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# The Children's Rights in the Japanese Judicial System

Evidences through the  
Research  
with Court Personnel

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## Introduction

The Zenshiho Labor Union (All Judicial Workers' Union, hereinafter called Zenshiho) is the sole labor union for personnel who work for courts throughout Japan. It includes Family Court Probation Officers, Court Clerks, Court Secretaries and others who deal with issues concerning families and children, from juvenile delinquency cases to general family cases. Zenshiho has had a keen interest in the rights of children and whether they are being guaranteed in the justice system, and has thus made efforts to maintain close relationships with other groups in similar fields, seeking to ensure a better social system.

In preparing this report, we conducted research from September to October 2006, sending questionnaires to union members who work for all 50 Family Courts, asking about the frontline issues confronting their practices, especially five points concerning children's rights. Forty-four out of fifty sent back their answers, which included refreshing opinions that illustrated various cases of unfairness to children.

Having determined that children's rights were not being protected sufficiently in daily judicial practice, we again felt strongly that the five points we focused on were significant ones, whose resolution would serve the advancement of children's rights.

In this report, we focus on two out of the five points mentioned above. They are: (1) prolonged restraint during arrest and protective detention in delinquent cases, and (2) issues related to the failure to pay child support after the divorce of parents.

This report is divided into two parts. The first part looks at the current state of children and the problems regarding the "revisions" to the Japanese Juvenile Law, which we specifically describe the issue of prolonged detention based on the evidence we gathered through the research. The second part looks at child support issues, based also on the evidence from the questionnaires.

## **PART I      The Problem with Juvenile Justice**

### **1.      The Current State of Children**

#### **1)      The Social Situation in Present-day Japan**

In the 1990s, arguments intensified over the notion that Japan's post-war democracy was too conservative to ensure development of a well-matured society and that it should undergo comprehensive change. The conventional education system as well as public school teachers were criticized and, while the defense agencies and police agencies had been fortified, medical care, social welfare and pension plans had been seriously corrupted. The Fundamental Education Law was revised adversely to advocate a more nationalistic education system in December 2006. At the same time, the Defense Agency was renamed the Defense Ministry. The National Referendum Law was instituted to amend the Constitution and approved in May 2007. As a consequence, the conversion from a system of "Education for the People" to "Education for the Nation" and from a "Nation for the People" to a "People for the Nation" had come to pass.

#### **2)      A Discourse on "Worsening Juvenile Delinquency" and Expanding Police Authority**

According to the Judicial Statistics Annual Report prepared by the Supreme Court of Japan, the number of murders and attempted murders committed by juveniles was around 300 annually in the 1950s. Since the peak in 1961 when 387 minors committed murder or attempted murder, the number has been on the decline. There have been less than 100 murders and attempted murders per year since 1985, and less than 50 during these past three years. In addition, about 70% of those cases are attempted murder cases and not first-degree murder cases. Statistics for the past 50 years indicate that the

fluctuation of other delinquency cases is like that of murder and attempted murder cases, decreasing and remaining relatively low in number.

A sentiment emerged in the public sector that both the quality and quantity of juvenile delinquencies had gotten worse, although there was no data to prove that minors had become more atrocious. The opinions that “strange children are on the increase,” “minors are getting more atrocious,” “juvenile crimes are becoming more frequent” and “our daily security is being threatened” are frequently expressed. Furthermore, the mass media is accused of agitating such arguments and arousing social unrest for the sake of audience ratings, profits and other commercialistic motives.

While social unrest about juvenile delinquency is prevalent, in December 2004, the Metropolitan Police Department released their blueprint on how legislation should be created that prevents juvenile delinquency, resulting in a bill being introduced to expand police authority to catch juveniles. An agreement to share information about children who have a propensity toward delinquency was forged between the boards of education and police headquarters in each administrative district. It is anticipated that they intend to introduce increased police authority into the school education system with jurisdiction over all students in general.

