Juvenile Law and the Age of Criminal Adulthood in Japan

Andrew R. J. Watson[*]

I. Introduction

The age of criminal responsibility in Japan is 14 and that for criminal majority – when offenders are dealt with as adults – is 20. In juvenile justice

* Senior Lecturer, Department of Law & Criminology, Sheffield Hallam University.

systems throughout the world an age of criminal adulthood 18 and above is very rare[1] and its existence in Japan evidences a predominantly welfare approach to juvenile delinquency rather than one of criminal justice and punishment. The Legislative Council of the Ministry of Justice, an advisory body to the Minister of Justice, began considering whether the age of criminal majority should be lowered to 18 in February 2017 and is expected to make recommendations, upon which the government may legislate, in a report during 2018. Although reduction of the age of criminal majority is strenuously opposed by the Japanese Bar Association, *Nichibenren,* individual attorneys who practice in the area, a number of academics and some members of the opposition political parties, the proposal enjoys considerable political and popular support. Amongst those who do not favour the change there is acceptance that it is very likely to happen. In such case protective measures of probation and attendance at Juvenile Training School will no longer be available to 18- and 19-year olds. This article[2] aims: to describe the current system of juvenile justice in Japan; to recount pressure of this century to move away from its primarily welfare methods, largely driven by fears of rising juvenile crime and media reaction to exceptional horrific crimes – in reality offences committed by juveniles, including grave crimes, have diminished remarkably over the last decade – and alterations in the law that resulted from this; to explain that despite these changes juvenile justice in practice has not become more punitive; in the context of lowering of the voting age to 18 in 2015, and the reduction expected soon to the age of adulthood in the Japanese Civil Code[3], to give an account of arguments, referring to a Ministry of Justice Study, produced at the end of 2016, and other sources, put for and against reducing the age of criminal adulthood; and finally, as best as possible, to assess the consequences of lowering the age in the Japanese Juvenile Act including the possibility of new forms of adult sentences for 18- and 19-year olds containing corrective education and protection, rather than punishment, thus much preserving the rehabilitative spirit of the Juvenile Act. Connected to these alternatives, suggested by the Ministry of Justice study group and forming part of the terms of reference for the Legislative Council, is the idea that sentences of imprisonment should no longer include forced labour, so as to allow all prisoners of every age sufficient time to receive effective

1 See N. HAZEL, Cross-national Comparison of Youth Justice (Youth Justice Board of England, 2008) 35.

2 Informed by interviews, in 2017, with probation officers, university academics, students, representatives of the Ministry of Justice and two members of the Ministry of Justice Legislative Council.

3 *Minpō,* Act No. 89 of 27 April 1896.

rehabilitation, assessed according to their individual needs. If this was to be put into effect it would mark a watershed in penal policy and law in Japan.

II. The Structure of Juvenile Justice

The present structure of juvenile justice in Japan was established by the Juvenile Act 1948[4] during the Allied occupation and is built around the Family Court. Family Courts exist in 50 locations nationwide. Additionally, there are 77 local offices at the same locations as the Summary Courts. As well as hearing cases of juvenile delinquency, they hear civil cases involving domestic relations and disputes over child custody. Because domestic tranquillity and sound development of children were seen as closely related, the two jurisdictions were placed under the Family Court.[5]

Described as "essentially a mirror of the US Juvenile system of the day"[6] the Juvenile Act was substantially influenced by American social work welfare approaches to juvenile delinquency, as had earlier laws during the 20th century, including the Taishō Era Juvenile Act of 1923, although their implementation was impeded by lack of resources.[7] Article 1 states that the purpose of the Juvenile Act 1948 is "to subject delinquent Juveniles to protective measures to correct their personality traits and modify their environment, and to implement special measures for juvenile criminal cases, for the purpose of Juveniles' sound development".

1. Informal Prevention of Juvenile Delinquency

Before closer consideration of the Family Court it is necessary to mention more informal measures in Japan to prevent delinquency. Organisations including the Scouts, Parent Teacher Associations, Mothers Associations, Big Brothers and Sisters provide supervision and positive engagement of juveniles. Volunteer Probation Officers ("VPO") and members of the Womens' Association for Rehabilitation Aid ("WARA") organise delinquency-prevention campaigns.[8] More proactive crime prevention units *(bōhan-kai)* of community associations *(chōnai-kai)* mount patrols to detect behaviour

4 *Shōnen-hō,* Act No. 168 of 15 July 1948, introduced as the Juvenile Law of 1949.

5 Supreme Court of Japan, A Guide to the Family Court of Japan (2013) 5.

6 T. Ellis/A. Kyo, Youth Justice in Japan, in Tony (ed.), Oxford Handbook of Crime and Criminal Justice Online (2012) 5.

7 M. Yokoyama, Juvenile Justice and Juvenile Crime: An Overview of Japan, in: Winterdyk (ed.), Juvenile Justice System International Perspectives (Toronto 2002) 323–324.

8 United Nations Asia and Far East Institute ("UNAFEI"), Criminal Justice in Japan (2014 edition) 56.

classified as "pre-delinquent" including underage drinking, smoking (both illegal under the age of 20), excessive noisiness and staying out all night. If their advice is ignored juveniles may be reported to the police. High school teachers and police sometimes conduct joint patrols. Teachers may inform police of pupils under their charge. Pre-delinquent behaviour may result in a warning and guidance from the police to juveniles and their parents. Such guidance (which does not lead to a criminal record) was received by over 800,000 juveniles in 2013.[9] A small number, 280 in 2014,[10] of pre-delinquents, classified as crime prone juveniles *(guhan shōnen),* rather than unwholesome or misbehaving *(furyō kōi shōnen),* are referred by police to the Family Court where protective measures may be considered. If there is evidence that a juvenile under the age of criminal responsibility has committed an offence, the police must refer him or her to a local child guidance centre, the director of which, or the prefectural governor, has, after weighing considerations of welfare and justice, to decide whether to send the matter to the Family Court, a course taken in only a very small number of cases.

2. Public Prosecutors and Cases in the Family Court

Save where the maximum penalty is a fine, allowing the police to send a case directly to the Family Court, the police must refer all cases involving juveniles aged 14 to 19 to the Public Prosecutor's Office. Prosecutors lack the wide discretion, frequently used in adult cases, not to prosecute or to suspend prosecution and all cases, except where there are weaknesses in evidence, are then sent by the Public Prosecutor's Office to the Family Court.

The juvenile jurisdiction of the Family Court, during 2014, dealt with approximately 107,000 cases, which was the lowest in thirty years and half the figure seven years previously.[11] The most common offence before the Family Court is theft, mainly shoplifting or of bicycles (theft and embezzlement of lost property together amounted to 42,000 cases in 2014). The second and third most frequent types are traffic offences and negligent driving. As all cases involving a juvenile reasonably suspected of being guilty must be sent to the Family Court, some may involve theft of very small amounts of money and minor breaches of road traffic law. The high rate of theft offences reflects a feature of Japanese crime across all ages: approximately seventy percent of offences overall relate to theft and the rate of serious crime is low.[12]

---

9 T. ELLIS/A. KYO, Re-assessing Juvenile Justice in Japan: Net Widening or Diversion?, Asia Pacific Journal 15 Nr. 9-2 (2017) 6–9.

