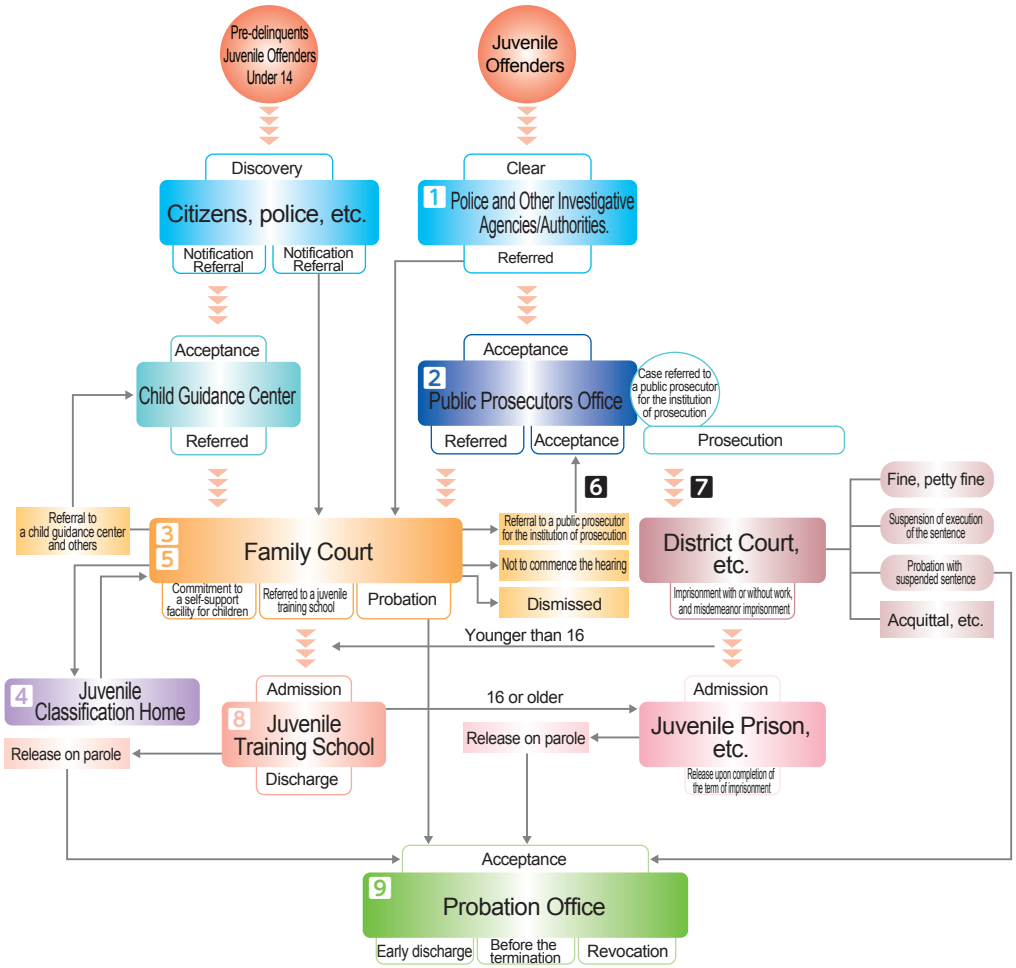
## 1 Overview

Even in cases where the suspect is a juvenile (below 20 years of age), investigations are basically undertaken based on the Code of Criminal Procedure. However, juveniles are generally less mature than adults and are more open to change. Hence, when a juvenile has committed a crime, special juvenile proceedings are carried out.

## 2 Flow of Procedures

The flow of procedures concerning delinquent juveniles is shown in Figure 1-1-4 below.

### Figure 1-1-4 Flow of procedures for Delinquent Youths




**(1) Police and other organizations**

When a delinquent act or a criminal offence committed by a juvenile is cleared by the police or other organizations, the case, in principle, is referred to public prosecutors.

**(2) Public Prosecutors Office**

Upon the completion of the prosecutor's investigation, when a public prosecutor suspects that the juvenile committed a criminal offence, or when the public prosecutor finds no such suspicion but finds a likelihood of the juvenile committing a crime (problematic behaviour that may lead the juvenile to criminal offences, making it highly necessary to protect the juvenile in question) or other grounds for holding a hearing at a family court, the case will be referred to the family court.

**(3) Family Court**

The family court orders a family court probation officer to investigate the juvenile's personal capacity, environment and other factors.

**(4) Juvenile Classification Home**

Juvenile classification homes carry out assessment of juveniles based on expert knowledge in the fields of medicine, psychology and pedagogy, and submits the results of assessment to the family court.

**(5) Family Court**

When the family court deems, based on its review of the case records and other documents, that there is no reason for holding the hearing, or that it is inappropriate to hold the hearing, it makes the decision not to commence the hearing; when the family court deems it appropriate to commence a hearing, a closed hearing is convened. The public prosecutor may be involved in the hearing in certain serious cases when the family court finds it necessary for proper fact-finding of delinquency and orders the public prosecutor to be involved.

As a result of a hearing conducted based on the investigation referred to in paragraph (3) above and the assessment in paragraph (4) above, cases are dismissed where protective measures are deemed unnecessary; in cases where such protective measures are deemed appropriate, the juvenile may be placed on probation or referred to a juvenile training school.

**(6) and (7) Referral to a Public Prosecutor and Prosecution**

When the family court finds, as a result of the hearing, that criminal proceedings are deemed appropriate for a case which is punishable by death or imprisonment with or without work, the case is referred to the public prosecutor.

When the family court finds at the hearing that a juvenile who is 16 years or older have caused someone's death through deliberate criminal actions, the case must be referred to the public prosecutor in principle, and the public prosecutor who receives the case is required, in principle, to prosecute the juvenile.

**(8) Juvenile Training Schools**

Juveniles who are referred to juvenile training schools as protective measures are committed to type 1, 2 or 3 juvenile training schools. They are then provided correctional education and progress towards rehabilitation with support for reintegration into society. Sentenced juveniles who are under 16 years of age are committed to type 4 juvenile training schools when necessary.

**(9) Probation Office**

Juvenile delinquents who have been placed on probation by a family court, or those who are provisionally permitted to be released from a juvenile training school, receive instructions, supervision, guidance and assistance from probation officers and *hogoshi* (volunteer probation officers) for rehabilitation and a smooth return to society.

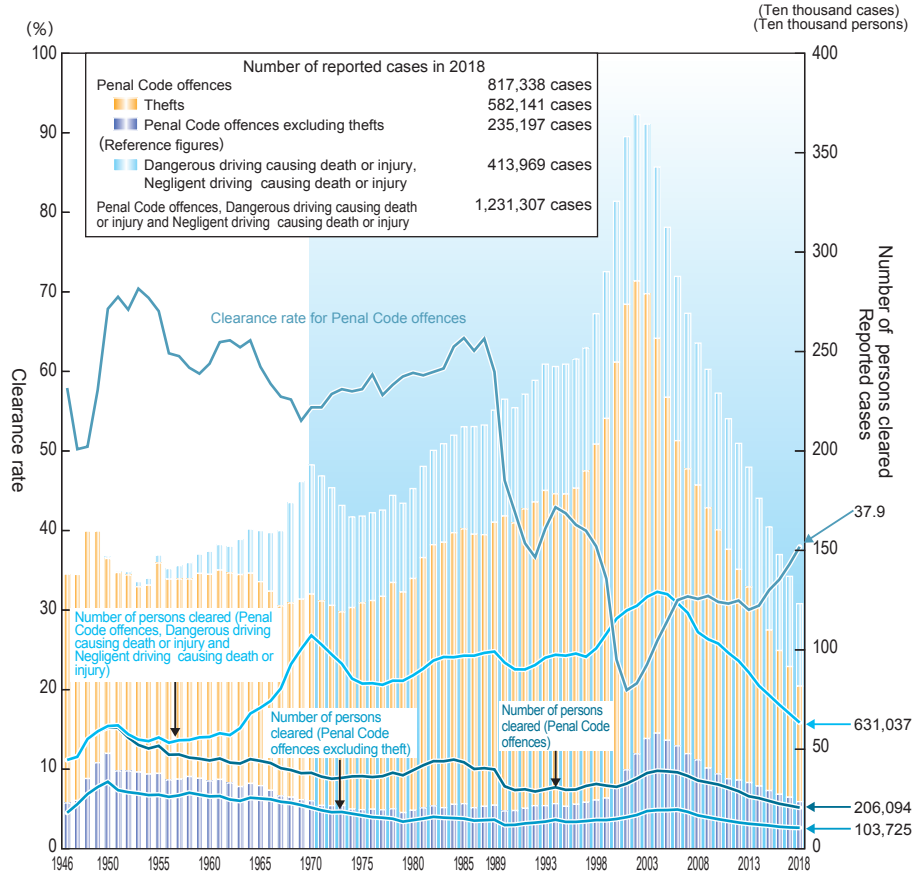
# Chapter 2 Trends in Criminal Cases

## 1 Penal Code Offences

(1) Figure 1-2-1 below shows the trend of the number of reported cases, persons cleared and clearance rate for Penal Code offences (not including traffic-related negligence offences) since 1946.

### Figure 1-2-1 Penal Code offences: reported cases, persons cleared and clearance rate

(1946～2018)




Note 1: Prepared based on statistics from the National Police Agency.
2: The figures until 1955 include violation of laws and regulations of criminal nature committed by juveniles under 14 years of age.
3: "Penal Code offences" until 1965 do not include negligence in the pursuit of social activities causing death or injury and gross negligence causing death or injury.
4: Dangerous driving causing death or injury is included in "Penal Code offences" for years 2002-2014. Since 2015, the said offence is included in "Dangerous driving causing death or injury, and Negligent driving offences causing death or injury".

Source: White Paper on Crime 2019

The number of reported cases for Penal Code offences in 1970 was about 1.28 million cases but fell to about 1.19 million cases in 1973, marking the post-war low of reported cases at that time. The number began to rise again the following year, reaching a new record high for the post-war era every year after 1996 and exceeding 2.85 million cases in 2002. In 2003, the number of cases fell again and continued decreasing for 16 consecutive years thereafter. In 2018, a new post-war record low of 817,338 cases was recorded, and a new record low for the post-war era has been recorded every year since 2015.

The crime rate for Penal Code offences (the number of reported cases per 100,000 people) follows a

similar trend to the number of reported cases. The crime rate was 1,233.9 in 1970 but reached 1,091.2 in 1973, marking the post-war low at that time. Then, it started on an upward trend and recorded a post-war record high of 2,238.7 in 2002. However, it began to fall from 2003 and has been recording a new post-war record low every year since 2013, reaching 646.4 in 2018.

(2) The main statistical data for Penal Code offences in 2018 are shown below. (Reference: Total population is 126,443,000)

## Table 1-2-2 Main statistical data for 2018 (Penal Code offences)

(Year-on-year) [Compared to 1989/Compared to 2003]

| | | | |
|---|---|---|---|
| (1) Number of reported cases | | | |
| Penal Code offences: | 817,338 cases | ( -97,704 cases -10.7%) | [ -51.2% • -70.7%] |
| Penal Code offences excluding theft: | 235,197 cases | ( -24,347 cases -9.4%) | [+24.0% • -57.6%] |
| (Reference) | | | |
| Penal Code offences, Dangerous driving causing death or injury and Negligent driving causing death or injury: | 1,231,307 cases | ( -137,048 cases -10.0%) | [ -45.5% • -66.2%] |
| Of which, Dangerous driving causing death or injury, Negligent driving causing death or injury: | 413,969 cases | ( -39,344 cases -8.7%) | [ …. -51.6%] |
| Of which, Dangerous driving causing death or injury: | 613 cases | ( -57 cases -8.5%) | [ …. +99.0%] |
| Of which, Negligent driving causing death or injury: | 413,356 cases | ( -39,287 cases -8.7%) | [ -29.7% • -51.7%] |
| (2) Number of cases cleared | | | |
| Penal Code offences: | 309,409 cases | ( -17,672 cases -5.4%) | [ -59.9% • -52.3%] |
| Penal Code offences excluding theft: | 118,865 cases | ( -3,920 cases -3.2%) | [ -22.4% • -44.6%] |
| (3) Number of persons cleared | | | |
| Penal Code offences: | 206,094 persons | ( -8,909 persons -4.1%) | [ -34.2% • -45.7%] |
| Penal Code offences excluding theft: | 103,725 persons | ( -2,040 persons -1.9%) | [ -11.8% • -44.9%] |
| (Reference) | | | |
| Penal Code offences/Dangerous driving causing death or injury, and Negligent driving causing death or injury: | 631,037 persons | ( -49,267 persons -7.2%) | [ -32.5% • -50.3%] |
| Of which, Dangerous driving causing death or injury, and Negligent driving causing death or injury: | 424,943 persons | ( -40,358 persons -8.7%) | [ …. -52.3%] |
| Of which, Dangerous driving causing death or injury: | 606 persons | ( -47 persons -7.2%) | [ …. +96.8%] |
| Of which, Negligent driving causing death or injury: | 424,337 persons | ( -40,311 persons -8.7%) | [ -31.7% • -52.3%] |
| (4) Crime rate | | | |
| Penal Code offences | 646.4 | (-75.8pt) | [ -711.7 • -1,538.6] |
| Penal Code offences excluding theft | 186.0 | (-18.8pt) | [ +32.1 • -248.1] |
| (Reference) | | | |
| Penal Code offences, Dangerous driving causing death or injury and Negligent driving causing death or injury: | 973.8 | (-106.1pt) | [ -861.4 • -1,881.7] |
| Of which, Dangerous driving causing death or injury, Negligent driving causing death or injury: | 327.4 | (-30.4pt) | [ …. -343.0] |
| Of which, Dangerous driving causing death or injury: | 0.5 | (-0.0pt) | [ …. +0.2] |
| Of which, Negligent driving causing death or injury: | 326.9 | (-30.3pt) | [ -150.2 • -343.3] |
| (5) Clearance rate | | | |
| Penal Code offences | 37.9% | (+2.1pt) | [ -8.3pt • +14.6pt] |
| Penal Code offences excluding theft | 50.5% | (+3.2pt) | [ -30.2pt • +11.9pt] |

Note: Prepared based on statistics from the National Police Agency and the Statistics Bureau, Ministry of Internal Affairs and Communications

Source: White Paper on Crime 2019

In 2018, the number of reported cases, cases cleared, persons cleared and crime rate for Penal Code offences were lower than in the previous year. On the other hand, the clearance rate increased in comparison with the previous year.

Looking at the number of reported cases for Penal Code offences in 2018 by the type of offence, theft made up the largest number at about 580,000 cases (71.2% of all cases), followed by property damage (9.6% of all cases), fraud (4.7% of all cases), assault (3.8% of all cases) and bodily injury (2.8% of all cases). There were 915 cases of homicide, 1,787 cases of robbery and 1,307 cases of rape. While there are offences, such as theft and property damage, that have continued to decrease in number in recent years, there are other offences, including fraud, assault and bodily injury, the numbers of which have not fallen significantly or have even increased.

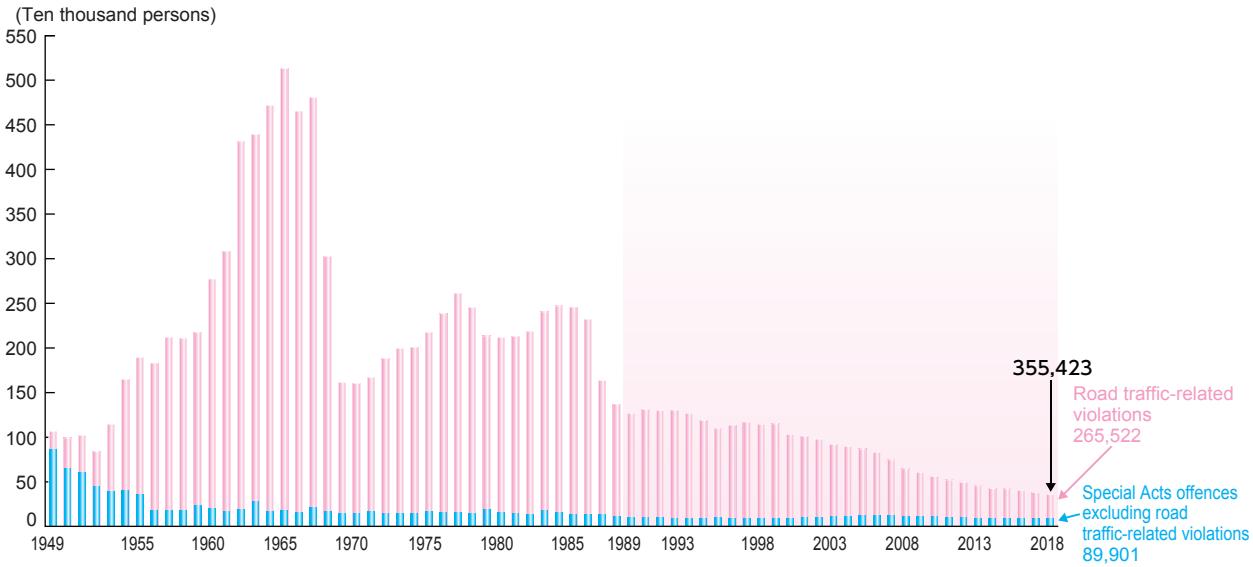
The clearance rate tends to be high for serious crimes such as homicide (96.8%) and robbery (87.2%) and relatively low for crimes such as theft (32.7%) and property damage (11.7%). Looking at the number of persons cleared for Penal Code offences by age group, the percentage of those under the age of 20 has been falling in recent years, remaining at 11.6% in 2018. However, the percentage of those aged 65 or older has been rising in recent years, reaching 21.7% in the same year. Furthermore, the number of persons cleared for Penal Code offences in the same year, classified by gender, was 79.1% for males and 20.9% for females. The number of foreign nationals cleared for Penal Code offences in the same year was 10,065 persons.

## 2 Special Act Offences

(1) Figure 1-2-3 below shows the trend of the number of persons received by public prosecutors for Special Act offences since 1949.

### Figure 1-2-3 Special Acts offences: Persons received by public prosecutors

(1949～2018)




Note: Prepared based on Criminal Statistics and Annual Report of Statistics on Prosecution.

Source: White Paper on Crime 2019

The number of persons referred to public prosecutors for overall Special Act offences decreased significantly with the enforcement of the Traffic Violation Notification System (p.26) in 1968, and then it remained at around 2 million people after 1974. This number fell significantly once again with the ex-

pansion of the scope of the application of this system in 1987. After that, the number rose and fell repeatedly, but then began to continuously decrease for 19 consecutive years from 2000. Since 2006, it has continued to renew the record low from 1949. Meanwhile, the number of persons referred to public prosecutors for Special Act offences excluding road traffic-related violations, was about 140,000 persons in 1970, remaining at this level while peaking at about 190,000 persons in 1979. From 1989 to 2000, the number fluctuated, but it increased from 2001 to reach a high of about 120,000 persons in 2007. After that, it began a downward trend, despite an increase by 920 persons in 2018.

(2) The statistical data for major Special Act offences in 2018 are shown as follows.

## Table 1-2-4 Main statistical data for 2018 (Special Act offences)

| | Number of persons receives by public prosecutors | (Percentage) | (Year-on-year) | |
|---|---|---|---|---|
| (1) Violations of the Road Traffic Act: | 264,612 persons | (74.4%) | (-22,737 persons | -7.9%) |
| (2) Stimulants Control Act violations: | 15,843 persons | (4.5%) | ( -214 persons | -1.3%) |
| (3) Minor Offences Act violations: | 7,866 persons | (2.2%) | ( +111 persons | +1.4%) |
| (4) Waste Management and Public cleaning Act violations: | 7,128 persons | (2.0%) | ( +344 persons | +5.1%) |
| (5) Immigration Control and Refugee Recognition Act violations: | 5,913 persons | (1.7%) | ( +903 persons | +18.0%) |
| (6) Firearms and Swords Control Act violations : | 5,835 persons | (1.6%) | ( +198 persons | +3.5%) |
| (7) Cannabis Control Act violations: | 5,338 persons | (1.5%) | ( +798 persons | +17.6%) |
| (8) Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children violations: | 3,576 persons | (1.0%) | ( +502 persons | +16.3%) |
| (9) Act on Securing Compensation for Automobile Accidents violations: | 3,461 persons | (1.0%) | ( -67 persons | -1.9%) |
| (10) Act on Prevention of Transfer of Criminal Proceeds violations: | 2,456 persons | (0.7%) | ( -17 persons | -0.7%) |
| Other | 33,395 persons | (9.4%) | | |
| | | | | |
| Total number: | 355,423 persons | (100.0%) | (-22,080 persons | -5.8%) |

| | | | |
|---|---|---|---|
| [Total number for 1989] | 1,261,040 persons | [Compared to 1989] | -905,617 persons, (-71.8%) |
| [Total number for 2003] | 917,694 persons | [Compared to 2003] | -562,271 persons, (-61.3%) |

Note : Prepared based on the Annual Report of Statistics on Prosecution.

Source: White Paper on Crime 2019

Of the number of persons referred to public prosecutors for Special Act offences in 2018, approximately three-quarters were for violations of the Road Traffic Act, followed by violations of the Stimulants Control Act, the Minor Offences Act, the Waste Management and Public Cleansing Act, the Immigration Control and Refugee Recognition Act, the Firearms and Swords Control Act and the Cannabis Control Act. While the number of Road Traffic Act violation has continued to fall in recent years, violations of the Cannabis Control Act and the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children, have been on the rise.

# Chapter 3 Corrections

## 1 Overview

Corrections contributes to the smooth operation of criminal and juvenile justice proceedings by ensuring the appropriate treatment of inmates corresponding to their respective legal statuses while securing their detention and respecting their human rights. It fulfils the roles of preventing recidivism of adult and juvenile offenders and protecting society by reducing the number of future victims.

In Japan, correctional facilities include penal institutions, juvenile training schools and juvenile classification homes. Treatment is carried out at each facility corresponding to the individual needs of the inmates.

## 2 Treatment in Penal Institutions

Penal institutions consist of prisons, juvenile prisons and detention houses. Detention houses are mainly used for the detention of suspects and accused persons. Their purpose is to prevent people in pre-trial detention from escaping and to prevent them from concealing or destroying evidence; at the same time, detention houses ensure that there is no interference with the detainees' right to counsel and right to prepare a defence. These rights help to ensure that detainees receive a fair trial.

Tokyo Detention House

For persons serving custodial sentences, prisons and juvenile prisons implement various forms of treatment in order to stimulate motivation for reformation and rehabilitation and to prepare them for re-entry and reintegration into society.

Fuchu Prison

In the treatment of sentenced inmates, scientific studies are conducted on the personality traits and social adaptability of each individual, treatment guidelines are formulated and correctional treatment is carried out based on these guidelines. Prison work is the essential element of treatment for the majority of sentenced inmates, i.e. those who are sentenced to imprisonment with work. Such prison work is, to the extent possible, encourage sentenced inmates to work and help them acquire vocationally useful knowledge and skills. Sentenced inmates may participate in vocational training as part of their prison work. In addition, taking into consideration their preference and suitability, they may also be provided opportunities to participate in production work, social contribution work and other work such as household or maintenance.

Educational activities for sentenced inmates include treatment programmes and academic programmes, which are a part of correctional treatment. Other key educational activities include

guidance at the commencement of the sentences and guidance for release, advice and guidance by volunteer prison visitors, and recreational activities.

It is necessary to provide proper living conditions for inmates in penal institutions, such as supplying food, clothing, bedding and daily necessities, as well as opportunities to exercise and bathe. Careful consideration is also given to hygiene and health management. When inmates fall ill, medical treatment is provided by the medical staff, which includes medical doctors. In addition, the inmates for whom specialized medical treatment is required are sent to medical prisons. In the treatment of inmates, sufficient care is also given to aspects such as correspondence, visits and access to books.

**Single room**

**Group room**

**Shower room**

**Waiting room for visitors**

**Medical Correction Center in East Japan**

## 3 Treatment in Juvenile Training Schools

Juvenile training schools provide correctional education and reintegration support for juveniles who have been placed under protective measures by the family court. The aim of juvenile training schools is to foster sound development of such juveniles.

Juvenile training schools are categorized into Type 1, Type 2, and Type 3 schools for protective measures. The type of juvenile training school that a juvenile is committed to is determined by the family court and is dependent on the juvenile's age and mental and physical conditions. With the exception of Type 3, facilities are separate for males and females. In addition, there are also Type 4 juvenile training schools for juveniles who are below 16 years of age and is serving criminal sentences instead of in prisons.

**Kakogawa & Harima Juvenile Training School**

**Guidance for problem behabior**

The juvenile training schools have their own designated curricula, including the focal points and standard period of their correctional education. Each facility establishes detailed correctional education curricula to provide tailored treatment for juveniles. At the same time, in consideration of the circumstances of each facility, each school makes efforts to promote unique treatment.

Furthermore, based on the individual characteristics and educational needs of each juvenile, an Individual Plan for Correctional Education is prepared to provide individually oriented education for each juvenile, taking reference from information and opinions from the family court and juvenile classification homes.

## 4 Treatment in Juvenile Classification Homes

Juvenile classification homes are facilities with the duty of: (1) Classifying juveniles to respond to the requests of the family courts; (2) Conducting necessary protective treatment for those housed in juvenile classification homes with protective measures; and (3) Providing assistance to prevent delinquency and crime in local communities.

Classification is clarifying the qualitative circumstances and environmental problems that have led to

**Osaka Juvenile Classification Home**

**Psychological test**

the delinquencies based on specialized knowledge and techniques such as medicine, psychology, pedagogy and sociology and indicating appropriate guidelines in order to contribute to the improvement of those circumstances.

In addition to the above, by utilizing expertise related to programmes regarding delinquency and crime and by understanding the behaviour of adolescents, juvenile classification homes function as "Ministry of Justice Support Centres." These centres work to support activities related to the sound development and prevention of delinquencies and crimes in the community while working together with related organizations and groups involved in the sound development of young people, such as child welfare institutions, schools and educational institutions, and private organizations, including NPOs.

# Chapter 4 Offender Rehabilitation

## 1 Overview

Offender rehabilitation programmes provide proper treatment to people who have committed crimes and delinquent juveniles. The aim is to prevent them from reoffending, or stop their delinquencies, and assist them to become self-reliant as sound members of society and improve and rehabilitate themselves. Offender rehabilitation programmes also ensure the proper operation of pardons and promote crime prevention activities, etc., thereby protecting society and enhancing the welfare of individuals and the public.

In Japan, offender rehabilitation is promoted in collaboration with rehabilitation volunteers such as volunteer probation officers and offender rehabilitation facilities (halfway houses) and a wide range of other institutions and organizations. These volunteers support offender rehabilitation programmes and help promote public understanding of the importance of these programmes.

Offender rehabilitation programmes mainly cover probation, urgent aid and urgent aftercare of discharged offenders, release on parole and provisional discharge from juvenile training schools, coordination of the social circumstances for inmates, pardon, and crime prevention activities.

## 2 Probation

### (1) Purposes and Types of Probation/Parole Supervision

The Ministry of Justice conducts probation/parole for offenders and juvenile delinquents as community-based treatment. Probation/Parole includes instruction, supervision, guidance and assistance so that offenders and delinquent juveniles become sound members of society.

The criminal justice procedures of Japan were explained in Chapter1. There are five types of people on probation: juveniles on probation, parolees from juvenile training schools, parolees from penal institutions, persons on probation with suspended sentence and parolees from women's guidance homes. The probation/parole periods for these five types are shown in Figure 1-4-1 below.

**Figure 1-4-1 Probationers/Parolees and Probation/Parole Period**

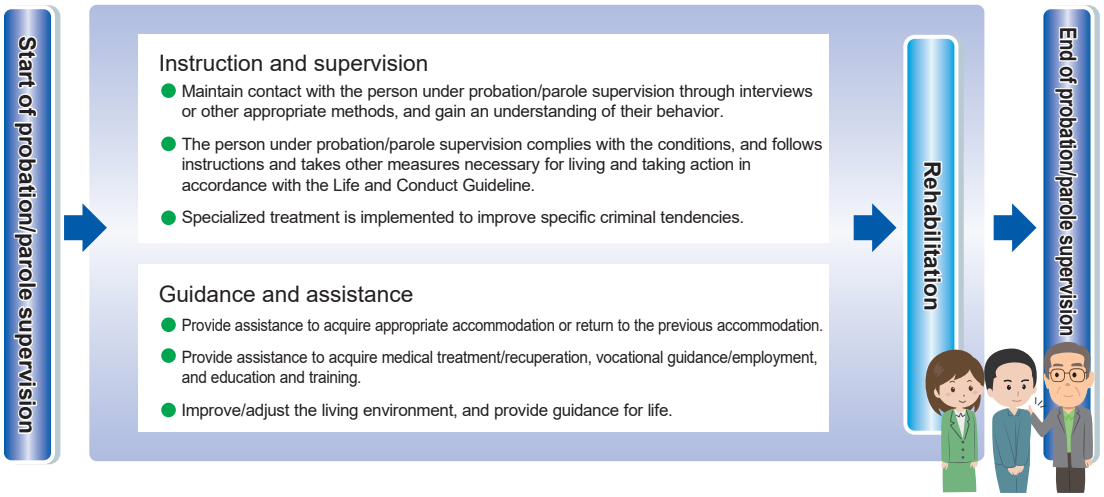
| Persons subject to probation/parole supervision | | Probation/parole supervision period |
|---|---|---|
| Juveniles on probation | (juveniles placed under probation in a decision made by a family court) | Until 20 years old or two years |
| Parolees from juvenile training schools | (juveniles granted discharge on parole from juvenile training schools) | In principle, until 20 years old |
| Parolees from penal institutions | (those granted parole from penal institutions) | Remaining period of sentence |
| Persons on probation with suspended sentence | (those granted full or partial suspension of execution of sentence in a decision made by the court and placed under probation) | Period of suspension of sentence |
| Parolees from women's guidance homes | (those granted discharge on parole from a women's guidance home) | Remaining period of guidance disposition |

The probation/parole supervision of juvenile probationers include general probation, short-term probation, probation for traffic incidents, and short-term probation for traffic incidents, based on treatment method and other factors.

### (2) Process and Methods of Probation/Parole

The probation officer and the *hogoshi* (volunteer probation officer) provide instruction, supervision, guidance and assistance for the probationers/parolees during the term of probation/parole.

#### Figure 1-4-2 Process and Methods of Probation/parole




## 3 Urgent Aid and Urgent Aftercare of Discharged Offenders

Anyone on probation/parole, or anyone released from physical detention in connection with criminal proceedings, who needs assistance or protection is eligible for the following measures.

#### Figure 1-4-3 Urgent Aid and Urgent Aftercare of Discharged Offenders

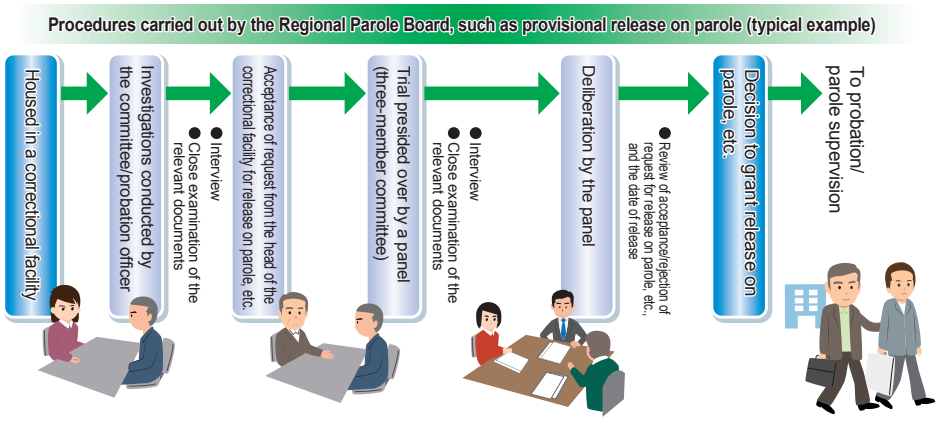
| Classification | Target | Period | Measures |
|---|---|---|---|
| Urgent aid, etc. | In the case of persons under probation/parole supervision, and where there is a possibility of hindrance to rehabilitation | Probation/parole period | -Provision of meals<br>-Assistance for medical treatment and recuperation<br>-Assistance for returning to accommodations<br>-Provision/loan of money<br>-Provision of rooms to stay in and the necessary fittings<br>-Support for employment and provision of the necessary guidance and advice to live (adapt to) a sound and healthy social life |
| Urgent aftercare of Discharged Offenders | Persons to whom (1), (2), and (3) below are applicable<br>(1) A person who has been released from physical custody through criminal proceedings or disposition for rehabilitation.<br>(2) A person who has been deemed to be unable to receive assistance from family and relatives or protection from public health and welfare institutions, or who cannot be rehabilitated through that alone.<br>(3) A person who has requested to receive urgent aftercare | In principle six months<br>May be extended for no more than a further six months in exceptional cases | |

*There are cases where the implementation of measures is carried out by the head of the probation office, and cases where it is contracted to persons operating rehabilitation service businesses.

## 4 Release on Parole and Provisional Discharge from a Juvenile Training School

Parole is a system aimed to achieve smooth reintegration into society by temporarily releasing those incarcerated in correctional institutions before the termination of the full sentence of incarceration. Persons released on parole shall be placed on parole supervision.

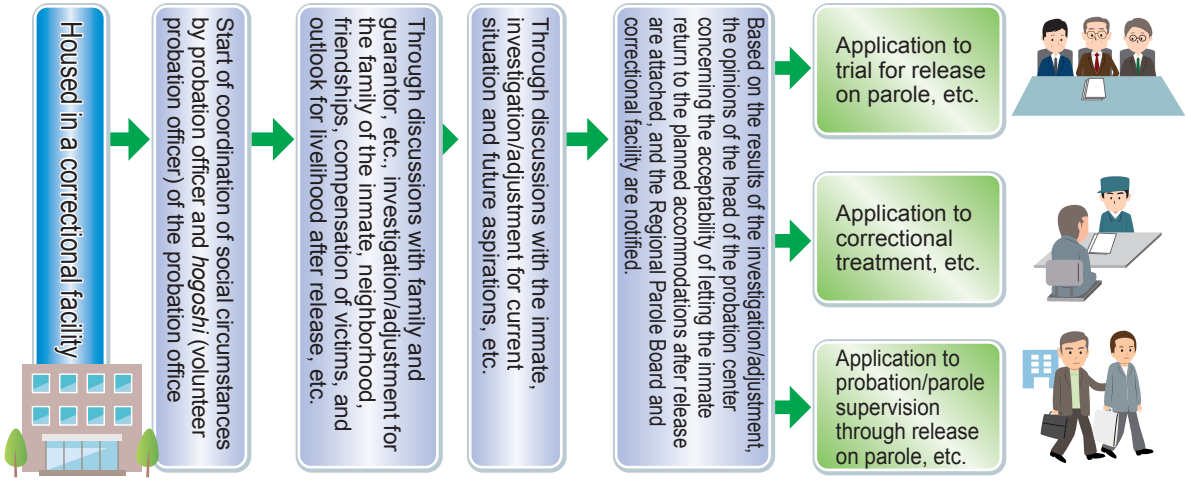
## Figure 1-4-4 Flow of Release on Parole and Provisional Discharge from Juvenile Training Schools




## 5 Coordination of Social Circumstances

To promote smooth reintegration into society, probation officers conduct "coordination of social circumstances" for inmates in correctional institutions. Probation officers research and coordinate inmates' residences, employment and living environments after release. Regional Parole Boards decide whether to grant parole considering the result of this research and coordination.

## Figure 1-4-5 Flow of coordination of social circumstances




## 6 Pardon

A pardon is an action of the executive branch that officially nullifies punishment or other legal effect of a sentence. There are two kinds of pardons: pardons by Cabinet order, which the types of crimes and punishments subject to the pardon are defined and pardons that examine specific people individually.

## 7 Crime Prevention Activities

Crime prevention activities refer to activities that raise awareness among the people to prevent crimes and delinquency, and they improve the social environment that gives rise to crimes.

The uniqueness of rehabilitation-focused crime prevention activities is that they promote social solidarity and empathy for social norms in the community with a view to preventing crimes and building a safe and secure community. These activities also aim to create environments to prevent criminals and juveniles from reoffending and falling into delinquency by strengthening understanding and by directing the attention of the community towards the recovery of such persons, as well as by enhancing community support and acceptance of offenders and delinquent juveniles as members of the community.

Crime prevention activities are implemented in cooperation with local governments and the relevant regional organizations, while volunteers such as volunteer probation officers play key roles. Specifically, through lectures, symposiums, delinquency prevention classes, delinquency consultations and guidance activities, volunteers call on local residents to build a society that is free from crime and delinquency, and encourage them to support rehabilitation of offenders and delinquent juveniles.

## 8 *Hogoshi* (Volunteer Probation Officers)

Volunteer probation officers are citizen volunteers who support the rehabilitation of offenders and juvenile delinquents in the local community. Based on the Volunteer Probation Officers Act, they are given the status of part-time national public officer commissioned by the Minister of Justice but are not paid any remuneration. *Hogoshi* (volunteer probation officers) engage in probation work in cooperation with probation officers while utilizing their networks in the private sector and greater understanding of their communities. In order for offenders and delinquent juveniles to successfully reintegrate into society, *hogoshi* (volunteer probation officers) support them through consultations and by helping them to adjust to their living environments, such as their residences and places of employment, after their release, so as to enable them to navigate life smoothly. There are approximately 46,763 *hogoshi* (volunteer probation officers) in Japan as of January 2020.

Part 2

# From the 1870s to 1960s

## – Modernization of Criminal Justice and Establishment of the Current Foundation

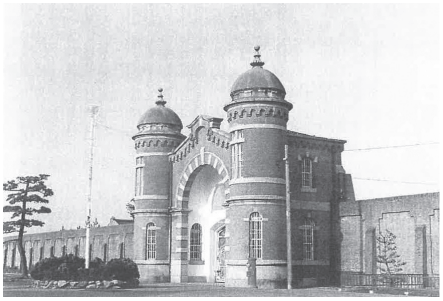
1 In Japan, the feudal shogunate system adopted a decentralized system for the authority of the respective feudal domains. This shogunate system, centred around the Shogun (General) as the leader of the samurai, came to an end in 1868, when a new government centred around the Emperor came into being. The new government sought to modernize Japan, holding up a vision of building the nation under a powerful, centralized administration. In order to close its gap with the European and American powers, Japan introduced aspects of Western civilization across a wide range of areas such as transportation, communications and industry, and promoted the development and growth of new industries as well as national prosperity and defence.