### **3) More Delinquent Juveniles Sent to the Public Prosecutor’s Office under the Revised Juvenile Law of 2000**

Such policies have led to the corruption of the Juvenile Law. It was amended and oriented toward a punishment-based law in December 2000 (enforced in April 2001). The minimum age for criminal disposition was lowered from 16 to 14 and, if a minor over 16 commits a crime resulting in death from an intentional criminal act, the minor is subject to criminal punishment in principle. In January 2004, concluding observations of the Committee on the Rights of the Child on the second periodic report of Japan expressed deep concern with the amendment of 2000.

After enforcement of the Revised Juvenile Law of 2000, the number of delinquent juveniles sent to criminal court has apparently increased. Comparing the proportion of minors who were sent to the Public Prosecutor's Office in the five years after the amendment with that of the 10 years before the amendment, there is a dramatic increase to 57.1% from 24.8% in the number of first-degree murder and attempted murder cases, 56.8% from 9.1% in the number of injury to death cases, and 74.0% from 41.5% in the robbery to death cases. (Judicial Statistics Annual Report prepared by the Supreme Court of Japan)

#### **4) The Process of Passing the Second Amendment to the Juvenile Law of 2007**

The government and the Ministry of Justice again introduced a bill calling for the revision of part of the Juvenile Law before the Diet in March 2005. The bill was passed in the House of Councilors with some modification on May 25, 2007. During the deliberation process, the House of Representatives Committee on Judicial Affairs, then controlled by the Liberal Democratic Party (LDP) pushed the bill through on the very day, while the House of Councilors Committee on Judicial Affairs allowed discussion for only two times. The forcible way of passing the bill even though it was an issue concerning children shows that the LDP did not understand the importance of child education.

The 2007 amendment authorized the Police Department to investigate children under 14 who commit delinquent acts, and lowered the minimum age of minors who could be sent to juvenile reform school from 14 to around 12. It also ruled that serious offenders under 14 are to be sent to family court and that juveniles under probationary supervision are subject to institutionalization if he/she breaks the compliance rules. It is obvious that, given the expanded police authority, they jumped to the conclusion that a problem child needs to be segregated from school and the community. Both the amendments of 2000 and 2007 aimed to punish the delinquent juveniles and serious younger offenders under 14

in terms of their criminal conducts. It is safe to say that surveillance, control and severe punishment of children have been steadily reinforced in Japan.

#### **5) The Current State of Children and Adult Society**

The most important right of children is that of growing up. It is imperative for children, as they grow up, to succeed through failure, learning from experiences while making mistakes along the way. It is difficult to raise children soundly by controlling and suppressing them strictly. Controlling and suppressing children just tames them. We should be generous in allowing them to make mistakes.

Children are currently under adult supervision within the confines of compulsory education, cram schools, after-school activities, etc. They are forced to accept inadequate dependence. They have few opportunities for trial-and-error and to learn from both success and failure. They grow up physically but not mentally by following a strict and compressed schedule. In the end, they arrive at puberty lacking in maturity. After puberty, their misconduct, considered a crime, is punished severely. It clearly impacts their sound and wholesome development.

Repeatedly revising the juvenile law makes light of the protection of children and emphasizes control of youth by the Police Department and premature institutionalization. By sending more minors to reform school or juvenile prisons without making every effort to rehabilitate delinquent juveniles in the community, we fail to develop their ability to maintain good human relationships or adapt well to society.

## **2. Prolonged Physical Restraint by Abuse while under Arrest and Detention**

### **----- Frontline Issues Emerged through Analysis by our Questionnaire**

#### **1) The Structure of Repeated Arrests**

In our questionnaire we asked respondents to report on cases of inappropriate prolonged physical restraint of juveniles that occurred during re-arrest(s) and extension of protective custody.