10 MINISTRY OF JUSTICE, White Paper on Crime 2015, Part 3/Chapter 1/Section 3.

11 White Paper on Crime 2015, *supra* note 10, Part 3/Chapter 1/Section 1/2.

3. Family Court Probation Officers and Investigations

When the Family Court receives a case, the judge orders a Family Court Probation Officer ("FCPO") to carry out a thorough investigation, taking into account the juvenile's emotional stability and confidentiality of others involved. Approximately 1,600 FCPOs are employed by the Supreme Court of Japan in 50 Family Courts across the country. In addition to juvenile delinquency, they investigate and prepare reports for the Family Court in domestic matters including disputes about divorce, custody and inheritance. Mainly because Family Court proceedings are not open, and despite recent steps to publicise it, including advertising student internships in the press, the FCPO's job is not particularly well known to the public. However, many more candidates, 768 in 2016,[13] take the exam, which principally tests knowledge of social sciences, for 60 training places available annually. Successful candidates attend the Training and Research Institute for Court Officials in Wakō-shi, Saitama, neighbouring Tōkyō, for two years. As well as clinical psychology, development psychology, family sociology, criminal sociology, pedagogy, social welfare studies and psychiatric medicine, trainees receive instruction in relevant legal subjects, including the Constitution, the Civil Code, the Penal Code[14], the Family Case Proceedings Act and the Juvenile Act. They are also taught specific practical skills necessary for serving as FCPOs including interview techniques, conducting investigations and psychological testing techniques. In connection with learning these subjects, time is spent observing and helping at Family Courts. Trainees who complete the course are then appointed as FCPOs.[15] About 55 percent of FCPOs are female.

Investigation by a FCPO is carried out by summoning the juvenile, his or her parents or custodians, and other interested parties to the court premises and interviewing them. Psychological tests may also be used. Visits to the juvenile's home and school may be made to confirm and explore circumstances further. The FCPO may also interview victims to ascertain their feelings and the damage they may have suffered.

During this period of investigation, as a means of encouraging juveniles to reflect on their conduct, FCPOs may suggest juveniles participate in community service activities, such as working in a home for old people or neighbourhood clear-ups, or taking a class in which victims of crime describe their experiences.

---

12 S. STEELE/Y. OHMACHI, Japan's Declining Youth Crime, Asian Studies Association of Australia, 24 May 2016.

13 "Family court probation officer internships give students insight into little-known career", Japan Times, 1 September 2016.

14 *Keihō* [Penal Code], Act No. 45 of 1907.

15 Guide to the Family Court of Japan, *supra* note 5, 6–7.

When the Family Court considers it is necessary to examine in greater depth the physical and mental condition of a juvenile, or fears he or she might abscond, it may commit him or her to a Juvenile Classification Home, usually for four weeks, although this can be extended to eight, where thorough medical, psychological and social observations are made.[16] In 2014 10,194 juveniles were sent to a Juvenile Classification Home, of whom 943 were female.[17] The FCPO summarises the results of his or her investigation about the juvenile and submits it, together with any related documents concerning enquiries, to the judge who then decides whether to open a court hearing. If the case is minor, there is no dispute over the facts, little possibility exists the offence will be repeated, and the judge is satisfied about the guidance given to the juvenile, he or she may dismiss the matter without a hearing. In 2014 nearly 51 percent of cases, 48,189, referred to the Family Court were dismissed without a hearing.[18]

4. Hearings in the Family Court

Family Court Juvenile hearings take place in functionally furnished rooms designed to be unintimidating.[19] The juvenile sits next to his or her parents, or custodians, facing a single judge. In very serious or complicated cases three judges may preside. Positioned at one end at right angles to the judge's desk is the FCPO with the court clerk and the court secretary at the end opposite. Next to the FCPO may be seated an attorney for the juvenile, although they rarely are instructed. The great majority of juveniles accept the evidence against them. Highlighting the difference of approach with countries where juvenile proceedings more closely resemble those in adult criminal trials, there is no formal procedure under the Juvenile Act to declare the innocence of a juvenile against whom a case has not been proved. Since an amendment to the Juvenile Act in 2000, the court may in its discretion order a Public Prosecutor to attend a hearing and present evidence, rather than the judge relying solely on a dossier from the Public Prosecutor's Office.[20] Where this occurs the court will appoint an attorney on the juvenile's behalf.[21] Although conducted with some sternness and solemnity to encourage introspection by the juvenile, the Juvenile Act states that pro-

16 Since 2015 these have been governed under the Juvenile Classification Homes Act (*Shōnen kanbetsu-sho-hō,* Act No. 59 of 2014).

17 White Paper on Crime 2015, *supra* note 10, Part 3/ Chapter 2 / Section 3/2.

18 White Paper on Crime 2015, *supra* note 10,, Part 3 / Chapter 2 / Section 2/2.

19 For photographs see SUPREME COURT OF JAPAN, Guide to the Family Court of Japan (2015) 33.

20 Juvenile Act, Article 22-2.

21 Juvenile Act, Article 22-3.

ceedings must be cordial and amicable.[22] They are not open to the public nor may the press publish any information capable of identifying a juvenile before the court.[23] Following amendments to the Juvenile Act in 2000, victims, or their relatives, may request access to court records and to be notified of the result of hearings,[24] and, as a result of an amendment in 2008, in serious cases to observe proceedings[25] and express opinions through an attorney. Such requests may be declined if the court considers they would hinder the sound development of the juvenile having regard to his or her age, emotional state and nature of the case. Victims may submit their opinions in writing or in an interview with a FCPO.[26]

III. Dispositions Available to the Family Court

1. Tentative Probation

If the court is unsure how to deal with a juvenile, it may order "Tentative Probation".[27] In essence this involves an even more thorough investigation than that of the FCPO over a longer time. It may also assist in rehabilitation. The method of tentative probation is not fixed by law and is decided on a case by case basis. However, in many cases a FCPO actively observes over a period the juvenile's domestic circumstances, conducts interviews with him or her and seeks information from relatives, or custodians, school teachers and employers. Guidance about leading a stable life is given by FCPOs. Additionally, over weeks, or possibly months, juveniles may receive assistance from specially recruited volunteers, drawn from a wide variety of backgrounds, who act as role-models and also help to compile information on the juvenile. Further material obtained through tentative probation assists the Family Court in deciding what order to make. If reports are sufficiently positive it may decide to make no further order and discharge the juvenile. Most juveniles on tentative probation, however, are given probation.

2. Dismissal after Hearing

If after hearing the evidence, and considering the report written by the FCPO, a judge determines no further measures are required, the case may

22 Juvenile Act, Article 22.
23 Juvenile Act, Article 61.
24 Juvenile Act, Article 5-2.
25 Juvenile Act, Article 22-4.
26 Juvenile Act, Article 9-2.
27 Juvenile Act, Article 17.

be dismissed, usually after admonishing the juvenile. Just over 20 percent of cases (18,988) referred to the Family Court in 2014 were dismissed following a hearing.[28]

3. Protective Measures

If the court deems them necessary, protective measures may be imposed on juveniles.[29] In 2014 they were ordered in approximately 23.5 percent (22,245) of cases referred to the Family Court in 2014. An appeal *(kōkoku)* may be lodged on behalf of a juvenile within two weeks to the High Court on the grounds of misapplication of law, serious error of fact, or substantial inappropriateness of the measures.[30] Where a public prosecutor has participated in court proceedings, the Public Prosecutor's Office may lodge an appeal within two weeks to the High Court against the decision of the Family Court to impose or not impose protective measures on similar grounds.[31]

Protective measures consist of: referral to a children's self-reliance support facility or a foster home; juvenile probation and committal to a Juvenile Training School. The first, obliging residence at a facility and to be cared for by social workers, is only available to under 18-year olds and is seldom ordered (only in 43 cases in 2014).

