

# **CRIMINAL JUSTICE IN JAPAN**

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

### **I. POLICE**

#### **A. Overview**

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

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

As of 2013, the authorized police strength is 293,588 nationwide, of which 7,721 belong to the National Police Agency and 285,867 to the prefectural police forces.

#### **B. National Police Organization**

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

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

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

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

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

##### **2. The National Police Agency**

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

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

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

### C. Local Police Organization

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

#### 1. The Prefectural Public Safety Commission

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

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



Tokyo Metropolitan Police Department

#### 2. Prefectural Police Headquarters

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

Police stations are under the command of their respective Prefectural Police Headquarters, and as of 2010, there are 1,184 police stations nationwide. *Koban* (police boxes) and *Chuzaisho* (residential police boxes) are subordinate units of police stations, and as of 2010, there are 6,232 *Koban* and 6,847 *Chuzaisho* nationwide.

Police stations are under the command of their respective Prefectural Police Headquarters, and as of 2013, there are 1,173 police stations nationwide. *Koban* (police boxes) and *Chuzaisho* (residential police boxes) are subordinate units of police stations, and as of 2013, there are 6,248 *Koban* and 6,614 *Chuzaisho* nationwide<sup>1</sup>.

## II. PROSECUTION

### A. Qualification

In Japan, judges, public prosecutors, and private attorneys have the same qualifications. To become a qualified lawyer in Japan, in principle, applicants must pass the National Bar Examination, complete a period of training, and pass the final national exam.

Previously, there were no eligibility requirements for the National Bar Examination, and the ratio of successful candidates was approximately 2 to 3 percent. After passing the National Bar Examination, candidates had to complete an 18-month apprenticeship at the Legal Training and Research Institute managed by the Supreme Court. At the end of the training period, legal apprentices had to pass a final examination to qualify as legal practitioners.

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<sup>1</sup> The White Paper on Police 2013

Recently, the system was changed as a part of extensive judicial reform in Japan. That reform aimed to increase the number of legal practitioners to 50,000, one for every 2,400 citizens, by the end of 2018, compared with 21,000 in 2000. However the plan is currently being reconsidered.

Under the new system, in order to become a qualified lawyer, candidates must first complete graduate level legal studies at an approved law school, and then pass the new National Bar Examination. The pass rate for the new Examination is substantially higher than that of its predecessor. In 2013, 2,049 candidates passed the Examination, and its pass rate was 26.8 percent. Following the Bar Exam, candidates must take a one-year course as a legal apprentice at the Legal Training and Research Institute, and then pass the final national exam. Law schools for graduate students were established from April 2004 and the new National Bar Examination started in 2006.

Judges or public prosecutors who resign their positions can become private attorneys, and most retirees from the judiciary and prosecution do in fact become private attorneys. Similarly, a private attorney also can become a judge or a public prosecutor. As of 2013, there were about 2,900 judges (including assistant judges), 1,800 public prosecutors and 34,000 private attorneys in Japan.<sup>21</sup>



Ministry of Justice & Public Prosecutors Office

## **B. Organization**

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

As of 2013, there were about 1,800 public prosecutors, about 900 assistant public prosecutors,<sup>3</sup> and about 9,000 prosecutor's assistant officers. Regarding the size of District Public Prosecutors Offices, the average office has about ten public prosecutors. The smallest has only five public prosecutors, and the largest has more than 200. Each office has a Chief and a Deputy Chief Prosecutor who supervise investigation, prosecution and trial. Thus, for example, in the smallest office, only three public prosecutors actually investigate and prosecute cases. In small offices, the public prosecutor who investigates and indicts a suspect is the same person who handles the trial. In contrast, in large offices, two different public prosecutors carry out these duties, working either in the Investigation Department (usually called the "Criminal Affairs Department") or the Trial Department.

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<sup>2</sup> Ministry of Justice Statistics, 2013

<sup>3</sup> Assistant public prosecutors are selected by a special examination different from the National Bar Examination. Most of them are former prosecutor's assistant officers and court clerks. As a rule, they are assigned only to Local Public Prosecutors Offices.

### C. Functions and Jurisdiction

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

### D. Status (Independence and Impartiality)

Public prosecutors have a status equivalent to that of judges in terms of qualifications and salary. They are considered impartial representatives of the public interest, and their independence and impartiality are protected by law. Aside from disciplinary proceedings, they cannot be dismissed from office, suspended from the performance of their duties, or suffer a reduction in salary against their will, with limited exceptions<sup>4</sup>. The Prosecutor-General, the Deputy Prosecutor-General and the Superintending Prosecutors are appointed by the Cabinet, and other public prosecutors by the Minister of Justice. Their retirement age is 63 (65 for the Prosecutor-General).