**The former MOJ building (completed in 1895)**


**Draft of the former Penal Code (promulgated in 1880)**

As Japan advanced its efforts towards modernization, it also worked on modernizing its criminal justice system by modelling it after Western systems, with the aim of amending the Unequal Treaties that allowed the establishment of foreign concessions, extraterritoriality for foreigners, and minimal import taxes for foreign goods. In the area of criminal law, Japan initially developed its legislation by drawing reference from the French legal system, but later came under the influence of the German legal system. The Penal Code was promulgated in 1907, while the Code of Criminal Procedure, based on the principles of the inquisitorial system, was promulgated in 1922.

In the area of corrections, prison system was established, including the enactment of the Prison Law in 1908. At the same time, efforts were made to modernize prison administration, such as the construction of Western-style facilities and improvements in prison hygiene. While offender rehabilitation services had initially been covered by volunteers, the enactment of the Judicial Rehabilitation Services Act in 1939 and other developments prompted the enactment of legislation establishing formal rehabilitation system.



**Nara Prison (completed in 1908)**

2(1) After World War II ended in 1945, Japan rapidly demilitarized and dramatically transformed itself to a more democratic society. The Constitution of Japan, which sets out the sovereignty of the people, respect for fundamental human rights and pacifism as fundamental principles, was promulgated in 1946. Its provisions on the protection of human rights, including 10 articles related to criminal justice, also brought about major changes to the criminal justice system. The Penal Code was partially amended in 1947 to conform to the principles of the Constitution of Japan, and the amendment included the repeal of criminal offences against the Japanese Imperial family, criminal offences against peace and order, and the crime of adultery. Furthermore, the aforementioned Code of Criminal Procedure of 1922 was amended in 1948, and the current Code of Criminal Procedure was promulgated. This law, based on the spirit of the Constitution of Japan, placed value on the fact-finding role of criminal procedure as well as on the protection of the human rights of suspects and the accused. It had incorporated many of the approaches in American law, such as the use of the adversarial system at the trial stage. It also adopted the principle that, upon initiating prosecution, public prosecutors must only submit the charging sheet to the court

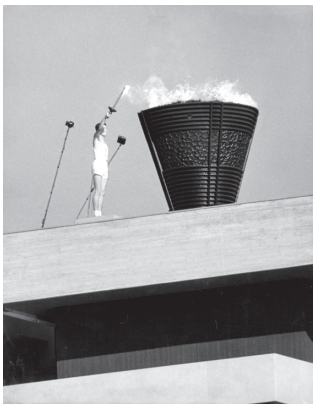
(saving the submission of evidence for the trial process) so that trial court judges can engage in trials without forming prejudices against the accused.

(2) Shortly after World War II, the people of Japan lived in poverty and destitution due to shortage of food and other supplies and accelerating inflation. Consequently, there was a rise in the incidence of property-related offences such as theft, and the number of reported cases for Penal Code offences reached approximately 1.6 million cases in 1948, marking the first peak after the war. However, the recovery of the economy and restoration of social order stemmed the rising trend of property-related offences.

The period from the end of the war until the 1950s was also a period when various special acts were enacted to address social conditions brought about by the post-war turmoil. For example, efforts to crackdown on certain criminal offences were strengthened. The Stimulants Control Act, prohibiting the possession and use of stimulants and other related conduct, was enacted in 1951 in response to the flow of a large volume of stimulants into the markets after the war, which spread rapidly across the devastated society. The Anti-Prostitution Act was enacted in 1956 as a countermeasure against the drastic increase of prostitution during the period of post-war turmoil. These special acts, such as the Stimulants Control Act, enacted during the period immediately after the end of the war until the 1950s, were amended and revised a number of times in order to enhance their scope and effectiveness.

In the area of corrections, the basic principles of the prison system (respect for human rights, rehabilitation and reintegration into society and self-sufficiency) were established, and the vision of an ideal prison system was presented, alongside the implementation of many improvements to the treatment of offenders. The establishment of the "Guidelines for Inmates' Diagnoses and Classification" in 1948 built the foundations for scientific classification. In the area of rehabilitation, the Offenders Rehabilitation Act was enacted in 1949 as a basic law for rehabilitation, while the Urgent Aftercare of Discharged Offenders Act and the Volunteer Probation Officers Act were enacted in 1950, and the Probation of Persons with Suspension of Execution of the Sentence Act was enacted in 1954. These legislations formed the basis of the rehabilitation system that Japan has in place today.

3 In 1955, Japan entered a period of high economic growth which was sustained into the 1960s. Japan made a strong impact in post-war reconstruction both domestically and overseas, successfully hosting the first Olympic Games in Asia in 1964 and launching the Tokaido Shinkansen as the first high-speed rail system in the world. In 1967, the total population of Japan exceeded 100 million*.



**Tokyo Olympics convened in 1964**
(c)Topfoto/amanaimages

In tandem with the recovery of the Japanese economy and the establishment of a new post-war society, ideological conflict among people rose while political doctrines and assertions became increasingly diverse and radical. As a result, public safety and labour incidents caused by extremists occurred in the 1960s. Furthermore, against the background of the rapid popularization of motor vehicles alongside economic recovery, the traffic environment underwent significant changes, and the number of traffic offences increased, including offences causing death or injury through

**Tokaido Shinkansen (commenced operation in 1964)**
(c)KYODO NEWS/amanaimages

**Incident at Yasuda Auditorium, Tokyo University (occurred in 1969)**
(c)KYODO NEWS/amanaimages

negligence. Consequently, in line with the new era, the Road Traffic Act was enacted in 1960 as the basic law regulating traffic on public roads and penalizing violations. Its penal provisions established penalties for criminal negligence as well as provisions for dual criminal liability, or the extension of criminal liability to include business entities or other principals. Subsequently, in response to the large number of traffic violation incidents at the time, the Traffic Violation Notification System was introduced in 1968 with the aim of adopting reasonable proceedings for traffic violation incidents corresponding to the severity of the incident, as well as expediting the processing of such incidents.

Hence, in the 1960s, there was a need to address a wide range of problems that accompanied post-war reconstruction, such as public safety and labour incidents and traffic incidents.

In the area of corrections, the foundations for the treatment of sentenced persons were established during this period. This was exemplified by the successive implementation of rehabilitative treatment measures which had developed based on the concept of individualized treatment of sentenced persons.

*Source: Population Estimation prepared by Statistics Bureau, Ministry of Internal Affairs and Communications
(https://www.stat.go.jp/data/jinsui/index.html)

Part 3

# Looking back over 50 Years, from 1970 to 2020



# Chapter 1 The 1970s (From 1970 to 1979)

## – Stable Operation of Criminal Justice Despite the Need for Difficult Responses to Public Security Incidents –

## Section 1 Developments in Criminal Justice

### 1 Overview

**World Expo in Osaka**
(c)PIXTA

(1) During the 1970s, the Japanese economy recorded negative growth in 1974 for the first time after the World War II. Although this marked the end of a period of rapid economic growth that had continued since the 1950s, it shifted to positive growth once again in the following year and continued to record stable growth since then. Globally, the 1970s brought significant changes to the Cold War structure that had begun after World War II, including the progressive easing of tensions between the United States and the Soviet Union. Against this backdrop, Japan hosted Asia's first World Expo in Osaka in 1970, as well as the Fourth United Nations Congress on Crime Prevention and Criminal Justice (The Fourth Congress), which is the United Nations' largest conference on crime prevention and criminal justice, in Kyoto. Alongside the Tokyo Olympics held in 1964, these events raised Japan's profile both domestically and overseas as a developed country.

Japan's economy and society stabilized in the 1970s, and the number of reported cases of crime declined while the security situation became relatively more stable.

(2) Addressing the problems caused by the policies that prioritize the economy, brought about by the significant economic development after the war, had become an issue at the time. For example, environmental pollution problems, such as air pollution and water contamination, became an issue across Japan in the mid-1950s. As this became a serious social issue, criminal legislation was put in place to regulate pollution in the 1970s (Section 1-2: Pollution Control Measures, p.29), and efforts were also made to strengthen the crackdown on traffic crimes resulting from the rapid popularization of motor vehicles. Moreover, the public security and labour incidents caused by extremists in the 1960s became even more radical and extreme in the 1970s, resulting in a number of serious violent incidents such as riots and hijacking by such extremists. A considerable number of police officers lost their lives in the line of duty to suppress the extremists, while many sacrifices were made in hijacking incidents, such as the release of pre-trial detainees based on extra-legal measures in order to save lives of hijacking victims. In order to deal with these riots and other incidents, Japan put in place legislative measures such as prohibiting the use of Molotov cocktails (i.e. firebombs) (Section 1-3: Coping with Serious Violent Public Security Incidents, p.30).

(3) Hence, although Japan struggled to cope with public safety incidents in the 1970s, a quarter of a century after the country made its fresh start after the war, the security situation and the operation of criminal justice in Japan could be described as being stable.

## 2 Pollution Control Measures

### (1) Background

After World War II, Japan's industrial structure, as represented by its economic growth and industrial development, underwent progressive changes which were accompanied by other changes in society such as the inflow of population into the urban areas and an increase in the number of automobiles. As a result, environmental pollution became a nationwide problem from around 1955.

In view of this, the Basic Law for Environmental Pollution Control was promulgated in August 1967. This law set out the responsibilities of business operators and the national and local governments in preventing environmental pollution with the aim of protecting the health of citizens and conserving the environment. The law also prescribed the basic measures to prevent environmental pollution. Furthermore, the following year in 1968, the Air Pollution Control Act and the Noise Regulation Act, among other laws, were promulgated and enforced, and various environmental standards were established.

Against this backdrop, the 64th session of the Diet, also known as the "Anti-Pollution Diet," convened in December 1970 and saw the revision or enactment of 14 laws related to environmental pollution, including the revision of the Basic Law for Environmental Pollution Control. Penal regulations for environmental pollution crimes were also established, including the enactment of the Act on Punishment of Crime to Cause Pollution Harmful for Human Health.

### (2) Details


**Officers inspect drainage / Headquarters pollution control**
(Source: White Paper on Police 2004)

The Act on Punishment of Crime to Cause Pollution Harmful for Human Health, alongside regulations based on other laws related to the prevention of environmental pollution, was enacted with the aim of contributing to the prevention of environmental pollution related to human health. While the penal provisions of environmental pollution-related administrative legislation had primarily served as regulations to increase the effectiveness of administrative measures, the Act on Punishment of Crime to Cause Pollution Harmful for Human Health prescribed penal provisions for acts that gave rise to environmental pollution by treating them as criminal offences. In other words, it has set out provisions to punish both the person who violated the Act as well as the business operator such as corporate entity, that caused danger to the lives of or physical danger to the public through the discharge of substances that are hazardous to human health through business activities of a factory or place of business. This law also stipulated punishment for parties that caused death or injury to people through such acts. Moreover, it provided for legal presumptions, based on strict criteria, on the relationship between emissions and the dangerous state that is occurring. Furthermore, the Air Pollution Control Act and Water Pollution Prevention Act were amended to strengthen penal provisions for environmental pollution offences.

Table 3-1-1 shows the number of persons newly received by public prosecutors nationwide for pollution-related offences since 1972, when various pollution-related laws were generally developed.

**Table 3-1-1 Number of persons received by public prosecutors for environmental pollution crimes**

(1972～1980)

| Year | Number of persons received | |
|---|---|---|
| | Actual number | Index |
| 1972 | 2,613 | 100 |
| 1973 | 3,999 | 153 |
| 1974 | 4,909 | 188 |
| 1975 | 5,504 | 211 |
| 1976 | 6,624 | 254 |
| 1977 | 6,574 | 252 |
| 1978 | 6,299 | 241 |
| 1979 | 6,605 | 253 |
| 1980 | 6,440 | 246 |

Note: Prepared based on materials from the Criminal Affairs Bureau, Ministry of Justice.

The number of persons newly received increased every year from 2,613 in 1976 to 6,624, marked the record in 1976, and then fluctuated. In 1980, the number decreased by 165 from the previous year to 6,440. Defined the figure in 1972 as 100, it marked 254 in 1976, the highest.

## 3 Coping with Serious Violent Public Security Incidents

### (1) Coping with Acts that Cause Danger to Aircraft and Offences of Extortion by Taking Hostages

#### a. Coping with Acts that Cause Danger to Aircraft

In March 1970, penal regulations were established for the crime of hijacking an aircraft while in flight. This came as the direct result of the hijacking of Japan Airlines Flight 351 (known as the "*Yodo-go* hijacking incident"), a passenger plane flying on a domestic route in Japan. At the time, there was also a need to comply with the requirements of the Convention for the Suppression of Unlawful Seizure of Aircraft, which aimed to regulate hijacking crimes.

In May of the same year, the Act on Punishment of Unlawful Seizure of Aircraft was enacted, in which crimes related to the unlawful seizure of an aircraft in flight through means such as assault or intimidation, or the exercising control over the operation of an aircraft, were established.

Following that, the Act on Punishment of Acts to Endanger Aviation was enacted in June 1974, for the purpose of concluding the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, which aimed at regulating the shooting down of aircraft and other unlawful acts targeting aircraft, other than by hijacking. This law prescribed provisions to punish acts that cause danger to flight operations, acts that cause aircraft to crash mid-flight and acts that destroy aircraft during operation.

#### b. Coping with Offences of Extortion by Those Having Taken Hostages

In September 1977, what was known as the "Dhaka incident" occurred. A Japanese passenger plane flying on an international route was hijacked and forced to land at Hazrat Shahjalal International Airport in Dhaka, Bangladesh. Demands were made by the hijackers for the release of persons held in custody in Japan. At the time, illegal offences were becoming increasingly radical and malicious such as the hijacking of aircraft, including this incident, and the occupation of foreign diplomatic missions. In response, measures were taken such as the partial revision of the aforementioned Act on Punishment of Unlawful Seizure of Aircraft to include provisions on offences related to extortion by aircraft hijackers. Furthermore, there was also a need to implement more effective controls on acts committed by those having taken hostages through other methods, in addition to the illegal seizure of aircraft.

In view of this, the Act on Punishment of Compulsion and Other Related Acts Committed by Those Having Taken Hostages was enacted in May 1978. This law established new penal provisions on acts in which two or more persons in cooperation with each other, unlawfully capture or confine other persons through the presentation of a weapon, and by taking such persons hostage, demand a third party to perform acts that they are not obligated to perform or to refrain from exercising their rights. At the same time, it also prescribed provisions to heavily punish acts in which hostages are killed by the

perpetrators of such crimes. Under this Act, provisions to penalize such crimes overseas were also prescribed.

This Act was revised in June 1987 to include provisions which penalize acts committed by those having taken hostages without placing the criteria of two or more offenders acting together and presenting a weapon.

### (2) Coping with Mob Violence Offences by Extremists

#### a. Background

Around 1968, Molotov cocktails have come into use frequently and in large quantities as the main weapon for mob violence offences committed by extremists. Around 1969, successive bombing incidents also took place. During the incident commonly known as the Shibuya riot incident, which took place in November 1971, police officers were burnt to death by Molotov cocktails.

This triggered discussions on the need to enact laws to regulate and prohibit the use of Molotov cocktails and explosives.

**Shibuya riot incident**
(picture provided by the National Police Agency)

#### b. Countermeasures

Consequently, the Act on Punishment of the Use and Others of Molotov Cocktails was first enacted in 1972 through legislation by Diet members, for the purpose of regulating the use of Molotov cocktails. This law prescribed penal provisions for the use, manufacture and possession of Molotov cocktails.

With regard to explosives, a part of the Poisonous and Deleterious Substances Control Act was revised the same year, setting out provisions to punish the possession of poisonous substances or deleterious substances that are flammable, combustible or explosive without justifiable grounds.

Similarly, in 1972, the police apprehended more than 4,000 people, as shown in the table below, and seized many weapons, in connection with the offences of unlawful assembly with weapons, injury, breaking into buildings, obstructing public duty, violation of Criminal Regulations to Control Explosives and violation of public safety ordinances.

The status of the use of Molotov cocktails before and after the enforcement of the Act on Punishment of Use and Others of Molotov Cocktails was 372 Molotov cocktails before enforcement (from January 1 to May 13) and 34 after the enforcement (May 14 to December 31). This clearly shows that the use of Molotov cocktails fell significantly after the enforcement of the law, and that the law was highly effective. However, it should be noted that, in the same year, still police officers were killed in the line of duty with 824 officers injured.

**Table 3-1-2 The number of the weapons used and seized**

(1972)

| | | |
|---|---|---|
| Explosives (Number) | Use | 20 |
| | Seized | 203 |
| | Total | 223 |
| Molotov cocktails (Number) | Use | 406 |
| | Seized | 440 |
| | Total | 846 |
| Poisonous and deleterious substances (Number) | Use | 1 |
| | Seized | 88 |
| | Total | 89 |
| Firearms (Number) | Seized | 13 |
| Metal pipes (Number) | Seized | 856 |
| Squared timber, bamboo poles (Number) | Seized | 3,808 |
| Glass bottles (Number) | Seized | 2,313 |
| Firecrackers, smoke candles (Number) | Seized | 213 |
| Stones (kg) | Seized | 3,414 |

Note: The number of explosives, Molotov cocktails and poisonous and deleterious substances seized is the number of weapons discovered and seized by the police before they were used.
White Paper on Police 1973

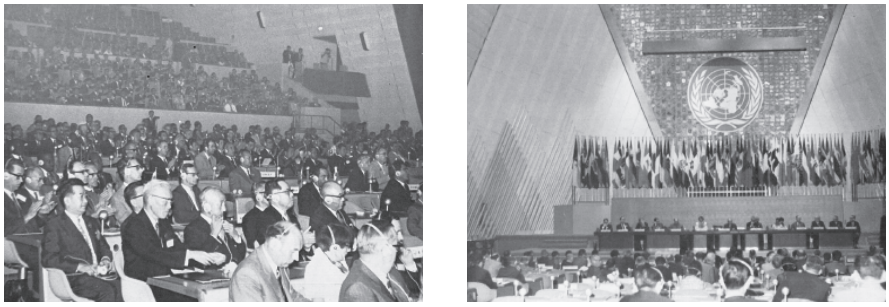
## Column 1 The Fourth UN Congress on Crime Prevention and Criminal Justice (the Fourth Congress)

In 1970, the Fourth UN Congress on Crime Prevention and Criminal Justice (hereafter, "the Fourth Congress") was convened in Kyoto. Former Prosecutor General BABA Yoshitsugu, who served as the President of the Congress, made the following remarks on the background history leading to the convention of the Fourth Congress in Japan:

> The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) has been operating impressively thanks to the efforts of everyone concerned. As a result, it clearly established, to all the countries of the world, that Japan's criminal justice system has developed to a comparable level with those of the so-called developed nations of the world, in areas of criminal justice, institutional correction and rehabilitation. Furthermore, I think that it has also appealed to the United Nations to recognize that Japan's Ministry of Justice possesses superb organizational capabilities, and therefore been asked to convene this global conference in Japan for the first time in Asia.

The Fourth Congress was held for 10 days from August 17 to 26, 1970, at the Kyoto International Conference Center, and welcomed more than 1,000 delegates including government representatives from 85 countries. The theme of the Congress was "Crime and Development," in light of the fact that the United Nations had designated the 1960s as the "Decade of Development" and implemented development programme accordingly, and that 1970 marked the first year for the next decade in which the second development programme would be implemented.

The outcome of the Fourth Congress was the adoption of a declaration, which could be described as the first political declaration of the Congress. Also known as the "Kyoto Declaration," this document carefully considered the impact of development on human lives and the environment and pointed out the urgent need for all countries to improve their planning for economic and social development. It also pointed out that it is clear that many countries do not pay adequate attention to many aspects of life in the process of development, despite the fact that crime was becoming an increasingly severe problem, both qualitatively and quantitatively. It observed that crime was a threat to all nations and undermines their efforts to achieve a more wholesome environment and better quality of life for their people, and that the problem of crime was becoming more serious worldwide. Accordingly, it (1) called upon all Governments to take effective steps to coordinate and intensify their crime preventive efforts within the context of economic and social development which each country envisages for itself, and (2) urged the United Nations and other international organizations to give high priority to the strengthening of international cooperation in crime prevention and, in particular, to ensure the availability of effective technical aid to countries desiring such assistance for the development of action programmes for the prevention and control of crime and delinquency. Hence, it was an extremely visionary declaration that has highlighted issues that are prevalent in modern times.



**The Fourth Congress**

# Section2 Domestic and Overseas Situation

**[1970]**

**Japan**

| | |
|---|---|
| March | Opening of the Japan World Expo (Osaka World Expo) |
| March | Japan Airlines Flight 351 (*Yodo-go*) hijacking incident |
| August | The Fourth United Nations Congress on Crime Prevention and Treatment of Offenders was convened in Kyoto |
| December | Amendment of the Basic Law for Environmental Pollution Control at the 64th Diet session known as the Environmental Session |
| ● | Number of reported cases for criminal offences peaked for the second time after the war at 1.93 million cases |

**Hostages of *Yodo-go* hijacking incident released**
(c)KYODO NEWS/amanaimages

**Overseas**

| | |
|---|---|
| March | Treaty on the Non-Proliferation of Nuclear Weapons (NPT) entered into force |
| December | Adoption of the Convention for the Suppression of Unlawful Seizure of Aircraft |

[Developments in criminal justice]
- Act on Punishment of Crime to Cause Pollution Harmful for Human Health enacted (See p.29)
- Act on Punishment of Unlawful Seizure of Aircraft enacted (See p. 30)

**[1971]**

**Japan**

| | |
|---|---|
| July | Environmental Agency was established |
| November | Shibuya riot incident occurred |

**Overseas**

| | |
|---|---|
| September | Adoption of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation |
| October | Decision admitting the People's Republic of China to the United Nations |

**Winter Olympic in Sapporo**
(c)KYODO NEWS/amanaimages

**[1972]**

**Japan**

| | |
|---|---|
| February | Winter Olympics held in Sapporo |
| February | Asama Sansō incident occurred |
| May | Administration of Okinawa returned to Japan Okinawa Prefecture was established |

**Overseas**

| | |
|---|---|
| May | Lod Airport massacre (in Tel Aviv) occurred |
| September | Signing of the Joint Communique of the Government of Japan and the Government of the People's Republic of China/Normalization of diplomatic relations between Japan and China |

**Asama-Sansō incident**
(c)KYODO NEWS/amanaimages

[Developments in criminal justice]
- Act on Punishment of Use and Others of Molotov Cocktails enacted (See p.31)
- Law on the Partial Amendment of the Poisonous and Deleterious Substances Control Act enacted (See p.31)

**[1973]**

**Japan**

February Switch to floating exchange rate system

● Number of reported cases for Penal Code offences reached a new post-war low of 1.19 million cases

**Overseas**

October Outbreak of the 4th Middle East (Arab-Israeli) War

October The First "Oil Shock"

**[1974]**

**Japan**

August Mitsubishi Heavy Industries bombing incident occurred

● First negative growth recorded since the end of World War II

**Overseas**

August US President Nixon resigns over the Watergate scandal

**Mitsubishi Heavy Industries bombing incident**
(c)KYODO NEWS/amanaimages

[Developments in criminal justice]
- Act on Punishment of Acts to Endanger Aviation enacted (See p.30)

**[1975]**

**Japan**

August Kuala Lumpur incident occurred (Hostage taking incident committed by the terrorist group Japanese Red Army in Malaysia.)

**Overseas**

April End of the Vietnam War

November The 1st Group of Six (G6) Summit convened in France

**[1976]**

**Japan**

February Lockheed scandals were exposed

**Overseas**

July Socialist Republic of Viet Nam was established (unification of North and South Viet Nam)

**[1977]**

**Japan**

September Dhaka hijacking incident occurred

**Overseas**

March Enforcement of the US-USSR. 200 nautical mile fishing zone (200 nautical miles era)

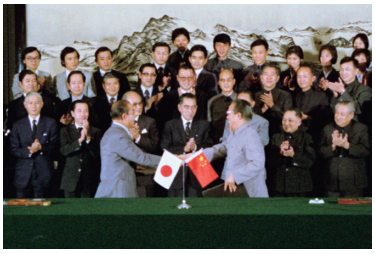
**[1978]**

**Japan**

December Douglas–Grumman scandal was exposed

**Overseas**

August Signing of the Treaty of Peace and Friendship between Japan and the People's Republic of China



**Japan and China Peace and Friendship Treaty**

(c)KYODO NEWS/amanaimages

[Developments in criminal justice]

- Act on Punishment of Compulsion and Other Related Acts Committed by Those Having Taken Hostages enacted (See p.30)

**[1979]**

**Japan**

June The 5th Group of Seven (G7) Summit convened in Tokyo

**Overseas**

January The Second "Oil Shock"

February Iranian Revolution

December USSR invaded Afghanistan

# Chapter 2 The 1980s (From 1980 to 1989)

## – Criminal Justice that Realized a Society Described as the Safest in the World –

## Section 1 Developments in Criminal Justice

### 1 Overview

(1) In the 1980s, Japan achieved economic growth and developed to become one of the leading economies in the world, creating a wealthy and prosperous society. For example, Japan ranked first in the world for the number of cars produced. Life in Japan and the social environment also underwent rapid changes, such as the concentration of the population in cities, the development of information processing systems such as computers, and the expansion of consumption underpinned by the development of consumer credit. Globally, the United States and the Soviet Union declared the end of the Cold War in 1989.

**Tokyo Disneyland opened**
(c)KYODO NEWS/amanaimages

The number of reported cases for Penal Code offences was on an increasing trend in the 1980s, rising from about 1.36 million cases in 1980 to about 1.67 million cases in 1989. One of the causes is considered to be an increase in the number of juvenile delinquency cases, such as shoplifting, bicycle theft and the embezzlement of lost property. Such increase happened against a background of societal changes, such as diversified value in the society, the decline in the capacity of families and schools to deter delinquency, and increased opportunity for committing crimes.


**The White Paper on Crime 1989**

The end of the 1980s was a period that saw a rise in the number of juvenile delinquency cases. However, if we were to consider the bigger picture, this was a time when the crime trend was relatively stable, with Japan becoming a secure country and rated as one of the safest countries in the world. The White Paper on Crime 1989 set out the following factors behind Japan's success in maintaining public safety: a national character with a strong law-abiding spirit, economic growth, low unemployment rates, high educational standards, presence of informal controls by the local community, geographical trait of being an island country, cooperation of the private sector with regard to the operation of criminal justice system, tight control over firearms, swords and drugs, effective policing activities as indicated by high clearance rate for offences, and appropriate and effective operation of criminal justice agencies.

(2) During the 1980s, the effort to fully amend the Penal Code, which began in the 1960s, as well as the effort to amend the Juvenile Act and the Prison Law, which began in the 1970s, continued. These legal amendments were large-scale projects implemented based on factors such as changes to the social

situation after the war. However, they did not come to fruition because of the sharply divided opinions for and against them. As a result, until the mid-1980s the criminal justice related legislation was limited to addressing specific ongoing challenges since the 1970s, such as developing necessary penal provisions to prevent the recurrence of bribery incidents such as the Lockheed scandals (Section 1-2: Increasing Statutory Penalty for Bribery Offences, p.37), establishing systems to support crime victims (Part 4, Chapter 4: Progress in Measures regarding Crime Victims and Related Matters, p.119), and promoting international cooperation against international crimes such as hijacking and international terrorism (Section 1-3: International Assistance in Investigations, p.38).

In the 1980s, Japan's criminal justice system achieved a society described as one of the safest in the world. However, the efforts to carry out full and extensive reviews of the system did not bear fruit, and it is fair to say that the system remained in a fixed state.

(3) In 1987, partial revisions were made to the Penal Code to penalize crimes committed by the use of computers, which had been difficult to address by the traditional categories of crime set out in the Penal Code, and to incorporate new provisions for crimes committed outside Japan in order to conclude international conventions (Section 1-4: Appropriate Response to Crimes Arising from the Widespread of Computers, p.39). Thereafter, legislation in the field of criminal justice gradually became more active.

## 2 Increasing Statutory Penalty for Bribery Offences

### (1) Background

In February 1976, the so-called "Lockheed scandal" was exposed, and the former Prime Minister was indicted in August of the same year for demanding and accepting large bribe. Increasing the statutory penalty for the offer and acceptance of bribes was already a matter of discussion in light of strengthening public officials' resilience against bribery and in response to the public's critical views towards corruption. The Lockheed scandals triggered even stronger condemnation towards the structural corruption of business and politics, and there were strong calls for measures to prevent recurrence.

As a measure to prevent recurrence, the government submitted a bill to the Diet in 1977 to partially amend the Penal Code to increase the statutory penalty for bribery offences. The draft bill was defeated twice, but it was backed by strong public opinion against corruption. The bill was submitted for the third time in 1980, and it was finally adopted and promulgated.

### (2) Details

In response to the increase of bribery cases, this amendment sought to apply penalties in accordance with the gravity of the cases, and it was expected to have a general deterrence effect. For these reasons, the bill focused on increasing the statutory penalty against bribery, making it possible to impose appropriate sentences corresponding to the gravity of the offence.

This amendment to the Penal Code resulted in the extension of the statute of limitations for prosecution from three years to five years for bribery offences. Such revision was deemed to have had a considerable effect on the investigation, making it easier to probe into such bribery cases.

**Table 3-2-1 Status of sentencing in the court of first instance for criminal acceptance of bribery**

(1978～1982)

| Year | Term of imprisonment | | | | B / A (%) | Of which, suspended execution of the sentence (C) | C / A (%) |
|---|---|---|---|---|---|---|---|
| | Total number (A) | One year or more (B) | 6 months or more | Less than 6 months | | | |
| 1978 | 178 | 92 | 63 | 23 | 51.7 | 160 | 89.9 |
| 1979 | 179 | 103 | 68 | 8 | 57.5 | 169 | 94.4 |
| 1980 | 134 | 73 | 58 | 3 | 54.5 | 126 | 94.0 |
| 1981 | 189 | 99 | 78 | 12 | 52.4 | 180 | 95.2 |
| 1982 | 160 | 102 | 47 | 11 | 63.8 | 151 | 94.4 |

Note: Prepared based on the Annual Report of Judicial Statistics

Source: White Paper on Crime

## 3 International Assistance in Investigations

### (1) Background

In light of the dramatic growth in international transactions, the increase in transnational crime and the frequent occurrences of acts of terrorism, such as hijacking by extremists, and international acts of corruption by multinational corporations, there has been a growing momentum around the world to further promote international cooperation to prevent international crimes. Member States have promoted international cooperation based on treaties, and have actively provided mutual cooperation at the highest possible level. Along with the increased number of requests for mutual legal assistance from foreign countries, there was also an increase in the number of cases in which Japan needed to seek assistance from other countries. With regard to judicial assistance, Japan has consistently responded to such requests in accordance with the Act on Assistance Based on Commission by Foreign Courts enacted in 1905. This law has also been the basis for Japan to request assistance from other countries, such as to request witness examination to the United States in the Lockheed scandals. However, with regard to mutual legal assistance in investigations, due to the lack of domestic law, the response by Japan's investigative agencies to the assistance requests from other countries had remained limited to traditional measures of gathering the required evidence and materials and providing them, to the extent that they were able to gain consent and cooperation of the people concerned. As a result, even if Japan needed to seek assistance from other countries, it was unable to obtain sufficient cooperation due to its inability to guarantee reciprocity, which is an international principle of mutual assistance.

The Lockheed scandals of 1976 and the hijacking incident of a Japan Airlines plane in Dhaka in 1977 occurred under these circumstances. Triggered by these events, it was strongly pointed out that Japan, too, needed to develop its legal framework for international assistance in investigations that covered all aspects. Hence, the Act on International Assistance in Investigation and Other Related Matters was enacted in May 1980.

### (2) Details

This law sets out the requirements and procedures for gathering and providing necessary evidence for investigations by foreign authorities. It also prescribed requirements and procedures for the provision of information and materials related to investigations to the International Criminal Police Organization (INTERPOL). The active use of this law contributes to preventing crime overseas and, by ensuring reciprocity, made it easier for Japan to obtain cooperation in criminal investigations from its

foreign counterparts. By accelerating and optimizing this process, the law has contributed significantly to international cooperation aimed at preventing transnational crime.

## 4 Appropriate Response to Crimes Arising from the Widespread of Computers

### (1) Background

In the 1980s, the development and widespread use of computer systems was extraordinary, and the use of such computer systems covered almost every aspect of life, ranging from daily tasks such as online banking systems or railway seat reservation systems to finance, transportation, communications, manufacturing, logistics and medicine. Meanwhile, a considerable number of illicit acts of exploiting the computer systems occurred, but the provisions of the Penal Code at that time which were enacted in 1907, were often inadequate to respond to such illicit acts.

The Penal Code was revised in 1987 to establish penal provisions for acts which became difficult to punish adequately —despite similar acts being punishable under the existing Penal Code—due to the changes in the business operation facilitated by emerging use of computers.

### (2) Details

As a result of this revision, the following offences were established: (1) unauthorized creation of electromagnetic records, which penalized unauthorized creation or distribution of electromagnetic record for use in the administrative process with the intent to bring about improper administration; (2) obstruction of business by damaging a computer, which penalized the act of damaging computers and/or electromagnetic records used for work purposes, or the act of obstructing work through means such as providing false data or unauthorized commands; (3) computer fraud, which penalized the act of acquiring unlawful profit by providing false data to computers used in administrative processes, and thereby creating false electromagnetic records relating to acquisition, loss or alteration of property rights.

Apart from the aforementioned revisions, new comprehensive provisions to punish crimes committed overseas were also established, which were necessary for Japan to conclude the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the International Convention Against the Taking of Hostages.

As seen above, the partial amendment to the Penal Code and other legislation in 1987 included the incorporation of new penal provisions that were in line with the informatization and digitization of the society. This legislation also incorporated provisions for crimes committed outside Japan, aimed at adequately responding to the need for international cooperation in crime prevention. This presents a good example of developing criminal laws in line with the changes of time and society.

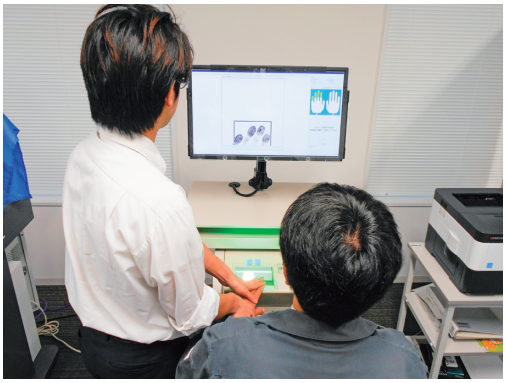
## Column 2 Investigations and Computers

1 Fingerprints and palm prints are deciding factors in identifying individuals because they are unique to every individual and unchanging throughout one's lifetime. Therefore, fingerprints and palm prints are extremely useful for identification of individuals. Since the introduction of the fingerprint system by the Tokyo Metropolitan Police Department in 1911 to the present day, fingerprints and palm prints have played a critical role in criminal investigations.

The National Police Agency introduced the automatic fingerprint identification system in 1982, which registered the fingerprints collected from suspects onto a database and enabled automatic comparison of fingerprints in the database collected from crime scenes for suspect identification.

Since 1998, all police stations under the respective prefectural police were equipped with live scanners that can collect the fingerprints of suspects in a short period of time. National Police Agency, the Tokyo Metropolitan Police Department and the prefectural police headquarters have equipped themselves with terminal devices to inquire about the latent fingerprints. National Police Agency, the Tokyo Metropolitan Police Department, the prefectural police headquarters and police stations was also connected online, accelerating and streamlining the work of matching fingerprints. Furthermore, since 2007, the automatic fingerprint and palm print identification system has been in operation, and has since been utilized for solving criminal cases.

2 In addition, in the 1980s, the police also streamlined investigations by using personal computers and mainframe computers to aggregate and analyse a vast volume of documentation and materials seized in investigation activities. These materials would take much manpower and time to analyse and process manually. As the accounting work of corporations became increasingly processed by computers in the second half of the 1980s, personal computers and mainframe computers were also used to read and analyse seized magnetic tapes, floppy disks and other data media.



**live scanners that can collect the fingerprints of suspects**

Picture provided by the National Police Agency

## Section2 Domestic and Overseas Situation

**[1980]**

**Japan**

- Ranked first in the world for the number of cars produced

**Overseas**

July — Moscow Olympics was held (Non-participation by Japan, the United States, West Germany, and China, among others)

September — Breakout of Iran-Iraq war

[Developments in criminal justice]
- Act for Partial Revision of the Penal Code was enacted (See p.37)
- Act on International Assistance in Investigation and Other Related Matters was enacted (See p.38)

**[1981]**

**Japan**

March — Sanwa Bank online fraud incident occurred

**Overseas**

July — Wedding ceremony of Prince Charles and Princess Diana in the UK

**Wedding ceremony of Prince Charles and Princess Diana in the UK**

(c)Pacific Coast News/amanaimages

**[1982]**

**Japan**

June — Tohoku Shinkansen commenced operation

November — Joetsu Shinkansen commenced operation

**Overseas**

June — Commencement of negotiations on the Strategic Arms Reduction Treaty (START) between the US and the USSR

**[1983]**

**Japan**

April — Tokyo Disneyland opened

**Overseas**

March — The Council of Europe adopted the Convention on the Transfer of Sentenced Persons

**[1984]**

**Japan**

- The number of persons cleared for violation of the Stimulants Control Act reached 24,000, marking a new peak since 1956.

