

Outline of Applicable Laws and Regulations

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I . Convention on the Rights of the Child

●Juvenile Training School Act and Juvenile Classification Home Act

The original Juvenile Training School Act had had no fundamental revisions since it was enacted and enforced in 1948. It did not clearly stipulate the rights and obligations of juveniles in correctional institutions, nor the authorizations given to the institution's personnel, and it had only a few provisions related to juvenile classification homes. To address these and other problems, the original Act was fully revised and a new Juvenile Training School Act and the Juvenile Classification Home Act were enacted on June 4, 2014 to establish a statutory foundation on which the juvenile training schools and juvenile classification homes can function effectively. Subsequently on June 1, 2015, the Acts were enforced.

(Major points of the new Acts)

- ① An individual law concerning juvenile classification homes was enacted;
- ② Provisions stipulating the improvement of measures to prevent juveniles from re-offending (legislation of the basic correctional education system, support for reintegration into society, and strengthened functions of juvenile classification homes);
- ③ Provisions stipulating implementation of proper treatment (clarification of the rights and obligations of inmates and authorizations given to the institution's personnel, improvement of health and medical care of inmates, establishment of a system to file an appeal, etc.); and
- ④ A provision stipulating that correctional institution operations be open to society (ensuring the transparency of operations of such institutions), and other provisions

These revisions are for the rights of juveniles in these institutions.

(Correctional treatment)

In juvenile training schools, the appropriate correctional treatment for each inmate is provided based on the juvenile's personality, age, background, mental and physical condition and development, the situation of the delinquency, family environment, associates, and other relevant factors, while considering the best interest of the inmate (Article 15, Juvenile Training School Act).

In juvenile classification homes, juveniles are to be treated with care and sincerity out of regard for their emotional susceptibility, and provided with a proper approach that

fits the characteristics of each juvenile, adopted in promoting their healthy development.
(Article 20, Juvenile Classification Home Act)

(Prevention of physical and psychological abuse)

It is stipulated that:

- Measures taken to properly maintain discipline and order in the juvenile training schools and the juvenile classification homes shall not exceed the extent necessary for these objectives (Article 83 (2) of the Juvenile Training School Act, Article 72 (2) of the Juvenile Classification Home Act);
- In the juvenile training school, disciplinary action shall not exceed the extent necessary to deter the disciplinary offense (Article 113 (3), Juvenile Training School Act);
- In executing a confinement, opinions of medical doctors should be obtained (Article 119 (3), Juvenile Training School Act).

(Systems for appealing grievances)

The following systems for filing relief and complaint are established for inmates in the juvenile training schools and the juvenile classification homes (Articles 120 through 132 of the Juvenile Training School Act, Articles 109 through 122 of the Juvenile Classification Home Act):

- ① An inmate who has a complaint about any measure taken by the head of the institution or any other treatment the inmate has received (including use of physical force) may make a filing of relief to the Minister of Justice.
- ② An inmate may make a filing of complaint, either orally or in writing to the inspector or the head of the correctional institution about a measure taken by the head or any other treatment the inmate has received.
- ③ A staff member designated by the head of the correctional institution must provide consultation to inmates regarding the filing of relief.

(Protection of private life) (Some provisions explained below are from the Juvenile Act or the Act on Penal Detention Facilities and Treatment of Inmates and Detainees)

- In the juvenile classification home, a juvenile should be placed in a single room whenever practicable unless a shared room is deemed appropriate for the purpose of observation or classification of the juvenile (Article 26, Juvenile Classification Home Act).
- When a juvenile enters a juvenile training school, he/she is accommodated in a

single room to provide an undisturbed environment under which the juvenile is examined regarding his/her status, including physical and mental condition, and while an education plan that fits the characteristics of the juvenile is formulated. In many cases, juveniles are subsequently moved to a shared room. Even after moving to a shared room, he/she is sometimes placed in a single room as necessary in accordance with his/her education plan.