Under the law, those who commit delinquent acts and get arrested are to be detained for police investigation, if necessary. The maximum detention period is 10 days but if an investigation requires more time, detention may be extended only once for 10 more days. In other words, the maximum period of detention for one arrest is 20 days. The law states that the period from arrest to request for a warrant of detention shall be no more than 72 hours, and the maximum period of physical restraint before Family Court shall be 23 days total. After a police investigation, a case is sent to Family Court through the Public Prosecutor's Office. If the Family Court judge decides it is necessary to take the juvenile into protective custody at the juvenile classification home, he/she is detained until disposition at the Court. During the investigation at the Police Department and/or during the period of protective custody, the juvenile might be arrested once more, if the Police Department deems it necessary for investigation of another charge. This is called "re-arrest." By being re-arrested, the day count starts all over from Day 1 again, so after several re-arrests, a juvenile could be detained for an extremely long time.

Detention of a juvenile should be decided carefully and prolonged detention should be avoided as much as possible. That has to be the bottom line. But in reality, there were many cases in which juveniles had to bear unnecessarily long detention, respondents said.



## 2) Evidence of Unnecessary Long Detention

Many respondents reported that, despite the fact that the Police Department had been aware of the possibility of other charges, they only investigated one charge for one incident, and sent the case to the Family Court anyway. In some cases, they just waited to see if he/she confessed to the other charges in the juvenile classification home. One boy was even re-arrested four times successively for his vehicle thefts of 20-plus cars. Another juvenile was re-arrested twice while under investigation of additional charges, even though the juvenile had confessed to all of the deeds from the beginning.

In looking at the processes in which the above cases were handled, we cannot see any effort by the Police Department to avoid unnecessary arrests by conducting efficient investigations, but just their tendency toward easy-arrest-repeating. In this way, it is hard to find their consideration for the rights of the child.

Basically, investigation authorities are supposed to finish investigating all charges in a timely manner, before sending the cases to the Court. When they have no choice but to re-arrest a juvenile, they have to do so as quickly as possible. If re-arrest is announced and not handled swiftly, juveniles would just waste days at the juvenile classification home.

There was a case reported of a juvenile who was re-arrested three times after the case had been sent to the Family Court and had to spend 7 to 9 days at the juvenile classification home each time. In that case, the juvenile experienced almost 25 days of unnecessary detention.

One juvenile was arrested and detained at a place far from his residence. Normally, as soon as his case is sent to the Family Court nearby, his case would be transferred to the Family Court which has jurisdiction over his home address. In his case, however, the Public Prosecutor's Office and the Police Department requested the Court not to transfer him for awhile, as they said that they were planning a re-arrest in 12 days and, as the Family Court judge accepted their request, the juvenile simply waited to be re-arrested. This situation could be an example of unlawful practice, sneaking around the net of the law

which defines the maximum detention period under the Police Department. In this case, considering the timing of his being taken into custody, the Police Department obviously expected the juvenile to be in the juvenile classification home so they could take summer vacation themselves. Similar cases are reported in the questionnaire responses, that the referral to the Family Court and the re-arrest were used as an excuse to arrange holiday scheduling for the Police.

We renewed our concern about the issue of physical restraint of a juvenile, as the episodes of six occurrences of re-arrest and three months of physical restraint were claimed among the responses to our questionnaire.

### **3) The Lowered Hurdle toward Physical Restraint and its Negative Effects**

It seemed that the resistance to the physical restraint of young people was lost. Through the research, we found that this syndrome was prevalent nationwide, mainly in urban areas. In the past, re-arrest was rare, but it has become quite common recently.

Just 10 years ago, policemen hesitated to arrest junior high school students. Permission from Prefectural Police Headquarters was needed then to arrest a junior high school student. The Family Court also did not use handcuffs for a junior high school student even when he/she was detained. Now that a general feeling of reluctance toward physical restraint of youth has subsided, junior high school students who were arrested are detained in detention cells as traditional substitute prisoners, just like older youths, though there are ways to place them in the juvenile classification homes, which focus on a child's physical and psychological welfare more than other facilities like police cells.