4. Probation

Unlike probation for adults, which may be attached to a suspended sentence, or form part of a partly suspended sentence, juvenile probation is a sentence in its own right. In 2014, 19,750 juvenile probation orders were made, representing nearly 21 percent of orders made in the Family Court during that year.[32] Reflecting falling levels of crime in Japan, the number of juvenile probation orders has decreased annually since 2000. Young people placed on probation by the Family Court are the largest group supervised by the probation officers, amounting to 46 percent of the probation service's caseload.[33] The maximum period of supervision is until the probationer's twentieth birthday or at least two years, whichever is longer.[34]

Upon recommendation of the Family Court, juvenile offenders considered to have low criminal tendencies may be placed on "Short-term Traffic

28 White Paper on Crime 2015, *supra* note 10, Part 3/ Chapter 2 / Section 2/2.
29 Juvenile Act, Article 24
30 Juvenile Act, Article 32.
31 Juvenile Act, Article 32-4.
32 White Paper on Crime 2015, *supra* note 10, Part 3 / Chapter 2 / Section 2/2.
33 SAIKŌ SAIBAN-SHO JIMU SŌKYOKU, *Heisei 26-nen shihō tōkei nenpō* [Annual Report of Judicial Statistics for 2014].
34 Juvenile Act, Article 24.

Probation" or "Short-term Juvenile Probation". While legally the duration of supervision is no different from ordinary probation, they operate on the assumption that probation will terminate early if certain requirements are fulfilled. Short-term Traffic Probation requires juvenile probationers to attend group lectures and discussions, often about driving, and to submit monthly reports on their daily lives. Those who satisfy these requirements are usually discharged from probation after three to four months. Juveniles placed on Short-term Juvenile Probation are also obliged to present monthly reports of their activities and to complete certain tasks individually assigned to them, including, after an amendment in 2013 to the Offenders Rehabilitation Act 2007[35], which became effective in 2015, social contribution activities such as helping in neighbourhood cleaning and tidying and assisting in homes for the elderly.

A juvenile placed on probation is required to report immediately to a probation office for an interview with a Professional Probation Officer ("PPO") during which how probation operates is explained. The PPO then designs a treatment plan based on the interview, relevant records, important in which is the FCPO's report for the Family Court, and an assessment of risk. As well as general conditions that apply to all supervisees, including attending interviews and residing at an agreed address, special conditions may be imposed such as avoiding contact with a certain person or group and participating in social contribution activities. Systematic treatment programmes such as preventing sex offending, avoiding violence, or stimulant drug taking imposable on adults, as yet cannot form special conditions for juveniles, but some probation offices administer them with the consent of the juvenile.[36]

A VPO is allocated as the day-to-day supervisor of the offender. Regular meetings, two or three times a month, take place with the VPO usually at his or her home, but visits to juveniles' homes are sometimes made. In accordance with the treatment plan, the VPO visits and works with the supervisee's family and provides guidance and practical support, often helping to find employment. The VPO submits a monthly progress report to the PPO, who, if necessary, intervenes with the offender and can begin procedure to revoke parole or probation. If thought unsuitable to be assigned to a VPO, a juvenile may be supervised directly by a PPO. In certain circumstances a juvenile can be allocated to more than one VPO.

In 2014, 76.7 percent of juvenile probationers were discharged early, 9.5 percent completed their term, and 13.7 had orders revoked because of further offences or failure to comply with probation conditions.[37]

35 *Kōsei hogo-hō,* Act no. 88 of 15 June 2007.

36 UNAFEI, *supra* note 8, 52–53.

5. Attendance at a Juvenile Training School

There are 52 Juvenile Training Schools ("JTS") throughout Japan, nine of which are for girls. The court, on the basis of the offender's age, severity of the crime, and any known psychological and medical problems, must specify to which of the three categories of JTS it wishes to send a juvenile. The first is for juveniles over 12 without severe physical or mental disability; the second exists for those 16 and above without severe physical or mental disability but with advanced criminal tendencies; the third admits juveniles over 12 with severe mental and physical disability. An amendment to the Juvenile Act in 1997 allows youths with "uncorrected tendencies" to be held until 23 and those with mental disturbances until 26.

In 2014, 2,872 juveniles entered JTS, of whom 219 were female. Corresponding with the decreasing crime rate in Japan, the number of JTS inmates has been dropping since 2005. Most minors were detained because they had committed theft, fraud or assault. Smaller numbers were committed for robbery, sexual offences, homicide, causing death by dangerous or reckless driving and other serious driving offences, and drugs offences.[38] In 2014 approximately 43 percent of those sent to JTS were "senior juveniles" (18- and 19-year olds).

JTS take a very different approach than prisons, where the prime purpose is punishment. Individual treatment plans are drawn up on admission. To assist in this task, it is now possible to send juveniles detained in JTS to Juvenile Classification Centres where a more thorough investigation can be made as to the causes of delinquency. Inmates usually live in shared dormitories. Some, but by no means all JTS are surrounded by walls. Although uniformed, instructors are teachers, rather than guards. Through counselling, schooling and vocational training, instructors try to educate young offenders and rehabilitate them back into society. A PPO, who in the course of her work has visited JTS on numerous occasions, spoke of an observable enthusiasm of instructors for their work.[39] They may behave strictly at times. Incidents of physical or verbal aggression may be met by a juvenile being removed to a small isolation room and given time to subside. This is intended as a punishment and partly to give time to reflect on his or her behaviour.

Arrest of five members of a JTS in Hiroshima in 2009 for physical abuse of inmates daily over a period of 4 years led to the establishment for every

37 F. AKASHI, Community Based Treatment of Offenders in Japan (Materials for a Presentation to the 162nd International Senior Seminar, UNAFEI, 2015) 10.

38 White Paper on Crime 2015, *supra* note 10, Part 3 / Chapter 2 / Section 4/1 for juveniles committed to JTS in 2014, by type of offence.

39 Interview on 14 August 2017.

JTS, under the Juvenile Training Schools Act 2014, of a Juvenile Training School Visiting Committee, an independent panel, including attorneys and doctors, to conduct regular inspections, hold interviews with juveniles, read letters from them, seek and receive explanations from the JTS and deliver their opinions to its head. Also, under the new statutory framework, which came into effect in 2015, juveniles may now file a complaint directly to the minister of justice if they allege they have been abused. A retired instructor interviewed welcomed increased transparency not only to prevent abuse but also to show the public what efforts are made for juveniles, to equip them for satisfying and law-abiding lives[40].

As many have had disrupted educations, minors are given an opportunity to obtain a high school certificate. Vocational training courses are also available in a wide variety of fields, including word and data processing, welding, civil engineering and construction, horticulture, agriculture, nursing services and driving a forklift truck. In 2012, 46.6 percent of released juveniles had obtained qualifications or licences related to vocational courses and 52 percent received qualifications in areas unconnected with them.[41] To enhance prospects for future careers, visits to workplaces and job-placement offices are arranged. Aimed at countering the effects of neglect and chaotic lifestyles, juveniles receive lessons about leading a stable pattern of life in which are highlighted the importance of a healthy diet, an orderly routine, domestic hygiene and science, home management and budgeting. Instruction about the harm of illicit drugs and prevention of sexually transmitted diseases is also given. Because social interaction is often difficult, counselling is received on forming friendships outside and ending those that are damaging. Social skills training on how to deal with authority also takes place. The majority of instruction is in class-rooms. However, there is also much private individual counselling. Juveniles are encouraged to form close ties with instructors and express their feelings about what they are experiencing, plans, hopes and anxieties for the future. Also, in unlocking emotions, seen as essential in building introspection, reflection and empathy, female police officers are assigned to become pen friends to boys and girls. Inmates are urged to keep a personal diary. Birthday parties and other social events are often arranged by VPOs and members of the voluntary WARA. After they are released, juveniles can consult with their former instructors about personal matters, relations with friends and their futures. Group therapy sessions, usually involving five or six inmates and one or two instructors, for those convicted of sexual or drug offences have been introduced. They constitute an exception to the general

40 "Life inside a juvenile correction center", Japan Times, 30 May 2015.

41 UNAFEI, *supra* note 8, 44.

discouragement of offenders, born out of concern they may meet after release and commit further crime, about discussing their personal lives, addresses and crimes they have committed.