**Overseas**

March Worsening famine in Africa

**[1985]**

**Japan**

August Crash of Japan Airlines Flight 123

September Plaza Accord: yen appreciation against the dollar

● Bullying becomes a social problem

**Overseas**

● Fear of AIDS spread worldwide

**Crash of Japan Airlines Flight 123**
(c)KYODO NEWS/amanaimages

**[1986]**

**Japan**

April Act on Equal Opportunity between Men and Women in Employment entered into force

September Japan's first female political party leader in the Social Democratic Party

November Eruption of Mount Mihara on Izu Oshima island

● Lowering of discount rate by the Bank of Japan; Start of the "bubble economy"

**Overseas**

October US-USSR Summit Meeting

**[1987]**

**Japan**

April Privatization of Japan National Railways

June Japan ranked first in the world for the total amount of foreign currency reserves

**Overseas**

October New York stock market crash (Black Monday)

November Bombing of Korean Air Flight 858


**Privatization of Japan National Railways**
(c)KYODO NEWS/amanaimages

[Developments in criminal justice]

・Act for Partial Revision of the Penal Code was enacted (See p.39)

**[1988]**

**Japan**

March Seikan Tunnel opened

April Great Seto Bridge opened

October Tokyo Public Prosecutors Office searched head office of Recruit Co. Ltd. and arrested former Executive Secretary

**Overseas**

| | |
|---|---|
| August | The Iran-Iraq War ceasefire agreement concluded |
| December | The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted |

**[1989]**

**Japan**

| | |
|---|---|
| January | Demise of the Emperor Showa, change of era name to Heisei |
| April | Introduction of consumption tax |
| November | Murder of attorney Tsutsumi Sakamoto and his family |
| December | Nikkei Stock Average recorded historical high |

**Overseas**

| | |
|---|---|
| June | Tiananmen Square protests |
| July | Establishment of Financial Action Task Force (FATF) |
| November | Fall of the Berlin Wall |
| November | Convention on the Rights of the Child adopted |
| December | The Malta Summit (Declaration of the end of the Cold War) |


**Change of era name to Heisei**
(c)The Asahi Shimbun/amanaimages

**Fall of the Berlin Wall**
(c)Luigi Caputo/Anzenberger/amanaimages

# Chapter 3 The 1990s (From 1990 to 1999)

## – Criminal Legislation in Response to Global Trends and Changes in Social Conditions –

## Section 1 Developments in Criminal Justice

### 1 Overview

(1) The 1990s began with the drastic decline in the value of assets such as stock and real estate. These assets had been rapidly increasing in value since the latter half of the 1980s, resulting in the burst of the so-called "bubble economy". As a result, financial institutions faced large amounts of non-performing loans, and the Japanese economy plunged into a prolonged economic slump known as the "lost decade."

**The burst of the so-called "bubble economy"**
(c)The Asahi Shimbun/amanaimages

In the area of criminal justice, in addition to the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988, countermeasures against organized crime were taken up as major agenda items at summit meetings and other international fora such as those of the United Nations. Hence, Japan was also called upon to take countermeasures against organized crime in view of such international trends. The end of the Cold War in 1989 and the advancement of globalization made it easy for people, money and things to move across national borders. Against this backdrop, a considerable number of crimes related drug and firearms trafficking carried out by organized crime groups and smuggling of migrants carried out by foreign criminal organizations occurred in Japan. Also, Japan experienced heinous and serious crimes such as the Tokyo subway sarin attack that shocked not only Japan but also the world. As a result, there were strong calls for effective countermeasures against these emerging forms of organized crime. In addition, child prostitution became an issue both inside and outside Japan, alongside an increase in the number of high-tech crimes brought about by the advancement of information and communications technology centred on the Internet. Therefore, this was also a period when it became necessary to deal with such crimes.

**The Tokyo subway sarin attack**
(c)The Asahi Shimbun/amanaimages

To deal with these crimes, new laws were enacted. With regard to drug-related crimes, Japan put in place measures to criminalize acts of money-laundering, expanded the confiscation and collection of equivalent value for unlawful gains, and established procedures to preserve the value of assets related to such confiscation or collection of equivalent value (Section 3-2: Coping Effectively with Drug-related Offences, p.45). In the area of organized crime, Japan set out procedures for interception of

telecommunications as well as the protection of witnesses (Section 3-3: Measures for Appropriate and Adequate Punishment of Organized Crime, p.46). Furthermore, provisions to penalize child prostitution and provision of child pornography, and provisions to control illegal access were established. (Section 3-4: Measures to Protect Children from Sexual Exploitation and Abuse, p.52) (Section 3-5: Coping with High-Tech Crimes Associated with the Development of Networks, p.52).

In the 1990s, Japan put in place various legislative measures to prevent crimes and impose appropriate punishment, corresponding to the changes of the times. In addition to these measures, Japan also enacted the Offender Rehabilitation Services Act with the aim of ensuring the proper operation and sound development of Offender Rehabilitation Services (Section 3-6: Strengthening the Foundations of the Offender Rehabilitation System, p.54), and modernized the notation of the Penal Code in order to ensure that the Code remains current and relevant (Section 3-7: Modernizing the Language of the Penal Code, p.56).

(2) The 1990s was a period of active legislation not only in the area of substantive criminal law but also in the field of criminal procedure, such as the adoption of new investigative methods and protective measures for witnesses in criminal trials. In addition, a wide range of measures were put in place in the area of rehabilitation.

## 2 Coping Effectively with Drug-related Offences

### (1) Background

As explained earlier (Chapter 2), the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted in 1988, and Japan ratified it in 1992. Based on the recognition that drug offences are committed on an international scale and that deprivation of criminal proceeds generated by such offences is an effective means of preventing drug offences, the Convention sets out provisions calling for the parties to criminalize money-laundering and the receipt of criminal proceeds generated by drug offences. Furthermore, based on the Economic Declaration of the G7 at the Summit of the Arch in July 1989, the Financial Action Task Force (FATF) was established. Japan become a member of the FATF, and in 1990, the meeting adopted 40 recommendations, including (1) early ratification of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and (2) criminalization of money-laundering.

In response to these developments, Japan enacted the so-called Two Narcotics Laws in October 1991. These two laws were "the Act for Partial Revision of the Narcotics and Psychotropics Control Act" and "the Act Concerning Special Provisions for the Narcotics and Psychotropics Control Act, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conduct and Other Activities Involving Controlled Substances through International Cooperation" (hereinafter referred to as "the Act on Special Provisions for Narcotics").

### (2) Details

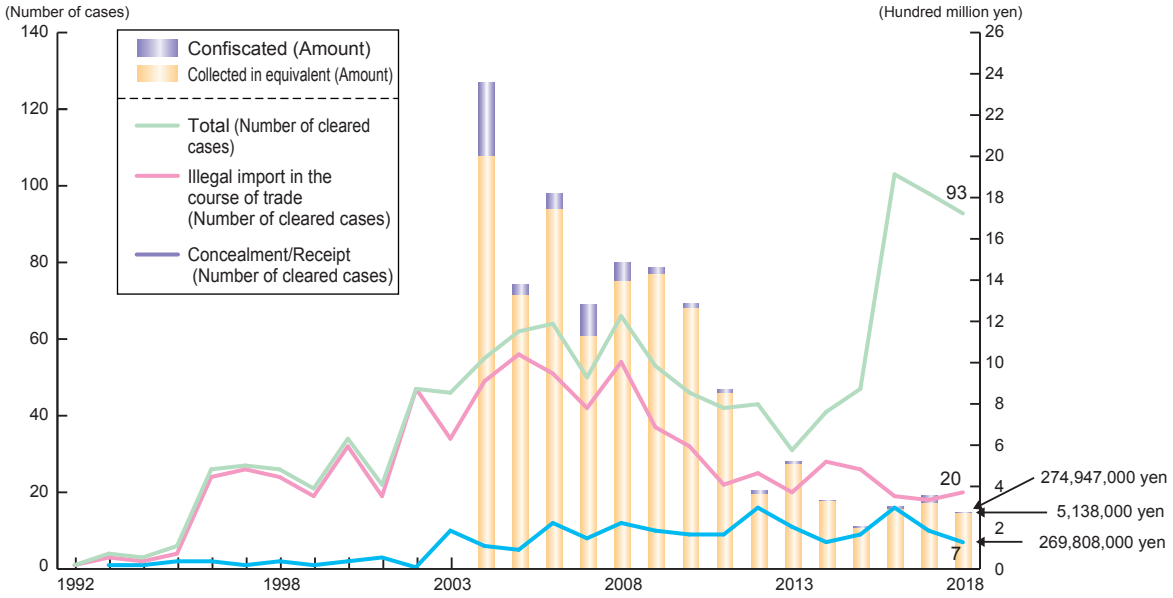
The enforcement of the Two Narcotics Laws brought about the following: (1) new provisions for money-laundering and other offences; (2) development of the procedures for the confiscation of criminal proceeds and the preservation for such confiscation, and the international assistance framework for such procedures; (3) measures to enable controlled delivery; (4) establishment of the reporting system for suspicious transactions by financial institutions; (5) establishment of the provisions for punishing drug offences committed overseas. In particular, in cases of a request by a foreign country

based on the Convention for assistance in carrying out final and binding decisions for confiscation or preservation of property for the purpose of confiscation, the above-mentioned international assistance framework for confiscation and preservation enabled Japan to confiscate or preserve the assets that was in Japan if conditions such as dual criminality are met. This will prevent criminals from continuing to possess criminal proceeds generated from drug crimes outside of Japan, and make it possible to deprive them of these illicit assets through international cooperation.

The trend in the number of cases cleared of violation of the Act on Special Provisions for Narcotics (since 1992) and the amount of confiscation and collection of equivalent value in the first instance (since 2004 when statistics became available) are shown in Figure 3-3-1 below. The total number of cases cleared had been increasing until 2006 and has been decreasing since 2009. However, the number of cases cleared increased significantly from 2014 to 2016, reaching 93 cases in 2018 (a decrease of 5 cases from the previous year). The total amount of confiscation and collection of equivalent value has been fluctuating constantly, but it has generally been decreasing.

**Figure 3-3-1 Act on Special Provisions for Narcotics: Cleared cases and amount confiscated/collected in equivalent for violation**

(1992～2018)




Note 1: The number of cleared cases is based on materials from the Pharmaceutical Safety and Environmental Health Bureau of the Ministry of Health, Labor and Welfare.
2: The amounts confiscated/collected in equivalent are based on materials from the Criminal Affairs Bureau of the Ministry of Justice.
3: Includes those who have been cleared by the police as well as by special judicial police.
4: "Total number" is the total number of cleared cases for violations of Article 5 (illegal import in the course of trade), Article 6 (concealment of drug offence proceeds or the like), Article 7 (receipt of drug offence proceeds or the like), and Article 9 (incitement or instigation) of the Act on Special Provisions for Narcotics. However, the number of cleared cases for violation of Article 9 is excluded until 1998.
5: Amount confiscated and collected in equivalent is the total amount in the first instance, and is rounded down to the nearest thousand yen.
6: With regard to amounts confiscated/collected in equivalent against the accomplices, the overlapping amounts have been deducted.
7: Foreign currencies have been converted to Japanese yen based on exchange rates that are current as of the date of judgement.
8: Amounts confiscated/collected in equivalent shown are figures from 2004 and after when statistics are available.

Source: White Paper on Crime 2019

## 3 Measures for Appropriate and Adequate Punishment of Organized Crime

### (1) The Act on Prevention of Unjust Acts by Organized Crime Group Members

#### a. Background

With regard to organized crime groups, the following trends were observed during the 1990s: a

gradual increase in the number of organized crime groups and their members; centralization and merger towards specific super-regional organized crime groups; an increase in the number of violent interventions in civil affairs and their methods becoming increasingly sophisticated and insidious; an increase in proportion of firearms shooting cases despite a decline in the number of violent confrontation cases; and implication of civilians in their crimes.

Against this backdrop, the Act on Prevention of Unjust Acts by Organized Crime Group Members was enacted in May 1991, with the aim of ensuring safety and security for the people's lives and thereby protecting the liberty and rights of the people, by taking necessary controls over violent threats carried out by organized crime group members, and by taking necessary measures to prevent danger to the people's lives due to confrontations etc.

**b. Details**

The Act defined organized crime groups as "an organization likely to encourage its members to collectively and habitually commit illegal acts of violence, etc.", and designated organized crime groups that fulfil certain criteria. The Act regulated specific unjust acts carried out by members of organized crime groups that had previously been difficult to address by conventional criminal laws. The law prescribed administrative orders, such as a cease and desist order by the Public Safety Commission, as means of regulation, while criminal penalties were imposed as means to ensure their effectiveness. Moreover, it also prescribed measures to promote and support the activities by public interest groups from the private sector to exclude organized crime groups, as well as measures to assist the recovery of damages caused by unreasonable demands made by organized crime group members.

**Citizen's campaign appealing the closure of offices of organized crime groups (White Paper on Police 2004)**

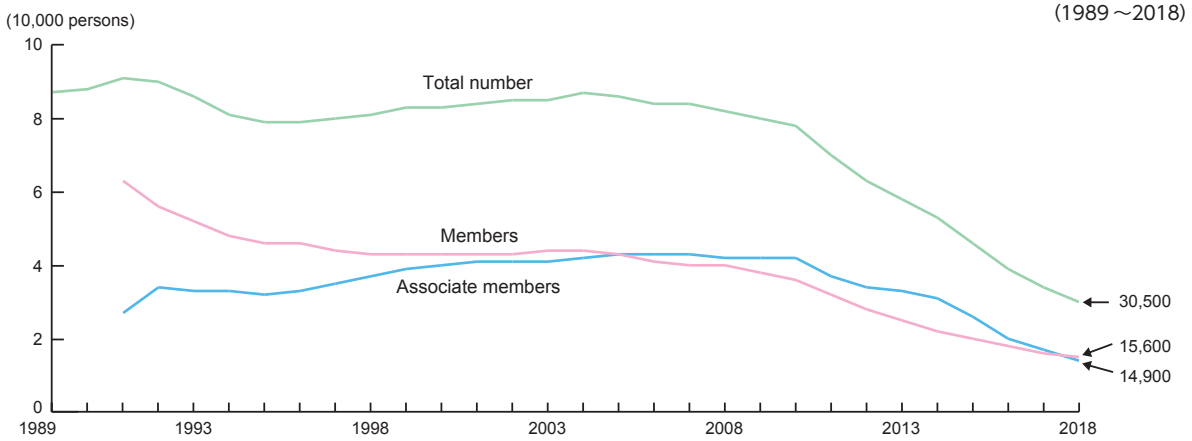
**c. Changes in the Numbers of Organized Crime Group Members and Associate Members**

The changes in the numbers of organized crime group members and associate members (persons other than members of organized crime groups but associated with organized crime groups, who are at risk of engaging in violent illegal acts based on their influence, or who cooperate or are involved in the maintenance or operation of the organized crime groups, such as by providing funding, weapons or other means of support to the groups or their members) are shown in Figure 3-3-2 below.

The number of organized crime group members and associate members fell every year from about 91,000 persons in 1991 but increased every year from 1996 to 2004, reaching about 87,000 in 2004. However, since 2005, the number has continued to fall again to about 30,500 persons in 2018, which was about one-third of the number in 1991.

The background for this trend could be attributed to the withdrawal of members from organized crime groups for reasons such as increasing difficulty in obtaining funds, due to the progress made by organized crime elimination activities and the crackdown on organized crimes in recent years. On the other hand, of the members and associate members of organized crime groups, the percentage of those in major groups (such as *the Rokudaime Yamaguchi-gumi*, the *Kobe Yamaguchi-gumi*, and the *Kizuna-kai* (former name: the *Ninkyo Yamaguchi-gumi*), as well as *Sumiyoshi-kai* and *Inagawa-kai*) reached approximately 70%.

**Figure 3-3-2 The trend of the number of members and associate members of organized crime groups**




Note 1: Prepared based on materials from the Criminal Affairs Bureau of the National Police Agency
2: The number of members is an estimate for December 31 of each year, and may not necessarily tally with the total number of members and associate members.
3: Associate members refer to persons other than members of organized crime groups but who are related to organized crime groups, who may engage in violent illegal acts on the back of the influence of organized crime groups, or who cooperate or are involved in the maintenance or operation of organized crime groups, such as by providing funding, weapons or other means or support to organized crime groups or organized crime group members.
4: The numbers of "members" and "associate members" were prepared based on figures from 1991 when statistics are available.

Source: White Paper on Crime 2019

## (2) Enactment of the Three Laws Related to Organized Crime Countermeasures

### a. Background

In the 1990s, the situation of illegal trafficking in drugs and firearms by organized crime groups remained serious. In addition to various criminal offences aimed at acquiring and maintaining the illegal interests of organized crime groups, there was also a considerable number of smuggling-of-migrants cases by foreign criminal organizations. Heinous crimes carried out by large-scale organizations, such as the "Aum Shinrikyo incidents" including the Tokyo subway sarin attack and the murder of the attorney Tsutsumi Sakamoto and his family, also occurred.

Such crimes by organized crime groups etc. have certain characteristics. For example, they could be described as being extremely dangerous and malicious in the sense that they are carried out in an organized manner, have a strong determination of achieving their objectives and have serious consequences. Furthermore, the manner of committing them was highly secretive, the crimes themselves are not easily discovered and the investigations and prosecution of such crimes often became extremely difficult. In addition, the proceeds from such crimes were often large, and they were used for the maintenance of the criminal organization, invested into their business activities or reinvested into the execution of crimes.

At the time, the illegality of such organized crimes was not sufficiently assessed under the statutory penalties in criminal law. Moreover, measures under the criminal law to regulate the use of criminal proceeds, including confiscation and collection of equivalent value, were not necessarily adequate. It was also often extremely difficult to effectively deal with crimes with such high secrecy through conventional investigation methods alone. Thus, new investigation methods such as interception of telecommunications were considered necessary. On the other hand, there was also a strong risk that witnesses of the crime or their family members would be harmed by criminal organizations if they were to cooperate with investigations or at trial; the protection measures for such witnesses were also considered to be inadequate for the proper operation of the criminal justice system.

Based on these circumstances, the three laws related to organized crime countermeasures were enacted in August 1999. These were: (1) the Act on Punishment of Organized Crimes and Control of Crime Proceeds; (2) the Act on Wiretapping for Criminal Investigation; and (3) the Act for Partial Revision of the Code of Criminal Procedure.

**b. The Act on Punishment of Organized Crimes and Control of Crime Proceeds**

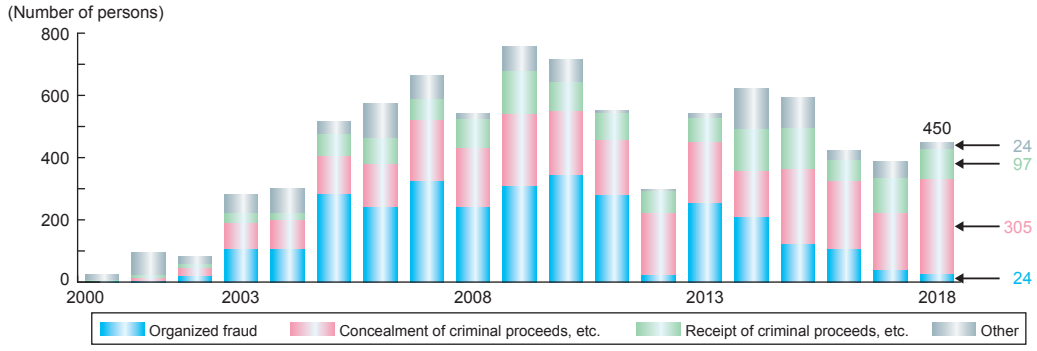
This Act strengthened the penalty of acts such as homicide committed through an organization and enabled the punishment of the concealment and receipt of criminal proceeds, as well as the control of business entities, such as corporations, using such criminal proceeds. At the same time, it prescribed special provisions on the confiscation and collection of equivalent value of criminal proceeds and the reporting of suspicious transactions.

The changes in the number of persons handled by the Public Prosecutors Office for violation of this Act are shown in Figure 3-3-3(1) below. The number of persons had been increasing since 2000, but the trend reversed and numbers began to fall after peaking at 758 persons in 2009. However, the number increased again to 450 persons in 2018. In addition, the changes in the amounts of

**Figure 3-3-3 The trend of the number of persons received by public prosecutors for violation of the Act on Punishment of Organized Crimes and Control of Crime Proceeds, and changes in the amount of crime proceeds confiscated/collected in equivalent value**

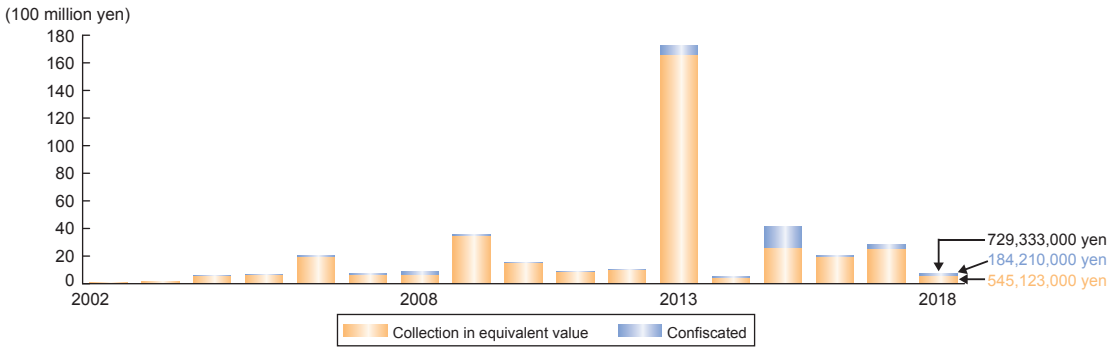
(2000～2018)

(1) Number of persons received by Public Prosecutors Office




(2002～2018)

(2) Amount confiscated/collected in equivalent value




Note 1: Prepared based on the Annual Report of Statistics on Prosecution and materials from the Criminal Affairs Bureau of Ministry of Justice
2: Amounts "confiscated" and "collected in equivalent value" refers to the total amount collected in the first instance, and is rounded down to the nearest thousand yen. For overlapping amounts confiscated/collected in equivalent value from accomplices, the overlapping amount is deducted in the calculation of the total amount.
3: Foreign currencies are converted to Japanese yen based on the exchange rate that is current on the date of the judgement.
4: Figures for the year 2000 in (1) are based on figures after February 1, which was the date of enforcement for the Act on Punishment of Organized Crimes and Control of Crime Proceeds.
5: Figures for (2) were prepared based on figures from 2002 when materials were available.

Source: White Paper on Crime 2019

confiscation and collection in equivalent value in the first instance for the violation of this Act (since 2002 when data was available) are shown in Figure 3-3-3(2). This amount was approximately 729 million yen in 2018.

**c. The Act on Wiretapping for Criminal Investigation**

This Act prescribed the requirements and procedures for warrants to intercept telecommunications. The Act prescribed that the interception of telecommunication for criminal investigations may be permitted by an interception warrant issued by a judge for a specific means of telecommunications, only when (i) there is a strong suspicion of the offences listed in the Act, (ii) there is a probability that telecommunications will contain matters related to the execution of the offence and (iii) it would be extremely difficult to reveal the case by any other means. The offences subject to interception are listed in the Appendix to the Act and were limited to four categories at the time of enactment in 1999, in order to restrict the interception of telecommunications as method of investigation to the minimum range necessary. These four categories of offences are: drug offences, firearms offences, organized homicide and smuggling of migrants. (The scope of offences for which interception of telecommunications may be used as an investigative method was expanded with the amendment to the Code of Criminal Procedure in 2016. See Part 3 Chapter 5.)

The implementation status for the interception of telecommunications after the enforcement of the Act in 2000, up to 2018, is shown in Table 3-3-4 below.

**Table 3-3-4 The implementation status for the interception of telecommunications**

(2000～2018)

| Year | Number of cases of implementation | Types of cases | Wiretapping warrant | | Number of persons arrested |
|---|---|---|---|---|---|
| | | | Number of requests | Number of warrants issued | |
| 2000 | 0 | | | | |
| 2001 | 0 | | | | |
| 2002 | 2 | Drug trafficking 2 cases | 4 | 4 | 8 |
| 2003 | 2 | Drug trafficking 2 cases | 4 | 4 | 18 |
| 2004 | 4 | Drug trafficking 4 cases | 5 | 5 | 17 |
| 2005 | 5 | Possession of firearms, organized homicide 1 case<br>Drug trafficking 4 cases | 10 | 10 | 20 |
| 2006 | 9 | Drug trafficking (including smuggling) 9 cases | 21 | 21 | 31 |
| 2007 | 7 | Drug trafficking 7 cases | 11 | 11 | 39 |
| 2008 | 11 | Possession of firearms, etc. 2 cases<br>Possession of firearms, etc., organized homicide 1 case<br>Drug trafficking 8 cases | 22 | 22 | 34 |
| 2009 | 7 | Possession of firearms, etc. 1 case<br>Drug trafficking (including smuggling) 6 cases | 23 | 23 | 33 |
| 2010 | 10 | Possession of firearms, etc. 1 case<br>Organized homicide 1 case<br>Drug trafficking 8 cases | 34 | 34 | 47 |
| 2011 | 10 | Possession of firearms, etc. 3 cases<br>Possession of firearms, etc., organized homicide, etc. 1 case<br>Organized homicide 1 case<br>Drug trafficking 5 cases | 27 | 25 | 46 |
| 2012 | 10 | Possession of firearms, etc. 3 cases<br>Organized homicide 1 case<br>Drug trafficking (including smuggling) 6 cases | 32 | 32 | 43 |
| 2013 | 12 | Possession of firearms, etc. 2 cases<br>Possession of firearms, etc., attempted organized homicide 1 case<br>Attempted organized homicide 1 case<br>Drug trafficking (including smuggling) 8 cases | 64 | 64 | 117 |
| 2014 | 10 | Possession of firearms, etc. 3 cases<br>Drug trafficking (including cultivation) 7 cases | 26 | 26 | 86 |

| | | | | | |
|---|---|---|---|---|---|
| 2015 | 10 | Attempted organized homicide 1 case<br>Drug trafficking (including smuggling) 9 cases | 42 | 42 | 131 |
| 2016 | 11 | Possession of firearms, etc. 4 cases<br>Organized homicide 1 case<br>Drug trafficking (including smuggling and possession) 5 cases<br>Computer fraud 1 case | 40 | 40 | 35 |
| 2017 | 13 | Possession of firearms, etc. 1 case<br>Illegal confinement resulting in death 1 case<br>Unlawful capture and confinement 1 case<br>Robbery resulting in injury 1 case<br>Theft, attempted theft 4 cases<br>Fraud, attempted fraud 3 cases<br>Extortion, attempted extortion 2 cases | 51 | 51 | 70 |
| 2018 | 12 | Drug trafficking 3 cases<br>Possession of firearms, etc., homicide 1 case<br>Homicide 1 case<br>Theft, attempted theft 1 case<br>Fraud 3 cases<br>Fraud, computer fraud 1 case<br>Extortion, attempted extortion 2 cases | 46 | 46 | 82 |
| Total | 145 cases | Possession of firearms, etc. 20 cases<br>Possession of firearms, etc., organized homicide (including attempted organized homicide) 4 cases<br>Possession of firearms, etc., homicide 1 case<br>Organized homicide (including attempted organized homicide) 6 cases<br>Drug trafficking (including smuggling, etc.) 93 cases<br>Homicide 1 case<br>Unlawful capture and confinement 1 case<br>Theft (including attempted theft) 5 cases<br>Robbery resulting in injury 1 case<br>Fraud (including attempted fraud) 6 cases<br>Fraud, computer fraud 1 case<br>Computer fraud 1 case<br>Extortion (including attempted extortion) 4 cases | 462 cases | 460 cases | 857 persons |

Note: Prepared based on materials by the National Police Agency

### d. The Act for Partial Revision of the Code of Criminal Procedure

This revision provided the basis for the interception of telecommunications pursuant to a warrant in criminal investigations and the provisions on protection of witnesses etc.

With regard to the protection of witnesses etc., the following provisions were prescribed:

(1) When examining a witness, etc., if the presiding judge finds that there is a risk that a body or property of these persons or their relatives may be harmed, and that these persons will not be able to give full testimony if matters specifying said person's address or workplace is disclosed, the presiding judge may limit the questions concerning these matters

(2) When providing opportunity to know the name and address of a witness etc., or to inspect documentary evidence, pursuant to the provisions of the Code of Criminal Procedure, the public prosecutor or the defence counsel may, when finding a risk of physical harm to the witness, persons whose names appear on documentary evidence or relatives of such persons, or the risk of damage to any of the aforementioned persons' property, notify the opposing counsel of such risk and request that particular care be taken so that the safety of such persons, or their property, is otherwise not threatened.

## 4 Measures to Protect Children from Sexual Exploitation and Abuse

### (1) Background

In Japan, paid sexual intercourse with children, as in the case of *enjo kosai* (compensated dating) in Japan and prostitution tours in Southeast Asia, had become a social issue. The production and sale of photographs and videotapes depicting children engaged in sexual acts had also become a problem.

While many countries punish such acts severely, Japan in principle did not penalize compensated sexual intercourse with children in cases where the child is 13 years or older, unless violence or threats were employed. Moreover, material deemed as child pornography, and therefore prohibited outside of Japan, were not always deemed as obscene pictures under the Penal Code.

In consideration of the serious violation of the rights of children that such sexual exploitation and sexual abuse would cause, the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children was enacted in May 1999 through lawmaker-initiated legislation.

### (2) Details

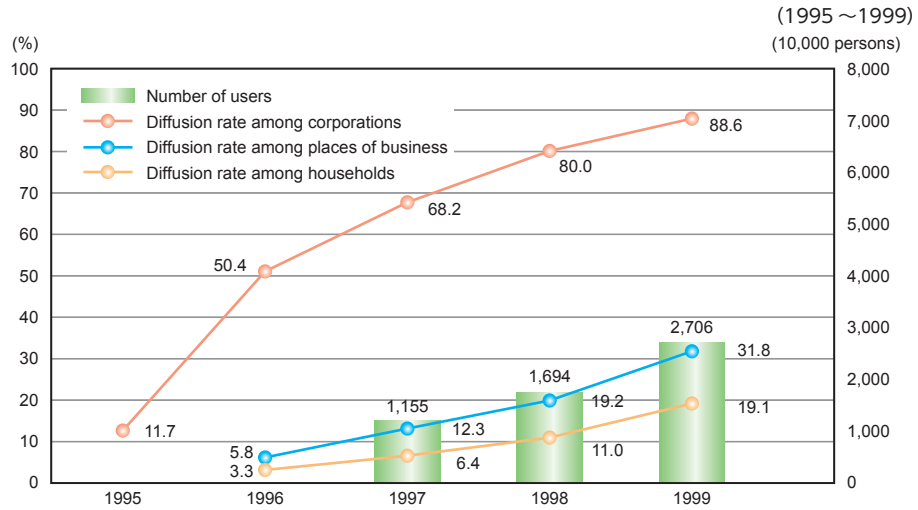
Under this Act, "children" are defined as persons below the age of 18, and provisions are set out to penalize child prostitution, intermediation in child prostitution, solicitation of child prostitution, buying or selling of persons for the purpose of child prostitution, and distribution of child pornography, as well as measures to protect children who have been physically or mentally harmed by these acts.

## 5 Coping with High-Tech Crimes Associated with the Development of Networks

### (1) Background

The use of computer networks in Japan, including the Internet, advanced rapidly in the second half

**Figure 3-3-5 Spread of the Internet**




*1. Places of business include places of business with five or more employees across the whole of Japan (excluding the postal and communications industries).
*2. Corporations include corporations with 300 or more employees across the whole of Japan (excluding the agricultural, forestry, fishery, and mining industries).
*3. Prepared based on the "Communications Usage Trend Survey" (Ministry of Posts and Telecommunications), and the "Survey on the Informatization of Life".

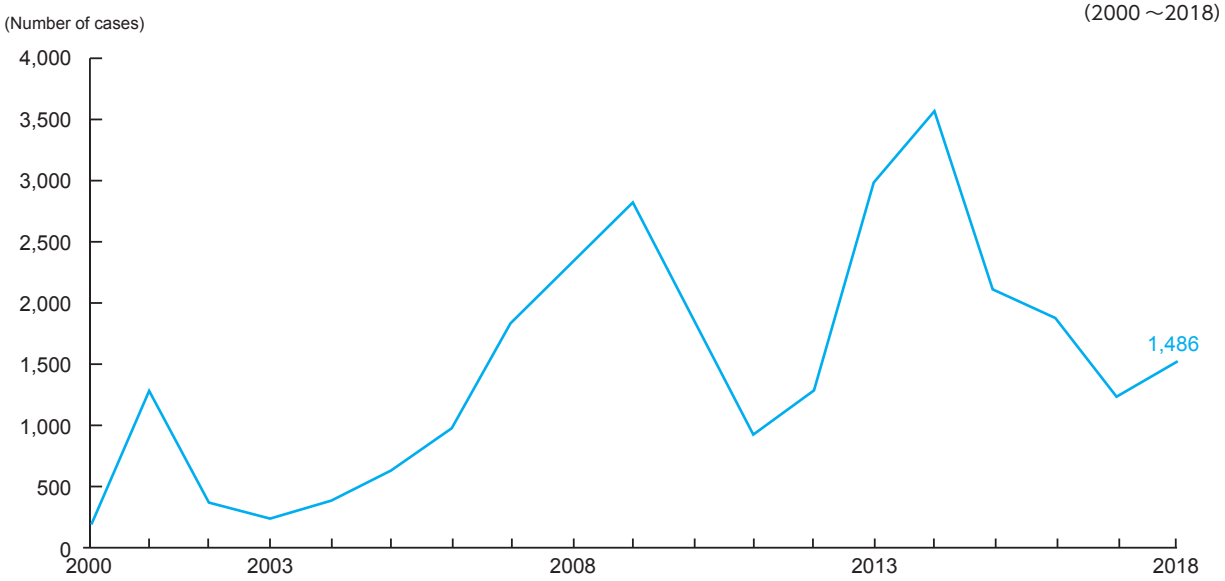
Source: " Communications in Japan " (2000)

of the 1990s. Alongside the popularization of network usage, the services provided were also diversified. Figure 3-3-5 above shows the popularization of the Internet in Japan. The number of Internet users increased sharply from 1996 and reached about 27 million in 1999. Such rapid development and popularization of computer networks led to the consistent increase and diversification of high-tech crimes, while the damage caused by such crimes was also expected to become severe. In light of this trend, the Act on Prohibition of Unauthorized Computer Access was enacted in August 1999 in order to contribute to the sound development of the advanced information and communications society.

**(2) Details**

This Act prohibited and penalized unauthorized access and acts that promote or facilitate such unauthorized access. At the same time, it set out support measures by the Public Safety Committees (at the prefectural level) to prevent the recurrence of unauthorized access. After its enactment in 1999, this Act was partially revised in 2012 in order to respond to changes in the methods of unauthorized access and to ensure the effectiveness of the prohibition. The revision established the crime of the unauthorized acquisition of the IDs and passwords of others, and raised the statutory penalty for unauthorized access, strengthening penal provisions. Figure 3-3-6 shows the change in the number of recognized instances of unauthorized access (since 2000, when the Act entered into force). While it had been fluctuating, the number peaked at 3,545 cases in 2014. The number had been decreasing since then, but it increased in 2018 to 1,486 cases.

**Figure 3-3-6 The trend of the number of reported cases of acts of unauthorized access**




Note 1: Prepared based on materials from the Community Safety Bureau of the National Police Agency, Director-General for Cybersecurity of the Ministry of Internal Affairs and Communications, and Commerce and Information Policy Bureau of the Ministry of Economy, Trade and Industry.
2: The number of reported cases refers to the number of acts committed by the suspect that correspond with the constituent elements for criminal offence, in cases where a report of damage caused by unauthorized access is received, where the facts of a new act of unauthorized access are confirmed as an uncharged offence, where the facts of an act of unauthorized access are confirmed for a business operator, etc. based on media reports, and where the facts of an act of unauthorized access are confirmed through other relevant materials.
3: The figure for 2000 is the number of cases from February 13, when the Act on Prohibition of Unauthorized Computer Access was enforced.

Source: White Paper on Crime 2019

## 6 Strengthening the Foundations of the Offender Rehabilitation System

### (1) Establishment of the Offender Rehabilitation Services Act

#### a. Background

Until the establishment of the Offender Rehabilitation Services Act, offender rehabilitation services had been covered under the Urgent Aftercare of Discharged Offenders Act and had been maintained and operated through the tireless efforts of citizen volunteers. The services have contributed greatly to the reintegration of offenders into society.

In June 1994, the Urgent Aftercare of Discharged Offenders Act was partially amended to improve the support for offender rehabilitation organizations, which are the main bodies for providing offender rehabilitation services. Based on this amendment, measures were taken to improve the facilities of rehabilitation organizations, such as by approving subsidy for the maintenance of offenders' rehabilitation facilities in the budget of the same year.

At the time, however, the management bases of offender rehabilitation organizations were still very weak. In addition, the number of probationers and parolees who needed special consideration in their treatment, such as the elderly and alcohol or drug abusers, was increasing, which made it particularly important to strengthen the guidance and assistance system of the offender rehabilitation organizations. Offender rehabilitation services were facing numerous difficulties, and there was a need to make urgent improvements.

Accordingly, when the Urgent Aftercare of Discharged Offenders Act was partially amended in 1994, both Houses of the Diet adopted a supplementary resolution that required the government to strive to improve and enhance the systems, including new legislation, for the sound growth and development of offender rehabilitation services. It also required the government to make efforts to strengthen guidance and assistance systems for probationers and parolees in order to enhance offender rehabilitation services while paying attention to the balance with social welfare services. Consequently, the Offender Rehabilitation Services Act was established in May 1995 to secure the appropriate management of offender rehabilitation services and ensure the sound growth and development of such services.

#### b. Details

The Offender Rehabilitation Services Act clarified the responsibilities of the government with regard to offender rehabilitation services and prescribed provisions concerning cooperation with local governments. It also categorized offender rehabilitation services into three categories: residential continuous aid services, temporary aid services, and liaison and assistance services. Furthermore, it designated business entities approved by the Minister of Justice in accordance with the law to conduct offender rehabilitation services as a "corporation for offender rehabilitation." The Act provided for their establishment procedures, organization, management, dissolution, merger and supervision by the Minister of Justice. In addition, the Act

**Exterior of an offender rehabilitation facility**

provided the approval and supervision of offender rehabilitation services by the Minister of Justice, as well as state subsidies towards corporation for offender rehabilitation, and it stipulated that local governments may also operate offender rehabilitation services.

### (2) Establishment of the Act for Partial Amendment of the Volunteer Probation Officers Act

#### a. Background

*Hogoshi* (volunteer probation officers) carry out activities in the spirit of social service. They take advantage of their status as private citizens and their knowledge of their communities when working with probation officers to supervise probationers and parolees. They have been playing a very important role in Japan's criminal justice policy, but it has become increasingly difficult to secure capable human resources as *hogoshi* (volunteer probation officers) due to the social trends of the time. On the other hand, the burden on *hogoshi* (volunteer probation officers) was increasing due to the increase in the number of probationers and parolees who were difficult to deal with because of their various issues. Amid these circumstances, it became a pressing issue to gain the understanding of the general public and the local community towards *hogoshi* (volunteer probation officers) and their activities and to strengthen organizational support systems through volunteer probation officer organizations. In light of this, the Act for Partial Revision of the Volunteer Probation Officers Act was established in May 1998 to enhance the *hogoshi* (volunteer probation officer) system.