- For juveniles incarcerated in penal institutions, a juvenile inmate must be separated from adult inmates under the provisions of the Juvenile Act, and placed in a single room. In the case where more than one juvenile is to be placed in a group room exclusively designated for juveniles in a penal institution, the inmates are carefully selected, taking into consideration the crime committed, personality and age of each juvenile along with other factors.
- In these institutions, inmates are provided with articles necessary for daily life, room decorations, and some luxury items. Inmates may use some of their self-supplied articles unless the use of such articles disrupts discipline or order in the institution or the management or operation of the institution, or significantly hinder the sound development of the juvenile (Articles 40 and 41 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Articles 60 and 61 of the Juvenile Training School Act, and Articles 41 and 42 of the Juvenile Classification Home Act). As explained above, these facilities provide an environment where the human rights of juveniles are taken into consideration and their dignity and values are fully respected to protect their private life.

(Separation from parents)

In a juvenile classification home, a juvenile is allowed to meet his/her guardian and the like within the institution and exchange letters with them, unless meeting visitors and any other contact is prohibited under the Code of Criminal Procedure (Articles 80 and 92, Juvenile Classification Home Act). When a juvenile meets a visitor, an institution officer will also attend the meeting or may audio- or video-record the meeting. If certain requirements are satisfied, a juvenile may be permitted to meet a visitor without the attendance of a staff member (Article 81 (1), Juvenile Classification Home Act).

In the juvenile training school, a juvenile is allowed to meet his/her guardian within the institution or exchange letters with the guardian, unless such contact may result in disrupting discipline or order within the institution or hindering proper implementation of the correctional education of the juvenile (Articles 92 and 98, Juvenile Training

School Act). Since meetings and exchanging letters with the guardian are important for the juvenile to resolve his/her problems and to smoothly reintegrate into society, advice and assistance are provided as necessary in order to build a good relationship with guardians (Article 108 of the same Act). Proper consideration is given to the environment in which the meeting with visitors takes place. Meeting rooms are provided in each juvenile training school. The interior of the meeting room is adequately arranged to promote family communication. A juvenile may be allowed to meet a visitor in any other appropriate area as well. For example, some juvenile training schools provide a family dorm where a juvenile may meet and stay overnight with his/her guardian (Article 97 of the same Act). An institution officer is to attend the meeting (Article 93 of the same Act). While respecting the privacy of the juvenile and his/her visiting family, an institution officer with professional knowledge gives careful consideration to make the contact of the juvenile with his/her family a meaningful opportunity for family counseling, coordination of the protection of the juvenile, and life planning after discharge from the institution.

● **Act on Penal Detention Facilities and Treatment of Inmates and Detainees**

The Act on Penal Institutions and Treatment of Sentenced Inmates, which revised provisions related to the treatment of sentenced persons in the Prison Act, took effect in May 2006. Additionally, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, which makes revisions for the treatment of un-sentenced persons, came into force in June 2007. These revisions established a legal foundation for conducting adequate treatment of inmates, including juveniles, committed to penal institutions with respect for their human rights and in accordance with their respective circumstances.

(Appeal System)

This act established the following appeal system for inmates committed to penal institutions (Article 157-170).

- ① Any person who is dissatisfied with measures taken by the warden of the penal institution may file a claim for review with the Superintendent of the Regional Correction Headquarters. Any person who is dissatisfied with the determination on the claim for review may file a reclaim for review with the Minister of Justice.
- ② An inmate may, if illegal use of physical force against the body, etc. by a staff member of the penal institution is taken against him/her, report the case to the Superintendent of the Regional Correction Headquarters. Upon receiving a notification of the findings after confirming whether or not the case has happened by

the Superintendent, if dissatisfied with its contents, the inmate may report the case to the Minister of Justice.

- ③ An inmate may file a complaint with the Minister of Justice, the Inspector and the Warden of the Penal Institution with regard to any treatment he/she has received.

(Separation from parents)

Juveniles who are committed to penal institutions are permitted to receive visits by relatives and to send and receive letters to and from relatives in principle (Article 111 and 126). With regard to the frequency of visits a sentenced person can receive and the number of letters a sentenced person can send, the warden of the penal institution may impose restrictions necessary for either the maintenance of discipline and order or the management and administration of the penal institution (Article 114(1) and 130(1)). However, the frequency of visits must be not less than twice per month and the number of letters must be not less than four per month (Article 114(2) and 130(2)). For un-sentenced persons, the frequency of visits must be not less than once per day and the number of letters must be not less than one per day (Article 118(5)).