To help foster a sense of achievement, individual responsibility and respect for the value of life some JTS put young offenders in charge of looking after an animal or cultivating plants (gardens full of potatoes, pumpkins and tomatoes are clearly observable outside Tama JTS in Western Tōkyō, one of the country's oldest and largest, with about 150 inmates). Baby dolls are sometimes used to teach both male and female offenders what it feels like to be a parent. Inmates at some JTS take part in clean-ups of parks and help in nursing homes.

JTS place great weight on teaching young offenders to comprehend the consequences of crime for victims and their relatives. Videos of those whose relatives have suffered are shown. Sometimes victims of crime, or their relatives, visit and talk to them directly.

Daily physical exercise takes place and there are opportunities for taking part in organised sports to enhance physical health, concentration, patience, following rules and co-operation.

The regime in a JTS is highly structured and follows a brisk pace. A typical schedule is shown below:[42]

7:00 Awaken.
7:40 Breakfast and self-planned study.
8:50 Morning assembly, singing and exercises.
9:00 Lifestyle guidance, vocational guidance, school course teaching, physical education and special activities guidance.
12:00 Lunch and recreational activities.
13:00 Lifestyle guidance, vocational guidance, school course teaching, physical education and special activities guidance.
17:00 Supper and committee activities.
18:00 Group discussions, educational classes, individual counselling, self-planned study and keeping a dairy.
20:00 Leisure (Television, although other activities may be followed including art and calligraphy).
21: 00 Lights out.

Whilst the rate of parole among adults is more than half, the parole rate for juveniles in JTS is astonishingly high – 99.9 percent, 3,122 persons in 2014.[43] In order to be released on parole from a Juvenile Training School by

42 CORRECTION BUREAU, MINISTRY OF JUSTICE, Connecting to tomorrow. Pamphlet of Juvenile Training Schools (2016).

43 F. AKASHI, Community-Based Treatment of Offenders in Japan (UNAFEI, 2016) 10.

a Regional Parole Board the law states that the juvenile – a person under the age of twenty in Japan – must have reached the highest stage of training suitable for his or her improvement and rehabilitation, or it is specially necessary for his or her improvement and rehabilitation to be released on parole.[44] The Probation Service assists JTS staff in plans for release by coordinating with the families of juveniles and helping to arrange accommodation at Half-way Houses for those for whom return home is not possible.

The period of supervision by the probation service after release lasts until the parolee's twentieth birthday or the last day of a fixed period of custody imposed by the Family Court. As with juvenile probation, supervision is mainly conducted by VPOs who report to PPOs and juveniles must comply with general conditions of parole and any special conditions that might also be imposed. Statistics for 2014 indicate that 19.3 percent of those on juvenile parole were discharged early; 65.4 percent completed their term and 15.1 percent had orders revoked.[45]

Whilst no figures on re-offending have been obtained from the Ministry of Justice, a thirty percent rate of re-admission to JTS, substantially less than prison recidivism rates, has been cited by a former judge who sat in the Family Court.[46] A widespread belief exists amongst probation officers and university academics interviewed that juvenile probation and JTS are effective in achieving rehabilitation. A further view exists that even if they were not, it is still morally right to make every effort to bring about a young person's rehabilitation.

6. Referring Cases Back to Public Prosecutors

When the court decides, taking into account his or her history of offending, physical and mental maturity, health, personality and the facts of the case that a juvenile deserves punishment, it may refer the case back to the Public Prosecutor's Office,[47] what is called "reverse referral". Following an amendment of the Juvenile Act in 2000 to restrict its discretion, a presumption was created that the Family Court will return to Prosecutors cases involving a juvenile aged 16 or above charged with an intentional act which caused death. However, the Court may decline to do so if it considers referral to criminal procedure would not be suitable in view of the motive and manner of the crime, circumstances following it, personality traits, age, behaviour,

44 Offenders Rehabilitation Act 2007, Article 41.

45 F. AKASHI, *supra* note 37, 10.

46 M. UENO, Is it Acceptable to Lower the Maximum Age for Application of the Juvenile Act?, Meiji University Media Guide Vol. 3, 2017.

47 Juvenile Act, Article 20.

environment and other circumstances of the juvenile.[48] Public prosecutors are required to prosecute cases referred back to them by the Family Court in the adult courts.[49] In 2014, just under 3 percent, 2,757, of all the cases referred to the Family Court were sent back to the Public Prosecutor's Office.[50] The vast majority of these were tried in the Summary Court, the lowest adult court, and received a fine. After conviction, an adult court may transfer a case back to the Family Court if it considers protective measures that can be imposed there are necessary.[51] A small number tried and convicted in the District Court of serious crimes receive determinate or indeterminate sentences of imprisonment in a Juvenile Prison, which incarcerates young adults up the age of 26, although those below 20 are separated from older offenders. In 2015, following a long-term trend since the 1980s of making less use of criminal punishment in juvenile criminal cases, only 39 persons were sentenced to these institutions (forty years ago over 1,000 juveniles were held in prison). Most imprisoned are in the 18 to 19 age group.[52] No juvenile under 16 has been imprisoned since 2000. Capital punishment cannot be imposed on juveniles who were under 18 at the time of committing an offence. Death sentences for juveniles are rare and appeals can take many years.

IV. Questioning of the Juvenile Act and Amendments Made

With its weight on protection, education, social work, rehabilitation and reintegration, the Juvenile Justice Act 1948 has been described as largely paralleling the US system of juvenile justice of its time, but from which the US has departed substantially by holding juveniles more individually culpable for their deeds, attaching less weight to broader social, environmental and psychological influences on behaviour, and more punitive sentencing.[53] On a cross-national continuum of juvenile justice with a welfare model at one end and a justice model at the other,[54] Japan still most closely resembles the former. However, whether this should continue has been questioned. Significant doubts emerged in 1997 when a 14-year old boy who called himself "Seito Sakakibara" killed two elementary school children, decapitating one, and injuring three others in Kōbe. Tried before a Family Court the boy was sent

48 Juvenile Act, Article 20-2.
49 Juvenile Act, Article 45.
50 White Paper on Crime 2015, *supra* note 10, Part 3 / Chapter 2 / Section 2/2.
51 Juvenile Act, Article 55.
52 White Paper on Crime 2015, *supra* note 10, Part 2 / Chapter 4 / Section 1/3.
53 Ellis/Kyo, *supra* note 6, 5.
54 Hazel, *supra* note 1, 23 24.

to a Medical JTS and was released on parole in 2004. In 2015 he published a detailed memoir which became a best seller, both shocking and mesmerising readers. The gruesome case, still raised in debates about the future of juvenile criminal justice, received huge coverage on television and in the newspapers and caused many people to ask whether the rights of victims were being neglected. In 2000 a 17-year old boy, armed with a kitchen knife hijacked a bus in Dazaifu, Fukuoka Prefecture stabbing one passenger to death and wounding two others. Amongst other subsequent heinous crimes over the years committed by juveniles was the killing in 2004 by an 11-year old girl of a 12-year old class mate who had allegedly made disparaging remarks about her weight. These and other exceptional cases sporadically occurring afterwards made, and continue to make, headlines for days, sometimes weeks, horrifying the country with the brutality of the killings and triggering public outrage over the protection youths receive under the Juvenile Act, concealing their identity and under which they are sent to JTS, from where they will be released after a comparatively short time. Sympathy for victims' families was compounded by the fact they could not attend hearings at the Family Court, were not allowed to make a written statement and were not informed about proceedings or the names of the defendants. A powerful victims' movement developed which, supported by a more general punitive feeling towards young offenders, *genbatsu-ka* (becoming punitive),[55] described by a professor of criminal procedure interviewed as a "moral panic" created by the media, especially television talk shows, the number of which has proliferated over the last two decades,[56] helped drive a series of revisions to the Juvenile Law.