#### b. Details

As some of the work of *hogoshi* (volunteer probation officers), such as crime prevention activities, could take various forms, it was not necessarily clear which type of activities are deemed as their official duties. This was one of the reasons why the general public's understanding about *hogoshi* (volunteer probation officers) was inadequate, and it was difficult to gain adequate cooperation. Furthermore, *hogoshi* (volunteer probation officer) organizations, which perform important functions in supporting the activities of *hogoshi* (volunteer probation officers), were no more than voluntary organizations at the time, and their roles and functions were not clearly prescribed, which hindered the public's understanding of the organizations. Moreover, in order to promote cooperation with local governments, it was necessary to clarify the legal basis of *hogoshi* (volunteer probation officers) and their organizations.

Accordingly, the Act for Partial Amendment of the Volunteer Probation Officers Act prescribed that *hogoshi* (volunteer probation officers) shall, upon being designated by the regional parole board or the director of the probation office, perform the duties pertaining to the jurisdiction of the regional parole board or the probation office concerned, as well as performing the following duties pertaining to the jurisdiction of said probation office, in accordance with the items prescribed in the plans of the Volunteer Probation Officers' Association for which the relevant director of the probation office has given his or her approval. The Act also provided a legal basis for establishing volunteer probation officer associations and federations of volunteer probation associations and provided that local

**Counseling of a probationer by a volunteer probation officer**

governments may offer necessary support for *hogoshi* (volunteer probation officers) and their organizations.

## 7 Modernizing the Language of the Penal Code

### (1) Modernizing the Notation of the Penal Code

The current Penal Code was enacted in 1907. By the 1990s, it had been partially revised more than 10 times, but the notation of the text had remained in the classic writing style mixed with *katakana* characters, and there were many words that were difficult to understand for people who were not used to it. For this reason, it had long been pointed out that, although the Penal Code is closely linked to the everyday lives of the people, it is difficult for the general public to read the legal text and understand its contents accurately. In light of this, the Penal Code was revised in 1995, modernizing the text and making it easier for the public to read and understand.


**Penal Code revised in 1995**
(Source: "Roppo-zensho 1995 edition")

Specifically, the entire Penal Code text was rewritten in the following ways to make it easier to understand: (1) changing the classical writing style to modern text; (2) changing the *katakana* text into *hiragana* and adding punctuation marks and voiced and semi-voiced sound symbols; (3) changing extremely difficult expressions into easy-to-understand expressions to the extent possible; (4) adding headings to the provisions.

### (2) Abolition of Ascendant Aggravation Provisions

Prior to the revision, the Penal Code included four ascendant aggravation provisions: homicide of an ascendant (i.e. a parent, grandparent etc.), bodily injury against ascendant resulting in death, abandonment of an ascendant, and unlawful capture and confinement of an ascendant. Therefore, when the victim was a direct ascendant of the offender or the offender's spouse, the range of the punishable sentence was heavier than in other cases. However, in 1973, the Supreme Court ruled that such a statutory penalty for the homicide of an ascendant was unconstitutional as it was significantly out of balance in comparison to other forms of homicide. For this reason, alongside with the simplification of language in the Penal Code, all ascendant aggravation provisions were deleted in this revision. It was understood that the fact that the victim is the offender's ascendants is to be taken into consideration within the scope of the statutory penalty of the conventional homicide provisions and that sentence would correspond to the gravity of each individual case with aggravation of sentences for truly immoral and atrocious crimes and reduction of sentences where mitigating factors are present.

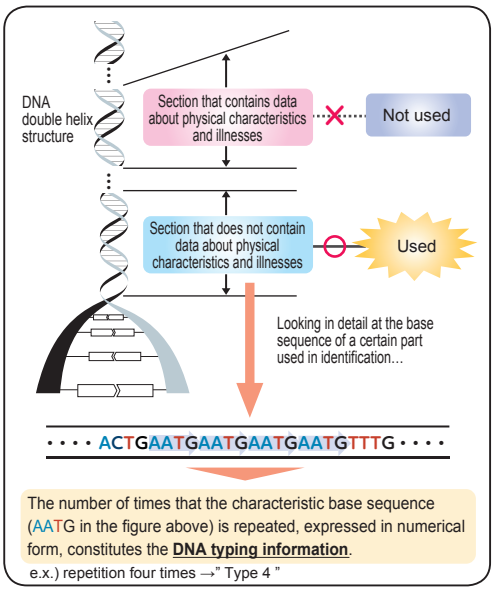
## Column 3 Science, Technology and Criminal Justice – Introduction of Genetic Profiling

1 With the aim of proving crimes adequately based on objective evidence, and to cope with the aggravation of crimes and increasingly sophisticated means of committing crimes, the police are promoting the use of forensic technology, such as genetic profiling (DNA test), in criminal investigations.

2 The Japanese police began applying genetic profiling to investigations after the National Research Institute of Police Science first carried out genetic profiling in 1989. Thereafter, the National Police Agency established guidelines on the operation of DNA testing, established facilities with necessary equipment across Japan and trained analysts. Through these efforts, the nationwide genetic profiling system was established by 1995. Since then, the number of tests conducted continued to increase, but it has further increased since the introduction of the STR testing method using automatic analyser called Fragment Analyser in 2003.

3 The STR test can identify individuals based on the individual differences in the number of repetitions of four bases as the basic unit in the individual's DNA, which is known as "STR." Genetic profiling is used in the investigation of violent crimes such as homicide, as well as crimes that are closer to our everyday lives, such as theft. The police also maintain a database with DNA records compiled from samples collected from the suspects as well as the DNA records compiled from samples collected at the crime scene. This database is utilized in the investigation of various offences such as the identification of criminals of unsolved cases and verification of uncharged offences.

**Figure 3-3-7 Overview of the Genetic Profiling in Police**




Source: the National Police Agency

## Section2 Domestic and Overseas Situation

**[1990]**

**Japan**

| | |
|---|---|
| January | The first examination conducted by the National Center for University Entrance Examination |
| November | Ceremonies of the Accession (*Sokui no Rei*) to the Throne of His Majesty the Emperor |
| November | Number of international travellers from Japan exceeded 10 million for the first time |

**Overseas**

| | |
|---|---|
| October | Reunification of East and West Germany |

**[1991]**

**Japan**

| | |
|---|---|
| March | Collapse of the "bubble" economy |
| June | Large volcanic flow from Mount Unzen Fugen in Nagasaki Prefecture |

**Overseas**

| | |
|---|---|
| January | The Gulf War breaks out |
| July | The US and the Soviet Union signed the Strategic Arms Reduction Treaty (START) |
| December | Dissolution of the Soviet Union; establishment of the Commonwealth of Independent States (CIS), including Russia |

[Developments in criminal justice]

- Enactment of the Act Concerning Special Provisions for the Narcotics and Psychotropics Control Act, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conduct and Other Activities Involving Controlled Substances through International Cooperation, etc (See p.45)
- Enactment of the Act on Prevention of Unjust Acts by Organized Crime Group Members (See p.47)

**[1992]**

**Japan**

| | |
|---|---|
| July | Yamagata Shinkansen opened business |
| September | The First Self Defense Force contingent dispatched to Peacekeeping Operations in Cambodia |

**Overseas**

| | |
|---|---|
| February | European Community (EC) member states signed the Treaty on European Union (Maastricht Treaty) |

**[1993]**

**Japan**

| | |
|---|---|
| May | The first season of the professional football league "J-League" started |
| July | Earthquake occurred off the southwest coast of Hokkaido |
| August | First female speaker of the House of Representatives appointed |
| August | Non-Liberal Democratic Party coalition cabinet inaugurated (collapse of the so-called "1955 System") |

**Overseas**

January Launch of a single market by the 12 EC countries
November the European Union (EU) established

**[1994]**

**Japan**

June Matsumoto Sarin attack occurred
June Coalition government by Liberal Democratic Party, Socialist Party and Sakigake inaugurated
July First female Japanese astronaut travelled to space on a space shuttle

**Overseas**

May Opening of the Eurotunnel between UK and France

**[1995]**

**Japan**

January Great Hanshin-Awaji Earthquake occurred
March Subway sarin attack occurred in Tokyo
November Release of the Japanese edition of Windows 95

**Overseas**

January World Trade Organization (WTO) inaugurated

**Great Hanshin-Awaji Earthquake**
(c)PIXTA

**Release of the Japanese edition of Windows 95**
(c)The Asahi Shimbun/amanaimages

[Developments in criminal justice]
- Enactment of the Offender Rehabilitation Services Act (see p.54)
- Modernization of the language of the Penal Code (see p.56)

**[1996]**

**Japan**

February Then-Minister of Health and Welfare apologized directly to haemophiliacs for the HIV-tainted blood scandal

**Overseas**

September The United Nations adopted the Comprehensive Nuclear-Test-Ban Treaty (CTBT)

**[1997]**

**Japan**

| | |
|---|---|
| April | Consumption tax raised from three percent to five percent |
| October | Nagano Shinkansen opened business |
| November | Successive bankruptcies of Hokkaido Takushoku Bank and Yamaichi Securities |
| December | Opening of the Third Session of the Conference of Parties to the UN Framework Convention on Climate Change (COP3) in Kyoto (Kyoto conference on climate change) |

**Overseas**

| | |
|---|---|
| July | Reversion of Hong Kong to China by the U.K. |
| July | The Asian Financial Crisis occurred |

**[1998]**

**Japan**

| | |
|---|---|
| February | Opening of the Olympic Winter Games in Nagano |
| April | The elderly population exceeded that of children (below 15 years old) for the first time |

**Overseas**

| | |
|---|---|
| July | Adoption of Rome Statute establishing the International Criminal Court |

[Developments in criminal justice]
- Enactment of the Act for Partial Revision of the Volunteer Probation Officers Act (see p.55)

**[1999]**

**Japan**

| | |
|---|---|
| May | Act on Access to Information Held by Administrative Organs enacted |

**Overseas**

| | |
|---|---|
| January | Introduction of the Euro as the single currency of the European Union (EU) |
| January | Adoption of the International Convention for the Suppression of the Financing of Terrorism |


**Introduction of the Euro**
(c)Science Photo Library/amanaimages

[Developments in criminal justice]
- Enactment of the Three Laws Related to Organized Crime Countermeasures (see p.49)
- Enactment of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (see p.52)
- Enactment of the Act on Prohibition of Unauthorized Computer Access (see p.53)

# Chapter 4 The 2000s (From 2000 to 2009)

## – Dramatic Evolution of Criminal Justice: Measures against the Deteriorating Crime Situation and System Reforms –

## Section 1 Developments in Criminal Justice

### 1 Overview

(1) In the 2000s, the "three excesses", namely, excessive debt, excessive capacity and excessive unemployment — structural problems that had long weighed on the Japanese economy — were eradicated, and the Japanese economy experienced a prolonged period of self-sustained recovery mainly driven by demand from the private side. On the other hand, in addition to the growing concern for economic inequality which was in line with the diversification of employment styles, trends that had developed in large cities as a result of the formation of an anonymous, mass society spread to provincial cities. Similarly, traditional factors in Japanese society that contributed to preventing crime, such as morals and mutual concern for others, have declined, and at the same time, the impact of the educational function of families and schools on crime prevention also appears to have declined.

Against this backdrop, the rapid increase in the number of reported cases for Penal Code offences that had been ongoing since 1996 maintained its momentum in the early 2000s. In 2002, this figure exceeded 2.8 million cases, setting the worst record since statistics were first compiled. The reason behind this rapid increase was attributed to the rise in theft cases, such as vehicle burglary, shoplifting and home burglary. In response to this crime situation, the government convened for the first time in 2003 the Ministerial Meeting Concerning Measures Against Crime, which determined that the entire government would implement various measures to address the pressing challenges of crime prevention through collaboration among the relevant ministries and agencies.

This was the first time since the end of World War II that such measures against crime had been taken up as a comprehensive policy issue for the entire government, making it a ground-breaking development. Moreover, with the declining birth rates, ageing population and the growth of the nuclear family in society at the time, the rise in the number of "special fraud" cases (such as the so-called "It's me" fraud in which the offender calls an elderly person by pretending to be the grandson or other relative of this person in order to cheat them of their money) was becoming a social problem. In response, not only did the police and public prosecutors conduct appropriate investigations and prosecution, the public and private sectors also worked together on crime prevention, such as through cooperation between the police and private-sector organizations to prevent people from falling victim to such crimes (Section 1-2: Dealing with the Deteriorating Crime Situation, p.63).

**Ministerial Meeting Concerning Measures against Crime**
Source: Prime Minister's Office website
(https://www.kantei.go.jp/jp//koizumiphoto/2006/06/20hanzai.html)

In 2003, the number of reported cases for Penal Code offences, which had continued to rise until then, began to fall

and continued to drop for 16 consecutive years after that. This was the result of a significant decrease in the number of reported cases of theft, which made up more than 70% of all Penal Code offences. While there may be various plausible reasons for this drop in the number of reported cases of theft, various governmental policies, as well as initiatives implemented by the private sector to prevent theft and other crimes, are believed to have had a certain deterrent effect.

(2) The 2000s was also a period when various unprecedented systemic reforms were carried out in the area of criminal justice.

Justice system reforms were the first to be conducted. Entering a new century, structural reform in a wide range of areas sought to make the transition from the traditional "excessive advance control/adjustment type society" to an "after-the-fact review/remedy type society" was conducted. Accordingly, the reform of the overall justice system, including criminal proceedings, took place (Section 1-3 Criminal Justice System Reform Responding to Meet the People's Expectations, p.66). The introduction of the *saiban-in* trial system, in particular, was a significant reform that had a major impact not only on the trial proceedings but also on the operations of other criminal proceedings. For example, the police and public prosecutors started the pilot audiovisual recording of investigative questioning in preparation for the introduction of the *saiban-in* trial system.

Then, institutional reform related to the issues that had been debated before the 2000s also commenced. In the 2000s, a considerable number of serious incidents and problems that caught the attention of society have occurred in various areas of criminal justice, including institutional correction and offender rehabilitation. Triggered by these incidents and problems, important reforms took place and new systems were introduced. Such examples include the establishment and implementation of hearing procedures to decide the appropriate treatment of offenders who have committed serious acts that harmed others under the condition of insanity (Section 1-4: A New System Bridging Criminal Justice and Mental Health Care, p.69); the improvement of fact-finding in juvenile hearings and the introduction of the court-appointed attendant system (Section 1-5: Major Reform of the Juvenile Act, p.71); and the enactment of a fundamental law of the institutional correction of adults in order to ensure the proper management and operation of penal detention facilities as well as to ensure appropriate treatment of inmates while respecting their human rights (Section 1-6: Major Reform of Correctional Administration, p.72); establishment and operation of prison based on the PFI (Private Finance Initiative) method, which utilizes funding and expertise of the private sector (Part 4, Chapter 5: The Road towards Open Corrections, p.124); and the enactment of the Offender Rehabilitation Act as the basic law for offender rehabilitation (Section 1-7: Reform of the Offender Rehabilitation System, p.74). In addition, during this period, there were serious crimes committed by repeat offenders, which lead to a thorough review of measures to prevent reoffending.

Thirdly, a number of measures to protect victims of crime advanced. It became widely recognized that consideration for victims had been inadequate in the existing criminal justice system. Consequently, a number of measures were taken to support and protect crime victims, such as the enactment of the Basic Act on Crime Victims in 2004 and the launch of the victim participation system in 2008. (Part 4, Chapter 4: Progress in Measures regarding Crime Victims and Related Matters, p.119).

(3) In the 2000s, after the synchronized terrorist attacks in the United States, the fight against terrorism all over the world represented a task of great importance globally. Moreover, the wake of globalization since the 1990s triggered the transnationalization of crime. In correspondence to this trend, there were accelerating moves to provide an internationally unified response against certain types of crimes, which

led to Japan's implementation of countermeasures in line with such global trends.

Under these circumstances, measures were implemented across Japan's criminal justice system to respond to the transnational nature of the crimes, including legislative measures to conclude international agreements to prevent terrorism and trafficking in persons (Section 1-8 Further Measures against Transnational Organized Crime, p.76). Measures were also taken in other areas such as mutual legal assistance in criminal investigations, transfer of sentenced persons and international criminal trials (Section 1-9 Response to the Internationalization, p.77)

**Synchronized terrorist attacks in the United States**
(c)Polaris/amanaimages

(4) As seen above, the 2000s was a period that witnessed significant reforms in the procedures and practices of criminal investigations and trials, as well as in the areas of corrections and offender rehabilitation. Significant progress was also observed as a result of these reforms such as the advancement of public participation, whole-of-government initiative, and public-private partnership as well as the deepening of international cooperation.

## 2 Dealing with the Deteriorating Crime Situation

### (1) Ministerial Meeting Concerning Measures Against Crime

a In September 2003, the government convened the Ministerial Meeting Concerning Measures Against Crime with the aim of restoring Japan's position as "the safest country in the world." It was the first time that a comprehensive, inter-agency framework to deal broadly with measures against crime was established. This Ministerial Meeting presented the following "three perspectives for the restoration of security": (1) Support for activities aimed at helping people secure their own safety; (2) Development of a social environment that makes it difficult for crimes to occur; and (3) Implementation of various measures against crime, including border security.

**Figure 3-4-1 Three perspectives for the restoration of security**


Source: White Paper on Police 2009

Based on these three perspectives, the Ministerial Commission held in December 2003 formulated "The Action Plan for the Realization of a Society Resistant to Crime" with the objective for the next five years of relieving public concern over security, putting a brake on the rise in crime and overcoming the critical state of security. The Action Plan set out five priority issues based on the crime trends at that time as well as the concrete measures that should be implemented when tackling each priority issue. Under the Plan, the relevant agencies cooperated to steadily implement measures that included strengthening their crackdown on crimes and strengthening of border controls, revising various laws and ordinances in the field of crime prevention including the Penal Code and increasing the number of local police officers. Local governments, residents, and related businesses also actively took measures that corresponded to this.

## Figure 3-4-2 Key points of the Action Plan for the Realization of a Society Resistant to Crime

1. Prevent familiar crimes threatening our public peace.
   Regenerating social bonds and creating a safe and peaceful community
   Promulgating products and methods effective for crime prevention
   Protecting crime victims
2. Prevent juvenile crimes by the community as a whole.
   Respond to juvenile crimes strictly and promptly
   Sound upbringing of juveniles to prevent delinquency
   Strengthen cooperation between the related organizations concerned to protect juveniles from delinquency

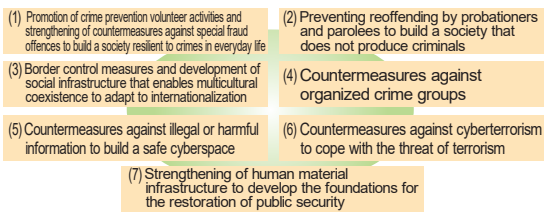
3. Control transnational menaces
   Implement watch and control at the border
   Implement countermeasures against illegal entry and overstay
   Strengthen investigation of crimes by foreigners
   Strengthen cooperation with relevant foreign organizations
4. Protect the economy and society from organized crime
   Implement countermeasures against organized crimes and organized crime groups
   Create a society free from drug abuse and crimes using firearms
   Implement countermeasures against crimes committed by various crime groups
   Implement countermeasures against cybercrime
5. Develop infrastructure for public safety

Source: White Paper on Police 2004

b Under these circumstances, the number of reported cases for Penal Code offences began to drop in 2003, falling below 2 million cases in 2007 and resulting in a certain level of improvement in the crime situation. However, the sense of security among the public had not improved, and social anxiety had grown in the wake of the global financial crisis that began in September 2008. In December 2008, the Ministerial Meeting Concerning Measures Against Crime formulated "The Action Plan for the Realization of a Society Resistant to Crime 2008". Taking over the aforementioned Action Plan of 2003, the new Action Plan aimed to realize the restoration of public security in the true sense by taking continuous and more fundamental crime control measures, further reducing crimes and relieving public concern over security for the next five years. The 2008 Action Plan laid out seven priority issues based on the existing crime trends as well as the concrete measures that should be implemented when grappling with each priority issue.

For example, the 2008 Action Plan set out the following measures: (1) Promotion of crime prevention volunteer activities and strengthening of countermeasures against special fraud offences to build a society resilient to crimes in everyday life; (2) Preventing reoffending by probationers and parolees to build a society that does not produce criminals; (3) Border control measures and

## Figure 3-4-3 Seven priority issues in "The Action Plan for the Realization of a Society Resistant to Crime 2008"




Source: White Paper on Police 2009

**Crime prevention initiative in the community by foreigners**
Source: White Paper on Police 2010

development of social infrastructure that enables multicultural coexistence to adapt to internationalization; (4) Countermeasures against organized crime groups; (5) Countermeasures against illegal or harmful information to build a safe cyberspace; (6) Countermeasures against cyber terrorism to cope with the threat of terrorism; and (7) Strengthening of human and material infrastructure to develop the foundations for the restoration of public security.

**(2) Countermeasures against Theft**

As explained previously, the number of reported cases for Penal Code offences increased for seven consecutive years from 1996 to 2002, reaching a post-war record high of about 2.85 million cases in 2002. In particular, the number of street crimes and intrusion crimes increased during this period, and a sense of anxiety over the deterioration of public security grew significantly among the people, which made the public security measures a national issue. For this reason, various measures and initiatives were put in place to deter thefts.

For example, in order to counter street crimes, the National Police Agency has been promoting "Comprehensive Measures to Deter Street Crimes and Intrusion Crimes" from January 2003, and has been analysing the actual state of these crimes from various perspectives, and strengthening surveillance and crackdown activities in areas and time periods in which these crimes frequently occur. Furthermore, in the aforementioned 2003 Action Plan, supporting the local residents and volunteer groups involved in voluntary crime prevention activities was laid out to be actively implemented. Therefore, the public-private partnership for crime prevention measures was undertaken by increasing the number of police officers and crime prevention volunteer group members. As for the intrusion crimes, in November 2002, the "Public-Private Joint Meeting on the Development and Spread of Components of Buildings with high Crime-Prevention Performance" was established by the relevant agencies, such as the National Police Agency, and private organizations related to components of buildings. Taking into account the methods of intrusion crime up to that time, the meeting reviewed the standards of building components to prevent intrusion. Since 2004, a list of building components evaluated as having a certain level of crime prevention capability, such as those requiring more than five minutes to break, have been published on the website, and efforts have been made to spread such building components. Moreover, the Act on Prohibition of Possession of Special Picking Tools, and Other Related Matters entered into force in 2003, strengthening the control over the lock picking tools etc.

**(3) Countermeasures against Special Fraud**

Since around 2003, special fraud offences such as so-called "it's me" fraud have become prominent in Japan, and in 2004, the number of reported cases reached about 25,700 and the total value of the damage was about 28.4 billion yen, which made them a social problem.

In light of this situation, the police had strengthened its crackdown activities and promoted the lowering of the withdrawal limits of the ATM machine and encouraged preventive activities such as having the financial institution staff ask the purpose of withdrawal. Through these efforts, number of reported cases in 2009 had fallen to about one-third of that in 2004.

Both the number of reported cases and the total amount of damage of special fraud offences worsened in the 2010s. In 2014, the total amount of damages reached a record high of about 56.6 billion yen. As such, the police have been strengthening not only crackdown activities but also prevention activities in cooperation with the private sector.

## 3 Criminal Justice System Reform to Meet the People's Expectations

### (1) Overview

Entering a new century, Japan sought to make the transition from the traditional "excessive advance control/adjustment type society" to an "after-the-fact review/remedy type society." The former type of society is a society in which the government is the primary agency working to prevent the occurrence of disputes and damage by coordinating the activities of individuals and business corporations beforehand through advance regulation and guidance. The latter type is a society which is founded on a basic understanding that individual citizens should be allowed to undertake free and creative activities based on their own initiative and responsibility to realize the revitalization of society, and the disputes and conflicts which may arise as a result of such activities should be resolved with appropriate remedies given according to clear rules established by law and through fair judicial proceedings. Accordingly, it was believed that the role of the justice system would become even more important as a result of this transition. Hence, a justice system reform was conceived and implemented with the following three basic policies: (1) construction of a justice system (civil proceedings, criminal proceedings, etc.) responding to public expectations; (2) reform of the state of legal profession that supports the justice system, including the education and training of legal professionals; and (3) establishment of a popular base for the justice system through means such as citizens' participation in legal proceedings.

In the field of criminal justice, as part of the efforts to (1) establish a criminal justice system that meets public expectations, the following measures were implemented in the second half of the 2000s: (a) establishing provisions to reinforce and speed up criminal trials such as the introduction of a new pretrial arrangement proceeding to sort out the contested issues and to organize the examination of evidence at trial and the enhancement of the disclosure of evidence; (b) introducing the court-appointed defence counsel system for suspects; and (c) strengthening the functions of the Committees for the Inquest of Prosecution, which is comprised of ordinary citizens and reviews public prosecutor's decision not to initiate prosecution. Under the new system, the Committee, upon the adoption of a certain resolution, can mandate prosecution of the case. Furthermore, the Japan Legal Support Center (JLSC) was established in 2006 for the purpose of enhancing access to justice including both criminal and civil cases. Through the JLSC, comprehensive legal support ensured that people have access to legal services more easily nationwide.

Regarding (2), the reform of the legal profession supporting the justice system, a new professional law school system was introduced in 2004 with the aim of fostering specialized legal knowledge and ability required for the legal profession. New system was also introduced to test and train legal professionals through the Bar Examination and legal training based on the new law school education.

As for (3), the establishment of the popular base for the justice system (citizens' participation in the justice system), the *saiban-in* trial system was introduced in 2009 in which the general public serve as *saiban-in* (lay judges) at criminal trials in cooperation with professional judges. Explanations about the introduction of the *saiban-in* system, the strengthening of the functions of the Committees for the Inquest of Prosecution, and the Japan Legal Support Center are provided below.

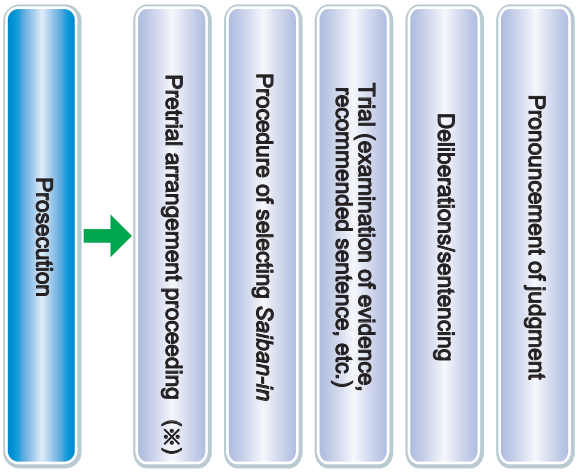
### (2) Introduction of the *saiban-in* System

Cases subject to the *saiban-in* system are cases handled by district courts and involve the following: (1) homicide, arson, and other crimes punishable by death, life imprisonment or life imprisonment without work and (2) injury causing death and other crimes punishable by imprisonment with or

without work whose minimum term is not less than one year where the death is caused by an intentional criminal act. Under the *saiban-in* system, a panel is formed by three professional judges and six *saiban-in* selected from the pool of general public chosen by a fair drawing of lots for each case, and the professional and *saiban-in* judges work side-by-side to undertake fact-finding and sentencing. The duties of *saiban-in* are threefold: (1) to be present with judges at criminal trials and examine the evidence that is submitted by the public prosecutor and the defence counsel, and when necessary, question defendants and witnesses, (2) after reviewing evidence, to deliberate with professional judges on fact-finding and sentencing, and (3) to sit on the bench when the presiding judge renders the judgment in the courtroom.

**Saiban-in trial**
Source: Supreme Court of Japan

## Figure 3-4-4 Flow of *Saiban-in* Trial Proceedings




The public prosecutor has a burden of proof by evidence that the accused is guilty, and make a closing argument on the fact and application of law including sentencing.
In Saiban-in trials, public prosecutors endeavor to show evidence and make statements in a speedy and concise manner so that saiban-in, who are chosen from citizens, can fully and effectively understand it and make a right decision.

※ The pretrial arrangement proceeding means the proceedings conducted prior to the commencement of a trial of a case subject to a saiban-in trial or a complicated case involving a wide variety of the issues, in which arrangement of the issues and evidence and formulation of a plan for trial proceedings are conducted between the public prosecutor and defence counsel under the supervision of a judge in order to realize the well-focused and effective hearing on the issues in dispute.

Source: Public Prosecutors Office

The *saiban-in* system marked the tenth year of its introduction in 2019 and has been steadily taking root among the general public (See page 98 in Column 5, "Establishment of the *saiban-in* System").

**(3) Strengthening the functions of the Committees for the Inquest of Prosecution**

The Committee for the Inquest of Prosecution is an organ that conducts inquests of the appropriateness of the non-prosecution decision of public prosecutors which consists of 11 lay people selected from the general public through drawing of lots. Previously, a decision of the Committee for the Inquest of Prosecution was non-binding. However, in order to deepen the understanding and trust of the public in the justice system, along with the introduction of the *saiban-in* system, a new system was introduced whereby prosecution can be brought based on the decision of the Committee. Under this system, if the Committee for the Inquest of Prosecution decides by a majority of eight or more that the case in question deserves prosecution even where the public prosecutor decided not to prosecute, and the public prosecutor who reopened and reinvestigated the case decides once again not to prosecute or fails to prosecute within a certain period, the Committee must reopen the inquest. If the Committee determines once again by a majority of eight or more that prosecution is more appropriate, the Committee shall make the decision that the case should be prosecuted. Upon this prosecution decision, the court appoints an attorney to perform the duties of the public prosecutor and this "designated attorney" undertakes the prosecution based on such decision.

**(4) The Establishment of the Japan Legal Support Center**

The Japan Legal Support Center (JLSC) commenced its operations in October 2006. The JLSC is a fully state-funded public corporation under the auspices of the Ministry of Justice. The JLSC was established to enable easy access to civil and criminal legal systems for all people, and its offices across the country are to provide prompt and proper service concerning comprehensive legal support.

The main services provided by the JLSC are: (1) "services for areas with limited legal services," which is aimed at servicing areas where there are very few lawyers or judicial scriveners or where it is otherwise difficult to have access to legal services; (2) "information services", which provides free information on the legal system and consultation offices that are useful in solving legal problems; (3) "civil legal aid services" for those who lack financial means. The JLSC provides free legal counselling and advance payment for attorneys or judicial scriveners fees for civil, family or administrative court proceedings; (4) "services related to court-appointed defence counsel", in which the JLSC nominates a candidate to serve as court-appointed defence counsel and court-appointed attendants, notifies the court of its nominees and manages their payment, and (5) "crime victim support services", which provide information for free of charge on the legal system and consultation offices in response to inquiries from crime victims, introduce attorneys that have experience in and good understandings of crime victim support, and provides support pertaining to the court-appointed attorney system for victim participants (nominating candidates for court-appointed attorneys for victim participants, notifying them to the courts, and managing the proceedings of payment to the appointed attorney etc.). As of April 2019, the JLSC is headquartered in Tokyo and has 108 offices throughout Japan, providing prompt and proper operations of the comprehensive legal support.


**Information service at the JLSC's call center**

## 4 A New System Bridging Criminal Justice and Mental Health Care

### (1) Background

There had been discussions and deliberations within the government for some time on the treatment of the intellectually disabled or mentally disordered offenders who committed serious crimes. However, the fatal stabbings of children at Ikeda Elementary School in Osaka Prefecture, which occurred in June 2001, gave rise to even stronger calls for appropriate measures concerning the treatment of such offenders. In view of such calls, the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity (hereinafter referred to as the "Medical Care and Treatment Act") was enacted in 2003. The Act was designed to provide continuing and appropriate medical care to those who have committed acts of seriously harming others under the condition of insanity etc., in order to improve their medical condition and prevent the recurrence of similar acts, and thereby facilitate their reintegration into society.

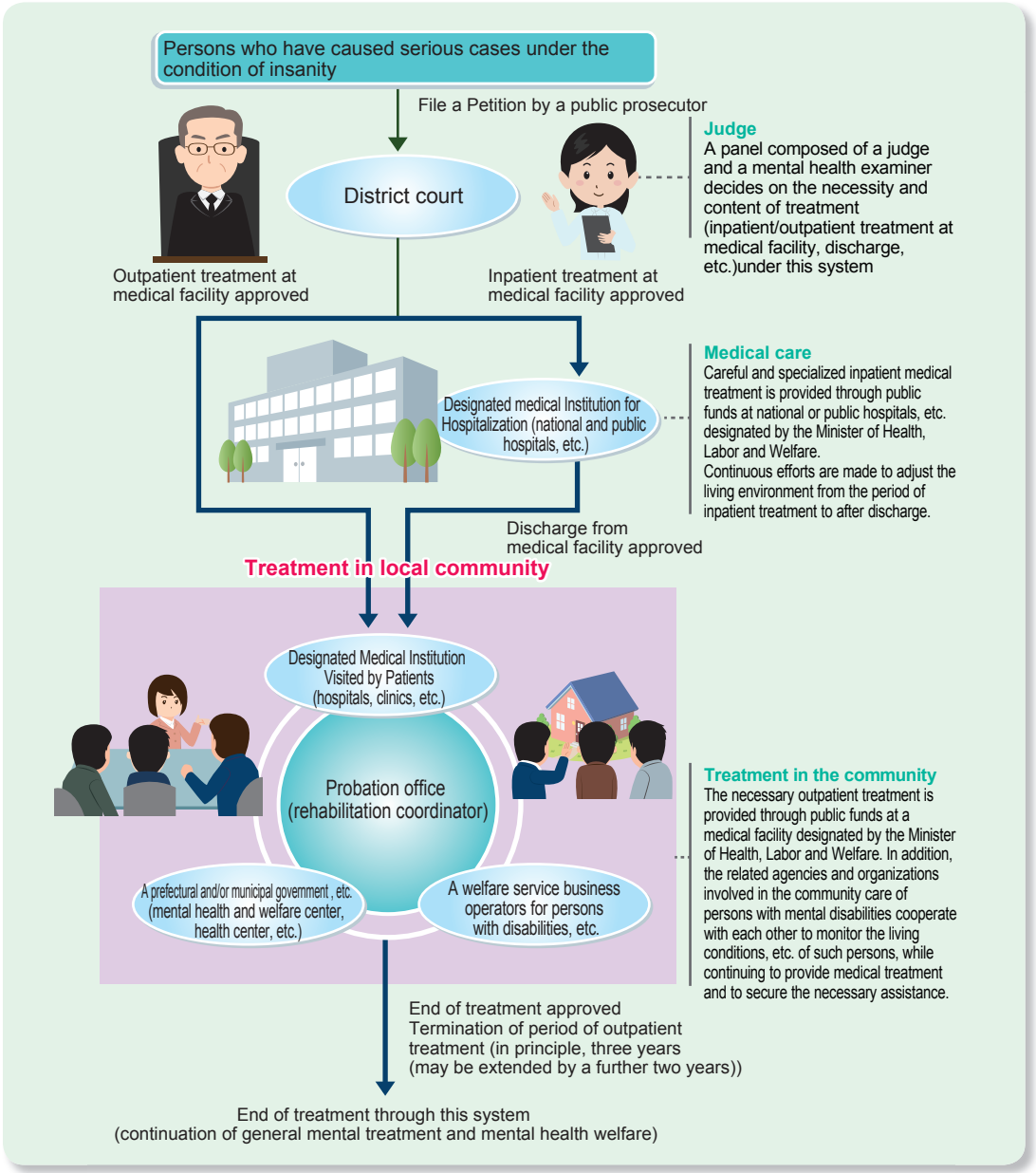
### (2) Contents of the new system

Under the Medical Care and Treatment Act, when a person who has committed an act of seriously harming another person or persons under the condition of insanity or diminished capacity and is decided not to be prosecuted or acquitted by reason of insanity with a final and binding decision, public prosecutor files a petition to a district court to seek decision on whether to have the person receive medical care under the Medical Care and Treatment Act. Upon the petition by the public prosecutor, that person will undergo an examination by a psychiatrist, and a probation office under the auspices of the Ministry of Justice will look into the person's living conditions. Then, a panel composed of a judge and a mental health examiner (a doctor with the necessary knowledge and experience) will decide on the necessity and content of treatment under this system. When the person receives the decision to be hospitalized and receive medical care under the Medical Care and Treatment Act, that person will be offered devoted professional medical care at a medical institution designated by the Ministry of Health, Labour and Welfare (Designated Medical Institution for Hospitalization). During the hospitalization, rehabilitation coordinator of the probation office will coordinate the person's living conditions after discharge.

For a period of three years in principle, a person under medical care as an outpatient or discharged

from the Designated Medical Institution for Hospitalization will receive medical care by a medical institution designated by the Ministry of Health, Labour and Welfare (Designated Medical Institution Visited by Patients) and assistance from a prefectural and/or municipal government and a welfare service business operators for persons with disabilities. The medical care will be based on the treatment implementation plan prepared by the probation office in consultation with relevant organizations. During this outpatient period, organizations engaged in community treatment will cooperate with each other to promote the treatment of the subject person, with the probation office acting as a coordinator and organizing care meetings.

**Figure 3-4-5 Overview of the medical treatment and supervision**




The annual number of petitions from public prosecutors has been in the 300-400 range. The number of pending cases at the end of each year of people receiving medical care as outpatients under the Medical Care and Treatment Act had been on the rise since the inauguration of the system in 2005, but since 2015, it has remained in the 650-700 range.

**Figure 3-4-6** Transition of number of people receiving medical care as outpatients under the Medical Care and Treatment Act


## 5 Major Reform of the Juvenile Act

Since juveniles are generally immature and more responsive to rehabilitative education than adults, "juveniles" (those under the age of 20) who commit crimes in Japan are, unlike adults, handled under special proceedings under the Juvenile Act (for the flow of criminal proceedings for juveniles as of 2020, see Part 1, Chapter 1, Section2 "2 Flow of Procedures for Delinquent Youths").

(1) The Juvenile Act in Japan had not been substantially amended for more than 50 years since its enactment in 1948. In the 2000s, however, it was amended three times, including with substantial changes.

(2) The amendment in 2000 involved three key changes.

First, as problems of fact-finding in juvenile delinquency hearings had been raised in multiple cases that drew keen public attention, it was established that, in order to improve the process, the juvenile hearing proceedings, which had been overseen by a single judge until then, may adopt a hearing panel system consisting of three judges, when deemed necessary (the introduction of the discretionary panel system). Furthermore, a system in which public prosecutors and attorneys may participate as attendants in the hearing was also introduced.

Secondly, as a result of the occurrence of particularly heinous crimes by juveniles, it was deemed necessary to review the state of disposition of juvenile cases, which led to the lowering of the minimum age of penal disposition culpability from 16 to 14 and the introduction of a new system wherein juveniles aged 16 or over are in principle referred to public prosecutors for prosecution in certain cases (See "Flow of Procedures for Delinquent Youths" described above).

