

The Japan Federation of Bar Associations' Report on the  
Japanese Government's 4th and 5th Report\* on the  
Convention on the Rights of the Child  
(Additional Information)

(\*This report includes the Japanese Government's reports on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).)

Date: September 21, 2018

Japan Federation of Bar Associations

State party:	Japan
Treaty covered by report:	CRC, OPSC and OPAC
Category of Reports:	NGO
Organization Name:	Japan Federation of Bar Associations (JFBA)
Contact:	Japan Federation of Bar Associations
Date of Publication:	December 13, 2018

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## Introduction

1. Prior to the full review of the Japanese Government's 4th and 5th Report on the Convention on the Rights of the Child by the Committee on the Rights of the Child, the Japan Federation of Bar Associations (hereinafter referred to as "Federation") will provide the following information in addition to "The Japan Federation of Bar Associations' Report on the Japanese Government's 4th and 5th Report on the Convention on the Rights of the Child" compiled as of September 15, 2017 (hereinafter referred to as "JFBA Report") in relation to the List of Issues to the Japanese Government (CRC/C/JPN/Q/4-5) published as of July 3, 2018 and the matters deemed to have considerable interest among the members of the Committee at the pre-session.

- I Information on each Issue in the List of Issues
- II Overview of "Child Guidance Center" in Japan
- III Overview of Attendant (Attorney of Juveniles) System and Likelihood of Committing a Crime

### I Information on each Issue in the List of Issues

1. Please provide information on any plans to adopt a comprehensive law on children's rights. Please describe the impact of the revised Child Welfare Act on children's rights. Please also provide information on the lessons that have been learned from the implementation of the Outline for the Promotion of Development and Support for Children and Young People (2016), and the measures the State party plans to take to implement on the basis of its outcome.

2. At the current time, there are no plans by the Japanese Government to adopt a comprehensive law on children's rights. The Federation is now considering a draft of a comprehensive law on children's rights and is considering activities to urge the Japanese Government to establish such a law.

3. As it is specified in the revised Child Welfare Act, Article 1 that children are guaranteed welfare pursuant to the spirit of the Convention on the Rights of the Child

and in Article 2 that all citizens shall endeavor to ensure that children’s views shall be respected, the best interests of children shall be the primary consideration and children shall be brought up in good mental and physical health, the rights and best interests of children are acknowledged in measures for children carried out across Japan.

3. Please provide information on the targeted measures taken to eliminate discrimination and hate speech against girls, lesbian, gay, bisexual, transgender and intersex children, children of unmarried parents, children belonging to ethnic minorities and children of non-Japanese origin. Please also provide information on any plans to adopt a comprehensive anti-discrimination law.

4. Among the children referred to above, for those other than the children covered by the “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” (Hate Speech Countermeasures Act) (“persons whose country or region of origin is outside of Japan or their descendants who lawfully reside in Japan,” who are only part of ethnic minorities), no specific measures have been taken. Also, the Act does not provide penalties or prohibition provisions.

5. Recently, in particular, there have been vigorous activities by organizations advocating antirealism and calling for exclusion, etc., of racial and ethnic minorities, including children, the Japanese Government continues to take the position that a comprehensive anti-discrimination law is unnecessary.

6. (Reference) In 2009, there was an incident that a discriminatory and anti-foreign organization carried out a demonstration in front of the Kyoto Korean 1st Elementary School during class hours, using loudspeakers, making racist slurs such as “this is a North Korean spy training institution,” “promises are made between human beings. Human beings and Koreans cannot make a promise,” “dispose of Koreans at public health centers,” “cockroaches and maggots return to the Korean Peninsula” (in the criminal case, 4 members of the organization were convicted and found guilty in forcible

obstruction of business and in the civil case, the organization was held liable for compensation).

4. Please provide information on measures taken to explicitly prohibit corporal punishment, however light, in law and to eliminate it in practice, in all settings. Please also provide information on the prevention of violence and child abuse, in particular sexual abuse, and on the type of support and rehabilitation services provided to child victims.

(1) Information on the measures taken to explicitly prohibit corporal punishment, however light, and to eliminate it in practice, in all settings

7. Currently, the legally explicit prohibition of corporal punishment in all settings has not been realized, but certain movements have been recognized in that direction. The Ministry of Health, Labour and Welfare (hereinafter referred to as “MHLW”) launched an awareness campaign as measures to eliminate corporal punishment in all settings.