● **Domestic Relations Case Procedure Act**

(Respect for the views of the child)

According to the Domestic Relations Case Procedure Act, which was enacted in May 2011 and took effect in January 2013, children with sufficient mental capacity may perform procedural acts themselves in domestic relations cases that affect them (Articles 151(ii), 168(iii) and 118). It also stipulates that a family court may, when it finds it to be appropriate, and by its own authority, have children intervene in proceedings for adjudication of domestic relations (Article 42(3)), appoint an attorney as child's counsel (Article 23) and shall endeavor to understand the intentions of the child by using appropriate methods and to take the child's intentions into consideration in adjudicating the case, according to the child's age or degree of development (Article 65).

(Separation from parents)

Procedures for designation or change to a person who has parental authority over the child or guardian for the child, or loss or suspension of parental authority, upon request by a child, relatives, or certain other parties, are handled in family court in accordance with the Civil Code, the Domestic Relations Case Procedure Act and Domestic Relations Case Procedure rules. The child or the person who has parental authority over

the child or other relatives may intervene in the proceedings (Article 41(1) and 42(1)-(2)). When ruling on the loss of parental authority or suspension of parental authority, the family court must hear statements from the person who has parental authority over the child (Article 169(1)(i)). When ruling on the designation or change of a person who has parental authority, or the designation of guardian for the child, the family court must hear statements from the child if the child is 15 years of age or older (Article 152(2) and 169(1)(i), etc.). Even if the child is less than 15 years of age, the family court shall endeavor to understand the intentions of the child by hearing statements from said child, using appropriate methods, and to take the child's intentions into consideration in adjudicating the case (Article 65). As these provisions show, related parties are given opportunities to intervene in the proceedings and express their opinions in the procedures of designation or change to a person who has parental authority over the child or guardian for the child, or loss or suspension of parental authority.

- **Regulations for the Rehabilitation of People Who Have Committed Crimes and Juvenile Delinquents in Society**

(Examination of a proposal for parole by the head of the correctional institution)

The head of the correctional institution should conduct an examination to determine whether to submit a proposal for parole of a juvenile inmate (Article 9 of the Regulations for the Rehabilitation of People Who Have Committed Crimes and Juvenile Delinquents in Society). The examination should be conducted by the end of the period designated by law (the earliest possible date when parole is granted), and must be conducted at least once every six months subsequently (Article 11 (1) of the same Act). The parole examination should be conducted when a juvenile inmate has reached the highest level of treatment in the juvenile training school or when a juvenile inmate is deemed to have satisfied the requirements for parole (Article 11 (2) of the same Act) and a periodical review is implemented to determine the appropriateness of a proposal for parole. If it is deemed necessary for the parole examination for proposal of parole, opinions from outside cooperators, outside psychiatric or psychological professionals, judges and prosecutors (Article 10 of the same Act) are sought to ensure adequate implementation of the examination.

- **Juvenile Act**

(Mitigation of death penalty and life imprisonment)

Article 51 of Japan's Juvenile Act stipulates that "In case a person who is under 18

of age at the time of commission of an offense is to be punished with death penalty, life imprisonment shall be imposed. In case a person who is under 18 of age at the time of commission of an offense is to be punished with life imprisonment, imprisonment with or without work for a definite term may be imposed. In this case, the term of imprisonment imposed shall be neither less than 10 years nor more than 20 years.” In other words, the minimum age for death penalty is 18 years of age or above at the time of committing the offense.

(Administration of Juvenile justice)

With respect to restriction on personal qualification by sentence imposed, a person who has been penalized for an offense that the person committed while a Juvenile shall not be governed by application on the restriction early in consideration of plasticity and adaptability to correctional education (Article 60).

It is prohibited to publish information in articles, etc. from which a person subject to a hearing and decision of a family court, or against whom public prosecution has been instituted for a crime committed while a Juvenile, could be identified (Article 61).

● **Family Register Act**

(Transcripts of a family register)

A person who requests the issuance of a transcript of a family register shall present evidence of personal identity when making the request and clarify the reason for the request, except in cases when they have a certain extent of lineal relationship to the subject person (Article 10-2(1) and 10-3(1)).