Prosecutorial functions are part of the executive power vested in the Cabinet,<sup>5</sup> and the Cabinet is responsible to the Diet in the exercise of its powers. As a member of the Cabinet, the Minister of Justice should have the power to supervise public prosecutors. On the other hand, prosecutorial functions have a quasi-judicial nature, inevitably exerting an important influence on all sectors of the criminal justice system, including the judiciary and the police. If those functions were subject to political influence, the integrity of the entire criminal justice system would be jeopardized. To harmonize these requirements, the Public Prosecutors Office Law Article 14 provides that “[the] Minister of Justice may control and supervise public prosecutors generally<sup>6</sup> in regard to their functions. However, in regard to the investigation and disposition of individual cases, he or she may control only the Prosecutor-General.” The Minister of Justice cannot directly control an individual public prosecutor’s investigation or disposition of cases.

#### **Political independence and authority of the public prosecutor (Feature) – the shipbuilding scandal case**

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

<sup>4</sup> Public Prosecutors Office Law, Article 25. Exceptions are stipulated in Articles 22 (retirement age), 23 (physical or mental disability, etc.), and 24 (supernumerary officials).

<sup>5</sup> The Cabinet consists of the Prime Minister and the Ministers of State. Not less than half of the Ministers must be chosen from the members of the Diet (Constitution, Article 66 and 68).

<sup>6</sup> “Generally” means, for example, to set up general guidance for crime prevention, the administrative interpretation of laws and how to dispose of affairs related to prosecution to maintain their uniformity

### III. COURTS

#### A. Structure

##### 1. Introduction

Article 76 of the Japanese Constitution vests all judicial power in the Supreme Court and inferior courts. No tribunal, organ, or agency of the executive branch can be given final judicial power. All criminal cases are heard and determined in ordinary judicial tribunals. All courts in Japan are incorporated into a unitary national judicial system. There are five types of courts: the Supreme Court, High Court, District Court, Family Court and Summary Court. As of 2013 there were approximately 2,900 judges within these courts, including assistant judges, and there were about 800 Summary Court judges. Approximately 22,000 other officers work in the judiciary, including court clerks, stenographers, and bailiffs.

##### 2. The Supreme Court

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

The Supreme Court has appellate jurisdiction over *Jokoku* (final appeals) and *Kokoku* (appeals against rulings specially provided for in codes of procedures) as provided by law. See page 33 for the meaning of *Jokoku*, *Kokoku*, and *Koso*. It ordinarily hears a *Jokoku* appeal against a High Court decision on the following grounds: (i) a violation of the Constitution or an error in constitutional interpretation, or (ii) adjudication contrary to precedents of the Supreme Court or High Courts. The Supreme Court may also hear at its discretion *Jokoku* appeals against any case which involves an important point of statutory interpretation.

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

##### 3. The High Court

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



The Supreme Court Building



The Courtroom of the Grand Bench



#### 4. The District Court

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

All District Courts and some of their branches hold *Saiban-In* trials (trials by a mixed panel consisting of professional judges and citizen judges) for certain offences designated by law. See page 29 for details of *Saiban-In* trials.

#### 5. The Family Court

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

#### 6. The Summary Court

There are 438 Summary Courts throughout Japan. All cases are presided over by a single Summary Court judge. The Summary Courts' original jurisdiction is limited to: (i) crimes punishable with a fine or lighter penalties (petty fine or misdemeanor imprisonment without work); (ii) crimes punishable with a fine as an optional penalty; and (iii) habitual gambling, running a gambling place for the purpose of gain, embezzlement, and crimes related to stolen property. Summary Courts may not impose imprisonment without work or heavier penalty. However, with regard to theft, embezzlement, crimes related to stolen property, breaking into a residence, habitual gambling, and other minor offences prescribed by law, they may impose imprisonment with work for up to three years. Summary Courts also issue Summary Orders that impose a sentence of fine. A vast majority of relatively minor cases are disposed of by Summary Order Procedure. See page 24 for more details.

### **B. Judges**

#### 1. Appointment of Judges

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

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

#### 2. Categories and Qualifications of Judges

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

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

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

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

#### **IV. CORRECTIONS**

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

In Japan, the Correction Bureau of the Ministry of Justice provides both adult and juvenile correctional services. Under the Director-General of the Correction Bureau, there are eight Regional Correction Headquarters which supervise the correctional institutions. Correctional institutions can be divided into penal institutions (prisons, juvenile prisons,<sup>7</sup> and detention houses) and juvenile correctional institutions (juvenile training schools and juvenile classification homes).

##### **1. Penal Institutions**

As of 2013, there were a total of 188 penal institutions: 62 prisons, seven juvenile prisons, eight detention houses, eight branch prisons, and 103 branch detention houses.

Prisons, juvenile prisons, and branch prisons are institutions for sentenced inmates. They provide various correctional treatment programmes that facilitate rehabilitation and resocialization of offenders. There are eight women's prisons (including two branches)<sup>8</sup> and four medical prisons. The medical prisons are set up to function as special medical centres that receive inmates in need of special medical care. Ordinary medical care and hygiene for inmates are provided within general penal institutions.

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

As of 31 December 2012, the total capacity of penal institutions was 90,681 (72,562 for sentenced inmates and 18,119 for unsentenced inmates), and the actual population was 67,008 (58,726 sentenced inmates and 8,288 unsentenced inmates).