Amendments in 2000: reduced the age limit for transfer from the Family Court to the adult District Court from 16 to 14 in serious cases;[57] introduced a presumption that juveniles of 16 and over charged with intentionally killing a person will be tried in the adult district court;[58] permitted public prosecutors to participate in more serious cases at the Family Court;[59] introduced panels of three judges to hear complicated or very serious cases;[60] allowed victim statements to be read;[61] and permitted victims to apply for

55 K. HAMAI/T. ELLIS, Genbatsuka: Growing Penal Popularism and the Changing Role of Public Prosecutors in Japan, Japanese Journal of Sociological Criminology 33 (2008) 67–91.

56 Interviewed at Dōshisha University Faculty of Law on 14 July 2017.

57 Juvenile Act, Article 20.

58 Juvenile Act, Article 20-2.

59 Juvenile Act, Article 22-2.

60 Juvenile Act, Article 31-2.

61 Juvenile Act, Article 9-2.

permission to view and copy court records.[62] An amendment in 2007 lowered the minimum age of juveniles who can be sent to Juvenile Training School from 14 to around 12. By an amendment in 2008, victims, or their relatives, in serious cases may request to observe proceedings.[63] In 2014 an amendment, strongly supported by victims' groups, was made which raised the maximum prison sentence an adult District Court may pass on a minor of 17 years or younger from 15 to 20 years.[64]

V. No Radical Shift in Juvenile Justice in Practice, but Prospects of Major Change

Notwithstanding revisions to the Juvenile Act, some report Family Court proceedings concentrate more on criminal acts committed and less on considerations of welfare,[65] toughening political and official rhetoric and apparently less public toleration of young people, there is little real evidence of hardening of sentencing in the Family Court and no increase in committal of juveniles from it to the adult District Court (the proportion of cases to the total, which has diminished greatly with the falling crime rate, has remained constant). Empirical research undertaken by criminologists indicates diversion, rehabilitation and reintegration still take clear precedence over criminal justice considerations.[66]

Professors of Criminology and Criminal Procedure interviewed agreed there had not been a radical shift in juvenile justice in Japan. Other than giving victims and their families more information about court proceedings and granting them qualified rights to make representations, one professor described the legislative changes as largely symbolic and a consolation for victims.[67] There are now, however, signs that the primacy of social welfare over criminal justice considerations may be seriously disturbed if proposals are adopted to reduce the age at which the Juvenile Act 1948 applies from 20 to 18, especially as 18- and 19-year olds commit nearly half of all juvenile offences.[68] This is not the first time this matter has been considered. Set against a very different background of rising juvenile crime, much fuller JTS and considerably more juveniles in prison, proposals were made

62 Juvenile Act, Article 5-2.
63 Juvenile Act, Article 22-4.
64 Juvenile Act, Article 51-2.
65 "Juvenile Crime and Punishment", Japan Times, 28 May 2015.
66 Ellis/Kyo, *supra* note 9, 16–17.
67 Interview at Dōshisha University, Faculty of Law, 14 July 2017.
68 Figures kindly supplied by the Japan Federation of Bar Associations, *Nichibenren*. In 2015, 47 percent of offences were carried out by 18- and 19-year olds, 30 percent by 16- and 17-year olds and 20 percent by 15-year olds and below.

in 1966 by the Ministry of Justice to lower the age to 18 but to give adult courts the power, if they thought fit, to deal with youths between 18 and 23 by protective measures. These were strongly opposed by criminal law scholars, lawyers, trade unions and opposition political parties who supported the welfare model. The Supreme Court also expressed concern. After some years of discussion, the proposals were withdrawn and no active movement for revision of the Juvenile Act emerged until the late 1990s,[69] even though delinquency continued to climb up to 1983.

VI. Background to the Proposals to Lower the Age of Criminal Majority

The National Referendum Law 2007 enacted those aged 18 or older be allowed to vote in the event of a referendum on constitutional reform. A further provision in the Act called for examination of whether 18, rather than 20, should be the minimum age of suffrage in national elections. The Legislative Council of the Ministry of Justice, an advisory body which reports to the justice minister, released a report in 2009 which advocated 18 as the age of adulthood. In 2015 the Diet altered the Public Offices Election Law and lowered the voting age to 18, despite widespread views that 18-year olds were too young to judge political issues.[70] A supplementary provision of the revised Public Offices Election Law stated consideration should be given to reducing the age of majority to 18 in the Civil Code and the Juvenile Act. A Bill to lower the age of majority from 20 to 18 in the Civil Code, introduced in 1896,[71] is expected in the next session of the Diet. A significant effect of this will be that 18- and 19-year olds will able to sign contracts for loans and credit cards without the consent of their parents or other legal representatives.

In 2015, a special panel of the Liberal Democratic Party was established to discuss juvenile crime. It concluded if youths can vote they should bear full social obligations and therefore the Juvenile Act should cease to apply at 18. This view was criticized in some quarters as an attempt to find favour with voters much influenced by sensationalist media reporting of excep-

69 Yokoyama, *supra* note 7, 323–324.

70 M. Iyanagi, Lowering the Voting Age to 18 in Japan, The Journal of Law and Politics, Shizuoka University 21 No. 3 (2017). In the July 2016 general election for the Upper House 46.8 of 18- and 19-year olds voted, compared to an overall turnout of 54.7 percent.

71 The age of adulthood as 20 was first established by decree of the Grand Council of State two decades earlier.

tional gruesome crimes, and convinced Japan is experiencing an epidemic of juvenile delinquency, when the opposite is true.[72]

During the course of 2016, the Justice Ministry conducted a series of hearings to obtain the opinions of some forty experts on the question of criminal adulthood. Those invited included criminologists, other social scientists, specialists on criminal procedure, education and social welfare, representatives from the Japan Bar Association, prosecutors and victims' groups. The study group's report was published in December of that year. It set out views both for and against lowering the age of criminal majority and how problems anticipated could be dealt with if it was. The report will help form the basis of discussion for the Ministry of Justice Legislative Council, an advisory body to the Minister of Justice, charged with considering the issue, which held its first meeting in February 2017.

VII. Opinions on Reducing the Age of Criminal Adulthood

Below are displayed a variety of views, expressed in the Ministry of Justice study[73] and elsewhere, about when criminal adulthood should begin and measures to be taken if it is reduced to 18.

1. Falling Crime and the Influence of the Juvenile Act

More than 80 percent of those surveyed in opinion polls in 2015 supported lowering the age of criminal majority from 20 to 18.[74] Also in that year, according to a Cabinet Office Survey, 78.6 percent of respondents believed the number of young offenders was increasing. Only 2.5 percent answered correctly that it was falling. Whilst heinous crimes committed by juveniles occupy much attention there has been a deep decline in juvenile offending since 2003. According to the National Police Agency the annual number of minors treated as criminal suspects by the police decreased from 123,715 in 2005 to 48,361 in 2014. The number of juveniles suspected of serious offences – murder, burglary, arson and rape – fell in those years from 1,441 to 703.

The number of juveniles arrested for Penal Code offences has decreased by 75 percent since 1983, when it was at its height, and murders, burglaries, rapes and arson committed by them has dropped to under one tenth of its peak in 1960.[75] Since 2014 the number of crimes by people over 65 has exceeded those aged between 14 and 19, although the young still have a

72 P. Brassor, "Despite what the media says about juvenile crime the kids are all right", Japan Times, 18 July 2015.

73 For a summary see *http://www.moj.go.jp/shingi1/shingi06100055.html*.

74 "Shifting the scales of juvenile justice", Japan Times, 23 May 2015.