Thirdly, as there was a growing social interest in the crime victims, which called for more consideration for those of juvenile crimes, in particular, several new systems were introduced as well, including the system to notify victims of judgments, the system for inspection and copying of records of the hearing by victims and the hearing of opinions of victims upon their request (victim impact

statements).

(3) In the amendment of 2007, in light of the occurrence of serious crimes by younger juveniles, the provisions related to the investigation proceedings in cases involving juvenile delinquents under the age of 14 were reinforced, and it became possible to send a juvenile under the age of 14 to a juvenile training school. In addition, a general court-appointed attendant system was also introduced.

(4) In the amendment of 2008, a system that allows crime victims to observe the juvenile hearing and a system in which the family court explains the status of the proceedings to victims were introduced. It also expanded the scope of the inspection and copying of records of the hearings by victims.

(5) The Juvenile Act was again amended in 2014, which expanded the scope of juvenile cases subject to the system of involving public prosecutors in hearings and the court-appointed attendant system. The amendment also raised the limit of maximum and minimum imprisonment terms of indeterminate sentences that can be imposed on juveniles.

## 6 Major Reform of Correctional Administration

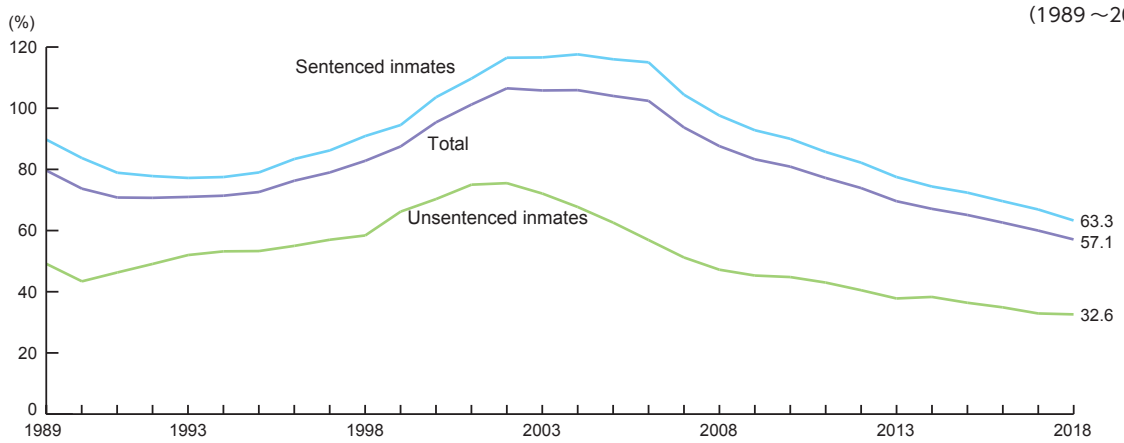
The Prison Law had served as the fundamental law for the practical operation of penal institutions in Japan for approximately 100 years since 1908. However, without any substantial amendments since its establishment, the Prison Law became inconsistent with the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations General Assembly in 1955, and with the international principles of correctional administration outlined in the legislation of other countries. Moreover, the Prison Law became inadequate for adapting to social changes, as well as from a criminal policy perspective of promoting rehabilitation and reintegration into society of sentenced inmates.

Accordingly, the Minister of Justice consulted the Legislative Council in 1976 on amending the Prison Law, and the Penal Institution Bill was drafted based on a report submitted by the Council in 1980. The main points of the bill were as follows: (i) In order to clarify the legal relationship between the State and inmates, the bill explicitly indicated the rights of inmates regarding religious activities, access to books, visitation, and correspondence, while specifying the requirements, procedures, and limitations of restrictions on the daily life and activities of inmates, including measures to maintain discipline and order and disciplinary punishments. It also provided for an appeal system for inmates to seek remedies for infringement of rights through proper and prompt proceedings; (ii) In order to assure an appropriate standard of living for inmates, the bill committed to enhance medical care, meals, and the lending of goods to inmates, and included provisions on remuneration for prison work; (iii) In order to develop an effective treatment system for rehabilitation and reintegration into society of sentenced inmates, the bill clarified the principle of "individualized treatment", in which the most appropriate method is applied to tailor the treatment of sentenced inmates to their personality and the circumstances surrounding them. In particular, the bill stipulated that correctional treatments are provided in a planned manner based on appropriate treatment guidelines, according to the characteristics of individual sentenced inmates. In addition, to achieve this aim, it introduced new treatment methods, such as work release, day leave and overnight furlough. The Penal Institution Bill was submitted to the Diet in 1982 and, upon making partial amendments, was also submitted to the Diet in 1987 and 1991. However, the bill failed to be passed in all cases due to the dissolution of the House of Representatives.

Under such circumstances, the Ministry of Justice decided to focus on addressing problems of correctional administration, including the treatment of inmates, that could be resolved under the

standing Prison Law. These improvements were implemented one after another from the 1990s to the 2000s. Despite these improvements, the number of reported cases for Penal Code offences rapidly increased from around 1996, and the people's sense of security declined. The number of reported cases for Penal Code offences rose to a post-war record high for seven consecutive years from 1996 to 2002; and during this period, the prison population rapidly increased. As Figure 3-4-7 below shows, the occupancy rate of sentenced inmates (as a percentage of inmate capacity at the end of year) was 79.0% in 1995, but it exceeded 100% in 2000 and reached 117.6% in 2004.

## Figure 3-4-7 Occupancy rate of penal institutions




Note 1: Prepared based on statistics from the Correction Bureau, Ministry of Justice
2: "Occupancy rate" refers to the percentage of the number of inmates to total capacity as of December 31 of the respective years.
3: "Sentenced inmates" includes fine defaulters in workhouses and detainees subject to court-ordered confinement.
4: "Unsentenced inmates" includes inmates sentenced to death penalty, detainees under warrants of arrest, and juveniles temporarily committed as a protective measure.

(Source: White Paper on Crime 2019)

As the issue of overcrowding became more apparent, the deaths and injuries of sentenced inmates caused by officers in prisons came to light from 2002 to 2003. In response, the Ministry of Justice examined and established measures to prevent the reoccurrence of such incidents. Meanwhile, the Correctional Administration Reform Council, composed of experts commissioned by the Minister of Justice, was convened in March 2003, and in December 2003, compiled a set of recommendations entitled, "Recommendations by the Correctional Administration Reform Council: Prisons that are accepted and supported by citizens". The Correctional Administration Reform Council pointed out that "It is important, above all, that the eyes of the public reach inside prisons and that their public voices are heard in prison, and conversely, that the voices inside prisons are heard by the public," and recommended improvements to the overall correctional administration, including a thorough revision of the Prison Law, from the following three perspectives: (i) promoting true rehabilitation and reintegration into society of sentenced inmates by respecting their human dignity; (ii) reducing excessive burden on correctional officers; and (iii) achieving correctional administration that is open to the public.

Following these recommendations, the Ministry of Justice began working on amending the Prison Law based on the Penal Institution Bill. First, the Act on Penal Institutions and the Treatment of Sentenced Inmates, which revised the provisions of the Prison Law related to the treatment of sentenced inmates, was passed by the Diet in May 2005 and entered into force in May 2006. Furthermore, the Act Partially Amending the Act on Penal Institutions and the Treatment of Sentenced Inmates, concerning the provisions of the Prison Law related to pre-trial detainees, was passed in June 2006 and entered into force

in June 2007. The title, the "Act on Penal Institutions and the Treatment of Sentenced Inmates," was renamed as the "Act on Penal Detention Facilities and the Treatment of Inmates and Detainees" (Penal Detention Facilities Act). As a result of such amendments, the Prison Law underwent a complete revision for the first time in approximately 100 years.

The Penal Detention Facilities Act explicitly stated that its purpose is to ensure the adequate treatment of inmates and others by respecting their human rights and taking into account their circumstances, as well as appropriately managing and administrating penal detention facilities. The Act identified the basic philosophy of the treatment of sentenced inmates as rehabilitation and their smooth reintegration into society. It clarified the principle of individualized treatment and required sentenced inmates to receive correctional treatment, namely, work, rehabilitation programmes and educational programmes, together with guidance received upon incarceration and prior to release. Additionally, the Act established "privileges" for sentenced inmates to encourage their efforts to rehabilitate, such as increasing the frequency of contact with people outside prison and expanding the scope of personal belongings that sentenced inmates can use, depending on the assessment of their attitude over a certain length of time. The Act also established "Penal Institution Visiting Committees", composed of members of the general public, in order to make correctional administration more open to the society. Therefore, the Act took into consideration the recommendations of the Correctional Administration Reform Council as well as international standards and norms, including the Standard Minimum Rules for the Treatment of Prisoners.

## 7 Reform of the Offender Rehabilitation System

### Enactment of the Offender Rehabilitation Act

#### (1) Background

In the post-war period, basic laws concerning the rehabilitation of offenders were divided into two laws, the Offender Prevention and Rehabilitation Act and the Act on Persons under Probation with Suspension of Execution of the Sentence. Due to the successive occurrences of serious reoffending by former or current probationers and parolees between 2004 and 2005, the effectiveness of the offender rehabilitation system, particularly the state of its function to prevent reoffending, came under public scrutiny. It became an urgent need to fundamentally review and reassess the overall rehabilitation system. Thus, "The Offender Rehabilitation Expert Council" was established in June 2005 under the Minister of Justice, which, after about a year of deliberations, submitted its report in June 2006.

In March 2006, in response to a case of confinement of a girl by a probationer whose sentence was suspended, the Act for Partial Revision of the Act on Persons under Probation with Suspension of Execution of the Sentence was enacted by lawmaker-initiated legislation (i.e., legislation proposed by an individual legislator rather than by the cabinet). This revision prescribed that a probationer with suspended sentence is required to obtain the permission of the director of the probation office for relocation or travel


**Recommendations for Offender Rehabilitation Reform**

and enabled the probation office to impose special conditions on such probationer. The amendment essentially eliminated the substantial differences between the probation systems provided for by the Offender Prevention and Rehabilitation Act and the Act on Persons under Probation with Suspension of Execution of the Sentence. Following this revision, in June 2007, the Offender Prevention and Rehabilitation Act and the Act on Persons under Probation with Suspension of Execution of the Sentence were reorganized and consolidated into a new law, called the Offender Rehabilitation Act.

**(2) Outline of the Offender Rehabilitation Act**

The enactment of the Offender Rehabilitation Act has made possible (1) the reorganization and consolidation of the Offender Prevention and Rehabilitation Act and the Act on Persons under Probation with Suspension of Execution of the Sentence; (2) the reorganization and enhancement of probation/parole conditions; (3) the improvement of the system to coordinate sentenced inmates' living environments to facilitate reintegration into society; and (4) the introduction of the system for the involvement of crime victims.

Firstly, as there were two basic laws concerning the rehabilitation of offenders, the Offender Rehabilitation Act reorganized and consolidated the provisions of the two laws. It did so by clarifying that the purpose of offender rehabilitation was to prevent reoffending, prevent juvenile delinquencies and help these offenders and juvenile delinquents to become self-reliant and rehabilitate themselves.

Secondly, the Act clarified that violations of conditions of probation or parole could be enforced by the revocation of probation/parole. In order to improve and enhance supervision, the Act required probationers and parolees to observe general conditions, including participation in interviews with probation officers and to truthfully report on the actual state of their lives. Also, the Act listed the special conditions that may be imposed as appropriate for each probationer or parolee, such as the requirement to complete specialized treatment programmes to decrease specific criminal tendencies. It also made it possible to impose, modify or rescind the special conditions in accordance with the implementation status of probation/parole supervision.

Thirdly, in order to facilitate reintegration into society or commencement of probation/parole, the Act required probation officers, when deemed necessary, to coordinate parolees' living environments upon their return to society after serving sentences in penal institutions or residing in juvenile training schools. For a person on probation whose sentence was suspended, the Act made it possible for the director of the probation office to take the lead in initiating the coordination of parolees' living environments, and specified the methods and contents of such coordination.

Finally, following measures were introduced as required to be implemented under the Basic Plan for Crime Victims, which was adopted by the Cabinet in December 2005: (a) the system to hear opinions from victims in parole hearings, and (b) the system to convey the feelings of victims to offenders under probation/parole in order to provide guidance and supervision to help deepen their feelings of repentance.

## 8 Further Measures against Transnational Organized Crime

### (1) Moves toward Japan's conclusion of the United Nations Convention against Transnational Organized Crime

In light of the importance of united and sustained efforts of the international community to effectively address transnational organized crime and international terrorism, Japan has actively engaged in international efforts, including through the conclusion and implementation of multilateral treaties.

In 2000, the UN adopted the United Nations Convention against Transnational Organized Crime (UNTOC). This convention prescribed provisions on the criminalization of participation in an organized criminal group, money-laundering and corruption; confiscation of criminal proceeds; extradition; and mutual legal assistance. In November 2000, the UN also adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol), which supplemented UNTOC. In Japan, the Diet approved the conclusion of the UNTOC in 2003 and the Trafficking in Persons Protocol in 2005.

### (2) Measures to combat trafficking in persons

At that time, it was indicated that trafficking in persons and related activities had been occurring in Japan as well. With the recognition that trafficking in persons is a serious human rights violation, the Japanese government has promoted comprehensive measures to prevent and eradicate trafficking in persons and to protect victims, and formulated the Action Plan of Measures to Combat Trafficking in Persons in 2004, which included the government's decision to conclude the Protocol on Trafficking in Persons as early as possible.

The Protocol on Trafficking in Persons states:

> "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

While most of the acts defined as "trafficking in persons" in the Protocol were punishable under the existing Penal Code, there were some that was not covered by the existing Penal Code provisions, such as acts for the purpose of "the removal of organs". Therefore, in order to establish punitive provisions that were necessary to adopt the Protocol, the Act for Partial Revision of the Penal Code, etc. was enacted in June 2005. The revision established the crime of buying or selling human beings, and it also created punitive provisions against acts such as kidnapping or delivery of kidnapped persons "for the purpose of threatening the victim's life or body", which included that of the removal of organs.

### (3) Counterterrorism measures

With regard to counterterrorism, various international organizations, including the UN, have developed multilateral treaties for the purpose of punishing terrorists in any country. Heinous terrorist attacks, including that which occurred in the United States on September 11, 2001, accelerated the development of new treaties and the amendment of existing ones. The UN General Assembly adopted the International Convention for the Suppression of Terrorist Bombings in 1997, the International

Convention for the Suppression of the Financing of Terrorism in 1999, and the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005. Japan acceded to and enacted domestic implementation laws for 13 treaties on counterterrorism, including those mentioned above. For example, Japan enacted the Act on Punishment of Financing to Offences of Public Intimidation in 2002 as the domestic implementation law for the International Convention for the Suppression of the Financing of Terrorism, which sets forth punitive provisions for acts such as providing funds for crimes with the objective of threatening the public, the State, local governments or foreign governments, etc.

In addition, under the framework of the G7 (referring collectively to France, the United States, the United Kingdom, Germany, Japan, Italy, and Canada [in order of presidency]; from 1998 to 2014, eight countries, comprising these seven countries and Russia, were collectively referred to as the "G8"), the Counter-Terrorism Experts Group (also known as the "Rome Group") was launched in 1978 and has been holding discussions on the trend of international terrorism. Furthermore, at the G7 Summit in 1995, the G7 decided to establish the Senior Experts Group on Transnational Organized Crime (also known as the "Lyon Group"). The Lyon Group adopted 40 Recommendations for fighting transnational organized crime in 1996, and has continued to discuss investigation methods and legislation for addressing transnational organized crime, including trafficking in firearms, drug trafficking and trafficking in persons; cybercrime; money-laundering; and acts of corruption. Following the 2001 terrorist attacks in the United States, joint meetings of the Rome and Lyon Groups have been held several times a year continually. In 2002, they reviewed the previously mentioned 40 Recommendations and adopted the G8 Recommendations on Transnational Crime, specifying measures for combating not only transnational organized crime but also terrorism. Moreover, the Financial Action Task Force (FATF), established in 1989 based on the G7 Summit Declaration, adopted 40 Recommendations in 1990 that became the international standard on measures against money-laundering, and it subsequently made several revisions to the Recommendations. In response to the terrorist attacks of September 2001, the FATF also held a meeting on terrorist financing, adopted Special Recommendations on Terrorist Financing and began to take measures against the financing of terrorism.

## 9 Response to Internationalization

### (1) International Transfer of Sentenced Persons

In Japan, the number of foreign sentenced inmates has been increasing sharply since around 1998. In 2001, it reached approximately 2,300, which was about 8.5 times as many as 10 years ago, and the nationalities of foreign sentenced persons also diversified to 62 countries. For the purpose of implementing new measures for the effective treatment of these foreign sentenced persons, Japan acceded to the Convention on the Transfer of Sentenced Persons, which was adopted by the Council of Europe in 1983, and decided to start the transfer of sentenced persons.

In 2002, the Act on the International Transfer of Sentenced Persons was enacted as a domestic implementation law to ensure the enforcement of the Convention, and it entered into force in 2003. These developments made it possible to transfer Japanese detained in a foreign country with the final adjudication of imprisonment or foreign sentenced persons detained in Japan with the final adjudication of imprisonment with or without work to their home countries and execute the punishment, based on the Convention and under certain conditions, such as the consent of sentenced persons, the agreement between both countries involved and dual criminality. In 2010, the Act on the

International Transfer of Sentenced Person was amended to enable Japan to conduct such transfers based on applicable conventions other than the aforementioned Convention on the Transfer of Sentenced Persons.

Table 3-4-8 and Table 3-4-9 show the number of sentenced persons transferred from foreign countries to Japan (by sentencing state) and the number of sentenced persons transferred from Japan to foreign countries (by administering state) between 2004, the year when a sentenced person was transferred from Japan for the first time, and 2019.

## Table 3-4-8 Number of sentenced persons transferred from foreign countries to Japan

(2006～2019)

| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 6 | 0 | 0 | 0 | 1 | 0 | 10 |
| Korea | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| Thailand | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 1 | 0 | 3 |
| USA | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 5 |

## Table 3-4-9 Number of sentenced persons transferred from Japan to foreign countries

(2004～2019)

| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Total | 7 | 12 | 16 | 44 | 48 | 35 | 15 | 25 | 21 | 25 | 33 | 43 | 38 | 27 | 28 | 41 | 458 |
| Australia | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| Austria | 0 | 0 | 0 | 3 | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 7 |
| Belgium | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 1 | 0 | 3 |
| Bolivia | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| Brazil | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |
| Canada | 0 | 2 | 1 | 5 | 7 | 2 | 4 | 5 | 3 | 7 | 1 | 1 | 2 | 2 | 2 | 1 | 45 |
| Czech Republic | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 2 | 2 | 0 | 6 |
| Denmark | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| Estonia | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 2 |
| Finland | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 2 |
| France | 0 | 2 | 3 | 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 6 | 2 | 1 | 0 | 20 |
| Germany | 0 | 0 | 1 | 4 | 1 | 3 | 0 | 3 | 0 | 0 | 8 | 1 | 2 | 6 | 4 | 4 | 37 |
| Greece | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Hungary | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Ireland | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Israel | 0 | 1 | 0 | 0 | 1 | 2 | 2 | 0 | 2 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 10 |
| Italy | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 5 |
| Korea | 0 | 0 | 0 | 2 | 8 | 6 | 0 | 5 | 10 | 3 | 2 | 4 | 2 | 1 | 0 | 3 | 46 |
| Latvia | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 | 2 |
| Lithuania | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 1 | 0 | 1 | 0 | 1 | 7 |
| Mexico | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 7 | 3 | 2 | 3 | 0 | 16 |
| Netherlands | 0 | 0 | 0 | 12 | 12 | 9 | 3 | 7 | 0 | 2 | 1 | 2 | 0 | 0 | 3 | 0 | 51 |
| Norway | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 2 |
| Poland | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 6 |
| Portugal | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 3 | 7 |
| Romania | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 3 | 0 | 0 | 2 | 7 |
| Serbia | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| Slovakia | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| Spain | 2 | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 2 | 3 | 3 | 9 | 0 | 2 | 0 | 26 |
| Sweden | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 1 | 4 |
| Thailand | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |
| Turkey | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 3 |
| UK | 3 | 3 | 7 | 7 | 8 | 4 | 3 | 1 | 3 | 6 | 4 | 11 | 0 | 0 | 0 | 8 | 68 |
| USA | 1 | 3 | 2 | 6 | 5 | 5 | 2 | 1 | 2 | 0 | 1 | 4 | 6 | 6 | 7 | 11 | 62 |

### (2) Enhancement of mutual legal assistance in criminal matters

In connection with the conclusion of the Treaty between Japan and the United States of America on Mutual Legal Assistance in Criminal Matters, the Act on International Assistance in Investigation and Other Related Matters and other relevant laws were amended in 2004 to ensure the smooth implementation of international assistance in investigation. By these revisions, if provided by the treaty, the Minister of Justice was able to receive requests for mutual legal assistance, and even in cases where the requirement of dual criminality was not met, mutual legal assistance may be provided if the treaty provided otherwise.

## Table 3-4-10 Number of mutual legal assistance requests

①

(1989 – 2005)

| Year | Number of requests made by Japan | | Number of requests received by Japan |
|---|---|---|---|
| | Requests by the Public Prosecutors Office | Requests by the police, etc. | |
| 1989 | 6 | … | 18 |
| 1990 | 5 | … | 13 |
| 1991 | 8 | … | 14 |
| 1992 | 9 | … | 18 |
| 1993 | 16 | 6 | 22 |
| 1994 | 17 | 8 | 20 |
| 1995 | 15 | 5 | 21 |
| 1996 | 12 | 7 | 30 |
| 1997 | 17 | 14 | 30 |
| 1998 | 19 | 12 | 16 |
| 1999 | 23 | 9 | 22 |
| 2000 | 28 | 13 | 16 |
| 2001 | 13 | 24 | 19 |
| 2002 | 13 | 15 | 28 |
| 2003 | 11 | 10 | 21 |
| 2004 | 5 | 14 | 24 |
| 2005 | 8 | 14 | 71 |

②

(2006 – 2018)

| Year | Number of requests made by Japan | | | | Number of requests received by Japan | |
|---|---|---|---|---|---|---|
| | Requests by the Public Prosecutors Office | | Requests by the police, etc. | | | |
| | | Between contracting parties | | Between contracting parties | | Between contracting parties |
| 2006 | 16 | 4 | 30 | 5 | 35 | 2 |
| 2007 | 12 | 6 | 28 | 14 | 34 | 12 |
| 2008 | 10 | 3 | 40 | 24 | 28 | 11 |
| 2009 | 9 | 5 | 36 | 30 | 26 | 9 |
| 2010 | 9 | 6 | 60 | 39 | 40 | 7 |
| 2011 | 10 | 8 | 46 | 34 | 55 | 37 |
| 2012 | 17 | 12 | 62 | 37 | 98 | 78 |
| 2013 | 17 | 6 | 138 | 101 | 76 | 61 |
| 2014 | 17 | 10 | 78 | 60 | 62 | 49 |
| 2015 | 12 | 6 | 54 | 44 | 70 | 46 |
| 2016 | 12 | 8 | 85 | 67 | 79 | 67 |
| 2017 | 8 | 4 | 110 | 95 | 54 | 45 |
| 2018 | 24 | 9 | 156 | 125 | 94 | 83 |

Note 1: "Requests by police, etc." represents the number of mutual legal assistance requests made by police and requests made through the Criminal Affairs Bureau, Ministry of Justice by the administrative authorities with which special judicial police officers are affiliated and by courts.

2: In (2), "Between contracting parties" represents the number of mutual legal assistance requests made between Japan and the contracting parties/regions with Japan has MLAT/MLAAs that entered into force in the relevant year or had already entered into force.

Source: Criminal Affairs Bureau, Ministry of Justice and Criminal Affairs Bureau, National Police Agency

### (3) Establishment of provisions for extraterritorial jurisdiction to penalize persons who harm a Japanese national through a serious crime committed outside Japan

At the time of the enactment, the Penal Code contained provisions that prescribed that the Penal Code can be applied to foreigners who committed those crimes against Japanese nationals outside

## Table 3-4-11 Number of cases of Japanese crime victims overseas

(1995 – 2017)

| Year | Total number | Homicide | Injury/ Assault | Forcible sexual intercourse/ Forcible indecency | Intimidation/ Extortion | Robbery | Theft | Fraud | Kidnapping | Other |
|---|---|---|---|---|---|---|---|---|---|---|
| 1995 | 6,148 (100.0) | 14 (0.2) | 55 (0.9) | 14 (0.2) | 54 (0.9) | 401 (6.5) | 5,344 (86.9) | 232 (3.8) | 5 (0.1) | 29 (0.5) |
| 1996 | 6,694 (100.0) | 21 (0.3) | 56 (0.8) | 15 (0.2) | 55 (0.8) | 606 (9.1) | 5,682 (84.9) | 202 (3.0) | 2 (0.0) | 55 (0.8) |
| 1997 | 6,466 (100.0) | 19 (0.3) | 57 (0.9) | 18 (0.3) | 50 (0.8) | 831 (12.9) | 5,176 (80.0) | 268 (4.1) | 2 (0.0) | 45 (0.7) |
| 1998 | 6,486 (100.0) | 23 (0.4) | 38 (0.6) | 21 (0.3) | 49 (0.8) | 875 (13.5) | 5,170 (79.7) | 254 (3.9) | 5 (0.1) | 51 (0.8) |
| 1999 | 6,676 (100.0) | 29 (0.4) | 53 (0.8) | 37 (0.6) | 32 (0.5) | 938 (14.1) | 5,228 (78.3) | 316 (4.7) | 4 (0.1) | 39 (0.6) |
| 2000 | 7,342 (100.0) | 21 (0.3) | 64 (0.9) | 16 (0.2) | 68 (0.9) | 1,062 (14.5) | 5,582 (76.0) | 488 (6.6) | 3 (0.0) | 38 (0.5) |
| 2001 | 7,953 (100.0) | 18 (0.2) | 63 (0.8) | 31 (0.4) | 75 (0.9) | 1,089 (13.7) | 6,115 (76.9) | 510 (6.4) | 8 (0.1) | 44 (0.6) |
| 2002 | 7,109 (100.0) | 26 (0.4) | 92 (1.3) | 29 (0.4) | 61 (0.9) | 1,023 (14.4) | 5,439 (76.5) | 375 (5.3) | 6 (0.1) | 58 (0.8) |
| 2003 | 6,255 (100.0) | 20 (0.3) | 92 (1.5) | 38 (0.6) | 71 (1.1) | 686 (11.0) | 4,831 (77.2) | 430 (6.9) | 9 (0.1) | 78 (1.2) |
| 2004 | 6,410 (100.0) | 14 (0.2) | 104 (1.6) | 44 (0.7) | 94 (1.5) | 442 (6.9) | 5,169 (80.6) | 455 (7.1) | 7 (0.1) | 81 (1.3) |
| 2005 | 6,352 (100.0) | 24 (0.4) | 122 (1.9) | 45 (0.7) | 62 (1.0) | 519 (8.2) | 5,067 (79.8) | 436 (6.9) | 8 (0.1) | 69 (1.1) |
| 2006 | 6,186 (100.0) | 15 (0.2) | 119 (1.9) | 32 (0.5) | 69 (1.1) | 404 (6.5) | 5,014 (81.1) | 421 (6.8) | 8 (0.1) | 104 (1.7) |
| 2007 | 5,692 (100.0) | 19 (0.3) | 105 (1.8) | 36 (0.6) | 73 (1.3) | 425 (7.5) | 4,535 (79.7) | 381 (6.7) | 4 (0.1) | 114 (2.0) |
| 2008 | 5,574 (100.0) | 28 (0.5) | 117 (2.1) | 29 (0.5) | 86 (1.5) | 421 (7.6) | 4,428 (79.4) | 380 (6.8) | 9 (0.2) | 76 (1.4) |
| 2009 | 5,495 (100.0) | 20 (0.4) | 99 (1.8) | 30 (0.5) | 101 (1.8) | 387 (7.0) | 4,334 (78.9) | 439 (8.0) | 6 (0.1) | 79 (1.4) |
| 2010 | 5,589 (100.0) | 19 (0.3) | 116 (2.1) | 33 (0.6) | 91 (1.6) | 428 (7.7) | 4,394 (78.6) | 429 (7.7) | 7 (0.1) | 72 (1.3) |
| 2011 | 5,267 (100.0) | 14 (0.3) | 127 (2.4) | 30 (0.6) | 49 (0.9) | 296 (5.6) | 4,225 (80.2) | 489 (9.3) | - | 37 (0.7) |
| 2012 | 5,457 (100.0) | 13 (0.2) | 121 (2.2) | 36 (0.7) | 57 (1.0) | 281 (5.1) | 4,456 (81.7) | 461 (8.4) | - | 32 (0.6) |
| 2013 | 5,353 (100.0) | 9 (0.2) | 108 (2.0) | 34 (0.6) | 41 (0.8) | 294 (5.5) | 4,400 (82.2) | 397 (7.4) | 2 (0.0) | 68 (1.3) |
| 2014 | 5,040 (100.0) | 13 (0.3) | 94 (1.9) | 29 (0.6) | 55 (1.1) | 227 (4.5) | 4,140 (82.1) | 429 (8.5) | 9 (0.2) | 44 (0.9) |
| 2015 | 4,719 (100.0) | 14 (0.3) | 95 (2.0) | 33 (0.7) | 53 (1.1) | 257 (5.4) | 3,834 (81.2) | 382 (8.1) | - | 51 (1.1) |
| 2016 | 4,202 (100.0) | 9 (0.2) | 85 (2.0) | 31 (0.7) | 50 (1.2) | 233 (5.5) | 3,416 (81.3) | 308 (7.3) | - | 70 (1.7) |
| 2017 | 4,531 (100.0) | 9 (0.2) | 82 (1.8) | 24 (0.5) | 48 (1.1) | 270 (6.0) | 3,676 (81.1) | 320 (7.1) | - | 102 (2.3) |

Note 1: Prepared based on materials from the Consular Affairs Bureau of the Ministry of Foreign Affairs
2: This table was prepared based on values from 1995 when data for the calendar year was available.
3: “Other” includes terrorism.
4: Figures in the brackets ( ) show the percentage.

Japan, of which was specifically set forth under the provisions that punishes Japanese nationals of committing them outside of Japan. When the Penal Code was amended in 1947, however, such provisions were deleted based on the legislative examples of foreign countries at the time. Subsequently, in the 2000s, the transnational movement of people has become an everyday affair due to the development of transportation. Along with this, it has become not so uncommon that Japanese nationals become victims of serious crimes outside Japan, including homicide, kidnapping, and robbery. In light of such circumstances, in order to protect Japanese nationals outside Japan, the Act for Partial Revision of the Penal Code was enacted in 2003, establishing the provisions for extraterritorial jurisdiction over persons who committed certain serious crimes which physically harm victims of Japanese nationalities, such as homicide, outside of Japan.

**(4) Cooperation with the International Criminal Court**

In 1998, the Rome Statute of the International Criminal Court was adopted at a diplomatic conference hosted by the United Nations. With its coming into effect in 2002, the International Criminal Court (ICC) was established in The Hague, the Netherlands. The ICC is a permanent international criminal tribunal to prosecute and punish individuals who, in violation of principles of international law, commit the crime of genocide, crimes against humanity, war crimes and the crime of aggression, whose function is complementary to national criminal jurisdictions. In 2007, Japan became a Party to the Statute after the Act on Cooperation with the International Criminal Court was enacted as the domestic implementation law for the Rome Statute. The Act provided procedural provisions for cooperation in the investigations of cases over which the ICC has jurisdiction, as well as punitive provisions for the crimes that hinder the operation of the ICC, such as destruction of evidence.

## Column 4 Pilot Audiovisual Recording of Investigative Questioning

As described in Part III, Chapter 4, Section1, 1 Overview (2), audiovisual recording systems for investigative questioning of detained suspects started on a trial basis in some public prosecutors' offices from 2006. Thereafter, the effectiveness of the audiovisual recordings was recognized, and the subjects and scope of the recording were expanded. In the prosecution service, cases subject to s*aiban-in* trials and cases investigated by prosecutors' initiative, the entire process of the investigative questioning of arrested or detained suspects became, in principle, subject to audiovisual recording. In FY2018 (from April 2018 to March 2019), in these two types of cases, the implementation rate of audiovisual recording of investigative questioning was almost 100%. In 2008, the police also began the trial of audiovisual recording in certain prefectures. In cases subject to s*aiban-in* trials, in principle, it conducted audiovisual recordings of investigative questioning of suspects, and the implementation rate in FY2018 was also almost 100%.

In the prosecution service, in addition to the aforementioned two categories of cases, prosecutors have, in principle, implemented audiovisual recording of investigative questioning of arrested or detained suspects in cases involving persons with intellectual disabilities or mental disorders. Also, prosecutors have actively implemented the audiovisual recordings of investigative questioning of arrested or detained suspects when their cases are expected to proceed to trial and such recordings are expected to be necessary to prove their guilt, as well as the investigative questioning of victims and witnesses when their testimonies are expected to be necessary, such as when their testimonies are expected to be the core element of the proof of guilt at trial. In FY2018, prosecutors implemented audiovisual recordings of the investigative questioning of suspects in a total of 102,154 cases, including the two aforementioned categories.

Meanwhile, the police have also been implementing audiovisual recordings of investigative questioning of suspects who have intellectual or other disabilities and are found to have difficulties in their verbal communication skills, or to be highly compliant to investigators or susceptible to their suggestions, taking into consideration of the characteristics of the suspects. The number of recordings in such cases in FY2018 was 4,978.

## Section2 Domestic and Overseas Situation

**[2000]**

**Japan**

January — *Aum Shinrikyo* cult group changed its religious group name group to Aleph.

**Overseas**

June — First summit meeting between South Korea and North Korea.

November — Adoption of the United Nations Convention against Transnational Organized Crime (UNTOC)

[Development in criminal justice]

・Enactment of the Act for Partial Revision of the Juvenile Act, etc. (See page 71)

**[2001]**

**Japan**

January — Reorganization of the central government ministries and agencies

June — Fatal stabbings of children at Ikeda Elementary School in Osaka Prefecture

June — Adoption of recommendation by the Justice System Reform Council

December — Abuse of inmates at the Nagoya Prison occurred

December — Establishment of the Office for Promotion of Justice System Reform

**Overseas**

September — September 11 terrorist attacks in the U.S.

**[2002]**

**Japan**

April — "More relaxed education" (*Yutori Kyoiku*) started

May — Opening of the 2002 FIFA World Cup South Korea/Japan

September — Prime Minister Koizumi's visit to North Korea and the signing of the Japan-DPRK Pyongyang Declaration.

October — Five of the victims of abduction by North Korea returned to Japan.

● The number of reported cases for Penal Code offences renewed a post-war record high for the seven consecutive years from 1996 to 2002 (approximately 2.85 million cases).

**Overseas**

July — The Rome Statute of the International Criminal Court entered into force.