High school students get expelled from school, often because of delinquent acts themselves, and sometimes because of the number of days absent from classes during detention. Prolonged detention inevitably results in their failure to get class credits and eventually they decide to leave school. One of the responses to the questionnaire reported

a case in which a first-time offender had to leave the high school because of the long detention period given without any consideration for his continuance in school.

Another response said that in the police cell, circumstances were not properly arranged for juveniles. Sometimes juveniles just do not know how to deal with time alone in a cell, making it a waste of time and lacking in educational value. Even worse, when juveniles are put together in the same cell, they sometimes exchange information about themselves, such as names, mobile phone numbers, home addresses, etc. Some of them would actually meet each other after they get out. Depending on circumstances, a juvenile might communicate with adults in a nearby cell and/or spend a long time with adults while waiting for their turn to be interviewed in the same room.

Some responses to the questionnaire pointed out that there were cases in which juveniles got re-arrested after the transfer to juvenile reform school. In such cases, their systematic education was interrupted and disturbed, they said.

### **3. The proposal from Zenshiho**

We at Zenshiho, based on the evidence provided by the collective voices of court personnel from around Japan, have come up with several ideas for a better system of juvenile justice, in the hopes of bringing about more effective educational measures for juveniles, with less detention and better consideration for their rights.

#### **1) Proposal to Prevent Prolonged Custody before Disposition**

##### **(1) The Court**

Every decision regarding the physical restraint of juveniles, including arrest, detention and extension of detention under the Police Department, is made under a warrant issued by the Court. Today, the court issues nearly all warrants, almost

automatically with few exceptions. We strongly believe that the court should have the sensibility to distinguish between cases that require physical detention of juveniles and routine requests. If the court changes its attitude toward issuance of warrants for juveniles, investigation authorities would have to pay more careful attention and eventually be forced to make their best effort to shorten detention periods.

No one can argue with the notion that the Family Court plays a central role in respecting and practicing the spirit and purpose of the Juvenile Law. Thus, the Family Court is ultimately responsible for avoiding useless prolonged custody. In particular, circumspection is required when taking junior high school and high school students into custody.

**(2) The Police Department and Public Prosecutor's Office**

The negative effects of long-term detention upon young people should be taken more into consideration, especially when the Police and Public Prosecutor deal with juvenile cases. It is highly recommended that special training be mandated for officers in the Juvenile Division, to give them opportunities to learn the character of juveniles, including their vulnerability, susceptibility and tendency to be intimidated. Furthermore, the Public Prosecutor's Office should exercise more decisive leadership over the Police Department, to ensure more effective investigation of juvenile cases, resulting in less detention time.

**2) Proposal for Enhanced and Broader Treatment**

**(1) Child Guidance Center Improvements**

It seems that the Child Guidance Center is fully occupied with child abuse cases, and not enough energy is available for another of their significant tasks, namely, dealing with problematic behaviors by young juveniles. The Child Guidance Center has a truly important jurisdiction in the community, over children at the very early problem stage, which

should be addressed from both the medical and welfare perspectives. It is obvious that they need staff with broader experiences, both in terms of numbers and skills to handle cases.

**(2) Support Facility for Development of Self-Sustaining Capacity Improvements**

Each prefecture in Japan has one or two Support Facilities for Development of Self-Sustaining Capacity. The situation and availability of the Support Facilities varies locally. In certain prefectures, as facilities are usually full, juveniles in need cannot be accepted, meaning juveniles there have fewer options. That is extremely unfair. It is necessary to create a new system in order to improve the current situation to set equal opportunities all over Japan.

Furthermore, there exist only two Support Facilities where compulsory measures can be taken, one for boys and one for girls, which is extremely insufficient. Facilities also suffer from poor quality of their programs and systems. For example, a facility is needed that can handle long-term care of junior high school graduates, or those under 18 years of age, and/or that has a resident doctor who is specialized in child psychiatry and capable of dealing with children with developmental disorders like AD/HD, Asperger's syndrome and other ailments.