8. The Social Security Council of the MHLW proposed in March 2016 explicit prohibition of corporal punishment, but the draft amendment to the Child Welfare Act, etc., submitted to the Diet in March by the Japanese Government did not incorporate the provision prohibiting corporal punishment. In the course of deliberation of the bill, on May 26, 2016, the Health and Labour Committee of the Upper House adopted a supplementary resolution and requested the Japanese Government [1] “to raise awareness of childcare that does not rely on corporal punishment,” and [2] “to make efforts to understand the current circumstances surrounding families and review how disciplinary rights of persons exercising parental authority should be, based on discussion trends in international communities.”

9. Regarding item [1], the MHLW launched its 2017 awareness campaign by posting on its website a leaflet titled, “No Loving Smack Operation” but it remains to be on a very small scale. Item [2] is a supplementary resolution for explicit prohibition of corporal punishment, but there have been no subsequent concrete actions.

10. Currently, only the proviso in the School Education Act, Article 11 prohibits corporal punishment while admitting the disciplinary rights of teachers to impose discipline on pupils and students in the main clause. The public has shown distress at the death of a five-year old girl in a case of abuse in March 2018 and explicit total prohibition of corporal punishment by law is required in order to effectively prevent violence against children.

11. Regarding the prevention of abuse of children, it is provided in the Act on the Prevention, etc. of Child Abuse, Article 3 that no person shall abuse a child. However, the Act defines child abuse as acts committed by a custodian against a child under his-her custody and does not extend to violence against children by third parties.

12. The Federation submitted a statement of opinions in March 2015, stating that it should be stipulated in the Civil Code that corporal punishment and any other cruel or degrading forms of punishment against children shall be explicitly prohibited in all settings, including in homes, but this has not been realized as of yet.

(2) Information on the type of support and rehabilitation services provided to child victims

13. In order to prevent causing further trauma to child victims by being requested to give testimonies repeatedly, joint interviews by a prosecutor's office and child guidance center have been conducted since 2016 under a notification issued upon consultation between the Ministry of Justice and the MHLW. Further development of collaboration is desirable among various organizations including welfare institutions, investigative organizations and medical institutions, etc., which seek to offer relief to child victims.

14. In Osaka, Sexual Assault Crisis Healing Intervention Center Osaka (SACHICO) was established to support victims of sexual abuse, including children and the target is set to establish at least one integrated support center for victims of sexual crimes and sexual violence with involvement of the government under the Basic Act for Gender-Equal Society in every prefecture, but there are few centers which can respond to sexual crimes of children with special care.

15. Regarding forensic interviews with abused children, Children's Advocacy Center Kanagawa, a nonprofit corporation established in Kanagawa Prefecture, and Carillon Children Center, a social welfare corporation established in Tokyo, have forensic interview rooms, where private hearings from child victims are conducted.

It is desirable to conduct hearings in a friendly environment for children to offer relief to child victims.

5. Please inform the Committee on concrete steps taken to prevent children from being removed from or abandoned by their families, to speed up the deinstitutionalization of children and to facilitate alternative care by foster or adoptive parents. Please provide an update on the system for the evaluation of temporary child protection facilities operated by child guidance centers. Please explain how the rights of the child to maintain relations with both parents after divorce is ensured.

(1) Information on concrete steps taken to prevent children from being removed from or abandoned by their families, to speed up the deinstitutionalization of children and to facilitate alternative care by foster or adoptive parents

16. In addition to the Government's Report, the Ministry of Justice is considering raising the age of the child subject to special adoption from the current criteria of younger than the age of six in order to promote use of the "Special Adoption" system, which is an adoption system that builds parent-child relationships with adoptive parents by severing relationships with biological parents.

17. Regarding alternative care by foster parents and adoptive parents, it is inadequate for the welfare of the child just to promote the system. Unless support to foster parents and adoptive parents is given priority, abuse and neglect will occur again, which means support for foster parents and adoptive parents is the most important task, but adequate support has not been provided at the current time.

18. In order to promote alternative care by foster parents, allowances provided for foster parents have increased since 2016 when temporary custody of a child is entrusted to a foster parent.

19. For other issues, refer to the JFBA Report, paragraph 6.

(2) An update on the system for the evaluation of temporary child protection facilities operated by child guidance centers

20. In the budget of the Japanese Government for 2017, expenditures to receive a third-party evaluation to secure and improve the quality of temporary child protection facilities were included. As a result, receiving a third-party evaluation of temporary child protection facilities rose to the same level as other child welfare institutions. According to research conducted in 2014, only 4.4% of temporary child protection facilities regularly received a third-party evaluation, but with the benefit of a budget, it is expected that more temporary child protection facilities will receive a third-party evaluation. On the other hand, since third-party evaluations are not mandatory at temporary child protection facilities, it is not possible to grasp the realities of all temporary child protection facilities. It is desirable, therefore, to require all temporary child protection facilities to receive a third-party evaluation.