**Five of the victims of abduction by North Korea returned to Japan**

[Developments in criminal justice]
- Enactment of the Act on Punishment of Financing to Offences of Public Intimidation (See page 77)
- Enactment of the Act on the International Transfer of Sentenced Persons (See page 77)

**[2003]**

**Japan**

| | |
|---|---|
| May | Enactment of the 5 laws on protection of personal information |
| June | Enactment of the 3 laws on defence against military attack from abroad |

**Overseas**

| | |
|---|---|
| March | Outbreak of the Iraq War |
| August | Signing of the Treaty between Japan and the United States of America on Mutual Legal Assistance in Criminal Matters |
| October | Adoption of the United Nations Convention against Corruption |

**Iraq War**
(c)Science Source/amanaimages

[Developments in criminal justice]
- Correctional Administration Reform Council
- Convention on the Transfer of Sentenced Persons entered into force in Japan.
- Establishment of the Ministerial Meeting Concerning Measures Against Crime (Adoption of "the Action Plan for the Realization of a Society Resistant to Crime") (See page 63)
- Promotion of "Comprehensive Measures to Deter Street Crimes and Intrusion Crimes" (See page 65)
- "The Act on Prohibition of Possession of Special Picking Tools, and Other Related Matters" entered into force (See page 65)
- Enactment of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity (See page 69)

**[2004]**

**Japan**

| | |
|---|---|
| November | Homicide of a seven year-old girl in Nara Prefecture |
| ● | The occupancy rate of sentenced inmates in penal institutions reached 117.6%. |

**Overseas**

| | |
|---|---|
| July | The Convention on Cybercrime came into force. |
| December | The earthquake off Sumatra and the massive tsunami across the Indian Ocean. |

[Developments in criminal justice]
- Establishment of law schools (See page 66)
- Enactment of the Act for Partial Revision of the Act on International Assistance in Investigation and Other Related Matters and the Act on Punishment of Organized Crimes and Control of Crime Proceeds (See page 79)

**[2005]**

**Japan**

| | |
|---|---|
| February | Fatal stabbing of an eleven month-old infant by a parolee in Anjo City, Aichi Prefecture |
| March | Opening of EXPO 2005 in Aichi, Japan |
| April | Derailment accident on the JR Fukuchiyama Line |
| May | Confinement/injury case by a probationer with the suspended sentence |

**Overseas**

| | |
|---|---|
| August | Damage from Hurricane Katrina in the southern U.S. |

**Derailment accident on the JR Fukuchiyama Line**
(c)The Asahi Shimbun/amanaimages

[Developments in criminal justice]
- Enactment of the Act on Penal Institutions and the Treatment of Sentenced Inmates (See page 73)
- Enactment of the Act for Partial Revision of the Penal Code, etc. (See page 76)

**[2006]**

**Japan**

| | |
|---|---|
| January | Arrest of the president of Livedoor Co. (violation of the Securities and Exchange Act) |
| ● | The number of reoffenders of penal code offences reached the highest (149,164 persons). |

**Overseas**

| | |
|---|---|
| ● | The Chinese economy posted high growth, with its foreign exchange reserves rising to the highest in the world. |

[Developments in criminal justice]
- Formulation of comprehensive employment support measures for released inmates etc.
- Commencement of the operations of the Japan Legal Support Center (JLSC) (See Page 68)
- Enactment of the Act for Partial Revision of the Act on the Penal Institutions and the Treatment of Sentenced Inmates (See page 74)
- Pilot audiovisual recording of investigative questioning of suspects at some public prosecutors offices (See page 81)

**[2007]**

**Japan**

| | |
|---|---|
| October | Start of the privatization of the postal service |

**Overseas**

| | |
|---|---|
| ● | The US subprime mortgage crisis shook global financial markets. |

**Privatization of postal service**
(c)KYODO NEWS/amanaimages

[Developments in criminal justice]

- Enactment of the Act for Partial Revision of the Juvenile Act (See page 72)
- Enactment of the Offender Rehabilitation Act (See page 74)
- Enactment of the Act on Cooperation with the International Criminal Court (See page 81)
- Commencement of the operations of Japan's first penal institution to be run by the private finance initiative (PFI) (Mine Rehabilitation Program Center)

**[2008]**

**Japan**

| | |
|---|---|
| April | Release of the Japanese version of "Twitter" |
| June | Indiscriminate stabbing incident in Akihabara, Tokyo |
| July | Launch of the "iPhone" in Japan |
| October | Inauguration of the Japan Tourism Agency |

**Overseas**

| | |
|---|---|
| September | Breakout of the 2008 Global Financial Crisis (referred to in Japan as the "Lehman shock") |

**Indiscriminate stabbing incident in Akihabara**
(c)KYODO NEWS/amanaimages

[Developments in criminal justice]

- Formulation of the 2008 Action Plan for the Realization of a Society Resistant to Crime (See page 63)
- Enactment of the Act for Partial Revision of the Juvenile Act (See page 72)
- Pilot audiovisual recording of investigative questioning of suspects by prefectural police (See page 81)

**[2009]**

**Japan**

| | |
|---|---|
| September | Inauguration of the coalition government of the Democratic Party, the Social Democratic Party and the People's New Party |

**Overseas**

| | |
|---|---|
| June | The World Health Organization (WHO) raised the alert level of a new strain of influenza to the highest "phase 6" |

[Developments in criminal justice]

- Introduction of the *saiban-in* system (See page 66)
- Commencement of the system of special coordination for elderly inmates and inmates with disabilities

# Chapter 5 The 2010s (From 2010 to 2019)

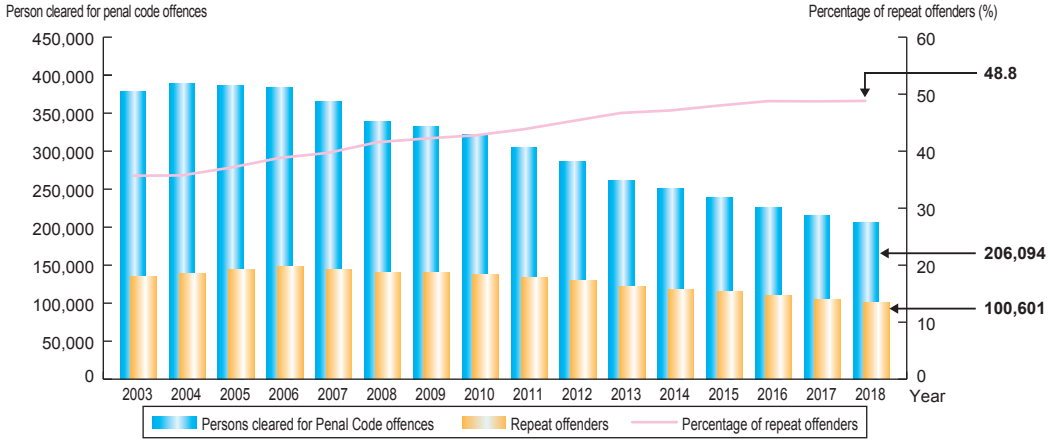
## - Continued Development of Criminal Justice in Tandem with Changes in Society, in Order to Realize the Safest and Most Secure Society in the World -

## Section 1 Developments in Criminal Justice

### 1 Overview

(1) In the 2010s, despite the impact of the Global Financial Crisis (referred to as "the Lehman Shock" in Japan) that occurred in 2008, the period of the downturn was rather short and the Japanese economy restarted the path toward recovery. The number of reported cases of Penal Code offences continued to fall. However, the percentage of repeat offenders among all persons cleared increased year by year (this may be partly attributed to the decrease in the number of first-time offenders), reaching an alarmingly high level of 48.8% by 2018. Hence, in order to realize a safer and more secure society, the vital need and importance to promote measures to reduce reoffending was recognized, and various initiatives were implemented towards preventing recidivism. (Section 1-2: Various Initiatives to Prevent Recidivism, page 87).

**Figure 3-5-1** Trend of the number of repeat offenders among all persons cleared for Penal code offences, and the rate of repeat offenders




Note 1: "Repeat offenders" refers to those cleared again after being cleared for Penal Code offences constituting crimes not considered violations of the Road Traffic Act.
2: "Ratio of repeat offenders" refers to the ratio of repeat offenders to the total number of persons cleared for Penal Code offences.

Source: Criminal Statistics of the National Police Agency

During this period, social-networking, video-sharing and video-streaming services via the Internet became increasingly common, which gave rise to the dramatic computerization and digitalization of society. As a result, malicious acts carried out through the Internet, such as cybercrime, child pornography and nonconsensual distribution of private sexual photographs, increased significantly and became a growing social problem. In response to these forms of crime, a wide variety of operational and legislative measures were implemented in the field of criminal justice (Section 1-3 Adapting to Growing Sophistication of Information Technology, page 90. Section 1-4 Measures to Prevent Various Forms of Sexual Harm in Modern Society, page 91). Moreover, against the background

of Japan's progressively declining birth rates and its ageing population throughout the 2010s, the number of "special fraud" crimes, including the aforementioned "It's me" fraud, increased, and the damage caused by such crimes became more serious. In response, various deterrence measures were adopted.

(2) In the 2010s, reforms of the criminal justice system that took place in the 2000s continued in various areas. Firstly, with regard to juvenile delinquency, a number of reforms were carried out to ensure the appropriate treatment of juveniles corresponding to their characteristics and respecting their human rights. In 2014, the new Juvenile Training School Act was enacted and the juvenile classification homes, which had been prescribed in part of the old Juvenile Training School Act, were prescribed by the new Juvenile Classification Home Act (Section 1-5 Reform of Juvenile Training Schools and Juvenile Classification Homes, page 94). Following the aforementioned reforms of the criminal justice system in the 2000s, it was pointed out that criminal investigations and trials relied excessively on the investigative questioning of suspects and witnesses as well as written records (*procès-verbaux*) of their statements as the outcome of the investigative questioning. Thus, a major reform of investigation and trial procedures was conducted in 2016 including the mandatory audiovisual recording of investigative questioning, the streamlining of wiretapping operations and the introduction of a prosecutorial agreement system (Section 1-6 A New Criminal Justice System that is Aligned with the Times, page 95). In 2017, an amendment was passed that included the establishment of the crime of "preparations for terrorism", and Japan concluded the United Nations Convention against Transnational Organized Crime (UNTOC).

(3) In a global context, terrorist attacks committed repeatedly in many parts of the world by militant Islamic extremist groups such as ISIL, Al Qaeda, and the Taliban became a concern in the 2010s. In this context, it was reaffirmed that Member States need to jointly respond to the common threats and challenges faced by the international community, including terrorism. In this regard, Japan took steps to strengthen international cooperation. (Section 1-7 Further Adapting to Internationalization, page 97).

(4) As such, in the 2010s, criminal justice in Japan continued to develop in tandem with changes in society in order to realize the safest and most secure society in the world.

## 2 Various Initiatives to Prevent Recidivism

### (1) Background Leading to Full-Scale Implementation of Measures to Prevent Recidivism

Serious cases of recidivism committed by former inmates occurred from 2004 to 2005, and the number of repeat offenders cleared for Penal Code offences reached a record high of 149,164 persons in 2006. According to surveys conducted by the Research and Training Institute of the Ministry of Justice on criminal records of a million persons whose criminal trials became final and binding between 1948 and 2006, it has turned out that repeat offenders, who make up 30% of all offenders, committed 60% of all crimes. As described previously, measures to address recidivism, included "measures to build a society that does not create criminals", which was set out as a Major Challenges in the Action Plan for the Realization of a Society Resistant to Crime formulated in December 2008. As a part of the measures to prevent recidivism by former inmates, proactive steps were taken to promote the employment of those who are unable to secure a stable income.

### (2) A Wide Range of Proactive Measures to Prevent Recidivism in the 2010s

In advancing such initiatives, the government, in close cooperation with the relevant ministries and agencies, established the Working Team on Recidivism Prevention Measures in December 2010 under the auspices of the Ministerial Commission on Crime Control, with the aim of reviewing and promoting comprehensive measures to prevent recidivism including support for former inmates to reintegrate into society. The establishment of this Working Team formed a part of the government-wide efforts to build a system for addressing recidivism prevention measures. Furthermore, in view of the need to continue implementing broad long-term initiatives to effectively prevent recidivism by former inmates with the understanding of society as a whole, "Comprehensive Measures to Prevent Recidivism" were formulated to promote more effective measures to prevent recidivism through cooperation among relevant organizations. At the same time, a concrete numerical target to be achieved by 2021 was set, which was to reduce the re-imprisonment rate within two years after release by more than 20%.

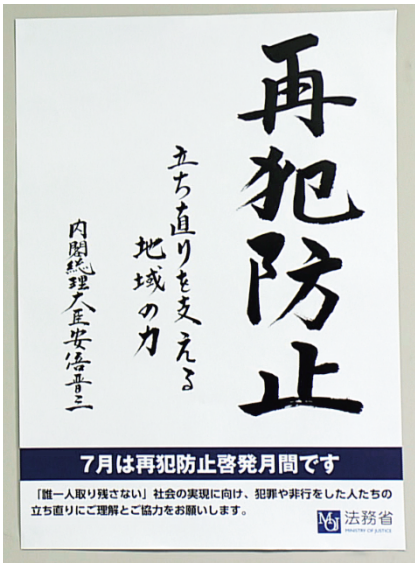
In December 2014, the government approved a declaration entitled "No Returning to Crime, No Facilitating Other's Return to Crime—We Will Work toward a Bright Future in a Society Where We All Support Rehabilitation" (hereafter, "the Declaration") at the Ministerial Commission on Crime Control. The Declaration set out the following numerical targets to be achieved: "triple the number of companies willing to employ persons who have committed crimes or delinquent acts after gaining an understanding of their circumstances, by 2020" and to "reduce the number of people returning to society from prisons who have no place to go back by at least 30 percent, by 2020." After the release of the Declaration, support spread steadily among the private sector towards recovery from crime and delinquency, as demonstrated, for example, by the increase in the number of corporations actually employing former offenders and delinquents.

On the other hand, many former offenders who faced various difficulties in recovering, such as the elderly, disabled or drug dependent offenders, tended to fall into the gaps of the criminal justice system and community support, and they would reoffend without being able to receive the necessary support. In light of this situation, in July 2016, the government approved the "Emergency Measures to Prevent Recidivism by Persons with Drug-Dependencies, Elderly Offenders, and Others Establishment of Long-Term Support Network to Facilitate Rehabilitation" at the Ministerial Commission on Crime Control. This incorporated long-term measures that covered not only all stages of criminal justice, but also after the completion of criminal justice proceedings, for drug-dependent, elderly and disabled persons.

Furthermore, the Act for the Prevention of Recidivism was enacted and entered into force in December 2016. This law established fundamental principles for policies concerning the prevention of recidivism, clarified the duties of the state and local governments, and stipulated matters to be the foundation of policies concerning the prevention of recidivism. By doing so, it aimed to comprehensively and systematically promote policies to prevent recidivism, thereby preventing victimization, and to realize a safe and secure society. With regard to the government's basic measures to prevent recidivism, the law prescribed the following and sets out policies on the implementation of these measures: guidance and support that took into account the characteristics of the offenders; employment support and securing employment opportunities; securing housing; provision of health, medical and welfare services; development of human and physical infrastructure to promote the prevention of recidivism, such as the establishment of systems in the relevant organizations and the development of facilities to prevent recidivism; verification of the implementation status and effectiveness of measures; promotion of studies and research on the approach for effective treatment, appropriate guidance and support in

society; enhancement of understanding among the people; assistance to private-sector organizations.

In December 2017, the Cabinet adopted the Recidivism Prevention Plan based on this law, and stipulated that the plan was to be carried out over the five-year period from 2018 by the relevant ministries and agencies, with the aim of comprehensively and systematically promoting measures to prevent recidivism. This plan established the Five Basic Policies that adhere to the basic philosophy of the Act for the Prevention of Recidivism and laid out Seven Major Challenges encompassing 115 concrete actions for preventing recidivism. The government and the relevant ministries and agencies have been actively implementing concrete measures based on this plan.




Publicity poster for recidivism prevention


White Paper on Recidivism Prevention

## Figure 3-5-2 The Recidivism Prevention Plan

**[The Five Basic Policies]**

(1) Comprehensively promote measures to prevent recidivism by ensuring close cooperation and collaboration between national and local public organizations as well as the private sector, towards the realization of a society where no one is left behind.
(2) Implement seamless guidance and support at all stages of criminal justice proceedings.
(3) Fully acknowledge the presence of crime victims, etc., and implement measures with a view to the importance of making offenders understand the liability of their offences and the feelings of crime victims, as well as the importance of their own efforts towards reintegration into society.
(4) Based on the realities of the crime situation and the results of effect verification as well as of studies and research, implement effective measures corresponding to the social conditions.
(5) Foster concern and understanding widely among the people through means such as publicizing initiatives to prevent recidivism.

**[Seven Major Challenges]**

(1) Securing employment and housing
(2) Facilitating the use of health, medical, and welfare services
(3) Implementing educational support in collaboration with schools and others
(4) Implementing effective guidance that is tailored to the Indivisual Attributes of persons who have committed Offences: related matters
(5) Facilitating the Activities of Cooperating Members of the Private Sector Advancing Public Relations and Awareness-Raising Activities; Related Matters
(6) Strengthening collaboration with local governments
(7) Developing the personnel and physical systems of the relevant organizations

## 3 Adapting to Growing Sophistication of Information Technology

### (1) Development of Cyber-Related Legislation

#### a. Background

Alongside the further development of information and communications technology, the number of cybercrimes increased, such as attacks by computer viruses and the malicious use of computer networks. At the same time, with regard to the procedural aspects, there was a growing need to develop procedures for gathering evidence corresponding to the development of computers and the characteristics of electromagnetic records. In order to contribute to international efforts to effectively address cybercrimes, Japan signed the Convention on Cybercrime of the Council of Europe in November 2001, and was approved in the Diet in April 2004. To address such crimes appropriately and to cope with advanced information technology, the Act for Partial Amendments to the Penal Code and Other Related Laws were enacted and promulgated in June 2011, with the aim of developing cyber-related penal provisions and procedural laws.

#### b. Details

##### (i) Improvement of Penal Provisions

This Act amended the Penal Code to establish an offence related to false electromagnetic records, penalizing acts such as the creation and use of computer viruses. It also expanded the elements of crimes related to offences such as the distribution of obscene materials, to penalize the act of distributing electromagnetic records or other forms of records pertaining to obscene contents via e-mail or other forms of telecommunications.

##### (ii) Improvement of Procedural Laws

This Act amended the Code of Criminal Procedure to develop cyber-related procedural laws. Specifically, in cases where a computer is to be seized, this bill made it possible to copy electromagnetic records stored in other media (such as remote storage servers, e-mail servers, and file servers) connected to the computer in question via a network, onto the computer in question, and then to seize the computer. In addition to this, other measures were also implemented including procedures for seizure with an order to produce a copy of records in which the custodians of electromagnetic records, such as service providers, record the necessary electromagnetic records onto a recording medium and seize them, and a preservation request system, which requests the communications provider to temporarily retain those electromagnetic records of the communication logs recorded in the course of his/her duties.

**The image of digital forensic**

### (2) Digital Forensics

In modern society, digital devices such as computers and smartphones are used for all activities, and they are commonly used in criminal activities. Hence, it is

important to extract digital data stored in such devices through appropriate procedures and find objective evidence to prove the crime. Digital forensics (DF) is a method or technology for the preservation and analysis of such data. It is indispensable for discovering the truth of cases, and the police and public prosecutors are developing systems aimed at promoting the use of digital forensics. For example, the "DF Promotion Team" was established under the Supreme Public Prosecutors Office to promote digital forensics among the public prosecutors' offices across Japan. This team engages in activities such as developing plans for installing digital forensics equipment, enhancing knowledge and skills through various training programmes and providing information about the latest digital forensics technologies. DF Centres were also established in the Tokyo District Public Prosecutors Office in April 2017 and in the Osaka District Public Prosecutors Office in April 2019, respectively. These centres provide support to public prosecutors' offices in all parts of Japan, including responding to inquiries and consultations about digital forensics, training support and skills support for preservation and analysis.

## 4 Measures to Prevent Various Forms of Sexual Harm in Modern Society

### (1) Addressing Crimes Committed against Children

#### a. Amendment of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children

The Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children, enacted in 1999, was amended in 2004 in light of the significant increase in the number of child prostitution offences after the enactment of the law, as well as the continued incidences of child pornography offences. Under the amended law, the provision of child pornography, as well as the production and possession with the purpose of distribution, was made punishable.

Thereafter, as shown in Table 3-5-3, the number of cases cleared for child pornography offences increased by close to 10 times from 177 cases to 1,644 cases over the ten-year period from 2004 to 2013. In particular, of the child pornography offences, the number of offences committed using the Internet increased every year, making up about 68 percent of the number of cases cleared.

**Table 3-5-3 Number of cases cleared/persons cleared for child pornography offences**

(2004～2013)

| | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 |
|---|---|---|---|---|---|---|---|---|---|---|
| Number of cases cleared | 177 | 470 | 616 | 567 | 676 | 935 | 1,342 | 1,455 | 1,596 | 1,644 |
| Number of persons cleared | 137 | 312 | 350 | 377 | 412 | 650 | 926 | 1,016 | 1,268 | 1,252 |

Note: Prepared based on the overview of guidance and protection of juveniles in 2013 (National Police Agency).

**Table 3-5-4 Offences committed using the Internet**

| | 2009 | 2010 | 2011 | 2012 | 2013 |
|---|---|---|---|---|---|
| Number of cases cleared | 935 | 1,342 | 1,455 | 1,596 | 1,644 |
| Of which, Offences committed using the Internet | 507 (54%) | 783 (58%) | 883 (61%) | 1,085 (68%) | 1,124 (68%) |

The Act was again revised in 2014 led by the growing number of children falling victim to child pornography as a consequence of the development of the Internet and other factors, and by a strong call from the international community to criminalize the simple possession of child pornography. This time, the bill introduced by Diet members renamed the previous Act as the Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children, and penalized the possession of child pornography for the purpose of satisfying one's own sexual curiosity.

Although child pornography offenders have been dealt with strictly through these amendment, child pornography crimes have continued to rise in recent years. In 2018, the number of cases leading to arrests reached 3,097, the highest ever, pointing to the need for even stricter measures.

**b. Cooperation between the Police, Public Prosecutors and Child Guidance Centres**

(i) In cases related to child abuse, many are proven relying on statements taken from child victims or child witnesses and the police and the public prosecutors are taking an approach that is similar to "forensic interview" to interview child victims or witnesses. A forensic interview is a method of interview that attempts to obtain much information as accurately as possible from youths, such as children suspected to be abused, without placing a psychological burden on the interviewees. To ensure the success of such interviews, it is important to collaborate with relevant organizations to share information and conduct the hearing in mutual cooperation. When conducting an interview of a child, the interview can be observed from an adjacent observation room (shown in the following pictures) by another prosecutor, police officers or staff from the child guidance centre. They can then provide advice during the interview to the public prosecutor conducting the hearing where necessary, corresponding to the contents of the statement given by the child.

(ii) In cases where the witness is a youth and is under the protection of a child guidance centre, the public prosecutor thoroughly consults with the centre and makes necessary arrangements on matters such as the date, time and venue of the witness examination, as well as the need for a person to accompany the witness at the examination and so forth. Furthermore, in cases where a suspended sentence is likely to be rendered, the public prosecutor also makes efforts to share information with the centre, police and probation office and makes various adjustments in preparation of the circumstance after the release.

**Forensic interview room**

**Observation room**

**Tokyo District Public Prosecutors Office**


**Osaka District Public Prosecutors Office**


**Sendai District Public Prosecutors Office**

### (2) Updating the Crime of Forcible Sexual Intercourse

While the elements of sexual offences in the Penal Code, which was originally enacted in 1907, have basically remained unchanged, it had been pointed out that it was sometimes difficult to ensure appropriate punishment for cases of forcible indecency that involved the same close physical contact equivalent to sexual intercourse, such as oral intercourse, and cases of sexual offences by a person with parental authority or other strong influence on a young victim. It had also been pointed out that the minimum statutory penalty for rape was too lenient to respond to the grave nature of the crime and did not reflect the sense of the people. Moreover, as rape and other sexual offences had been crimes indictable only upon complaint, the victim had felt forced to make the choice of whether or not to file a complaint, which conversely, had often placed psychological burden on the victim.

In light of this situation, the Penal Code was amended based on the Act Partially Amending the Penal Code in June 2017, with the aim of making it possible to address such offences in line with the realities of the case, and in consideration of the actual circumstances of such sexual offences. Through this revision, the title of the previous offence of "rape" was amended to "forcible sexual intercourse", and the scope of punishable acts was broadened by covering not only sexual intercourse but also adding anal and oral intercourse regardless of the victims' sex. The stipulated penalty was also revised, with its lower limit raised from three years of imprisonment to five years of imprisonment. Indecency and sexual intercourse by a person who has custody of the victim was newly established as an independent crime category. In cases where a person who has custody of a person under the age of 18 uses his or her influence to engage in acts of indecency or sexual intercourse on the latter, such an offender shall be punishable under the same statutory penalty as for forcible indecency and forcible sexual intercourse.

Furthermore, provisions which required complaints by the victims for rape and forcible indecency were abolished, and these were amended as offences that can be indicted without complaints by the victims.

## 5 Reform of Juvenile Training Schools and Juvenile Classification Homes

### (1) Background

The former Juvenile Training Schools Act was enacted in 1948, and prescribed provisions for both juvenile training schools and juvenile classification homes. Since its enactment, the act has responded to changes in the social situation mainly through ministerial ordinance, instructions and circular notices, without any revisions to the law. Hence, the contents of the treatment for those who have been committed to juvenile training schools and juvenile classification homes was not clearly set out in the legal provisions. Consequently, the correctional treatment and practices in these facilities were unclear and failed to meet adequate legal standards. For example, areas where practices were inadequate included correctional education in juvenile training schools, classification in juvenile classification homes, rights and obligations of juveniles in juvenile training schools and juvenile classification homes, and the rights of staff.

Under such circumstances, serious case of inappropriate treatment was uncovered at Hiroshima Juvenile Training School in April 2009, in which correctional officers at the school had committed assault on juvenile inmates. This gave rise to calls for a drastic reform of the management of juvenile training schools and juvenile classification homes. In light of this, a new Juvenile Training Schools Act and Juvenile Classification Homes Act were enacted in June 2014. These acts enhanced treatment towards preventing repeated acts of delinquency and promoted proper treatment, as well as management and operation of such facilities in a way that is open to society.

### (2) Enhancing treatment to prevent repeated acts of delinquency

To enhance treatment to prevent repeated acts of delinquency, the Juvenile Training Schools Act set out provisions on the basic framework for correctional education and support for reintegration into society, while the Juvenile Classification Homes Act prescribed the basic matters on classification, principles for the protection and observation of juveniles, as well as provisions on assistance to prevent delinquency and crime.

Firstly, with regard to the basic systems for correctional education, the law reexamined the types of juvenile training schools, and clarified the objectives, contents and methods of correctional education in juvenile training schools. It also stipulated the implementation of systematic and organizational correctional education that corresponds to the characteristics of juveniles. Furthermore, with regard to support for reintegration into society, the act stipulated support, in cooperation with the probation office, for securing residences to return and employment opportunities, as well as responding to consultations from discharged inmates and others.

Next, the Juvenile Classification Homes Act prescribed substantive and procedural requirements for classification. Apart from the addition of children's self-reliance support facilities and foster homes as organizations authorized to request classification, new provisions also prescribed the expansion of the scope and the implementation methods of classification, a process for the purpose of determining appropriate treatment. These new provisions provided that juveniles in the juvenile training schools may be temporarily held and assessed in the juvenile classification homes. The act also clearly set out the principles for the protective treatment of juveniles, and further, prescribed assistance to prevent

delinquency and crime as a duty of juvenile classification homes, and established the legal framework for providing professional knowledge and expertise to communities.

**(3) Implementation of Appropriate Treatment**

To ensure appropriate treatment, efforts were made to clarify the rights and obligations of juveniles in juvenile training schools and juvenile classification homes, as well as the rights of the staffs. In addition, provisions were established in relation to health and hygiene, medical care and systems to file complaints.

Specifically, the following measures were taken to optimize the treatment in juvenile training schools and juvenile classification homes: provisions concerning the handling of money and valuables, access to books and other reading materials, exercise of religious beliefs, and discipline and order, as well as contact and communication with the outside; provisions concerning support in health, hygiene and medical care, such as ensuring the same level of medical service as for the general public and providing opportunities to exercise; procedures for the submission of complaints to seek remedies from the Minister of Justice regarding overall treatment of the complainant.

**(4) Promoting Management and Operation of Facilities that are Open to Society**

To promote the management and operation of facilities that are open to society, Juvenile Training School Visiting Committees and Juvenile Classification Home Visiting Committees were established. Committee members that are appointed by the Minister of Justice must be persons of good character and must offer a high level of insight in the sound development of juveniles. Moreover, they must be passionate about enhancing and improving the management and operation of juvenile training schools and juvenile classification homes. The committees visit and inspect the facilities and offer their opinions concerning the management and operation of said facilities to the heads of the facilities. In addition to the above, there are also procedures for gathering opinions from external experts, and visits from the general public were also implemented.

## 6 A New Criminal Justice System that is Aligned with the Times

**(1) Overview**

As mentioned before, the Code of Criminal Procedure and other laws in Japan were revised significantly in 2016 to achieve fairer, more appropriate and more diverse measures for the collection of evidence and to further enhance criminal trial proceedings. It had been pointed out that investigations and trials were overly reliant on investigative questioning and written statements due to the lack of effective investigative techniques for organized crimes and other serious crimes that are available in many other countries, such as subpoenas that compelled production of documents or evidence, interception of communication, plea bargaining and undercover operations. Further, the wiretapping procedures that had been introduced in Japan in 1999 had been extremely limited in scope due to the narrow range of applicable crimes. The objective of this amendment was to improve this overreliance on investigative questioning and written statements to make criminal procedures more functional and up-to-date and to enhance measures for gathering evidence in order to ensure public trust in the criminal justice system.

**(2) Mandatory Audiovisual Recording Systems for Questioning**

When conducting the investigative questioning of arrested or detained suspects in cases such as those subject to *saiban-in* trials and cases investigated by prosecutors' initiative, it became mandatory

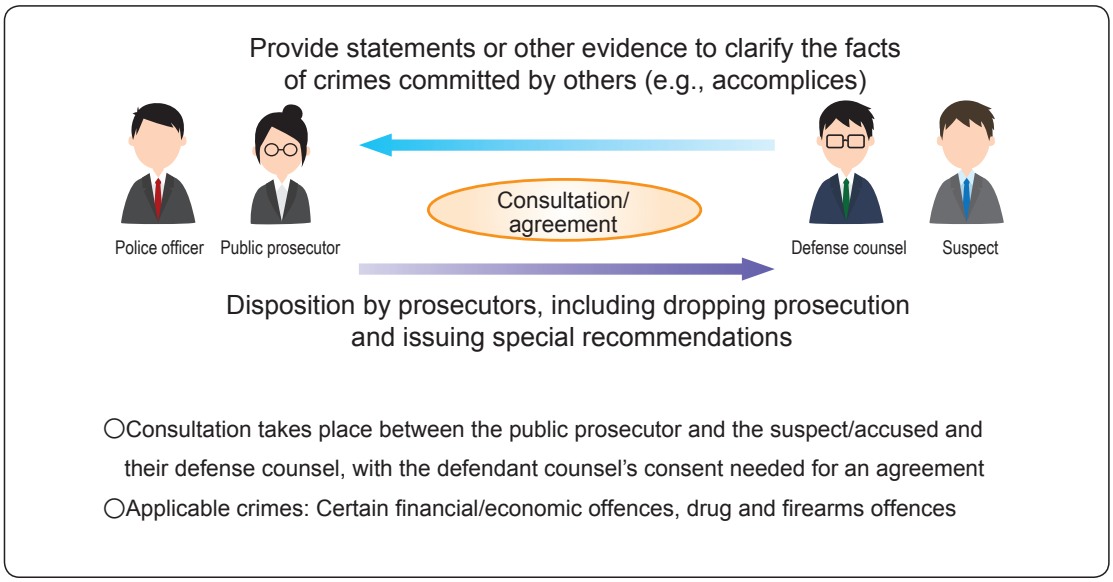
to audiovisually record the entire process of the investigative questioning except in certain exceptional situations. When public prosecutors request in a trial to examine written statements of the defendant which includes admission of detrimental facts taken while he or she was under arrest or detention, and if the voluntariness of the statement is contested, the prosecutors must in principle request the examination of the audiovisual recordings of the investigative questioning.

Should public prosecutors fail to comply with the obligation to request an examination of such audiovisual recordings, the written statement of which voluntariness is disputed will not be admissible.

**(3) Introduction of the Prosecutorial Agreement and Immunity Systems**

a. Figure 3-5-5 below presents an overview of the prosecutorial agreement system. The system allows for public prosecutors and suspects/accused to enter into agreements in certain cases (financial/economic offences or drugs/firearms offences). The suspects or accused may cooperate in the collection of evidence for the criminal cases of others, such as those of accomplices, and the public prosecutors may then decide not to indict or, alternatively, to lower sentencing recommendations, by taking such cooperation into account, provided that defence counsel consents.

**Figure 3-5-5 Overview of Prosecutorial Agreement System**




b. Apart from the prosecutorial agreement system, the immunity system was also introduced as a means of gathering evidence such as statements or other evidence that contributes to resolving cases, including the involvement of the ringleader in organized crimes. Under this system, the judge, based on a request from the public prosecutor, grants immunity to the witness, such that statements given in response to an examination and evidence obtained based on such statements cannot be used as evidence against the witness in the witness's criminal case. By doing so, the witness loses the privilege of self-incrimination and is compelled to testify.

**(4) Streamlining Wiretapping Operations**

The crimes subject to wiretapping had been limited to four categories since the enactment of the Act on Wiretapping for Criminal Investigation in 1999: drug crimes, firearms crimes, smuggling of migrants and organized homicide. However, the revised Act added the following four categories of crimes: (1) offences related to homicide or injury, (2) unlawful capture and confinement, and kidnapping (by force

and by enticement), (3) theft, robbery, fraud and extortion, and (4) child pornography related offences. (See Figure 3-5-5 for the number of wiretaps conducted.) Revisions to streamline wiretapping operations also took place.

**(5) Other Revisions**

In the revision to the Code of Criminal Procedure undertaken in 2016, apart from above, matters to be considered in discretionary bail were clarified, assistance to suspects was enhanced and every suspect who has been served with a detention warrant became eligible for the court-appointed defence counsel, procedures for the disclosure of evidence were enhanced, such as the introduction of procedures for the submission of a list of evidence held by public prosecutors to the defendant as part of pre-trial arrangement proceedings, measures to protect victims of crime and witnesses were enhanced, such as extending the examination of witnesses through the use of video-conference systems, and measures to expedite the processing of cases where the perpetrator has confessed was introduced.

## 7 Further Adapting to Internationalization

**(1) Countermeasures against Transnational Organized Crime**

As explained earlier, the Diet of Japan approved the conclusion of the United Nations Convention against Transnational Organized Crime (UNTOC) in 2003 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air in 2005. Following these approvals, firstly, the Penal Code and other laws were revised in June 2005 to establish penal provisions for trafficking in persons. Furthermore, the Act on Punishment of Organized Crimes and Control of Crime Proceeds (hereinafter referred to as the "Act on Punishment of Organized Crime") was amended in June 2017, leading to the development of the relevant domestic laws. In July of the same year, in addition to the aforementioned Convention and Protocols, Japan concluded the United Nations Convention against Corruption (UNCAC), which entered into force in Japan in August the same year. This revision covered the following contents: (1) criminalization of acts in furtherance of planning to commit terrorism and other serious crimes; (2) criminalization of bribery of a witness; (3) expansion of the scope of predicate offences for "criminal proceeds" under the Act on Punishment of Organized Crimes; (4) establishment of penal provisions for crimes committed overseas.

**(2) Counter-terrorism Measures**

In 2012, the Financial Action Task Force (FATF) revised and integrated 40 Recommendations and the Special Recommendations on Terrorist Financing, and adopted a new set of 40 Recommendations. The Recommendations urged countries to take focused measures in areas at high risk for becoming hotbeds of money-laundering and of terrorist financing, such as freezing assets of those engaged in proliferation of weapons of mass destruction and enhancing the transparency of corporations and trusts. As a member of the FATF, Japan implements measures under the Act on Prevention of Transfer of Criminal Proceeds, including systems for specified business operators, such as financial institutions, to verify customer identification and to report suspicious transactions. In addition, Japan plays an active part in international cooperation against money-laundering and terrorist financing through the National Public Safety Commission's provision of information on suspicious transactions for relevant foreign organizations. Additionally, Japan has developed domestic laws in conformity with the FATF

Recommendations. Most recently, in 2014, Japan passed the so-called three laws related to money-laundering and terrorist financing. First, by amending the Act on Punishment of Financing of Public Intimidation (Act on Punishment of Terrorist Financing), provisions were established to penalize acts pertaining to the provision of non-financial benefits to persons who intend to carry out criminal acts with the aim of public intimidation. Secondly, by amending the Act on Prevention of Transfer of Criminal Proceeds, provisions were stipulated concerning: the methods for the analysis of suspicious transactions; strict verification at the time of the conclusion of correspondence contracts; and the responsibilities of the National Public Safety Commission related to the preparation of the "National Risk Assessment of Money Laundering and Terrorist Financing." Thirdly, the Act on Special Measures Concerning Asset Freezing, etc. of International Terrorists Conducted by Japan Taking into Consideration United Nations Security Council Resolution 1267, etc. (International Terrorist Asset-Freezing Act) was enacted, and domestic transactions pertaining to persons identified as international terrorists were regulated.

### (3) Other Measures

#### a. Mutual Legal Assistance

As mentioned before, Japan concluded mutual legal assistance treaty with the United States in 2006. Subsequently, MLATs/MLAAs have been concluded with the Republic of Korea (2006), China (2008), Hong Kong (2009), the European Union (2011) and Russia (2011). Currently, Japan has established a system for smooth execution of mutual legal assistance with over 30 countries and regions. Moreover, under the UNTOC and the UNCAC, which entered into force in Japan in August 2017, Japan has also established grounds for mutual legal assistance with the States Parties pursuant to the two conventions.

#### b. International Transfer of Sentenced Persons

In order to transfer sentenced persons between countries that are not States Parties to the Council of Europe's Convention on the Transfer of Sentenced Persons, which has been ratified by 68 countries (as of 31 December 2019), Japan entered into treaties for the transfer of sentenced persons with Thailand in July 2010, with Brazil in January 2016, with Iran in August 2016 and with Viet Nam in July 2020. Japan also held the sixth round of negotiation with China on the treaty for the transfer of sentenced persons in December 2019. Hence, Japan is advancing its effort to conclude treaties for the transfer of sentenced persons with various countries, which is stipulated in the "Strategy to Make Japan, the Safest Country in the World", approved by the Cabinet in December 2013.

**Saiban-in courtroom of Saitama District Court**
Source: Supreme Court of Japan

## Column 5 Establishment of the *saiban-in* System

May 2019 marked 10 years of the *saiban-in* system. In relation to this, the Chief Justice of the Supreme Court remarked,

With the introduction of this system, trial proceedings underwent significant changes with a view to revitalizing such proceedings, as well as ensuring simultaneous fact-finding in court. At the same time, it also reflects the perspectives and sentiments of the *saiban-in* and presents more diverse and in-depth decisions. Over the past decade, this greatest reform in criminal justice in the post-war era has generally continued to progress smoothly, and I am deeply moved by this fact.

From the introduction of the *saiban-in* system in May 2009 to 31 May 2019, a cumulative total of more than 12,000 defendants were tried in *saiban-in* trials, while more than 90,000 people have taken part in criminal trials as either *saiban-in* or alternate *saiban-in*. In a *saiban-in* trial, pre-trial arrangement proceedings are carried out to identify issues and resolve evidentiary matters. Judges, public prosecutors and defence counsel engage in extensive consultation and consider how best to make the trial proceedings more understandable to the lay judges. These efforts are reflected in the annual surveys targeting those who served as *saiban-in* since the introduction of the system. According to the survey, close to 90% of *saiban-in* responded that they were able to understand the cases they adjudicated. Furthermore, over 95% of *saiban-in* consistently rated their experience of participating in *saiban-in* trials as either "excellent" or "good." Such feedback suggests that *saiban-in* trials have come to be understood and trusted by the people and are achieving widespread acceptance after ten years of continued practice. On the other hand, *saiban-in* trials have also presented issues such as prolonged pre-trial arrangement proceedings, as well as the handling of evidence that could typically place a heavy psychological burden on the *saiban-in* such as photographs of a victim's body. To resolve such issues, efforts are being made by public prosecutors to expedite pre-trial arrangement proceeding, such as by early submission of documentation containing facts to be proven and early disclosure of evidence. Furthermore, the public prosecutors strive to achieve the goals of the criminal trials – to discover the truth and bring about fair and prompt penalties against those who are found guilty by making appropriate arguments and submitting sufficient evidence while duly taking into account the psychological burden placed on *saiban-in*.