**(3) Establishment of several kinds of Facilities for Juveniles Needed**

It is obvious that more various facilities are required to respond to the various needs of juveniles. For example, some juveniles are better off living separately from families until they get to sustain themselves, financially and mentally. Now that those facilities are very few and operated privately often by charitable money, lots more are needed through public management.

**(4) Juvenile Reform School: More Facilities and Improvements**

Juvenile Reform Schools are often over-populated, which undoubtedly leads to maltreatment. In addition, their programs are not always responsive to the various needs of juveniles, for example, with developmental disorders, which require careful and individual treatment. First of all, we strongly recommend an increase in the number of Reform Schools as well as number of staff. Secondly, they need to improve the professional skills of staff members and develop the variety of programs.

**(5) More Facilities Needed for Juveniles without Homes**

We also need facilities to accept juveniles without a home. Some youth have to wait, even after they fulfilled their program at the Juvenile Reform School simply because they do not have a home to return to. Some families just hesitate to greet them, others are reluctant to do so. The delay of release according to rejection from family often has negative effects on juveniles, discouraging them a lot. More housing facilities for such juveniles would be needed.

**(6) Probation Department: More Officers, Training**

The “Amendment” of the Juvenile Law in 2007 enabled the violation of probation condition to be a sufficient reason to the transfer to the Juvenile Reform School, which may sound that this amendment would serve for the probation getting more powerful and effective. But, without an increase in the number of Probation Officers, and without improvement in the skill levels of Volunteer Probation Officers, probation would not function sufficiently enough to support juvenile’s rehabilitation.

**(7) Family Court Improvements and more Family Court Probation Officers**

Definitely the Family Court needs far more Family Court Probation Officers to do their work properly and take responsibility as guardians of the rights of children. More

Judges, Court Clerks and Court Secretaries are also needed. With the current underpopulation of Family Court Probation Officers, the Family Court cannot handle the complex problems of juveniles.

### **3) Juveniles under the Criminal Justice System**

#### **(1) Special Consideration toward Juveniles in the System**

In reality, juveniles being prosecuted in the Adult Courts stay detained for a long time, not a few of them are detained for one year without any special consideration as juveniles. While the period of protective detention is limited in the Family Courts, no such restriction is set in the Adult Criminal Courts even if the accused is a minor. It is not in the interest or welfare of the juvenile that they are often put into substitutable institutions for adults.

Open court hearings are also problematic for juveniles. Considering the nature of juveniles, being easily intimidated and confused in public, vulnerable and naïve in front of an audience, the regulations regarding whether a court hearing should be open or not should be customized for juveniles. Limiting the spectators to the victim and/or the victim's family, close relatives of the juvenile and the press, placing barriers in the courtroom as a shelter from the public, are examples.

#### **(2) The Prison Program and Improvements**

Though the "Year 2000 Amendment" facilitated the improvement and enrichment of the treatment menu for minors in the prisons, it is still not enough. More programs should be enhanced for youth. And it is worth considering that juveniles who are sentenced at the Adult Court should first be allowed to spend their juvenile days at the Juvenile Reform School and, after they mature, get transferred to an adult prison to serve their full sentences.

## **PART 2      Problems with Child Support**

### **1.      Child Support in Japan**

In Japan, over 90 % of divorcing couples choose to divorce by “paper,” which is done by presenting signed documents to the city office, without any court proceeding. 9% of the remaining 10% divorce through a mediation proceeding at Family Court, and 1% by trial in open court. In either case, if they have a minor child/children between them, a couple shall decide which parent is to be the custodian for each child at the time of divorce. Other issues like visitation schedule, the amount of child support, child’s surname and others, can be discussed and decided later.

Issues regarding child support are decided either between couples by themselves (some use a notarized agreement, but most do not), in an agreement drawn up through mediation at Family Court, or by judgment by the Court. If information like the name of an obligatory parent, amount of child support, form of payment, etc. is written up in an enforceable way (that is, written up as a notarized document, an agreement or a judgment by the Court), it can be legally enforced in the case of delay and/or failure of payments.