(3) Rights of the child to maintain relations with both parents after divorce

21. Under the Civil Code of Japan, sole custody is applied after divorce and joint custody is not permitted. A person without custody rights shall maintain a relationship through visitation exchanges and payment of child support. More than 80% of divorce cases grant mothers custody rights and custodians are mothers in many cases, but as of 2016, approximately 60% of mother-child families have not arranged for child support payment and approximately 75% of children do not receive child support. Over 70% have not arranged for visitation exchanges or visitation exchanges are not conducted (MHLW, “National Survey on Single Parent Household in 2016”<sup>1</sup>). In Japan, approximately 90% of couples divorce by agreement without involvement of courts

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<sup>1</sup> <http://www.mhlw.go.jp/stf/houdou/0000188138.html>



(MHLW, “Overview of ‘Statistics on Divorce’ in 2009”<sup>2</sup>). Divorce by agreement shows a higher percentage of not making an arrangement than other forms of divorce. Even if an arrangement is made, there is no effective means to secure performance in the case of non-performance. Support for visitation (securing the number of visitation exchange support organizations across Japan and reducing the expense burden of users) is inadequate and a system to secure payment of childcare support expenses has not been prepared. Family courts in Japan take the position that visitation exchanges shall generally be conducted after separation or divorce, but visitations permitted by courts is limited to approximately once a month and more than 90% do not permit overnight stays (Justice Statistics in 2016, Table No. 24<sup>3</sup>) and in many cases the time for visitation is a few hours or less. Current situations are criticized by organizations supporting DV victims as it is inappropriate to presuppose visitation exchanges and also criticized by Western countries and the parties focusing on the roles of non-guardians as visitation exchanges are too restrictive.

22. In a case where a foreign national who had resident status due to marriage to a spouse becomes the person without custody rights, in determination of the resident status after divorce, there is no explicit provision in the laws that provide for consideration of maintaining a relationship with the child even if the foreign national maintains the relationship through visitation and support with a child residing in Japan, and it is rarely considered in practice. Consequently, a person without custody rights is not generally permitted to continue to reside by reason that the person is a parent of the child residing in Japan.

6. Please provide information on progress in developing inclusive education for children with disabilities in accordance with the revised School Education Act, and explain what is meant by “special needs education.” Please explain the steps that have been taken to revise the minimum standards of afterschool day care for children with disabilities in the light of the privatization and deregulation of these services.

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<sup>2</sup> <http://www.mhlw.go.jp/toukei/saikin/hw/jinkou/tokusyuu/rikon10/index.html>

<sup>3</sup> <http://www.courts.go.jp/app/files/toukei/718/008718.pdf>

(1) Information on what is meant by “special needs education” and progress in developing inclusive education

23. Under the School Education Act, in Japan, children with disabilities have been provided with “special education,” based on the principle of separation where they enrolled in schools for disabled children, for blind and deaf students or “special classes” which are comprised only of children with disabilities and established as part of regular schools, but not enrolled in regular schools or regular classes. It is an education environment exactly opposite to inclusive education.

24. The Japanese Government, in the School Education Act of 2007, added a change to call special education “special needs education.” The Japanese Government decided to change the names of schools for blind, deaf and disabled children to “special needs schools” and the name of special classes to “special needs classes.”

25. In connection with the change to special needs education, there were such improvements at regular elementary schools as it was recognized that there are children requiring special needs education and schools make efforts to respect the intention of guardians for school attendance. However, children with developmental disabilities are currently covered by special needs education which resulted in many of children with developmental disabilities who had previously been in regular classes separated into special needs classes. In addition, children with disabilities are not generally enrolled in local schools, but enrolled in special needs schools, segregated from their local region, where only children with disabilities are enrolled, which means children with and without disabilities are raised separately, and therefore, there is no change in the basic structure that the ultimate authority of allocation and decision of enrollment is vested in government agencies and that mutual understanding between children with and without disabilities will not be promoted.

26. In fact, since the change to special needs education in 2007, the number of children enrolled in special needs schools has continued to increase, while the total number of children has continued to decrease. The number was 141,944 in 2017, as compared with 104,592 in 2006, which is an increase of 36% in just eleven years. The environment and

opportunities for children to learn and grow together at school regardless of disabilities are decreasing.

