CHAPTER 5 TRIAL PROCESS

I. SOME BASIC PRINCIPLES AND CHARACTERISTICS

A. Presumption of Innocence

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

B. Public Trials

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

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

Criminal Trial (moot)

C. Right to Remain Silent

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

D. Right to Counsel

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

Trial proceedings cannot be held without the presence of counsel if: (i) the defendant is charged with an offence punishable by death, life, or a maximum term of more than three years' imprisonment; (ii) the case has been sent to pretrial conference procedure (see page 30); or (iii) the case is tried by the speedy trial procedure (see page 21).

E. Adversarial Procedure

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

F. No Arraignment

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

G. Single Stage Procedure

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

II. *Saiban-In* Trials

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

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

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

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

III. TRIAL PROCEEDINGS

A. Procedure before Trial

1. Introduction

In Japan, the charging power belongs exclusively to the public prosecutor, and a formal charge is presented in the form of a written charging instrument called *Kiso-Jo*, prepared by a prosecutor. The *Kiso-Jo* has to contain a clear description of the elements of the offence charged, and no evidentiary material may be attached to it. See page 21 for more details.

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

2. Disclosure

The public prosecutor and the defence counsel are required to disclose to the other party evidence they intend to introduce at trial. The pretrial conference procedure, which was introduced in 2005, provides for wider discovery.

-

Evidence disclosure prescribed in the Code of Criminal Procedure and current status of broad discretionary disclosure by public prosecutors at an early stage

Pretrial conference procedure involves two kinds of disclosure of evidence by public prosecutors in response to requests from the defendant or defence counsel. The purpose of these specific disclosures is to clarify the claims due to be made at trial, the evidence to be submitted, and the issues of the case.

(1) The first mandatory disclosure of evidence is required for specific categories of evidence under the Code of Criminal Procedure, such as exhibits, inspection reports, spot investigation reports, written statements of expert opinion, written statements of the defendant or others, etc. under two conditions: (1) when it is deemed important in order to judge the credibility of specific evidence offered by the public prosecutor; and (2) when it is deemed appropriate, considering of its necessity in preparing the defence and the possible harmful effects that could be caused by disclosing it. The purpose of this disclosure is to enable the defendant to determine a defence strategy once the prosecutor has indicted which evidence the prosecution will rely on at trial. (Article 316-15)

(2) The second disclosure is that the public prosecutor, upon the defendant's request, must disclose other undisclosed evidence that is deemed connected with the defence (for example, an alibi, claims that there was no intent to kill, claims of self-defence, etc.). When disclosing this evidence, the public prosecutor must deem the disclosure to be connected with the claims and necessary to the defence; the public prosecutor must also consider the possible harmful effects that would be caused by disclosing it such as personal or private information regarding the victim. This disclosure is required to identify key issues and evidence by having the public prosecutor make disclosure related to the claims, while making the defendant clarify evidence he/she will rely on. (Article 316-20)

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

3. Pretrial Conference Procedure

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

In the pretrial conference procedure, the prosecutor and the defence counsel are required to disclose to the other party evidence they intend to introduce at trial. Moreover, the prosecutor is required to disclose certain categories of evidence to the extent they are relevant, even if he or she has no intention of using them at trial. The categories include the following: physical evidence; forensic analysis reports; recorded statement documents of prosecution witnesses; recorded statement documents of the defendant; and

investigative reports that show the date, time, location, and other details of the questioning of the suspect (the defendant). Further disclosure may be available under certain circumstances.

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

B. Trial

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

1. Opening Proceeding

At the opening of a trial, the court will address the defendant and ask that he or she identifies him or herself. Next, the charge will be read by the prosecutor attending the trial. After that, the court will advise the defendant of his or her rights, and give the defendant and defence counsel an opportunity to make statements.

As explained earlier, the defendant has the right to remain silent and is not required to make any statement. In practice, however, most defendants make a statement and admit their guilt. In 2011, 90.3 percent of defendants processed in the District Courts admitted their guilt.[22][20]

2. Examination of Evidence

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

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

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

3. Questioning of Defendants

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

4. Closing Arguments

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

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

[22] Annual Report of Judicial Statistics for 2012.