If the child support issue was agreed upon or decided during the Family Court proceeding (e.g., mediation, disposition or judgment), and negligence payments occur, a concerned party (usually the mother in most cases) can apply for a motion to Family Court to take certain measures for ensuring the obligations. The number of motions applied to Family Court in the year 2007 was 16,280, which has increased rapidly in the past decade, by 1.4 times. What is worse is, in nearly half the cases, 45.1% to be exact, though ensuring measures were taken or sought, no payment was done, as obligatory parents often knew the ensuring measures did not have any compulsory power.



## **2. Points that Emerged from Our Research**

### **1) Inaccessibility to Compulsory Execution**

In our research, a lot of reports claimed the hardship experienced by custodial parents with unpaid child support. This situation seemed to be the same all over Japan.

As explained above, if the child support issues are decided in Family Court, a custodial parent can apply for a motion for ensuring measures to Family Court. However, those measures do not have compulsory power. If the ensuring measures, which are just investigation and advice to pay by the Family Court Probation Officer in most cases, have no effect, a concerned party can file for a case of compulsory execution to the District Court of the obligatory party's residence.

The hurdle for filing a case to the District Court, however, is sometimes very high. For example, the whereabouts of an obligatory parent is not always known. Furthermore, the employer's name or what kind of property is to be seized from the obligatory parent is usually beyond knowledge. Without such information, filing a compulsory execution case is not possible.

In reality, a lot of concerned parties have to give up the compulsory execution procedure, even though they have agreements and/or dispositions of child support.

### **2) Reality of the Child's Living Situation without Child Support**

Every custodial parent does his/her best to take care of the child, physically and financially, often doing overtime work and enduring low wages. While almost 80% of children from divorced families live with the mother, their average wage is substantially lower than that of the father, statistically.

A respondent in our research says that after the divorce of his parents, the child started living with his mother, who worked overtime, and his life changed drastically, staying home alone longer, waiting for his mother. Another child had to play the role of listening to his own mother's complaining and lamenting about her situation. In some

cases, hardship has led the undesirable consequence of child abuse by a single parent. Some custodial parents simply could not survive the hardship and gave up custody of the children to the other parents, ignoring the children's will.

The consequences that such situations bring about are not hard to imagine. Many respondents in our research pointed out that children often gave up the education that they were eligible for had they had the proper child support and regular payments, as agreed upon. Children could not continue studying at high school, left university and/or just stopped playing their favorite sport, practicing a musical instrument or developing skills in various fields, because of their financial situation.

The undesirable effects come about in the relationship between the child and a non-custodial parent. Oftentimes, a custodial parent makes an objection to the visitation by a non-custodial parent, in response to the failure of child support payment. Also, a custodial parent sometimes uses the visitation by the non-custodial parent as an opportunity to ask for money. In either case, the visit by the non-custodial parent does not serve as a productive moment for the child. Some children reportedly have gotten fed up with hearing their mother's complaining about their father. Not a few children grow up hating their own fathers due to repeatedly hearing bad things about them.

### **3) Poor Public Support**

Some respondents described the sad situation in which a mother could not file a case of compulsory execution because she did not know about either the assets nor the employer of her former husband, and that she also got denied access to welfare, being told to get child support first by the Social Services Agency.

Social Services Agency calculates the amount of child welfare with 80% of child support as partial income, even if it wasn't actually all paid. In a way, it is ironic that the presence of an agreement or disposition for child support can become an obstacle if it is neglected.

### **3. Proposal from Zenshiho**

While not a few non-custodial parents ignore their responsibilities as parents, the system to sure payments is insufficient. Significant changes in the social systems as well as in the public consciousness are needed.

We propose the following:

- (1) A system of criminal punishment and/or administrative dispositions should be newly established against neglect of child support payments.
- (2) Procedures for compulsory execution should be revised to be more accessible.
- (3) The administrative body should be empowered to put pressure on negligent parents.