The mayor of a municipality may refuse the request when the reason for the request is found to be unjust. This measure prevents a third party from illegally obtaining the identity of a child.

A person who has been issued a copy of a family register, etc. illegally shall be punished by a fine of not more than 300,000 yen from May 2008 (Article 133). Thus, sanction has been tightened on a third party illegally obtaining the identity of a child.

● **Basic Act for Persons with Disabilities, Act for Eliminating Discrimination against Persons with Disabilities**

(Prohibition of Discrimination)

Japan amended the Basic Act for Persons with Disabilities in 2011 in light of the provisions related to the prevention of discrimination in the Convention on the Rights of Persons with Disabilities. In principle, the amended Act prohibits an act of

discrimination or any other act which violates interests or rights against a person with a disability on the basis of the disability. It also stipulates that when a person with a disability currently requires the removal of a social barrier and if the burden associated with said implementation is not excessive, reasonable accommodation must be given to implementing the removal of the social barrier so as not to be discrimination by denial to do so (Article 4(1)-(2)).

Japan enacted the Act for Eliminating Discrimination against Persons with Disabilities in 2013 to provide more details on provisions in Article 4 of the Basic Act and it came into effect April 2016.

The amended Act, as “prohibition of discrimination on the basis of disability,” prohibits an act which violates interests or rights against a person with a disability through unfairly discriminatory treatment on the basis of the disability by administrative entities and businesses. It also stipulates that when a person with a disability currently requires the removal of a social barrier and if the burden associated with said implementation is not excessive, reasonable accommodation must be given to implementing the removal of the social barrier (businesses must make efforts to give reasonable accommodation) so as not to be discrimination by denial to do so (Articles 7-8).

● **Act on the Prevention, etc. of Child Abuse**

(Definition of Child Abuse)

Article 2 of the Act on the Prevention, etc. of Child Abuse clarifies the definition of the term “child abuse” as follows and prohibits it:

The term "child abuse" as used in this Act means the following acts:

- (i) Assault the child in a manner that will cause or is likely to cause external injury on the body of the child;
- (ii) Engage in indecency against the child or cause the child to engage in indecency;
- (iii) Substantially reduce the amount of food for the child or abandon and neglect the child for a long time period in a manner that may interfere with normal development of the child mentally or physically, or leave a person living together other than the custodian to commit any act that is equivalent to those listed in the preceding two items or the following item, or otherwise materially fail to perform the duty of custody as a custodian; or
- (iv) Use significantly violent language or take an extreme attitude of rejection

against the child, use violence upon one's spouse in a family in which the child is living together, or otherwise speak or behave in a manner that would be significantly traumatic to the child.

Furthermore, the amendment to the Act on June 2016 stipulates that a person who exercises parental authority over his/her child shall not discipline the child beyond the extent necessary for custody and education in disciplining the child.

● **Basic Act on Education**

As mentioned in paragraph 25 of the third periodic report, the Basic Act on Education was amended in December 2006. Article 1 of the Act continuously stipulates that “Education must be provided with the aim of fully developing the individual character, as we endeavor to cultivate a people who is sound in mind and body and imbued with the qualities that are necessary in the people who make up a peaceful and democratic nation and society.”

To realize the aforementioned aims of Article 1, the objectives of education are newly stipulated as follows in Article 2:

- (i) having students acquire wide-ranging knowledge and culture, fostering the value of seeking the truth, and cultivating a rich sensibility and sense of morality as well as building the health of the body;
- (ii) developing individuals' abilities, cultivating creativity, and fostering a spirit of autonomy and independence by respecting the value of the individual, as well as emphasizing the relationship between one's career and one's everyday life and fostering the value of respect for hard work;
- (iii) fostering the values of respect for justice, responsibility, equality between men and women, and mutual respect and cooperation, as well as the value of actively participating in building our society and contributing to its development, in the public spirit;
- (iv) fostering the values of respecting life, caring about nature, and desiring to contribute to the preservation of the environment; and
- (v) fostering the value of respect for tradition and culture and love of the country and regions that have nurtured us, as well as the value of respect for other countries and the desire to contribute to world peace and the development of the international community.

These amendments are considered to match with the direction shown in Article