27. Accordingly, regarding whether inclusive education, the philosophy of the Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities, has progressed, the reality of “special needs education” in Japan must be regarded as “going against” such philosophy.

(2) Steps that have been taken to revise the minimum standards of afterschool day care for children with disabilities in light of privatization and deregulation of these services

28. For afterschool day care for children, there are Standards for Facilities and After-School Child Sound Upbringing Services (Ordinance of the MHLW, No. 63 of April 30, 2014). However, as standards with respect to the minimum space for each child (generally 1.65m<sup>2</sup> per child) and the size of children’s groups (generally less than 40 children) remain “to be taken into account,” they lack binding force. Therefore, there are many afterschool childcare facilities below the above standards while there are several afterschool childcare facilities that double the number of children contrary to space standard conversions. The Japanese Government is considering further relaxation of the standards for assignment of staff in afterschool childcare facilities after 2019.

29. There are no minimum standards for children with disabilities and only subsidies are granted to assignment of instructors, etc., having specialized knowledge and barrier free construction work (2017 Budget, etc.). Under such circumstances, there are many cases where children with disabilities are refused by reason of an inadequate environment to enable acceptance of children with disabilities. In Japan, since there is afterschool day care (Child Welfare Act, Article 6-2-2), which virtually functions as a place for children with disabilities to spend time afterschool, there exists a separation which is contrary to the philosophy of inclusiveness also in afterschool care.

8. Please explain how the current climate mitigation policy of Japan is compatible with its obligation to protect the rights of children, in particular the rights to health, food and an adequate standard of living, both in Japan and abroad.

30. Climate change caused by an increase in anthropogenic greenhouse effects has adversely affected children in Japan and overseas through the frequent occurrence of abnormal weather and natural disasters, adversely affecting the supply of water and food, increasing the number of cases of mediated diseases and infectious diseases, and the impact from climate change deteriorates the rights of the child exposing them to crisis, including life, survival and development (Article 6), principle of non-separation from parents (Article 9 and Article 10), highest attainable standards of health (Article 24) and adequate standards of living (Article 27) protected by the Convention on the Rights of the Child<sup>4</sup>. Steps concerning mitigation of climate change taken by Japan are inadequate as stated below and they cannot be regarded as conforming to obligations of Japan to protect the rights of children who would be affected by climate change.

31. The Japanese Government covenants to reduce emissions by 26% from 2013 by 2030 as a country-specific contribution based on the Paris Agreement (25.4% from 2005). But this cannot be evaluated as being consistent with the long-term target of reducing emissions of greenhouse gas by 80% by 2050 provided for in the 4th Basic Environment Plan determined in April 2012 and Proposal for Global Warming Countermeasures determined in 2016. Even when compiling the effects of contribution proposals submitted by each country, including Japan, there is no indication of achieving the 2°C target of the Paris Agreement (the target of limiting the global average temperature increase below 2°C as compared with the level before the Industrial Revolution) at the lowest possible cost.

32. Japan's Target 2030 was calculated by an accumulation of existing measures and technologies based on an energy mix formulated by the Ministry of Economy, Trade and

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<sup>4</sup> OHCHR, Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child. A/HRC/35/13.

Industry in 2016, which set out nuclear and coal power generation as important baseload power sources and the target of introducing renewable energy at 22~24% and coal fired power generation at 26% in 2030. This cannot be regarded as reflecting the responsibility of an advanced nation which is supposed to lead significant reductions in total emissions (The Paris Agreement, Article 4, paragraph 4) or reflect ambitions to the greatest extent possible (The Paris Agreement, Article 4, paragraph 3) <sup>5</sup>.

33. Basic laws on climate change and global warming countermeasures in Japan is the Act on Promotion of Global Warming Countermeasures, but the Act only sets out targets related to the Framework Convention on Climate Change as its objective and is not a legal framework for realizing objectives and targets of the abovementioned Paris Agreement<sup>6</sup>. More than 92% of greenhouse gas emissions in Japan are carbon dioxide and energy sources account for 93%. While the energy mix constitutes the basis of contributions by Japan based on the Paris Agreement, the process of participation of the public in development of the Basic Energy Plan is inadequate<sup>7</sup>.

34. Measures for pricing of carbon remain at a low rate carbon tax, introduced in 2012 and preferential connection of a renewable energy system was rescinded from the Act, which means promotion of the introduction of renewable energy is also inadequate.