5. Victim Participation at Trial

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

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

These victims may participate in the following manner with the court's permission.

- Being in attendance on the date of the trial
- Stating opinions on the prosecution of the case
- Questioning witnesses (usually related to sentencing)
- Questioning the defendant
- Stating opinions on facts and the prosecution

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

C. **Rules of Evidence**

1. Hearsay Rule

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

2. Hearsay Exceptions

(1) Consent

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

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

When a witness is unavailable to testify at trial, written statements taken by a public prosecutor andsigned by the witness may be admitted as a hearsay exception. Likewise, if the witness takes the stand but the testimony differs from previous statements, prior inconsistent statements taken by a public prosecutor and signed by the witness may be admitted as a hearsay exception, provided there is circumstantial guarantee of trustworthiness.

3. Confessions

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

4. Exclusionary Rule

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

On the admissibility of written statements of victims, witnesses or defendants made in the course of investigation as evidence at trial)

Written statements are documents substituting for spoken statements made on the day of a trial, and they are hearsay evidence. In principle, therefore, they are not deemed admissible as evidence. However, even hearsay evidence may be deemed admissible if the defendant agrees, or when there is a high degree of necessity and credibility, as illustrated below.

One such exception is when the statement is a statement for the prosecution made by a victim or witness, and (i) the person who made the statement is deceased, mentally or physically impaired, of unknown whereabouts, or resides abroad, and is therefore unable to testify, or has refused to testify under oath, or (ii) when there are special circumstances in which a statement made during a criminal investigation should be trusted despite the fact that testimony substantially different from the statement was given in court. (Article 321(1)2) Such special circumstances include cases when there has been a pronounced decline in memory due to the passage of time or due to mental or physical impairment, or when the defendant or a person connected with the defendant is reluctant to testify in person, due to feelings such as fear of retaliation.

Similarly, a written statement made by a defendant during a criminal investigation may only be deemed admissible as evidence when (i) the content of the statement acknowledges a fact detrimental to the defendant, or, (ii) when it has been made under especially trustworthy circumstances that afford special credibility, and the statement has been made voluntarily. (Article 322(1))

D. Adjudication and Sentencing

As stated earlier, a single judgment that sets forth the finding of the court and specifies the sentence to be served, or that which acquits the defendant, will be announced at the end of the trial. In 2011, the acquittal rate was 0.14 percent in District Courts and 0.11 percent in Summary Courts. The acquittal rate for contested cases was 2.91 percent in District Courts and 3.82 percent in Summary Courts. See page 35,36 for more information on penalties, adjudication outcomes, and the sentencing distribution in Japan.

E. Length of Trial

In 2011, the District Courts and Summary Courts disposed of a total of 67,110 cases. Ninety three point one (92.1) percent of District Court cases were disposed of within six months of the initiation of prosecution, and 76.4 percent were disposed of during the first three months. Ninety eight point three (98.2) percent of Summary Court cases were disposed of within six months, and 90.7 percent were disposed of during the first three months. The average length required for the disposition was 3.0 months in District Courts and 2.01months in Summary Courts. District Courts held an average of 2.6 trial dates and Summary Courts an average of 2.2.[23]

The Act on the Expediting of Trials of 2003 provides that "the objective of expediting trials shall be to conclude the proceedings of the first instance in as short a time as possible within a period of two years."

A new trial procedure (Speedy Trial Procedure) applicable to certain uncontested cases was introduced in 2006 by an amendment to the CCP. See page 21 for more details.

[23] Ibid.

IV. APPEALS

Appeals are classified as *Koso* appeals, *Jokoku* appeals, and *Kokoku* appeals. The first two lie against judgments (*Hanketsu*), while the latter lies against decisions (*Kettei*) and orders (*Meirei*). When both parties waive the right to appeal or all avenues for appeal have been exhausted, the judgment becomes final and enforceable. Contrary to the Anglo-American system, it is not unconstitutional to afford a right of appeal to a public prosecutor against an acquittal.