75 White Paper on Crime 2015, *supra* note 10, Part 3 / Chapter 1 / Section 1/2.

slightly higher propensity to commit crime. The declining birth rate is often offered as the key explanation of tumbling juvenile crime in Japan.[76] This may, however, only be a partial picture of an under-researched area. According to National Police Agency statistics in the period 2007 to 2014, first time young offenders decreased by 56 per cent and second time offenders by 48 percent, but the number of persons between 14 and 19 fell by only 4 per cent.[77] Other reasons said to contribute to the significant decline in recorded juvenile offending include: effective policing deterring offending, less thorough investigation of minor shoplifting offences and greater use by police of warnings and consultations with parents under the pre-delinquency procedure;[78] the phenomenon of *hikikomori,* (literally pulling inward, being confined), brought on problems at school or work, illness and unemployment and affecting, according to government figures, up to 700,000 adolescents and adults under 31 who seldom, if ever, leave home and withdraw from outside life, thus lessening the possibility of them committing crime, except in the family;[79] computer gaming, which may have a psychological cathartic effect reducing violence and also removes potential offenders from public places;[80] large periods of time spent on mobile phones, and in some cases taking part time jobs to pay for it, which might have been occupied in deviant activity; the moral sense of young people, who, if anything, should be celebrated, not criticised, for their behaviour [81] and the influence of local and national delinquency prevention campaigns mounted by the probation service and organisations like WARA.

The variety and complexity of reasons why juvenile crime has declined is accepted by opponents of the proposal to reduce the age of criminal adulthood to 18. Nonetheless they maintain the Juvenile Act, particularly protective measures concentrating on corrective education, is also an important factor.[82] One professor of criminal procedure, a former public prosecutor, interviewed emphasised that the push to alter the Juvenile Act was entirely external to those working in criminal justice, few of whom thought it was necessary. In his view the present system could deal adequately with

76 See, for example, "Victims' justice, A misplaced panic about juvenile crime", The Economist, 30 July 2015.

77 STEELE/OHMACHI, *supra* note 12, 1.

78 STEELE/OHMACHI, *supra* note 12, 3.

79 A. TEO, The Intersection of Culture and Solitude: The Hikikomori Phenomenon in Japan, in: Coplan/Bowker (eds.), The Handbook of Solitude: Psychological Perspectives on Social Isolation, Social Withdrawal and Being Alone– (Chichester, 2014) 445.

80 ELLIS/KYO, *supra* note 6, 13.

81 STEELE/OHMACHI, *supra* note 12, 5.

82 UENO, *supra* note 46, 2.

cases where punishment, rather than rehabilitation, was required through "reverse referral", the Family Courts' power of sending cases back to the Public Prosecutor for trial in the adult District Court, which has extensive powers of punishment, even the death penalty for those over 17, although this is rarely passed.[83]

2. Due Punishment and Deterrence

The Ministry of Justice report displayed some opinions that it was unacceptable for minors to escape criminal punishments, seen as due to them irrespective of their youth, for serious offences. Some hold subjecting 18- and 19-year olds to penalties in adult courts would act as a deterrent to committing crime and also make offenders examine the consequences of their actions.[84] Even with campaigns and measures to eradicate it, a pervasive culture of bullying in schools remains in a group-orientated education system often resulting in physical assaults and contributes to a high rate of suicide amongst the young. For this reason, suggestions were made by some university students interviewed[85] that the age at which the Juvenile Law applies should be lowered even further than 18 because many bullies do not fear being dealt with under it. This appears to be part of a wider view that some minors commit offences fully aware they will not be held criminally responsible and instead will be protected by the Juvenile Act. Opponents, sceptical that many juveniles make such a calculation, doubted the deterrent effect of lowering the age of criminal adulthood and, on the contrary, consider crime may rise if it were lowered. If protective measures became unavailable for persons aged 18 and 19, some who had committed serious offences would be sentenced to prison, where they would mainly work as a punishment. However, many who now receive protective measures would instead be subject to suspended prosecution by public prosecutors. The Criminal Code of Procedure gives public prosecutors wide discretion not to prosecute, taking into account the character, age, environment, gravity of the offence, and circumstances surrounding and following it.[86] Suspension of prosecution is used in 55 percent of cases received by prosecutors. Even when prosecuted, half of those sentenced to prison receive suspended sentences, many on the basis that they are first offenders. A proportion receives fines. It has been suggested that many parents of 18-

83 Interview at Dōshisha University Law School, 17 July 2017.

84 For example, see Masato Takahashi, a lawyer who specializes in crime victims' rights. Reported in the Japan Times, 23 May 2015.

85 Interviews held at Ōsaka City University on 6 and 9 July 2017.

86 *Keiji soshō-hō* [Code of Criminal Procedure], Act No. 131 of 10 July 1948, Article 248.

and 19-year olds would often pay these for them. Additionally, a frequently used procedure for adults allows police to close minor offences with especially mitigating factors, that satisfy public prosecutor's predetermined criteria, without sending them to prosecutors.[87] Those dealt with by imprisonment, suspended prosecution, suspended sentences, fines and the police minor offence procedure would not receive the educative and rehabilitative benefits of JTS and probation and, it is argued, would be more likely to re-offend, leading to an overall increase in crime.[88]

3. Protective Measures as more Challenging and Onerous than Penal Code Punishment for Offenders

Some against reducing criminal adulthood to 18 argue probation and particularly attendance at JTS, as well as forcing deeper reflection on the consequences of their criminality, may represent a greater restriction on offenders' liberty than punishment under the Penal Code. In an article a former judge who had until recently sat in both the adult and Family Court, wrote usually a first time adult stimulant drug offender would receive a suspended sentence of imprisonment, whereas most juveniles in similar circumstances would be sent to JTS. He continued

> "I think correctional education is much more severe and harder than continuing with prison work matter of factly while in prison. In fact, I saw some defendants who had committed a crime again in order to be sent back to prison after becoming accustomed to life there, but I never met a juvenile who wanted to return to a Juvenile Training School."[89]

Commenting on the proposal to reduce the age at which the Juvenile Act ceases to apply to 18, a former prosecutor, now a professor of criminal procedure, considered it strange that a movement to increase punishment in society may actually achieve less limitations on juveniles and modification of their behaviour than at present.[90]

4. Development and Consequences of Adult Trials and Punishment

Those against settling the age of criminal adulthood at 18 frequently argue juveniles' characters are not yet fully moulded but continue to grow and develop and that this "plasticity", potential for change, renders them more

87 Code of Criminal Procedure, Article 246.

88 It was reported that Kōmeitō, the junior partner with The Liberal Democratic Party in the coalition government, harboured such concerns and called for caution in reform. "Slow move on Juvenile Law reform", Japan Times, 15 January 2017.

89 UENO, *supra* note 46, 1.

90 Interview at Dōshisha University School of Law, 17 July 2017.

receptive to education to remove criminal tendencies than adults. Rather than being complete in the late teens, as had been thought previously, modern developmental neuroscience, which focuses on using brain imaging tools, indicates that the brain carries on developing at least to the mid to late 20s.[91] It is therefore argued that reduction of the age of criminal adulthood to 18 would run counter to new evidence about maturation processes of young people, as well as international trends of including young adults in the scope of juvenile justice, of which an example is Germany where adult courts may transfer offenders aged up to 21 back down to the juvenile courts.[92] One opponent, a professor of criminology, interviewed considered that disqualifying 18- and 19-year olds from protective measures would be to infringe their right to develop positively.[93] Some psychiatrists in Japan have advocated that the age of criminal majority should be increased to 25.[94] While not entirely convinced by neuro-scientific evidence, members of the Ministry of Justice study group affirmed their belief in the value of education to promote change in the behaviour of immature juveniles.

In contrast to victims' groups, who press strongly for lowering the age of criminal majority to 18, strong opposition, expressed in submissions to the Ministry of Justice study group and elsewhere, to criminalising young people has come from the Japan Association of Bar Associations ("JFBA"), *Nichibenren,* and some academics. In arguing for keeping the present welfare approach, they maintain the experience of being tried in an adult court could hinder their development and expose young people to damaging publicity (although identifying juveniles is legally prohibited,[95] the law is sometimes ignored in serious cases by elements of the media, resulting in protests and calls for the law to be upheld by the JFBA). They also set out concerns about stigma attaching to prison sentences, which may have long-term consequences, not least for employment, and the high rate of re-offending amongst those released.