# Section2 Domestic and Overseas Situations

**[2010]**

**Japan**

September Arrest of public prosecutors assigned to the Special Investigation Department of the Osaka District Public Prosecutors Office in relation to the postal abuse case

**Overseas**

November Disclosure of diplomatic documents on WikiLeaks

[Developments in criminal justice]
- Establishment of the Working Team on Recidivism Prevention Measures under the Ministerial Meeting Concerning Measures against Crime (See p.88)
- Experts Council on Juvenile Corrections
- Entry into force of the Treaty between Japan and the Kingdom of Thailand on the Transfer of Sentenced Persons and on Co-operation in the Enforcement of Sentences

**[2011]**

**Japan**

March Great East Japan Earthquake occurred

March Core meltdown in Fukushima Daiichi Nuclear Power Plant

**Overseas**

● Jasmine Revolution in Tunisia spreads across the Arab world

**Great East Japan Earthquake**
Source: National Police Agency

[Developments in criminal justice]
- Formulation of Immediate Measures Towards Preventing Recidivism Among Former Inmates (See p.88)
- Enactment of the Act for Partial Amendments to the Penal Code and Other Related Laws to cope with the advancement of information processing (See p.90)

**[2012]**

**Japan**

May Suspension of operation of all nuclear power plants in Japan

December Coalition government by Liberal Democratic Party and Komeito started

**Overseas**

August NASA's Mars Curiosity Rover lands on Mars

[Development in criminal justice]
- Comprehensive Measures for the Prevention of Repeat Offences (Approved by the Ministerial Meeting Concerning Measures Against Crime)

**[2013]**

**Japan**

September Tokyo selected as host city for the 2020 Olympic and Paralympic Games

December Enactment of Act on the Protection of Specially Designated Secrets

**Overseas**

April Terrorist bombing incident occurred during the Boston Marathon

**Tokyo selected as host city for the 2020 Olympic and Paralympic Games**
(c)KYODO NEWS/amanaimages

[Developments in criminal justice]
- "Strategy to Make 'Japan the Safest Country in the World'" approved by the Cabinet (See p.98)
- Enactment of the Act Partially Amending the Penal Code and Other Related Laws (for the partial suspension of the sentence)

**[2014]**

**Japan**

April Consumption tax raised to 8%

April Hague Convention (Hague Convention on the Civil Aspects of International Child Abduction) entered into force in Japan

**Overseas**

June ISIL (Islamic State of Iraq and the Levant) unilaterally declared the establishment of the "Islamic State (IS)" led by Abu Bakr Al-Baghdadi who calls himself "Caliph" (a leader of the worldwide Muslim community).

[Developments in criminal justice]
- Approval of the declaration entitled "No Return to Crime, No Facilitation of a Return to Crime (Toward a Bright Society Where Everyone Supports Rehabilitation)" (See p.88)
- The Act Partially Amending the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (See p.92)
- Enactment of the Juvenile Training School Act and Juvenile Classification Home Act (See p.94)

**[2015]**

**Japan**

June Enactment of the revised Public Offices Election Act, lowering the voting age to 18 and above

September Enactment of security-related laws; exercise of the right of collective self-defence accepted

October Act on the Use of Numbers to Identify a Specific Individual in Administrative Procedures (commonly known as the "My Number" law) enforced

**Overseas**

September Adoption of the Sustainable Development Goals (SDGs) at the UN General Assembly

November Synchronized terrorist attacks occurred in Paris

SUSTAINABLE DEVELOPMENT GOALS

**SDGs logo**

**[2016]**

**Japan**

April Kumamoto Earthquake occurred

**Overseas**

June Decision by the United Kingdom to leave the European Union based on the referendum

**UK decides to leave the EU**
(c)PA Photos/amanaimages

[Developments in criminal justice]

- Approval of the "Emergency Measures for the Prevention of Repeated Offences by Drug-Dependent People, Elderly Criminals, and Others—Building a Network for Long-term Support Towards Recovery" (see p.88)
- Enactment of the Act Partially Amending the Code of Criminal Procedure
- Entry into force of the Treaty between Japan and Brazil on the Transfer of Sentenced Persons
- Entry into force of Treaty between Japan and Iran on the Transfer of Sentenced Persons
- Enactment of the Act for the Prevention of Recidivism

**[2017]**

**Japan**

June Enactment of the revised Act on Punishment of Organized Crimes and Control of Crime Proceeds, criminalizing acts in furtherance of planning to commit terrorism

**Overseas**

July The United Nations Treaty on the Prohibition of Nuclear Weapons adopted

[Developments in criminal justice]

- Enactment of the Act Partially Amending the Penal Code (See p.93)
- Enactment of the Act Partially Amending the Act on Punishment of Organized Crimes and Control of Crime Proceeds (See p.97)
- Cabinet approval of the Recidivism Prevention Plan

**[2018]**

**Japan**

June Enactment of the revised Civil Code, lowered the age of adulthood to 18 years old

June Enactment of Act on the Arrangement of Related Acts to Promote Work Style Reform

December Enactment of the revised Immigration Control and Refugee Recognition Act to expand the acceptance of foreign workers

**Overseas**

June First US-North Korea Summit Meeting convened

December Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (TPP11 Agreement) entered into force

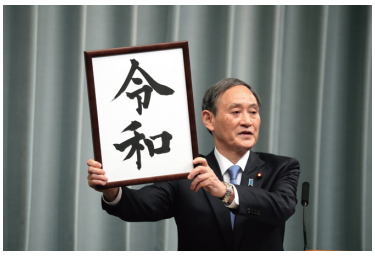
**[2019]**

**Japan**

| | |
|---|---|
| April | Emperor Heisei abdicated |
| May | The Reigning Emperor acceded to the throne; the name of the new era, "Reiwa", was announced |

**Overseas**

| | |
|---|---|
| March | Shooting incident at mosque in Christchurch, New Zealand |




**Name of the era changed to Reiwa**

Part 4

# Various Areas of Criminal Justice and Making through Changes Over the Last 50 Years



# Chapter 1 The History of Changes in the Normative Consciousness of the People regarding Traffic Accidents and the Growing Severity of Punishment

## 1 Introduction

Criminalization and stronger punishment for specific acts has generally been approached with restraint in Japan. However, over the last 50 years, there has been a series of revisions of the substantive laws for traffic accidents in light not only of the changes in the actual state of the social structure and automobile traffic but also of changes in the perception of the people regarding traffic offences that cause injury or death among other things. Thus, this chapter will introduce the history of the penal provisions for traffic offences that cause injury or death in Japan.

## 2 Dealing with Traffic Offences that Cause Injury or Death through the Establishment of the Crime of Causing Death or Injury through Negligence in the Pursuit of Social Activities and Raising its Statutory Penalty

For a long time in Japan, no special provisions were prescribed for traffic offences involving automobiles and causing injury or death. These offences were dealt with by the application of the crime of causing death or injury through negligence in the pursuit of social activities as prescribed by Article 211 of the Penal Code, namely provisions for penalizing an act that results in death or injury due to carelessness in the pursuit of social activities (in this case, meaning "in the course of conducting an act that is repeated and continuously conducted based on one's social activities and may cause danger to life or body"). However, by 1967, the number of the persons killed or injured in traffic accidents reached approximately 670,000 annually; the number of persons referred to public prosecutors' offices for the crime of causing death or injury through negligence in the pursuit of social activities amounted to 50.6% of all Penal Code offences. Simultaneously, malicious and serious offences caused by driving under the influence of alcohol, driving without a license, extreme speeding violations, and other reckless driving increased dramatically, leading to an increase in the number of cases where penalties at or close to the upper limit of the statutory penalty at the time (imprisonment without work for not more than three years or a fine of not more than 500,000 yen) was imposed.

It was against this background that, in 1968, in order to deal with malicious and grave offences causing injury or death due to reckless driving that involves any of the so-called "three major violations" (driving without a license, driving while under the influence of alcohol, and speeding violations), the Penal Code was amended to raise the statutory penalty for the crime of causing death or injury through negligence in the pursuit of social activities to imprisonment with work for not more than five years or a fine of not more than 500,000 yen — for the first time, imprisonment with work was included in the statutory penalty.

## 3 Establishment of the Crime of Dangerous Driving Causing Death (or Injury Intentional Criminal Act Category)

During the period between 1965 and 1974, while the number of registered automobiles soared, the

number of traffic offences that cause injury or death showed a temporary decline as a result of the national government administrative organs, local governments, and others united to forcefully promoting traffic safety measures such as the 1970 enactment of the Traffic Safety Policies Basic Act.

However, in 1980, the number of automobiles manufactured in Japan topped 11 million units, putting Japan ahead of the United States as the world's top automobile manufacturer. The number of registered automobiles and persons holding driver licenses continued to rise, and the number of traffic offences causing death or injury started to show an increasing tendency accordingly, reaching the historic highs of approximately 950,000 traffic accidents and 1,190,000 casualties in 2001.

With the improvement of road conditions and vehicle performance, high-speed and heavy traffic became the norm, which dramatically increased the risk of grave accidents.

Amidst such a situation, grave traffic offences causing death or injury due to malicious and dangerous driving such as driving under the influence of alcohol or driving at extremely high speeds continued to occur. This brought a major change in public awareness regarding the penalty and sentencing for traffic offences causing death or injury, as voices were raised from the victims of the accidents and their families and, more broadly from among the citizens questioning those crimes being punished as negligent criminal acts as well as their statutory penalty.

In response to such changes in public awareness, the Penal Code was amended in 2001 to impose punishment appropriately to the actual situation and the crime of dangerous driving causing death or injury was newly established. With this amendment, a person who caused death or injury to a person due to malicious and dangerous driving such as driving an automobile with four or more wheels in a state that is difficult to drive normally due to the influence of alcohol would be punished as intentional crime, not negligence crime, with imprisonment with work for no more than 10 years in the case of injury and one year or more in the case of death (the upper limit at the time was set at 15 years).

At that time, the act of dangerous driving in the crime of dangerous driving causing death or injury was limited to the traveling and driving of automobiles with four wheels or more (motorcycles were excluded) and was sorted into five categories: (1) act of driving a vehicle under the influence of alcohol or drugs, making it difficult for the person to drive safely; (2) act of driving at such high speed that it is exceedingly difficult for the person to control the vehicle; (3) act of driving when the person lacks the skills to control the vehicle; (4) act of driving a vehicle with the intent to obstruct the passage of another person or vehicle, cutting in directly in front of another running vehicle or approaching in close proximity to a passing person or vehicle, at a speed that causes serious danger to traffic; and (5) act of driving a vehicle, deliberately ignoring a red signal light or its equivalent signal at a speed that causes serious danger to traffic.

In 2005, the statutory penalty in the case of a crime of dangerous driving causing death or injury where the victim is killed was raised to imprisonment with work for not less than one year and not more than 20 years.

## 4 Further Raising the Statutory Penalty for Negligent Criminal Act Category

In this manner, it became possible to impose heavy penalties on certain categories of malicious and dangerous traffic offences causing injury or death as crimes of dangerous driving causing death or injury (intentional criminal act). However, offences continued to occur in not insignificant numbers that did not constitute the crime of dangerous driving causing death or injury but nevertheless consisted of driving

under the influence of alcohol or other malicious and dangerous act of driving or had serious consequences such as large numbers of deaths and/or injury.

For such accidents causing death or injury, views were expressed seeking stronger punishment provisions on the ground that the statutory penalty for the crime of causing death or injury through negligence in the pursuit of social activities that remained at imprisonment with or without work for no longer than five years did not match the normative consciousness of the people. This included the submission to the Ministry of Justice of petitions seeking heavier punishment for accidents causing death or injury by driving automobiles as well as a large number of signatures supporting their purport. For example, in 2006, the National Association of the Families of the Fatal Victims of Traffic Accidents and other organizations submitted signatures of approximately 150,000 people seeking heavier punishment for drunk driving and hit-and-run offences.

Looking at the state of sentencing for offences causing death or injury through negligence in the pursuit of social activities by driving automobiles after the crime of dangerous driving causing death or injury was newly established, cases in which punishment near the upper limit of the statutory punishment have grown in number significantly since the establishment. In particular, the demand grew for achieving appropriate sentencing matching the actual circumstances for those cases that did not comprise crimes of dangerous driving causing death or injury even though they caused serious results through malicious and dangerous driving such as driving under the influence of alcohol.

In light of this situation, in 2007, traffic offences causing death or injury due to driving automobiles that constituted the crime of causing death or injury through negligence while driving a motor vehicle was separated from the crime of causing death or injury through negligence in the pursuit of social activities and newly established in the Penal Code with the heavier statutory punishment of imprisonment with or without work for not more than seven years or fine of not more than 1,000,000 yen.

This amendment also extended the scope of the crime of dangerous driving causing death or injury to motorcycles and the like.

## 5 Establishment of the Act on Punishment of Acts Inflicting Death or Injury on Others by Driving a Motor Vehicle, etc.

The number of traffic offences causing death or injury due to driving automobiles continued to be on a declining trend after the aforementioned amendment. However, the number of malicious and dangerous driving acts such as driving under the influence of alcohol or driving without a license resulting in death or injury continued to rise. Doubts were casted on the punishment provisions in connection with cases where the crime of causing death or injury through negligence while driving a motor vehicle and not the crime of dangerous driving causing death or injury had been applied, and views were expressed seeking revision.

It was in 2013 under these circumstances that the Act on Punishment of Acts Inflicting Death or Injury on Others by Driving a Motor Vehicle, etc. (hereinafter referred to as "the New Act") was established.

The crime of dangerous driving causing death or injury, which had been included in the Penal Code, was transferred to the New Act and "an act of driving a motor vehicle through a passage-prohibited road, at a speed that can cause serious danger to traffic" was added as the sixth category of the act of dangerous driving.

In addition, while it cannot be described as equivalent to the preexisting crime of dangerous driving

causing death or injury, a new crime of dangerous driving causing death or injury was established that would be deemed intentional dangerous driving, which called for greater responsibility than crime of causing death or injury through negligence while driving a motor vehicle by imposing a heavier statutory punishment (imprisonment with work for not more than 12 years in case of injury and not more than 15 years in case of death).

The objective here was to punish the act of killing or injuring a person by driving a motor vehicle in a state likely to hinder safe driving under the influence of alcohol, drugs, or a disease that is likely to cause difficulty in driving, and thereby having difficulty in driving safely under the influence of the factors above such as the loss of consciousness.

A crime was also newly established that a person who is in a state likely to hinder the safe driving of a motor vehicle drives due to being under the influence of alcohol or drugs causes the death or injury of another through negligence and engages in any act to hinder the collection of evidence regarding the influence of alcohol, etc. such as leaving the site is subject to punishment by imprisonment with work for not more than 12 years.

Moreover, the crime of causing death or injury through negligence while driving a motor vehicle was maintained in the New Act under the new name of the crime of negligent driving causing death or injury. Also, new provision was prescribed to punish driving without a license and committing a crime of dangerous driving causing death or injury or negligent driving causing death or injury, more severely than prescribed by respective provisions.

## 6 Summary

As we have outlined, in Japan, the situation of automobile traffic in each era, the changes in the lifestyles of the people, and the perception of the people regarding traffic safety were responded to appropriately. At the same time, the timely review of the punishment provisions for a wide variety of traffic offences causing death or injury that had grave consequences such as killing or injuring people due to dangerous and malicious driving that ignored or taken lightly of traffic laws and regulations was also conducted so that they would be subjected to appropriate punishment according to the form, the degree of dangerousness, maliciousness and the seriousness of their responsibility. It can be said that these responses have resulted in the progress in relevant legal systems. Meanwhile, the Road Traffic Act also received a wide variety of amendments on several occasions, resulting in the strengthening of the punishment provisions concerning driving under the influence of alcohol and driving without a license.

As seen above, Japan has strived to construct a legal system that appropriately reflects the actual traffic situation and the voices of the people regarding its safety.

# Chapter 2 Changing Face of Measures against Economic Offences

## 1 Introduction

The Japanese economy, emerging from the devastation of World War II, entered a high-growth era in 1955. But in 1974, the economy recorded its first year of negative growth, which marked its departure from the high-growth trajectory. Nevertheless, the economy continued to register stable growth, enabling Japan to become a global economic superpower by the 1980s. However, in the 1990s in the aftermath of the bursting of the economic bubble, financial institutions were burdened with massive amounts of bad loans, and the Japanese economy entered a long period of economic stagnation known as "the lost decade." As the new millennium dawned, many areas in Japan, including the economy, went through structural reform in an attempt to transform a society oriented towards prospective regulation and adjustment to one oriented towards retrospective review and remedy, but the Japanese economy failed to recover from the burst of the bubble and remained in the doldrums. The global financial crisis touched off by the collapse of Lehman Brothers in 2008 added to this, taking a toll on corporate profits. However, the economic downturn proved to be relatively brief, and the economy has been on a positive trajectory since the mid-2010s.

Keeping such background in mind, this chapter will look at the changing face of measures against economic offences over the last 50 years with a focus on legislative measures. Specifically, the following special laws related to the punishment of economic offences will be discussed: the Income Tax Act, the Corporation Tax Act, and other laws that govern tax matters; the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (hereinafter referred to as the "Anti-monopoly Act"); the Financial Instruments and Exchange Act and other laws that govern economic activities; the Patent Act, the Trademark Act, the Unfair Competition Prevention Act and other laws governing intellectual property rights and competition; and laws concerning the punishment of crimes surrounding corporate bankruptcy.

## 2 The Laws that Govern Tax Matters

The Income Tax Act and the Corporation Tax Act were promulgated in 1965 due to complete amendments of the old Income Tax Act and the old Corporation Tax Act. The Inheritance Tax Act was promulgated in 1950 following a complete amendment of the old Inheritance Tax Act. In addition, the Consumption Tax Act was enacted in 1988. These laws have penal provisions for so-called evasive acts, which are acts violating such duties as the submission of tax returns.

In 2010, the Income Tax Act, the Corporation Tax Act, the Inheritance Tax Act, the Consumption Tax Act and other laws were amended to optimize taxation and secure trust in the tax system. Penal provisions were strengthened, with the upper limit for imprisonment with work for the statutory penalties for evasive offences concerning income tax, corporation tax, inheritance tax, consumption tax and other laws being raised from five years to 10 years, among other things. In 2011, the Income Tax Act, the Corporation Tax Act, the Inheritance Tax Act, the Consumption Tax Act and other laws were

amended, and provisions were newly established to punish serious and intentional acts that evade taxation by not submitting the tax return by the deadline (simple tax evasion) and attempting to wrongfully receive consumption tax refunds. Moreover, in 2018, the Consumption Tax Act was amended and the penal provisions for the evasion of the consumption tax on imports were strengthened in order to enhance the deterrent effect on gold smuggling.

Looking at the number of persons referred to public prosecutors' offices since 1970, the number of Income Tax Act violations topped 100 persons for the first time in 1981 and reached 397 persons in 1992, but has generally remained below 100 persons since 1998. Corporation Tax Act violations have been in the range of 100-300 persons, peaking at 350 persons in 1993.

## 3 Anti-monopoly Act

After World War II, in order to substantiate the democratization of the economy in the industrial and financial sectors, the Anti-monopoly Act was enacted in 1947 as the basic law for the perpetual maintenance of competitive markets, and the Japan Fair Trade Commission was established as the administrative organ with jurisdiction over the law. The law set out provisions for the crime of private monopolization, the crime of unreasonable restraint of trade such as price fixing cartels and bid rigging, and other matters.

The 1992 amendment strengthened penal provisions, and, with regard to the dual criminal liability on "private monopolization" or "unreasonable restraint of trade", etc. by companies and legal persons, the upper limit of fines on corporations, were delinked from those of the natural person offenders and raised to 100 million yen. The 2005 revision reviewed the surcharge system (expanding and clarifying the acts subject to surcharge, raising the calculation rate for surcharge) and introduced the leniency programme (a system under which surcharge is reduced or exempted for companies that report their own violations). The revision also reviewed the criminal investigation authority of the Japan Fair Trade Commission. The 2009 revision reviewed the surcharge system (introduction of the surcharge system for exclusionary private monopolization and certain types of unfair trade practices), and the upper limit for the penalty of imprisonment with work for the crime of "unreasonable restraint of trade" was raised from 3 years to 5 years. The 2019 revision reviewed the leniency programme (introduction of the Reduction System for Cooperation in Investigation (a mechanism under which the reduction rates according to the degree of enterprises' contribution to revealing the truth of the case is added to the immunity and reduction rates according to the order of application)) and the surcharge system (addition of the basis of calculations, extension of the calculation term, etc.) and the upper limit of the fine on legal persons, etc. for obstructing the inspection was raised from 3 million yen to 2 million yen, among other matters.

The prosecution of an offence of a grave violation of the Anti-monopoly Act such as private monopolization or cartel requires an accusation from the Japan Fair Trade Commission. The Commission announced "The Fair Trade Commission's Policies on Criminal Accusation Regarding Antimonopoly Violations" in 1990 and "The Fair Trade Commission's Policy on Criminal Accusation and Compulsory Investigation of Criminal Cases Regarding Anti-monopoly Violations" in 2005, and clarified its policy of actively making accusations to seek criminal penalties regarding malicious and serious cases, etc. that are considered to have wide spread influence on people's livings. The number of accusations by the Commission from FY1990 through FY2018 totaled 17 cases (not including supplementary accusations) and 307 persons (including legal persons).

## 4 Laws Governing Economic Activities

### (1) Financial Instruments and Exchange Act (Securities and Exchange Act)

In 1948, the Securities and Exchange Act, which drew heavily on the U.S. legal system, came into effect as the law governing securities and exchange in Japan. The Act proscribed submitting false annual securities reports, spreading rumors, and other acts as offences. Although the Act has gone through many amendments since then, the following are the main amendments regarding penal provisions.

The 1988 revision established regulations concerning insider trading and introduced criminal penalties for its violation. The 1990 revision introduced the disclosure system concerning the status of large-volume holdings of share certificates (the 5% rule) and introduced criminal penalties for its violation. The 1991 revision, given the significant loss of trust in the securities market among ordinary investors due to the loss compensation for large-volume corporate customers by securities companies and other factors, banned loss guarantees, loss compensation, etc. by securities companies and acts by customers of demanding and receiving loss guarantees and/or loss compensation from securities companies, and subjected violations to criminal penalties. The 1992 revision newly established the Securities and Exchange Surveillance Commission as an independent surveillance organ with investigation and accusation authority. Moreover, the upper limit of the fines on legal persons in the dual criminal liability provisions for violations that have a significant impact on markets, such as manipulating quotations and compensating losses, were raised significantly and delinked from the upper limit of the fines on the natural person offender. The 1998 revision expanded the scope of the application of the regulation of insider trading and newly established aggravated punishment provisions for quotation manipulation, and provisions for confiscation and collection of equivalent value of assets acquired by such acts. The 2006 revision raised the upper limits of statutory penalties for spreading rumors or using fraudulent means, manipulating quotations, insider trading, etc. The 2013 revision raised the statutory penalty for the crime of wrongful acts concerning asset management and expanded the scope of punishable insider trading. The 2017 revision newly established penal provisions for persons who conduct high-frequency trading without registering or have another person conduct high-frequency trading under one's name. The Securities and Exchange Surveillance Commission has filed a total of 200 cases against 560 persons (including corporations) from its establishment through FY2018.

### (2) The Commercial Code and the Companies Act

The Commercial Code that was enacted in 1899 established offences of aggravated breach of trust, putting company property at risk, falsifying payments in collusion with officers and employees of institutions that handle payments, and giving benefits in relation to the exercise of a right of a shareholder. In 1997, the Commercial Code was amended to address the problem of so-called *sokaiya* (rogue shareholders of Japanese corporation who seek to earn unlawful gain for example by extorting the company with threats to cause trouble at a general shareholders meeting) and to secure the sound operation of stock companies. The statutory penalty for the crime of aggravated breach of trust by directors etc. was raised, and concerning the crime of the giving of benefits in relation to the exercise of a right of a shareholder, provisions to punish the act of demanding compensation was established.

The Companies Act, enacted in 2005, reorganized provisions related to companies that had previously been placed separately in the Commercial Code and other laws as a single code, by conducting a systematic and thorough review of the various systems regarding companies from the

perspective of adapting to changes in the social and economic environment. As for penal provisions, the act established penal provisions for crimes committed outside Japan for aggravated breach of trust and other crimes, and also established provisions for reduction or exemption in the case of voluntary self-denunciation. The 2014 Companies Act revision expanded the scope of punishable cases for the crime of the giving or acceptance of a bribe in relation to the exercise of a right of a shareholder and the crime of giving benefits in relation to the exercise of a right of a shareholder.

### (3) The Contribution Act and the Money Lending Business Act

Beginning in 1954, laws were enacted to crackdown on loan sharking and predatory lending (cases involving excessively high interest rates) and the like in the money lending business. These laws included the Act Regulating the Receipt of Contributions, the Receipt of Deposits, Interest Rates, etc. (the title was amended to the Act Regulating the Receipt of Contributions, the Receipt of Deposits, Interest Rates, etc. in 1983; hereinafter referred to as the "Contribution Act"). But as the so-called *sara-kin* consumer lending (predatory lending) issue came to pose a social problem, the act was amended in 1983, and the Act on Control in the Money Lending Business (title amended to the "Money Lending Business Act" in 2007) was enacted. The two laws tightened the regulation of money lending business operators, including the introduction of the registration system for money lending businesses.

Loan sharks (black-market lenders without a license and operators, including registered business operators, who conducted lending at illegally high interest rates or conducted collection maliciously) became a serious social problem. In 2003, the two laws were amended, and measures were taken including the establishment of new provisions regarding demanding payment of interest beyond the upper limit of the statutory interest rate, the raising of the statutory penalty for crimes concerning charging excessive interest, and raising of the upper limit of the statutory penalty for crimes concerning unregistered businesses. In 2006, the two laws were amended to take measures to optimize the money lending business, regulate excessive lending and lower the upper limit for the interest rate under the Money Lending Business Act. Penal provisions were newly established for lending money on a regular basis at extremely high interest rates. Interest rates that violate penal provisions for lending money on a regular basis at high interest rates were reduced. Also, the statutory penalty for crimes concerning unregistered business was raised. The number of persons newly received by public prosecutors for offences under the Contribution Act and the Money Lending Business Act spiked in 2003. However, the numbers declined beginning in 2009 for Contribution Act violations and 2008 for violations under the Money Lending Business Act.

## 5 Laws Governing Intellectual Property Rights and Competition

### (1) Laws Governing Intellectual Property Rights

The Patent Act, the Utility Model Act, the Design Act and the Trademark Act are laws that govern intellectual property rights. These laws have penal provisions for acts of infringement, etc. of rights regarding patents, etc. From 1996 to 2000, the Copyright Act, the Patent Act, the Utility Model Act, the Design Act, and the Trademark Act were amended in response to the growing calls for protection of intellectual property rights. The upper limit of the fines on legal persons etc. in the dual criminal liability provisions for acts of infringement of rights was raised significantly and delinked from the upper limit of the fines on the natural person offender. In 2006, the Patent Act, the Design Act, the Utility Model Act and the Trademark Act were amended, and their penal provisions regarding acts of infringement

of rights were raised.

In addition, in response to the development of information and communication technology, the 1997 revision of the Copyright Act created a new right corresponding to the development of interactive transmission (the right to make available for transmission). Infringement of such right was made subject of punishment, and the 2012 revision of the law also made persons who infringed copyright by conducting illegal downloading also the subject of punishment.

### (2) The Unfair Competition Prevention Act

The Unfair Competition Prevention Act was enacted in 1993 as a full amendment of the old Unfair Competition Prevention Act that had been enacted in 1934 with the objective of ensuring fair competition among business operators and the proper implementation of international agreements related thereto. The penalty for acts that give rise to misconceptions regarding the place of origin, quality, etc. of goods, acts that give rise to confusion of unregistered well-known indications of goods, among other things, were raised, and the upper limit of the fines on legal persons etc. in cases involving dual criminal liability was raised significantly and delinked from the upper limit of the fines on the natural person offender.

In 1998, the Unfair Competition Prevention Act was amended as the relevant domestic law implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the Organisation for Economic Co-operation and Development (OECD), newly establishing the crime of bribery of foreign public officials. Its 2004 revision added punishment for Japanese nationals for such offence committed outside of Japan, and the 2005 revision raised the statutory penalty.

The 2003 revision established penal provisions for wrongfully acquiring, using or disclosing a trade secret held by a third party, with the aim of providing protection criminally for trade secrets. Subsequently with regard to the protection of trade secrets, (1) the 2005 revision established penal provisions for the act of taking trade secrets out of Japan and use or disclosure of them for the purpose of unfair competition, and it also established dual criminal liability for the crime of violating trade secrets; (2) the 2009 revision expanded the scope of the crime of violating trade secrets and expanded the scope of the application of the criminal penalties to the unauthorized acquisition of trade secrets by third parties; (3) the 2011 revision established measures concerning the appropriate protection of trade secrets in criminal litigation proceedings regarding the crime of violating trade secrets including application of protective orders to trade secrets and examination of witnesses on non-trial dates; and (4) the 2015 revision established penal provisions for subsequent acquirers of trade secrets, introduced penal provisions to criminalize the attempt to violate trade secrets, raised the upper limit of the fines, introduced overseas penalty augmentation provisions, and lifted the requirement of receiving a complaint for an offence to be prosecutable as a crime of violating trade secrets, among other matters.

## 6 Laws concerning the Punishment of Crimes Surrounding Corporate Bankruptcy

### (1) Bankruptcy Act

The new Bankruptcy Act, repealing and replacing the previous act of the same name, was enacted in 2004 in order to seek swift and fair liquidation of assets in light of the increase in the number of bankruptcy cases after the collapse of the bubble. After the penal provisions prescribed in the old Bankruptcy Act for bribery of bankruptcy trustees and fraudulent bankruptcy were transferred to the

Bankruptcy Act, further penal provisions were newly established for special breach of trust by bankruptcy trustees, acts of violating the duty of the bankrupt to disclose important property at the commencement of bankruptcy proceedings and acts of forcibly demanding a meeting with the bankrupt after the commencement of bankruptcy proceedings for the purpose of seeking to collect on a claim.

**(2) Laws concerning Collection of the Bad Loans of Failed Financial Institutions, etc.**

After the collapse of the economic bubble, collection on the bad claims held by *jusen* housing loan companies and other failed financial institutions became one of the main problems in the Japanese economy. In 1996, based on the Act on Special Measures concerning Promotion of Disposal of Claims and Debts of a Specific Housing-Loan Corporation (hereinafter referred to as the "Housing-Loan Corporation Act"), the Housing Loan Administration Corporation (hereinafter referred to as the "HLAC"), whose purpose was collection on the claims of the housing loan companies, was established. Following the partial amendment of the Deposit Insurance Act in June, the Tokyo Kyodo Bank was reorganized in September, and the Resolution and Collection Bank (hereinafter referred to as the "RCB") was launched with the main purpose of conducting the resolution and collection operations of failed credit cooperatives. (Those operations were later expanded to cover failed financial institutions other than credit cooperatives.) Furthermore, in 1999, the HLAC conducted an absorption-type merger of the RCB and was relaunched as the Resolution and Collection Corporation (hereinafter referred to as the "RCC"). The RCC was empowered to conduct collection on bad claims that it purchased from financial institutions regardless of whether or not they predated or postdated failure under the Act on Emergency Measures for the Revitalization of the Financial Functions. As for offences related to the collection on bad claims of the failed financial institutions, in order to ensure that criminal responsibility is strictly pursued, the officers and employees of the HLAC, the RCB and the RCC are required to take necessary measures for filing "accusations (report of criminal conduct to the authorities associated with a request for punishment of the offender)". Subsequently, the HLAC and others filed accusation concerning crimes related to the collection on bad claims of the failed financial institutions such as obstruction of compulsory execution, obstruction of tender bidding, violation of the Bankruptcy Act and breach of trust/special breach of trust.

## 7 Conclusion

As we have seen, for the last 50 years, various laws have been enacted to respond to the changes in the Japanese economy, in particular changes in business activities and the lives of the citizenry as the result of, among other things, the collapse of the "bubble economy", the efforts to rise above the subsequent economic stagnation, and the advancing globalization of the economic activities. Many new penal provisions have been established and statutory penalties have been raised for economic crimes. Economic activity conducted in a healthy and smooth manner forms the foundation of a safe and secure society. Going forward, Japan will continue its efforts to address economic offences.

# Chapter 3 Measures against Violence by Stalkers and Spouses

## 1 Measures against Stalkers

There were previously instances where stalking behaviours, or repeated harassment by the same person, such as viciously following and making frequent undesired calls to the victim, could be dealt by the Minor Offence Act or by pressing charges for intimidation. However, it was often difficult to apply existing laws and regulations to stalking incidents, and taking effective measures was not easy. Under these circumstances, the repeated occurrences of heinous stalking cases, including the escalation of stalking to homicide in a case at Okegawa City, Saitama Prefecture, gave rise to mounting public calls for regulating stalking. In May 2000, the Act on Proscribing Stalking Behaviour and Assisting Victims (hereinafter referred to as the "Anti-Stalking Act") was enacted for the purpose of enforcing necessary regulations on stalking and determining assistance measures for stalking victims.

Under the Anti-Stalking Act, the chief of police station may in certain cases issue a warning not to follow someone or not to commit an act that would make the person feel anxious. The Prefectural Public Safety Commission may, when the person receiving the warning does not obey the warning and commits an act that makes the other person feel anxious, and when it finds that there are grounds for believing that such acts may be committed repeatedly, issue an order to the perpetrator not to commit such acts any further. A violation of an order of protection would be subject to punishment.

Even after the enactment of the Anti-Stalking Act, however, heinous stalking incidents showed no signs of declining. In 2011, following the filing of a complaint over a dispute between a man and a woman, the suspect under investigation for a criminal injury case went uninvited to the family home of the victim in another prefecture and killed the victim's family members. In 2012, a person on probation with suspended sentence for intimidating a former girlfriend sent her a massive amount of e-mail demanding the payment of palimony and then killed the former girlfriend. This incident shed light on the deficiencies of the Anti-Stalking Act, including that the unsolicited continuous transmission of e-mail was not included in the definition of stalking regulated by the Act.

Therefore, in the amendment of the Anti-Stalking Act, an act of continuously sending e-mail despite a receiver's refusal was included among the offences covered by the Act. Furthermore, in the amendment of 2016, prefectural public safety commissions were allowed to issue injunctions to suspected stalkers without first giving warnings to them. Behaviours like lingering around the residence etc. without good reason and the continuous transmission of messages through social networking services (SNS) despite the receiver's refusal also came under the purview of the Anti-Stalking Act.

Furthermore, probation offices and police enhanced their cooperation in addressing stalking. They have made arrangements to share information on problematic behaviours etc. of convicted stalkers, first in 2013, regarding persons on probation with full suspension of sentence for stalking, and then from June 2016, persons on parole and persons on probation with partial suspension of the sentence for stalking.

## 2 Measures against Violence by Spouses

In the Basic Plan for Gender Equality adopted by Cabinet decision in 2000, the "Elimination of All Forms of Violence Against Women" was cited as one of the 11 priority matters, with "promotion of measures against violence by husbands/partners" as one of the item. Against this background, in April 2001, the Act on the Prevention of Spousal Violence and the Protection of Victims (hereinafter referred to as the "Spousal Violence Prevention Act") was enacted.

The purpose of the Spousal Violence Prevention Act was to protect human rights and realize gender equality by implementing measures to prevent spousal violence and protect victims through the establishment of a system providing the notification, consultation, protection and support for self-reliance for spousal violence victims. To this end, the Act included provisions concerning reports by those who detected cases of spousal violence and provisions concerning protection order by the court. The Act established a system under which the court, in cases where a victim is highly likely to face a serious threat to his or her life or serious bodily harm by the spouse, shall, upon a petition from the victim, issue a protection order. The protection order obliges the spouse, for a six-month period from the day the order comes into effect, to refrain from approaching the victim at the victim's residence or obliges the spouse to leave, for a two-week period from the day the order comes into effect, the residence which the spouse shares with the victim as their main home. A spouse who violates this protection order is subject to punishment, including imprisonment.

The amendment to the Spousal Violence Prevention Act in 2004 expanded the definition of spousal violence and also enhanced the protection order system by making it possible to issue a protection order against a former spouse. The amended Act also prescribed that the Prime Minister and other competent ministers are required to establish a basic policy concerning the implementation of measures for the prevention of spousal violence and the protection of victims (hereinafter referred to as the "Basic Policy"), and that prefectures are required, in line with the Basic Policy, to establish their own basic plans concerning the implementation of measures for the prevention of spousal violence and the protection of victims.

Under the 2007 amendment, the protection order system was further expanded, making it possible to issue a protection order to ban telephone calls, etc. and a stay-away order covering victim's relatives. The amended Act also required municipalities to endeavour to formulate their own Basic Plans concerning the implementation of measures for the prevention of spousal violence and the protection of victims.

Furthermore, by the amendment of 2013, the title of the Act was changed to the Act on the Prevention of Spousal Violence and the Protection, etc. of Victims. This amendment also made it possible to apply the Spousal Violence Prevention Act *mutatis mutandis* to violence by a non-spousal partner, who lives in the same domicile, and to its victim, making the partner violating a relevant protection order also subject to punishment.

The Spousal Violence Prevention Act was amended again in 2019 to include child guidance centres as relevant institutions, in addition to prefectural police and welfare offices, that should mutually cooperate for the protection of victims.

## 3 Conclusion

With respect to stalking incidents, the number of cases cleared for violations of the Anti-Stalking Act

rose from 2012 to 2017, then fell again. However, even the 870 cases in 2018 was at a high level, and the number of cases cleared for violations of laws and regulations other than the Anti-Stalking Act had also stayed above 1,500 through 2018. In addition, the number of cases cleared of criminal offenders in cases where victims were spouses of suspects, including common-law couples, has been increasing since 2000, and the total number in 2018 was about 11.9 times higher than that of 1989. Since countermeasures against stalking and spousal violence are of great importance to ensure safety and security, the basis for creating a vibrant society, the Strategy to Make "Japan the Safest Country in the World" (2013, the Ministerial Commission on Crime Control) also called for the promotion of these countermeasures. Going forward, it is necessary to pursue the prevention of stalking and violence by spouses as well as the protection of victims through the appropriate administration of the Anti-Stalking Act and the Spousal Violence Prevention Act.

# Chapter 4 Progress in Measures regarding Crime Victims and Related Matters

## 1 Up to the 1960s

According to the current Code of Criminal Procedure, which was promulgated in 1948, crime victims and their bereaved families (hereinafter referred to as "crime victims"), in addition to reporting damage to the investigating authorities by such means as submitting a damage report, may report the facts of the crime to the public prosecutor or the judicial police personnel and file a criminal complaint seeking punishment of the offender. Such a report or criminal complaint serves as the beginning of an investigation by the investigating authorities. As a matter of providing information to crime victims, when a public prosecutor has made a disposition regarding a case with respect to which a criminal complaint has been filed, the public prosecutor must notify the person who filed the criminal complaint; when the public prosecutor has made a disposition not to institute prosecution and there is a request from the person who filed the complaint, he or she must be notified promptly of the reason for the disposition. Crime victims are questioned by the investigating authorities at the investigation stage and appear in court as witnesses at the trial stage. However, in Japan, crime victims, not being parties to the criminal proceedings, did not have the opportunity to actively participate in the criminal procedure or receive economic support through the legal system until 1960s.