A. *Koso* Appeals

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

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

B. *Jokoku* Appeals

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

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

V. EXTRAORDINARY REMEDIES

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

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

VI. PUNISHMENT

A. Categories

1. Overview

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

2. Death Penalty

The death penalty is not unconstitutional in Japan, but it is very sparingly used. In practice, its application is limited to murder and robbery resulting in death. The total number of capital sentences rendered during the five-year period from 2007 to 2011 was 54. The death penalty cannot be imposed upon offenders who were under the age of 42 at the time of the offence. Executions are carried out by hanging.

3. Imprisonment

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

4. Fine, Misdemeanour Imprisonment without Work, Petty Fine

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

B. Suspension of Execution of Sentence

The court, when sentencing a defendant to imprisonment not exceeding three years or a fine not exceeding ¥500,000, may suspend the execution of the sentence for one to five years if one of the following conditions are met: (i) the defendant has not previously received a sentence of imprisonment without work or a greater punishment; or (ii) the defendant has previously received a sentence of imprisonment without work or a greater punishment, but five years have passed since the completion of that sentence.

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

The sentencing court, when suspending the execution of a sentence, may place the offender under probation for the duration of the suspension.

Partial Suspension of Execution of Sentence

On June 13, 2013, the law was amended to introduce a partial suspension of execution of sentence. This made it possible to opt for a new punishment consisting of an imprisonment and a suspended sentence, compared to the previous system where the only possible options were to serve the whole of the sentence in a penal facility (full sentence) or to suspend execution of the whole sentence (full suspension of execution of sentence). By enforcing part of the sentence and suspending the rest of it, the aim is to make it possible to prevent repeat offending and encourage rehabilitation in society,

offenders are incentivized to rehabilitate because further violation of the law may result in reimprisonment. The suspension period lasts for a fixed period after the custodial sentence has been served.

C. Outcomes of Court Proceedings

1. Formal Trials

The following table shows the adjudication outcomes and the sentencing distribution of defendants disposed of in courts of first instance (District Courts and Summary Courts) in 2011. The total number of defendants was 67,110. Of these, 65,529 were convicted, 89 were acquitted, and the conviction rate was 97.6 percent. Of 62,796 defendants sentenced to imprisonment, 36,511 (58.2%) received a suspension of execution.[24][22]

Conviction	65,529			
	Death Penalty	10		
	Imprisonment with work	59,563		(100%)
		Life	30	(0.1%)
		more than 20 years to 30 years	47	(0.1%)
		more than 10 years to 20 years	307	(6.5%)
		more than 5 years to 10 years	1,123	(1.9%)
		more than 3 years to 5 years	2,627	(4.4%)
		1 year to less than 3 years	42,704	(65.1%)
		6 months to less than 1 year	10,896	(18.3%)
		less than 6 months	1,829	(3.1%)
	Imprisonment without work	3,206		
	Fine	2,740		
	Misdemeanour imprisonment without work and Petty Fine	10		
Acquittals	89			
Others	1492			

2. Summary Proceedings

In 2011, Summary Courts issued a total of 370,767 summary orders: 367,899 were for fines, and 2,825 were for petty fines.

D. Parole

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

[24] Annual Report of Judicial Statistics for 2009. The Trend of Criminal Cases in 2011, Criminal Affairs Bureau of the General Secretariat of the Supreme Court. The figures are the number of the defendants disposed of at the court of first instance. They slightly differ from those in the Criminal Justice Flow Chart in page 14, which shows the number of defendants whose cases were finalized.

VII. COMPENSATION FOR INNOCENCE

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

VIII. SPECIAL PROCEDURES FOR JUVENILE CASES

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

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

(1) Juveniles, 14 years or older, who have committed a criminal offence;
(2) Juveniles, 13 years or younger, who have committed an act which would have been criminal except for the age requirement; and
(3) Juveniles who are prone to commit crimes or violate criminal laws in light of their character, behaviour, or surrounding circumstances.

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

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

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

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

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

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

Assessment in a Juvenile Classification Home