5. A Uniform Age of Adulthood

Reducing the age when the Juvenile Act ceases to apply to 18 is supported by those who believe that there should be consistency with when people are

91 S. BLAKEMORE, Imaging Brain Development: The Adolescent Brain, NeuroImage 61 (2012) 397–406.

92 F. DUNKEL, Juvenile Justice and Crime Policy in Europe, in: Zimring/Langer/Tanenhaus (eds.), Juvenile Justice in Global Perspective (New York 2015) 9–62.

93 Interviewed at Ritsumeikan University School of Law, 18 July 2017.

94 For example, Tamaki Saito, reported in "Coming of Age? Japan's shifting definition of adulthood", the Japan Times, 25 March 2017.

95 Juvenile Act, Article 61.

deemed responsible to vote and have adult capacity under the Civil Code. Opponents maintain that there is no over-riding or compelling argument why the Juvenile Law age should change in tandem with other laws and point to the fact that after adulthood has been altered to 18 for the Civil Code, while prohibitions under separate laws against drinking alcohol and smoking tobacco and gambling will remain for good reasons of health and social policy. A criminology professor interviewed drew a sharp distinction requiring parental consent, soon to be abolished, for a minor to enter certain contracts, and the paternalism of the state in trying to ensure the sound development of juveniles with the ultimate goal of protecting society from crime.[96] Some 18- and 19-year old students interviewed saw nothing objectionable about differential age qualifications for voting, the Civil Code, and assumption of criminal adulthood, but others preferred a single age as more logical and understandable.

VIII. Preserving the Juvenile Act's Spirit of Corrective Education and Welfare

A number of experts who contributed to the Ministry of Justice study report were persuaded by arguments to harmonise the law on when adulthood commences, or at least accepted this as inevitable. Nonetheless they urged preserving the welfare spirit behind preventative measures because of their effectiveness and to avoid an increase in offending, foreseen if probation and JTS were no longer available for 18- and 19-year olds. Accordingly, the Ministry of Justice study group report recommended that investigations of comparable depth to those undertaken by in the Family Court by FCPOs should take place on that age group in the adult courts and that Juvenile Assessment Centres might continue to be used. It also proposed new measures including deferred sentences under which a convicted person would be allowed to spend time in the community under the supervision of a probation officer and would ultimately receive a lighter sentence if she or he had responded positively and did not reoffend.

1. Redefining Sentence of Imprisonment

The Report observed that almost all prison sentences imposed are with labour *(chōeki)*[97] rather than without labour *(kinko),*[98] principally reserved for negligent or political crimes, seen as lacking moral culpability, and only

96 Interview at Ritsumeikan University, School of Law, 18 July 2017.
97 Penal Code, Article 12.
98 Penal Code, Article 13.

passed in 23 cases in 2014. Prisoners perform many hours of industrial work typically including printing and making furniture, household items, leather goods and car accessories.[99] Although basic education and rehabilitative courses, especially for drug prevention and sexual offences, have become more available over the last decade or so, only a limited time is spent on them. Fundamentally, prisons remain places of punishment with forced labour eight hours each day, five days a week and strict military-style discipline.[100] Radically and reaching far beyond 18- and 19-year olds, the Report recommended that a single prison sentence without the obligation to work should be introduced, thereby allowing more time for rehabilitative activities based on an assessment of characteristics and needs of each prisoner. Whilst the number of persons arrested for criminal offences has declined since 2005 and that of repeat offenders is also gradually falling, the ratio of repeat offenders to all persons apprehended has risen and stood at 47 percent in 2014,[101] prompting intense discussion how to lessen recidivism and prison occupancy, especially of drug offenders, shoplifters and people over 65 who now form almost 20 percent of the prison population, up from 5.8 percent in 2000, according to the National Police Agency.[102] Reasons ascribed for increasing crime amongst the elderly include financial hardship because of inadequate state pensions, limited opportunities for employment, especially in non-urban areas, breakdown of the traditional family unit in which grandparents often lived with their children, rather than on their own, reluctance to ask for help from relatives and a perception of prison as a place where basic material needs are met at no cost.[103] Eliminating obligatory labour from prison sentences would to some extent be a recognition that an increasing number of older offenders are incapable of physical work and many require nursing care.

Regarding 18- and 19-year olds, taking away the requirement to work from prison sentences, although work would very likely be strongly encouraged when they were not involved in rehabilitative activities, would

99 See UNAFEI, *supra* note 8, chapter 6.

100 For an overview of prisons in Japan, descriptions of their regime and topical articles see World Prison Brief online database by the Institute for Criminal Policy Research, University of London at http://www.prisonstudies.org/.

101 White Paper on Crime 2015, *supra* note 10, Part 4 / Chapter 1 / Section 1.

102 P. BRASSOR, Media starts to focus on Japan's aging prison population, Japan Times, 28 January 2017.

103 For an analysis of why crime is increasing amongst the elderly see M. NEWMAN, Crime in Japan – Part 1: The Economics of Elderly Crime, Custom Products Research, 22 February 2016. Available at http://www.custprd.com/rsch/Crime%20in%20Japan%20-%20Geriatric%20Jailbirds.pdf. See also, "Elderly turn to a life of crime to ease cost of living", Financial Times, 27 March 2016.

allow the importation into prison of much of the JTS curriculum and even possibly the use of their premises, re-designated as prisons.

2. Other Alternatives to Protective Measures

Introducing probation as an independent adult sentence for 18- and 19-year olds, and possibly for those who are some years older, has been suggested. A professor of criminal procedure interviewed thought, however, in the *genbatsu-ka* climate of desire for tougher sentences,[104] merely transferring a Family Court disposition to adult courts would be seen widely as little more than cosmetic change and be unacceptable.[105] A further idea concerns Public Prosecutors, some of whom advise those they are considering suspending prosecution to seek work and help from various sources, but have no authority to compel them. It has been proposed that they be given statutory powers to order them to do so. A more far-reaching suggestion is linking suspended prosecution with accepting and complying with supervision from the probation service. This would entail Prosecutors assessing if a person would be suitable for supervision and for how long and on what terms. It would also involve deciding whether to prosecute or take action short of this when there is a failure to comply with its terms. Lacking experience or training in these areas, the assistance of the probation service would be necessary in providing information to make these judgements, at least until sufficient expertise had been acquired.

Amongst other possible alternative measures for 18- and 19-year olds known to be under consideration by the Ministry of Justice are forms of community service. Under a revision of the Offenders Rehabilitation Act in 2007, it became possible to require those on probation and parole to take part in social contribution activities, such as assisting clearing up local areas and helping in homes for old people. This has been used principally as a means to help raise participants self-esteem. It is presently debated whether community service should be developed as a punishment under an independent sentence, perhaps under supervision of the probation service.

The Rehabilitation Bureau of the Ministry of Justice is studying sentences in foreign countries.[106] One such under examination is Attendance Centres in England and Wales where young people are required to attend premises at the weekend for about three hours, during which they undertake physical exercise and attend lectures about the impact of crime on victims,

104 An opinion poll conducted in 2015 showed nearly 80 percent of respondents supported tougher penalties for juvenile offenders, Japan Times, 23 May 2015.

105 Interviewed at Dōshisha University, School of Law on 11 July 2017.

106 Interviews conducted with members of Rehabilitation Bureau of the Ministry of Justice, Kasumigaseki, Tōkyō on 26 July 2017.

drink and drug awareness, individual health, first aid and gaining employment. Also known to have been studied by the Rehabilitation Bureau are Approved Premises in England and Wales. These are hostels, staffed 24 hours a day, run either by the National Probation Service or independent organisations, where offenders are monitored to ensure they comply with conditions imposed by the courts and also receive regular supervision and support aimed at reducing offending behaviour and risks to the public.