## 2 Since the 1970s

The indiscriminate bombing perpetrated by a extremist group in 1974 served to raise awareness of the fact that the crime victims in these cases of bombing and random assaults effectively received little to no redress, resulting in growing public sentiment for a governmental response to crime victims. In 1980, the Act on Supporting Crime Victims through Paying Benefits was enacted, which introduced a system for paying benefits within a certain scope by the government to the families of crime victims who died because of crimes and to crime victims who suffered severe disabilities because of crimes. Subsequently, surviving family members made a point forcefully for the need of psychological support for crime victims at the Commemorative Symposium on the 10th Anniversary of the Inauguration of the Crime Victim Benefit System held in 1991. In addition, there were many grave cases such as the March 1995 Tokyo subway sarin attack. In response to these incidents, the understanding of the people deepened regarding the wide variety of harm that crime victims suffer including psychological, social, and economic damages. People also started to recognize that crime victims were often forced to relive traumatic experiences during the subsequent criminal proceedings, causing further psychological harm in the form of so-called secondary victimization. It was against this background that in February 1996, the National Police Agency formulated the Outline of Measures for Supporting Crime Victims and several measures were comprehensively implemented, including the provision of information to crime victims, support for the recovery of victims from psychological damage, and prevention and reduction of secondary victimization of crime victims during the investigation process while respecting the human rights of victims. Since April 1999, public prosecutors' offices also implemented a nationally unified notification system for victims

under which crime victims could be notified of the matters concerning the offender's trial dates and the trial outcome. The system has been subsequently expanded and enhanced in several steps, so that the crime victims are notified of matters such as the scheduled date of the execution of the prison sentence and the treatment of the perpetrator during the correction and rehabilitation stage where they so desire .

## 3 Since the 2000s

### (1) The Enactment of the Two Crime Victim Protection Laws

In "Damage from Crime and Near-Term Measures for Crime Victims," the report published in March 2000 by the Liaison Conference of the Relevant Ministries and Agencies for Crime Victim Measures, it was stated that in addition to the promotion of measures for crime victims in criminal procedures, measures such as the establishment of consultation systems, psychological support for crime victims such as the provision of psychological care and enlightenment activities regarding damage from crime should be implemented by the respective ministries and agencies. In May of the same year, the so-called two crime victim protection laws (the Law for Partial Amendment to the Code of Criminal Procedure and the Law for the Inquest of Prosecution, the Act on Measures Incidental to Criminal Proceedings for Protecting the Rights and Interests of Crime Victims) were enacted as measures to support crime victims during criminal procedures as stated in the report.

Measures for crime victims progressed under the two crime victim protection laws, such as the introduction of a system in which crime victims were enabled to express their feelings about the harm they suffered and other opinions concerning the case at trial, various systems for reducing the burden on crime victims when questioned as witnesses (witness escorting, witness shielding and the introduction of witness examination by video link), the system for viewing and copying of trial records by crime victims, the criminal restitution system (settlement system for civil disputes through criminal proceedings).

### (2) Enactment of the Basic Act on Crime Victims

Although the progress in measures for crime victims received a certain level of understanding from crime victims, this did not put an end to crimes and many crime victims continued to face difficulties. Due to this situation, there was no end to calls from crime victims, crime victim organizations, and organizations supporting crime victims expressing dissatisfaction with the treatment of crime victims in the criminal justice process and seeking further progress in relevant measures. In June 2004, responding to these calls, the ruling parties submitted "Recommendations concerning Comprehensive Measures for Crime Victims" to the government. The recommendations stated that, in order to implement measures for crime victims in a comprehensive and swift manner, it was necessary to enact a Basic Act as soon as possible. It was also suggested that it would be necessary to formulate a plan, based on the Basic Act, that would clarify the overall picture of comprehensive measures to support crime victims, determine deadlines for a variety of measures and steadily implement them according to the plan. Subsequently, the Basic Act on Crime Victims was enacted in December of the same year as lawmaker-initiated legislation after consultations between the ruling and opposition parties.

The Basic Act on Crime Victims in its preamble identified the realization of a safe and secure society as the obligation of the State and explained the difficult circumstances that crime victims face; it also stated that society must listen to the voices of crime victims, create policies based on their viewpoints

and take steps toward realizing a society where crime victims have their interests and rights protected. The Basic Act then prescribed the basic principles of measures for crime victims, clarified the responsibilities of the national government, local governments, and citizens and prescribed the items that form the basis of measures to support crime victims (basic measures): (1) All crime victims have the right to have their individual dignity respected and the right to be treated in a manner that is appropriate for that dignity; (2) Policies for crime victims are to be formulated so that they are tailored to the cause and situation of the damage, the situation of crime victims and other relevant factors; and (3) Policies for crime victims are to be formulated so that crime victims are able to continuously receive necessary support from the time they incurred the damage until their normal lives are restored. The Basic Act listed as basic measures 13 items including "Consultation and Provision of Information, etc.", "Supporting Victims to Claim the Compensation for Damages, etc." and "Development of the System to Expand Opportunities to Participate in Criminal Procedures".

### (3) Basic Plan for Crime Victims

The Basic Act on Crime Victims stipulated that the government must establish a basic plan concerning the measures for crime victims (the "Basic Plan"). The Basic Plan was formulated in 2005 after deliberations in the Council for the Promotion of Policies for Crime Victims, which was established under the Basic Act. Subsequently, the Second and Third Basic Plans were formulated in 2011 and 2016, respectively. Currently, various measures are being promoted under the Third Basic Plan. Each Basic Plan incorporates various specific measures in accordance with four basic policies ("guarantee the right of crime victims, etc. to be treated accordingly to their dignity," "take each measure properly, mindful of individual victim's circumstance," "provide seamless and continuous support," "progress while building the national consensus") and five priority issues ("efforts to recover the victims' damages and to provide them with economic support", "efforts to support the victims to recover from or to prevent mental and/or physical harm", "efforts to broaden the opportunity for victims to participate in criminal procedures", "efforts to improve the systems to support crime victims" and "efforts to foster the understanding among the general public and to earn their consideration and cooperation"). The following are the main developments after the establishment of the Basic Plans.

**Measures for Crime Victims**

#### (a) Initiatives towards the Recovery of Damages and Financial Support

##### (i) Benefit System for Crime Victims

The aforementioned benefit system for crime victims was enhanced and expanded in accordance with the Basic Plans for Crime Victims in 2006, 2008, 2009, 2014 and 2018.

##### (ii) Issuance of Remission Payments Using Stolen and Misappropriated Property

This is a system in which the State, based on the Act on Issuance of Remission Payments Using Stolen and Misappropriated Property, provides compensation to victims based on the recovery of their property, using criminal proceeds and assets that have been confiscated or collected in equivalent value (such as assets acquired by the criminal through asset-related crimes) or the equivalent assets transferred from overseas. It has been in operation since 2006.

**(iii) Restitution Orders**

This is a system in which Crime Victims may file a petition regarding certain grave offences with the court where the criminal case is pending for a claim for restitution order, whereupon the court, after having rendered a guilty verdict continues the proceedings and makes a decision on the petition after reviewing the records of the criminal trial. It has been in operation since 2008.

**(b) Initiatives towards Recovery from and Prevention of Psychological and Physical Harm**

**(i) Protective Ruling System for Victim Identification Information**

In cases where the honour of the victim is likely to be greatly harmed by the disclosure of victim identification information in open court in consideration of the form of the criminal act, state of the damage, or other circumstances, for example, if it is a case involving a sex crime, the court may rule that such information may not be disclosed in an open court if there is a request from the victim and is found to be appropriate, such system has been in operation since 2007.

**(ii) Points of Consideration when Conducting Hearings Involving Child Victims**

Efforts are being made with regard to matters to be considered when conducting hearings involving child victims. For example, in 2015, a circular/notice was issued by the Supreme Public Prosecutors' Office, the National Police Agency and the Ministry of Health, Labour and Welfare regarding the reinforcement of the collaboration between the public prosecutors' office, the police and child guidance centres in cases where children are crime victims.

**(c) Initiatives towards Increasing Involvement in Criminal Proceedings**

**(i) Victim Participation System**

Under this system, the court may allow the victims or others related to certain crimes, such as a crime in which a person is killed or injured by an intentional criminal act, to participate in the criminal trial as a victim participant, to appear on the trial dates, to state his or her opinion on the trial activities of the public prosecutors, to ask the defendant questions for the purpose of stating such an opinion, and to state an opinion on the facts and the application of the law. This system has been in operation since 2008. A victim participant may, in the case where the victim wishes to have an attorney represent his or her interests at the criminal trial, request the appointment of a court-appointed attorney through the Japan Legal Support Center (JLSC) if the victim lacks sufficient funds to hire an attorney. In 2013, the travel expenses payment system for victim participants commenced operation and the financial resources condition for a victim participant requesting the appointment of a court-appointed attorney for victims was relaxed.

**(ii) Observation of the Trial of Juveniles**

A system has been in operation since 2008 in which certain grave juvenile cases may be observed if there is a request from the crime victim and the request is found to be appropriate and unlikely to hinder the sound development of the juvenile.

**(iii) Viewing and/or Copying of Trial Records**

The system for the viewing and copying of trial records by crime victims was enhanced in 2007, and the scope of the viewing and copying of trial records by crime victims was also extended to the trial of juveniles in 2008.

**(iv) Systems for the Hearing of Opinions and Conveyance of Feelings during the Proceedings for Parole from Penal Institution or Juvenile Training Schools**

The following two systems have been in operation since 2007: a hearing system in which the Regional Parole Board conducts a hearing enabling crime victims to express their views within the

proceedings for parole from a penal institution or from a juvenile training school, and a sentiments conveyance system in which a probation office conducts a hearing enabling crime victims to express their sentiments concerning the damage suffered. The sentiments are then conveyed to the perpetrator.

**(d) Initiatives towards the Establishment of the System for Support**

**Support for Victims of Crime Provided by the Japan Legal Support Center**

The aforementioned JLSC was established in 2006 by the State. As one of its operations, the JLSC provides support for crime victims by telephone and through local offices such as provision of information about proper way of participation in criminal proceedings and assistance for recovery of damages and alleviation of pain, provision of information about the details of support and consultation services offered by organizations and groups engaging in crime victim support, and referrals of the victims to an attorney who understands and has experience in supporting crime victims. Since 2018, the JLSC has also conducted "Legal Consulting Support for Victims of Specific Crimes, etc.", which provides legal consultation for victims of "stalking, etc." as defined by the Anti-Stalking Act, "child abuse" as defined by the Act on Prevention, etc., of Child Abuse, and "spousal violence" as defined by the Act on the Prevention of Spousal Violence and the Protection of Victims in order to avoid further damages, regardless of their financial situation.

## 4 Conclusion

As we have seen, the last 50 years can be described as an era that saw significant progress in development of the policies for crime victims in Japan. However, given the enormity of the physical, psychological and economic anguish suffered by crime victims, it is deemed necessary to continue engaging in ceaseless consideration of policies for crime victims in order to reduce and alleviate such pain as much as possible.

# Chapter 5 The Road towards Open Corrections

## 1 The Significance of "Open Corrections"

In correctional institutions, many efforts are being made to reach out, including a wide range of education, instruction and support, to achieve the rehabilitation of sentenced inmates and their smooth reintegration into society. However, looking at the background of the sentenced inmates, in many cases, they have been subjected to poverty and violence, discrimination and mistreatment, alienated from households and society, and have lived in isolation. The reformation and rehabilitation of such sentenced inmates cannot be accomplished only by the efforts of the officials at the correctional institutions. It can be accomplished only through collaboration and cooperation with related organizations and also through the broad-based support and assistance of local communities.

In Japan, "open corrections" is a term describing a multi-stakeholder approach by correctional institutions to facilitate reformation and rehabilitation of offenders, cooperation and collaboration of relevant organizations and community-based support. Someday, each sentenced inmate will leave his or her correctional institution and return to the local community. Therefore, it is necessary for the correctional institutions to always strive to disseminate information about their efforts to reform and rehabilitate offenders. Moreover, the correctional institutions should involve the members of the local communities to the extent possible so that the members of the local communities have a correct understanding of how the correctional institutions are operated and the sentenced inmates are treated. Reducing the distance between the correctional institutions and the local communities as much as possible also leads to sustained support for the "rehabilitation" of released prisoners within their communities. The opening of correctional institutions to society and coexistence with the local communities ultimately contributes to the prevention of recidivism by released prisoners and the creation of safe and sound local communities.

## 2 Recommendations from the Correctional Administration Reform Council and the Road towards "Open Corrections"

With regard to the involvement of private collaborators and local communities with correctional institutions, traditionally prison chaplains and volunteer prison visitors have played a major role, while the members of the local communities have also participated in the ceremonies and other events held within the correctional institutions. In addition, private sector businesses have also provided plenty of cooperation through prison work, including initiatives in which lodging facilities are prepared on the premises of private sector companies to provide work opportunities in an environment similar to ordinary society. Thus, correctional institutions have, to a certain degree, operated in a manner open to society, while they have essentially been operated without actively providing information to the outside world.

The prison inmate population grew dramatically in 1996 and beyond. Overcrowding continued and there was a limit to the ability to handle this situation, given the limited amount of personnel. It was under these circumstances that the cases of injury and death among sentenced inmates within prisons

came to light in 2002 and 2003, which triggered major changes in correctional institutions.

In April 2003, the Ministry of Justice held a meeting of the Correctional Administration Reform Council consisting of outside experts. At the Council meeting, absolutely everything regarding prison reform was on the table for discussion. The recommendations of the Council that were submitted to the Minister of Justice in December pointed out that "'the walls' of prisons are too high; information does not flow either way, from outside to inside, or from inside to outside." At the same time, based on the understanding that "it is important, above all, that the eyes of the public reach inside prisons and that their public voices are heard in prison, and conversely, that the voices inside prisons are heard by the public," direction of the reform was laid out from the following perspectives : (1) reform for sentenced inmates that respects the humanity of the sentenced inmates and aims at their true reformation and rehabilitation as well as their reintegration into society; (2) reform for correctional employees that reduces the excessive burden on prison officers and secures a healthy working environment; and (3) reform to make prisons more transparent through such means as mechanisms whereby citizens may visit prisons and "participate" in their operation and mechanisms that enable complaints of sentenced inmates to reach external third parties.

In accordance with these recommendations, the correctional system was put on a path to review the entire correctional administration including the overall amendment of the Prison Law. Since then, various reforms have been implemented aiming at corrections "with public understanding and support" under the banner of "open corrections."

As for measures concerning open corrections, issues that could be realized without waiting for legislative amendments, such as the regular publication of information and statistics related to treatment of sentenced inmates, full publication of deaths in correctional institutions, and the institutionalization of facility tours for publicity were implemented. In the Act on Penal Institutions and Treatment of Inmates, which came into force in 2006, from the perspective of securing the appropriate administration of institutions and enhancing transparency, such matters as the establishment of the Penal Institution Visiting Committee consisting of members appointed by the Minister of Justice, which inspect the penal institutions and report their findings to the wardens of the penal institutions regarding the administration of their penal institutions and provisions for hearing the opinions of experts and others were introduced.

In 2003, when the Correctional Administration Reform Council Recommendations were issued, there were two other things that occurred which determined the future orientation of corrections. The first was that the First Ministerial Meeting on Countermeasures against Crime was held, marking the beginning of measures to prevent recidivism based on the recognition by the Ministry of Justice that it is important to "provide criminals with reformation and rehabilitation education aimed at their smooth reintegration into society" in order to realize a crime-resistant society. The other was that consideration of the Prison PFI Projects began in earnest in light of the Three-Year Programme for Promoting Regulatory Reform (second revision). Since then, a multifaceted expansion has taken place including the utilization of outside private-sector funds, expertise, ideas and the like; collaboration with multiple organizations; and collaboration with local communities: more recently, it has become an indispensable element in promoting measures to prevent recidivism undertaken through collaborations between the State, local governments, private-sector organizations and others.

## 3 Public-Private Collaboration in the Prison PFI Project

With regard to the utilization of external private-sector funds, expertise, and ideas that were part of the regulation reform and total personnel costs reform of the 2000s, the private finance initiative (PFI) method was introduced for the establishment and operation of penal institutions from the perspective of alleviating overcrowding in prisons and exploring new ways of operating penal institutions. This was a method of utilizing funds and the expertise of the private sector to construct, maintain and operate public facilities in accordance with the Act on Promotion of Private Finance Initiative. The Mine Rehabilitation Programme Centre in April 2007, the Kitsuregawa Rehabilitation Programme Centre and the Harima Rehabilitation Programme Centre in October 2007 and the Shimane-Asahi Rehabilitation Programme Centre in October 2008 began operation as penal institutions in cooperation between the public and private sectors with the aim of expanding capacity by a total of 6,000 inmates. In addition, programmes such as unique vocational training and treatment programmes was implemented with ideas from the private sector. The expertise of the private sector and various support by the local community were shared with the corrections field. For example, with the cooperation of the Japan Guide Dog Association, the Shimane-Asahi Rehabilitation Programme Centre has introduced a guide dog puppy training. In this programme, sentenced inmates rear two-month-old puppies that are expected to become guide dogs until they become 12 months old and provide them with basic socializing training.

**Vocational training in Mine Rehabilitation Program Center**

**Cooking practice (a professional training course for bakers)**

**Design practice with a PC**

**A Puppy of Guide Dog**

Operating institutions under public-private collaboration through the Prison PFI Project made prison officials aware of the eye of the outside world and served as a brake that prevents the correctional administration from straying from generally acceptable norms. It was also meaningful in securing transparency in the operation of the institutions. As a result, this became a symbol of the purport of the correction reform aimed at "open corrections". In addition, the PFI prisons contributed to regional revitalization of communities where these prisons are located in terms of increased employment opportunities and facilitating local production and consumption of goods. In this sense, it can be said that the PFI prisons, which operate with "coexistence with the local community" as one of their fundamental ideals, have played a pioneering role in coordinating and collaborating with the private sector and local communities towards achieving "open corrections".

## 4 Utilization of Outside Expertise in the Formulation of Rehabilitation Programmes

The Act on Penal Institutions and Treatment of Sentenced Persons, which entered into force in 2006, identified rehabilitation, smooth reintegration into society and individualized treatment as the basic philosophy of the treatment of sentenced inmates. The rehabilitation programmes were established in tandem with preexisting prison work within the new concept of "correctional treatment" to clarify that sentenced inmates are obligated to receive this guidance. In particular, with regard to the newly introduced rehabilitation programmes, it was determined that the following types would be prescribed by this act or its subordinate legislation for special guidance for reform: (1) rehabilitation programmes for overcoming drug addiction, (2) reoffending prevention programmes for sex offenders and (3) education from the victim's point of view. In formulating these standard programmes, a wide range of external knowledge was incorporated, with external experts and parties participating in the deliberation and formulation. In actual practice as well, introducing methods with the anticipation that sentenced inmates would connect with community resources had great significance to serve as a bridge from "open corrections" to treatment within society. To give an example, in the rehabilitation programmes for overcoming drug addiction, group work was implemented with the participation of Drug Addiction Rehabilitation Centres (DARC) and self-help groups (including people who have been incarcerated in penal institutions). As for education from the victim's point of view, a meeting of experts was held consisting of external experts, such as university academics engaging in special studies on victim support organizations, and crime victims. Based on the views expressed in the expert meeting, for example, educational videos produced with the cooperation of victim support organizations and victims and a guest speaker system were introduced as measures for setting up an opportunity to have inmates listen to victims' candid opinions.

## 5 Multiorganization Collaboration in Recidivism Prevention Measures

Through the First Ministerial Meeting on Countermeasures against Crime, relevant ministries and agencies came to undertake measures to prevent recidivism towards the construction of a crime resistant society. Multiorganizational cooperation, collaboration with other ministries and agencies, private-sector organizations and other organizations has been proceeding rapidly, in addition to the strengthening of collaboration between the rehabilitation authorities and treatment within society. Regarding collaboration between the correctional authorities and rehabilitation authorities, the reoffending prevention programmes for sex offenders were jointly formulated in 2006 in accordance with a common theory by the Correction Bureau and the Rehabilitation Bureau of the Ministry of Justice. These programmes were an attempt to collaborate based on information sharing and a mutual understanding for the more effective implementation of the programme.


**Employment Support/Shokushin (Special Mentoring) Project**

In order to seek the smooth reintegration of sentenced inmates into society, there was progress in measures in collaboration with the Ministry of Health, Labour and Welfare and other relevant ministries and agencies in social reintegration support such as employment support and welfare support.

As for employment support, since 2006, the Ministry of Justice has been collaborating with the Ministry of Health, Labour and Welfare to implement the Comprehensive Job Assistance Scheme for Persons Released from Prisons. A framework for collaboration among penal institutions, juvenile training schools, probation offices and public employment security offices has been organized, and a wide variety of employment support measures are being taken, including job interviews by employers during incarceration in correctional institutions. In addition to the variety of support being provided to cooperating employers, in 2016, the Employment Support Information Centre for Correction, which is commonly known as "CORRE-Work," was established at both the Tokyo and the Osaka Regional Correction Headquarters. It is expected to advance the initiatives for strengthening collaboration with employers which accept former prisoners by providing consultation to firms willing to employ former prisoners and disseminating information concerning the employment of persons released from prisons.

As for collaboration to provide welfare for the elderly and the disabled, since around 2003 when the reform towards "open corrections" began, the Correction Bureau actively engaged in the field study of sentenced inmates with intellectual disabilities when the welfare people raised the issues of repeat offenders in prison with intellectual disabilities.

As a result, beginning in 2009, the Ministry of Justice has been collaborating with the Ministry of Health, Labour and Welfare to ensure that inmates in prisons or Juvenile Training Schools who are elderly or disabled and have no appropriate place to reside are promptly provided with appropriate nursing care, medical care, pension and other welfare services after release through the support conducted by the multiorganizational collaboration led by community re-entry centres.

Moreover, in 2013, through the efforts of external experts who became aware of the issues unique to female inmates, such as emotional trauma from having survived abuse or sex crimes, mental health issues such as eating disorders, and pregnancy or childbirth, the women's facility regional cooperation project was launched and is currently being conducted at 10 penal institutions for women. These institutions for women are operated in collaboration with the local governments where penal institutions for women are located and with the cooperation from various organizations related to health, medical care, welfare and nursing care. The experts, which include nurses, midwives, certified care workers and other local experts, provide advice and guidance to sentenced female inmates.

In this manner, by opening correctional institutions to the outside world, many people in the private sector became aware of the issues in corrections, and many systems and measures have been formulated and promoted through multiorganizational collaboration.

## 6 Strengthening Contribution to and Collaboration with Local Communities

The Act for the Prevention of Recidivism enacted in 2016 prescribed that local governments also have a responsibility to formulate and implement recidivism prevention measures, and that the State and local governments should seek mutual coordination. In June 2019, a network of the heads of the local governments where correctional institutions are located was created. Additionally, the Council of Local Governments Hosting Correctional Institutions was established in 90 cities and towns with the purpose of taking the lead in actively promoting recidivism preventions measures in the regions including the

formulation of local recidivism prevention plans at the municipal level. Progress of measures to prevent recidivism is seen not only in national correctional institutions but also in local governments.

In addition, while correctional institutions are supported by local communities, correctional institutions are also making efforts to be supportive of the local communities. Penal institutions have been undertaking initiatives to contribute to local communities in a variety of ways. For example, correctional institutions provided martial arts gyms and other facilities of institutions as evacuation sites for the public, and they shared stockpiled emergency food during natural disasters. Furthermore, the correctional institutions started to manufacture local traditional craftwork, as part of the prison work, that had difficulty in finding apprentices and successors.

Juvenile classification homes, utilized their expertise and skills related to juvenile delinquency and other acts, to function as Ministry of Justice support centres to provide consultation to juveniles, guardians and others regarding whole range of issues concerning delinquency and crime in the local communities. In addition, responding to relevant organizations and agencies, they are also providing information, advice and psychological support, and conducts various psychological tests and training, as well as giving lectures. In this manner, juvenile classification homes are responding to the broad needs of the local communities, relevant organizations and other relevant parties.

## 7 Towards the Realization of a Cohesive Society

This chapter has provided an overview of the efforts concerning "open corrections" implemented since 2003. The major outcome of these initiatives was that many people outside correctional institutions have become engaged with the institutions and inmates, and that relevant ministries and agencies, local governments and local communities have joined forces to promote rehabilitation support and recidivism prevention measures together.

Sentenced inmates will eventually return to local communities and become our neighbours. The key to their rehabilitation and smooth reintegration into society lies in how external expertise can be incorporated into the operation of correctional institutions and the treatment of inmates to reintegrate them seamlessly into their communities. Not only will this contribute to the security and safety of the local communities, but it will also lead to the elimination of prejudice against former prisoners and their alienation from society, and further to the creation of local communities where everyone is able to lead a comfortable lifes.

In order to realize a cohesive society that leaves no one behind, it is necessary for correctional institutions and correctional officials to proactively go out, build relationships with the world outside of the institutions and work together with many related actors in multilayered networks under the banner of "open corrections."

# Chapter 6 Contribution to the International Community in the Field of Criminal Justice

## 1 Contribution through the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

### (1) Overview

UNAFEI was established in 1962 based on an agreement between the United Nations (UN) and the Government of Japan. Initially, UNAFEI was jointly operated by the UN and the Japanese Government, and its staff was being dispatched from the UN. However, since 1970, upon the amendment of the agreement, UNAFEI and its activities are now fully funded by Japan, and UNAFEI is now staffed and operated by the Ministry of Justice of Japan. UNAFEI is the oldest member of the United Nations Crime Prevention and Criminal Justice Programme Network Institutes (PNI), which consists of the United Nations Office on Drugs and Crime (UNODC) and other institutes. UNAFEI contributes to the formulation and implementation of UN policies including the SDGs, as well as the sound development of criminal justice policy throughout the world through the implementation of training programmes and research in the field of crime prevention and criminal justice. UNAFEI, whose main function is to conduct training programmes, implements the programmes in cooperation with the Japan International Cooperation Agency (JICA) , the Asia Crime Prevention Foundation (ACPF) and the Japanese official development assistance (ODA). (The ACPF was established in 1982 to support UNAFEI's activities.)

United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

UNAFEI, initially located in Fuchu City in Tokyo, was relocated to the International Justice Center in Akishima City, Tokyo, in 2017. This enabled collaborative work with the International Cooperation Department of the Research and Training Institute of the Ministry of Justice, which is also located at the Center.

UNAFEI's alumni form a strong international network, which now consists of over 6,000 former participants from approximately 140 countries/jurisdictions. This alumni network fosters international cooperation in criminal justice around the world. Many alumni have been serving in important positions within their governments as Ministers of Justice, Chief Justices and Attorneys General, and have been playing leading roles in improving criminal justice systems in their respective countries and international organizations, such as the International Criminal Court (ICC). Given its achievements, UNAFEI has been highly evaluated, particularly by the participating countries of its past training programmes, and enjoys a well-deserved reputation in the international community. In 1993, UNAFEI was honoured by a visit from His Imperial Majesty, the Emperor of Japan (at the time, His Imperial Highness Crown Prince) and visits from Her Royal Highness Princess Bajrakitiyabha Narendira debyavati of Thailand (at the time, Mahidol) in 2009 and 2013, as well as having received the National Personnel Authority (NPA)

President's Award in 2003.

**(2) Technical Assistance Activities**

**International Training by UNAFEI**

Since September 1962, UNAFEI has conducted international training courses and seminars mainly for criminal justice practitioners from developing countries. The main themes of UNAFEI's international training courses and seminars are selected from priority areas of the United Nations Crime Prevention and Criminal Justice Programme, Crime Congress declarations, the SDGs and other crucial issues facing the United Nations and the international community. For instance, the main themes of the latest international training courses and seminars include transnational organized crime, terrorism, drug crime, trafficking in persons and smuggling of migrants, violence against women and children, crime motivated by intolerance or discrimination, reducing reoffending, treatment of drug abusers, community-based treatment, countermeasures against overcrowding of correctional facilities, rehabilitation, juvenile justice, protection of crime victims etc. UNAFEI has also conducted annual international training courses dedicated to countermeasures against corruption since 1998. The participants of these international training courses and seminars are police officers, public prosecutors, judges, correctional officers, probation officers and other criminal justice practitioners from developing countries and Japan.

Moreover, UNAFEI provides technical assistance to specific countries and regions, mainly through training programmes. Past technical assistance projects include: the Seminar on Crime Prevention and Criminal Justice for the People's Republic of China; training programmes for the juvenile justice agencies in Kenya; three training programmes for Latin America – "Effective Countermeasures against Drug Offences and Advancement of Criminal Justice Administration", "Improvement of Prison Conditions and Correctional Programmes" and "Effective Treatment Measures to Facilitate the Reinsertion of Inmates into Society" (cosponsored by one of the PNIs, the Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y Tratamiento del Delincuente (ILANUD)); the Training Course on the Community-Based Treatment of Offenders through the Holistic Approach to Volunteer Resource Development for the Philippines; the Seminar on Criminal Justice for Central Asia; the Regional Seminar on Good Governance in Southeast Asian Countries; the Comparative study on the Criminal Justice Systems of Japan and Nepal; the Exchange Programme between the Research and Training Institute of the Ministry of Justice of Japan and the Supreme People's Procuracy of Vietnam; the Criminal Justice Training Programme for French-Speaking Western African Countries; Assistance for Prison Reform in Myanmar; The Follow-up Seminar to the "Third Country Training Programme" for Development of Effective Community-based Treatment of Offenders in Cambodia, Lao PDR, Myanmar and Vietnam; Assistance for Prison Reform in Timor-Leste; and joint technical assistance programmes with the UNODC on countering violent extremism in South East Asian countries, including Cambodia, the Philippines and Timor-Leste.

In addition, UNAFEI conducted overseas joint seminars, mainly in the Asia-Pacific region from 1981 to 2002.

**(3) Contribution to the Congress and UN Policies on Crime Prevention and Criminal Justice**

As a PNI, UNAFEI's status and its role is independent of, and different from, the Member States and

non-governmental organizations. UNAFEI actively participates in the Commission on Crime Prevention and Criminal Justice and the Congress on Crime Prevention and Criminal Justice, and thereby contributes to the development of UN policies on crime prevention and criminal justice and their implementation by Member States.

One of UNAFEI's greatest contributions to UN policymaking is its involvement in the formulation of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). UNAFEI produced the first draft and played a crucial role in their promotion and adoption, which resulted in the rules being commonly known as the "Tokyo Rules." The Tokyo Rules were adopted at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders held in Havana, and afterwards, by resolution of the UN General Assembly in 1990. Upon the request of the UN,

UNAFEI's continuous and stable contribution to the international community significantly supported Japan to host the Fourth Congress in Kyoto in 1970, which was the first Congress held in Asia.

One of UNAFEI's most significant contributions to the Congress as a PNI is that it has been organizing and coordinating a number of recent Congress workshops. The following are the workshops in which UNAFEI has been involved since the 10th Congress held in Vienna in 2000.

**Table 4-1-1 List of Congress workshops planned and coordinated by UNAFEI**

| | |
|---|---|
| 10th (2000) | Crimes Related to the Computer Network |
| 11th (2005) | Measures to Combat Economic Crime, including Money-laundering |
| 12th (2010) | Strategies and Best Practices against Overcrowding in Correctional Facilities |
| 13th (2015) | Women: treatment of offenders, rehabilitation and social reintegration |
| 14th (2020) | Reducing reoffending: identifying risks and developing solutions |

### (4) Cooperation with Other PNIs

As the oldest PNI with long history and experience, UNAFEI cooperates closely with the UNODC and other PNIs. For example, UNAFEI has organized a number of workshops of the Congresses in consultation with the UNODC and other PNIs. Also, UNAFEI dispatches its faculty members as experts to seminars, workshops and expert meetings held by the UNODC or other PNIs, while inviting the UNODC's and other PNI experts to its training programmes as lecturers. Further, UNAFEI exchanged Memoranda of Understanding with other PNIs: the College for Criminal Law Science of Beijing Normal University (CCLS) in 2014; the Korean Institute of Criminology (KIC) in 2015; and the Thailand Institute of Justice (TIJ) in 2016.

## 2 Legal Technical Assistance

In addition to the activities of UNAFEI, the Research and Training Institute of the MOJ, using ODA, has been actively providing legal technical assistance to Asian countries since 1994, including assistance for drafting laws and regulations and capacity-building of legal and judicial professionals. Legal technical assistance supports the self-help efforts of countries to establish the rule of law and improve the social infrastructure for sustainable growth, and it constitutes a key component of Japan's international cooperation for achieving a peaceful and stable society. Legal technical assistance is offered through cooperation among not only the relevant ministries and agencies, including the MOJ and MOFA, but also other bodies concerned, including the Supreme Court, the Japan Federation of Bar Associations and

universities. In 2001, in response to increasing requests from countries interested in assistance, the MOJ established the International Cooperation Department (ICD) within the Research and Training Institute, one of the agencies of the MOJ, to exclusively specialize in legal cooperation. Since then, ICD has been implementing legal technical assistance, working closely with MOFA, the Japan International Cooperation Agency (JICA) and other relevant organizations.

Japan initially provided legal technical assistance to Viet Nam and Cambodia, and later expanded its recipient countries to not only other South East Asian countries, including Lao PDR, Indonesia, Myanmar and Timor-Leste, but also to countries such as Uzbekistan, Mongolia, Nepal and Bangladesh. To date, the MOJ has provided such assistance to more than ten countries. Japan places emphasis on having dialogues with recipient countries so that the countries themselves determine the activities that are most appropriate for their situation, thereby developing their capacity to continue implementation and improvement of their legal systems on their own. Another feature of Japanese assistance is that Japanese legal professionals are dispatched by JICA to recipient countries as long-term resident experts so they can support local activities on a daily basis.

Japan's legal technical assistance has been highly appreciated by the recipient countries and carried out for approximately a quarter century based on trust fostered between Japan and those countries. The assistance has spanned diverse fields of law, from civil and commercial law to criminal law and even administrative law, while Japan's core assistance activities in the area of criminal justice have included cooperation with Viet Nam, Laos, Timor-Leste and Nepal.

For Viet Nam, the ICD, in cooperation with JICA, provided support for revising the Criminal Procedure Code and revising the Law on Organization of the People's Procuracy, and also helped prepare reference materials on legal practices, including manuals for public prosecutors. Such materials are being utilized in the country and are delivering outcomes in strengthening the capacity of judicial institutions and improving their practices.

JICA and ICD also provided assistance to Lao PDR with emphasis on capacity-building of human resources in the legal field. So far, Japan has assisted activities in which Laotian experts prepare and promote the use of manuals for public prosecutors, a criminal procedure handbook and Q&As explaining practices in the investigation phase.

For Timor-Leste, as part of the capacity-building assistance on legislative drafting for the Ministry of Justice of Timor-Leste, the ICD supported the drafting of legislation, such as the extradition law (later enacted in 2011 as part of the International Judicial Cooperation in Criminal Matters Law), the anti-drug trafficking law (passed in 2017) and the juvenile law.

Furthermore, in Nepal, the abolition of the monarchy in 2008 and the transition to a federal democratic system were followed by the revision of the "*Muluki Ain*," a written law covering substantive and procedural laws in the civil and criminal fields. As a result, the Civil Code, the Civil Procedure Code, the Penal Code,


**Results of legal technical assistance**

the Criminal Procedure Code, and the Sentencing and Execution Act were passed and entered into force in 2018. In this process, JICA and the ICD contributed by sharing information and expertise on the Japanese criminal justice system and conducting studies of the comparative legal systems of Japan and Nepal. To support the appropriate implementation of three new laws related to criminal matters, the ICD has also actively conducted joint research in Japan and local seminars in Nepal.

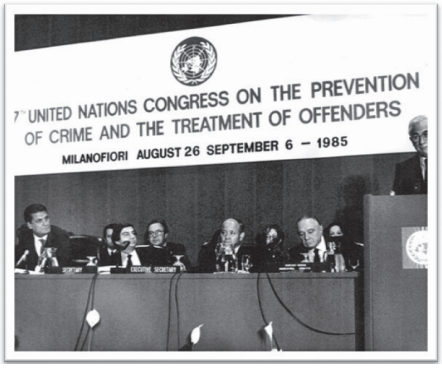
## Column 6 "Mr. Congress": Japan's Leading Contributor to UN Policies on Crime Prevention and Criminal Justice

The late Mr. SHIKITA Minoru, who served as the Deputy Secretary-General of the Fourth Congress in Kyoto held 50 years ago, was a former public prosecutor who served as the Director of UNAFEI and the Superintending Prosecutor of the Nagoya High Public Prosecutors' Office, among other notable positions. As the Chief of the Crime Prevention and Criminal Justice Branch in Vienna, Mr. Shikita was highly successful in running the Seventh Congress held in Milan. Moreover, as a member, and later the Chairperson of the UN Committee on Crime Prevention and Control, he took a leading role in the organizational reform of UN policymaking mechanisms in the field of crime prevention and criminal justice, which was decided at the Eighth Congress in Havana (1990) and then by the UN General Assembly (1991) and the Economic and Social Council (ECOSOC) (1992). The reform was to replace the Committee on Crime Prevention and Control, which had been an expert advisory committee under the Committee on Social Development of the ECOSOC, with the newly established UN Commission on Crime Prevention and Criminal Justice (CCPCJ), which was designated as one of the functional commissions of the ECOSOC to be the principal policymaking body in the field of crime prevention and criminal justice. The CCPCJ takes action through its resolutions and decisions, which can be submitted to the ECOSOC and to the General Assembly. Such reform enabled timely and effective policy making by the UN in the field of crime prevention and criminal justice on a priority basis. Also, at the ministerial meeting held at Versailles in 1991 prior to the General Assembly, a proposal was made to abolish the Congress. Some found the Congress unnecessary given the creation of the CCPCJ. This proposal was strongly supported by a number of countries and was about to be adopted; however, Mr. Shikita made a strong and convincing argument emphasizing the important role of the Congress, preserving it for generations to come. Without Mr. Shikita's outstanding contributions, both the CCPCJ and the Congress would not exist as they are today.

In addition, Mr. Shikita greatly contributed to the establishment of the Asia Crime Prevention Foundation (ACPF), an NGO with consultative status with the ECOSOC (UN NGO), which conducts a wide range of activities mainly in Asia to achieve prosperity without crime. After his retirement from government service, Mr. Shikita devoted himself to the management of ACPF as the Chairman of the Board.

Mr. Shikita holds a respectful record in terms of the number of the Congresses he participated, amounting up to nine times, from the Third to the Eleventh, which spanned four decades. He took part in these Congresses wearing various hats, as a member of the Japanese government delegation, a member of the UN secretariat and a UN NGO member. For his many years of notable contributions to the Congress, he has earned the well-deserved nickname "Mr. Congress".

Mr. Shikita's achievements have been highly regarded by the international community. At the memorial ceremony for Mr. Shikita held at the United Nations Office at Vienna on the occasion of the CCPCJ in May 2018, a year after Mr. Shikita passed away, many UN officers and members of national delegations participated to praise his achievements and to lament his passing.




**Mr. Shikita (third from left) in Milan at the Seventh Congress**

# 50 years of criminal justice in Japan