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<sup>7</sup> A juvenile prison is not a juvenile correctional institution. It accommodates juveniles sentenced to imprisonment and sentenced adult inmates under 26 years old.

<sup>8</sup> One of which accommodates both female and male inmates.



Fuchu Prison



Tachikawa Detention House

## 2. Juvenile Correctional Institutions

As of 2013, there were 51 juvenile training schools, 50 juvenile classification homes, two branch juvenile training schools, and one branch juvenile classification home. Juvenile training schools house juveniles referred by the Family Court and provide them with correctional education. Juvenile classification homes house juvenile delinquents placed under “protective detention” by the Family Court. During protective detention, an expert report on the juvenile’s personality and disposition is prepared, which will assist the Family Court’s decision-making.



Osaka Juvenile Classification Home



Kifunebara Juvenile Training School for Girls

## B. **Correctional Officials**

As of 2013, more than 23,000 officials were working for the correction service. The majority of correctional officials in penal institutions are employed from among those who have passed the examination for correction service. Education officials in juvenile institutions are employed from among those who have passed a specialized examination. Classification specialists (psychologists) are selected from among those who have passed the senior-level examination for psychological services.

## V. **REHABILITATION**

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

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

There are eight Regional Parole Boards that coincide with the jurisdictions of the High Courts are located. The main responsibilities of Regional Parole Boards are to make parole decisions for prison inmates and juveniles committed to juvenile training schools, and to revoke parole when the legal requirements for revocation are met. They also decide when to terminate an indeterminate sentence imposed upon a juvenile offender (see page 37). The number of board members varies in each region from three to fifteen, and board decisions are made by a majority vote.



‘The front-line duties of community-based treatment are carried out by the Probation Offices, which are located in each of the 50 District and Family Court jurisdictions. Their main responsibilities include the following: (i) supervision of both adult and juvenile probationers and parolees; (ii) co-ordination of social circumstances, such as family relationship, residence, and job-placement, prior to release; (iii) urgent aftercare of discharged offenders; (iv) promotion of crime prevention activities in the community; (v) recommendation of volunteer probation officers; (vi) support for the victims of crime; and (vii) mental health supervision pursuant to the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity.

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

## **B. Personnel**

### **1. Probation Officers**

Probation officers are full-time government officials who engage in community-based treatment of offenders, such as supervision of probationers and parolees, and other duties of the Regional Parole Boards and Probation Offices. The Offenders Rehabilitation Act (2007) requires them to have a certain degree of competence in medicine, psychology, pedagogy, sociology and other expert knowledge relating to rehabilitation of offenders. As of 2013, there were 1,351 probation officers nationwide.

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

Rehabilitation co-ordinators are qualified psychiatric social workers, or other qualified persons, assigned to Probation Offices, who engage in mental health supervision and other responsibilities pursuant to the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity. Rehabilitation co-ordinators do not handle ordinary probation or parole cases. As of 2013, there are 177 rehabilitation co-ordinators nationwide.

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

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

Volunteer probation officers are citizens commissioned by the Minister of Justice who co-operate with probation officers in providing various rehabilitation services to offenders. Their main activities are (i) to assist and supervise probationers and parolees; (ii) to co-ordinate the social circumstances of inmates; and (iii) to promote crime prevention activities in the community. They do not receive salaries: only a certain amount of their necessary expenses is reimbursed. As of 1 April 2013, 47,990 citizens were serving as Volunteer Probation Officers.



Ceremony for Volunteer Probation Officers

## 2. Juridical Persons for Offenders Rehabilitation Services

A Juridical Person for Offender Rehabilitation Services is a form of non-profit organization established under the Offenders Rehabilitation Services Act (1995). They undertake one or more of the following activities: (i) operate Offender Rehabilitation Facilities (so-called halfway houses); (ii) provide temporary aid to offenders; and (iii) engage in “co-ordination and promotion services” related to rehabilitation of offenders. As of 2013, there were 165 Juridical Persons for Offender Rehabilitation Services.

### (1) Offenders Rehabilitation Facilities (Halfway House)

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

There are 103 Offenders Rehabilitation Facilities nationwide. As of 2012, their total capacity was 2,340 and 6,380 offenders were admitted. The duration of stay for probationers and parolees in 2012 was as follows: one month or less (9.4%); more than one month to six months (83.0%); and more than six months (7.6%).

One hundred (100) of the Offender Rehabilitation Facilities are run by Juridical Persons for Offender Rehabilitation Services. The government supervises and provides financial support to such Juridical Persons and other entities that operate Offenders Rehabilitation Facilities.



Offenders Rehabilitation Facility (Halfway House)

### (2) Rehabilitation Aid Association

As of 2013, 66 Rehabilitation Aid Associations exist throughout Japan. They provide offenders with temporary aid such as meals or clothing, and/or engage in “co-ordination and promotion services” for Offender Rehabilitation Facilities, Volunteer Probation Officer Associations, and other volunteer organizations. “Co-ordination and promotion services” include providing subsidies, textbooks for training, and tools and materials for crime prevention activities.

## 3. Others

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