IX. The Legislative Council

On 9 February 2017 the Minister of Justice, Katsutoshi Kaneda, formally consulted the Ministry of Justice Legislative Council, an advisory body, on lowering the age of criminal adulthood to 18 and also more generally about rehabilitation of offenders, including whether forced labour should cease to form part of prison sentences. The Council is composed of 10 academics, 2 judges, 2 attorneys, 1 public prosecutor, 1 person from a victims' group, 1 representative from the National Police Agency and 1 civil servant. This body is expected to take about one year to deliberate and compile a report following which the Ministry intends to submit amendments of the Juvenile and Penal laws in the Diet. The Council convenes each month. In light of the reduction in age to 18 for voting, and widely expected lowering under the Civil Code, the Council has accepted that maintaining the current age of criminal majority would be anomalous. It considers that the Juvenile Act is adequately fulfilling its function, but if the age of criminal adulthood were reduced, juveniles who are 18 and 19, despite the fact of their personalities not yet being fully developed, would not be treated by protective and educative measures. Accordingly, if the age cap is altered, a similar level of protection and education should be extended to them. At its fourth monthly meeting in July, the Council formed three sub-committees to study how this could be achieved. At the time of writing, matters under discussion include: clarification of the objects of treatment for young offenders; abolition of the requirement of labour in prisons, thus allowing sufficient time for rehabilitation; ways of reducing re-offending during periods of suspended prosecution; deferring sentences; other new kinds of punishment for young people; suspended fines combined with probation orders; use of the Juvenile Classification Centres and probation officers in assessing young adults; coordination between prisons and half-way houses for young people released from prison; and how much time would be required to introduce new measures.[107] To assist its deliberations the Legislative Council is research-

107 I am indebted to Professor Masao Okumura of Dōshisha University, who is a member of The Ministry of Justice, Legislative Council, for this information.

ing sentencing of young adults overseas and to this end sent a delegation to London in November 2017 to study the youth justice system in England and Wales and deferred sentences passed there.

X. Conclusion

It seems highly probable that the government will pass legislation to reduce the age of criminal adulthood, maybe as early as 2018, although its implementation may not be for a period afterwards and could even coincide with that for adulthood at 18 under the Civil Code. What is uncertain at this stage is what would replace protective measures currently available for 18- and 19-year olds, as this is under discussion. Alteration of the age of criminal adulthood would amount to a significant change in Japanese criminal justice. However, if the government was to accept recommendations from the Ministry of Justice study group and the Legislative Council to introduce one type of prison sentence without the requirement of obligatory labour, and use time made available for individually planned rehabilitation of prisoners to tackle the increasing problem of re-offending, or even less radically redefine prison sentences to include both labour and necessary steps to rehabilitate and re-integrate offenders into society, this would be a major landmark in penal reform and by far the most significant amendment of the Penal Code 1907 since its promulgation.

Summary

The question whether the age of criminal adulthood – when offenders are treated as adults – should be lowered to 18 is before the Ministry of Justice Legislative Council and is more widely debated in Japan. The present age of 20, high by international comparisons, in the Juvenile Act 1948 reflects policies of welfare and educative rehabilitation towards juvenile delinquency, broadly supported at the time of that law, rather than a strict criminal justice and punishment approach. Discussion occurs against a background of continuing concern about the prevalence of juvenile crime, though in reality there has been an enormous drop over the last decade, reduction in 2015 of the voting age to 18 and the change of the age of adulthood to 18 in the Civil Code, anticipated very shortly. Even amongst opponents of reducing the age of criminal adulthood there is an expectancy it will happen.

This article describes the current system of juvenile justice in Japan; recounts pressure of this century to move away from the protective methods it employs; sets out amendments to the Juvenile Act that resulted, but which, in practice, have not fundamentally altered the administration of juvenile law,

though qualified rights have been given to victims and their families; gives an account of arguments, referring to a Ministry of Justice study, produced at the end of 2016, and other sources, for and against reducing the age of criminal adulthood; assesses the consequences of lowering the age to 18; and considers new forms of adult sentences for 18- and 19-year olds that have been suggested, containing corrective education and protection, rather than punishment, preserving much the rehabilitative spirit behind the Juvenile Act. Connected to these alternatives, put forward by the Ministry of Justice study group and forming part of the terms of reference for the Legislative Council, is the idea that sentence of imprisonment should no longer include forced labour, so as to allow prisoners of whatever age sufficient time to receive effective rehabilitation, assessed according to their individual needs. Alteration of the age of criminal adulthood would amount to a significant change in Japanese criminal justice. Redefining imprisonment, as a consequence, would be a watershed, by far the most major amendment of the Penal Code since its introduction in 1907.

ZUSAMMENFASSUNG

Die Frage, ob die Strafmündigkeit, d.h. der Zeitpunkt, ab dem jugendliche Täter wie Erwachsene behandelt werden, auf 18 Jahre herabgesetzt werden soll, wird in Japan intensiv debattiert und beschäftigt aktuell die Gesetzgebungskommission des japanischen Justizministeriums. Die heutige, im internationalen Vergleich hohe Altersgrenze von 20 Jahren im Jugendschutzgesetz von 1948 steht in der Tradition der seinerzeit weithin verbreiteten Politik von Erziehungs- und Resozialisierungsmaßnahmen anstelle einer strengen Bestrafung junger Täter. Die heutige Diskussion ist vor dem Hintergrund der anhaltenden Sorge der Öffentlichkeit vor einer hohen Jugendkriminalität zu sehen, obgleich diese in Wirklichkeit im letzten Jahrzehnt erheblich zurückgegangen ist. Ferner spielt eine große Rolle, dass zum einen das aktive Wahlrecht im Jahr 2015 auf die Vollendung des 18. Lebensjahres herabgesetzt wurde und zum anderen eine Änderung des Eintritts der Volljährigkeit im japanischen Zivilgesetz auf ebenfalls 18 Jahre in Kürze erwartet wird. Auch die Kritiker einer Absenkung der Strafmündigkeit gehen davon aus, dass diese im Zuge dieser allgemeinen Entwicklung unvermeidlich sein wird.

Der Beitrag gibt einen Überblick über die aktuelle Praxis des Jugendstrafrechts in Japan und schildert den öffentlichen Druck, von schützenden Maßnahmen Abstand zu nehmen. Er beleuchtet dabei die bereits umgesetzten Reformen des Jugendschutzgesetzes, die allerdings die Praxis des Jugendrechts noch nicht stark verändert haben, auch wenn den Opfern jugendlicher Täter und deren Familien nunmehr qualifizierte Rechte eingeräumt werden. Es folgt eine Erörterung der zentralen Argumente für und gegen die Herab-

setzung der Strafmündigkeit, wie sie unter anderem in einer umfassenden Studie des Justizministeriums aus dem Jahr 2016 zusammengestellt sind. Ferner werden die vorgeschlagenen neuen Formen der Bestrafung für 18- und 19-jährige Täter bewertet, welche nach wie vor eine korrigierende Erziehung und Schutz statt Bestrafung vorsehen und damit den Rehabilitationscharakter des Jugendgesetzes erhalten. Die vom Untersuchungsausschuss des Justizministeriums vorgeschlagenen Alternativen sind von dem Gedanken geprägt, eine Inhaftierung nicht mehr mit Zwangsarbeit zu verbinden, um Gefangenen jeden Alters ausreichend Zeit für wirkungsvolle Rehabilitierung zu geben, die individuell nach den jeweiligen Bedürfnissen zugeschnitten werden soll. Dieser Ansatz bildet den Referenzrahmen für die Gesetzgebungskommission. Eine Änderung der Strafmündigkeit sowie die Neudefinierung der Folgen einer Inhaftierung würden für das Jugendstrafrecht in Japan eine große Wende bedeuten und die bei weitem die größte Reform des Strafgesetzes seit dessen Inkrafttreten im Jahr 1907 darstellen.

(Die Redaktion)