9. Please provide information on the measures taken to address the growing poverty among children and its negative impact on child-related social protection. Please also explain the causes of the low impact of social transfers on the reduction in the rate of child poverty and the practical measures that the State party plans to take to make social transfers more efficient.

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<sup>5</sup> The Federation as of June 17, 2015, “Statement of Opinions on the ‘Intended Nationally Determined Contributions of Japan (Draft of the Japanese Government)’,” the Federation as of April 5, 2016 “Statement of Opinions on “Proposal for Global Warming Countermeasures (Draft)’.”

<sup>6</sup> The Federation as of February 16, 2017, “Opinion Concerning the Improvement of the Legal System of Japan to Implement the Paris Agreement.”

<sup>7</sup> The Federation as of June 15, 2018, “Opinion Calling for the Formulation of a Basic Energy Plan Consistent with the Paris Agreement.”

(1) Information on the measures taken to address the growing poverty among children and its negative impact on child-related social protection

35. Under the Act on Promotion of Policy on Poverty among Children (Act No. 64 of 2013), the Cabinet Office held a meeting on countermeasures related to alleviating poverty among children in cooperation with the Ministry of Education, Culture, Sports, Science and Technology (hereinafter referred to as “MEXT”) and the MHLW, etc., and developed an outline that promotes research and study as well as development of a poverty alleviating measures promotion plan by local governments and sets up funds supporting the future of children, mainly by private organizations. As specific measures, establishment of a system to provide families receiving welfare benefits with temporary allowances for entering universities, a grant-type scholarship system and scholarship system in conjunction with income, enhancement of the quota of interest-free scholarship, and an increase in childcare allowances, etc., have been implemented.

36. Regarding the grant-type scholarship system, however, grant amounts and obtainable benefits are limited in scale and specific measures taken in the meantime have not been effective and have proved an ineffective spending measure. A poverty countermeasures promotion plan of the Japanese Government depends on the initiative of local governments and voluntary efforts of private organizations, without the Japanese Government taking responsibility for supporting a budget to implement such measures, which cannot be expected to generate results.

(2) Explanation of the causes of the low impact of social transfers on the reduction in the rate of child poverty and practical measures that the State party plans to take to make social transfers more efficient.

37. The major causes for the low impact of social transfers on reducing the rate of child poverty are the following: household eligibility for welfare benefits system do not use this (the capture ratio of welfare benefits is significantly low); while education expenses for children are soaring, there is a conventional idea that parents should bear expenses and the social benefits system is inadequate; income limits are imposed on childcare allowances, which is paid in cash to a “single parent” whose poverty rate is particularly high, and the grant amount is low; while most “single parent” families are mother-child

families, the social security system is designed based on a male earner model and the household unit, and wages of women are still lower than those of men as social conditions where women cannot continue to work have not improved, and such situations have not improved at all.

38. As practical measures planned by the Japanese Government to make social transfers more efficient, these include free university tuition for tax exempt households, enhancement of grant-type scholarships and free pre-school education. But the Japanese Government is not aware of the causes for the low impact indicated above and the plan for specific and fundamental improvement measures has not developed including improvement of the capture ratio of the welfare benefits system, establishment and enhancement of the social benefits system of childcare expenses without income limits, resolution of wage gaps between men and women, specific measures for women to continue work, including measures for children on waiting lists for nursery schools and improvement in working environment for women, and fundamental system reform of the social security system, etc.

10. Please inform the Committee about the concrete measures taken, including resources available, to provide early childhood care facilities and to ensure the quality of early childhood education. Please provide information on measures to protect children from bullying. Please inform the Committee about the measures taken to mitigate the negative consequences of the extremely competitive school environment.

(1) Information on measures to protect children from bullying

39. Against the backdrop of recognition of bullying as a social problem, although the “Act for the Promotion of Measures to Prevent Bullying” was enforced in 2013 by lawmaker-initiated legislation, it focused not only on the prevention of bullying but also on moral education. While the Act defined bullying across a broader scope than the definition in the previous statistics survey from the viewpoint of protection of victims, it indicated the characterization by dichotomy as prohibiting children from bullying, not allowing to look on and supporting bullied children, and on the other hand, it treats

bullying children as the subject of guidance, disciplinary action and exclusion. However, it contains a gap between the recognition of “bullying” by society in general and has not been functioning well.

40. According to the survey by the MEXT conducted every calendar year and by the Ministry of Internal Affairs and Communications concerning the status of implementation of laws, the number of recognized bullying cases reached a record high of over 320,000 cases under the new definition (2016). This indicated a difference of approximately 19 times in the number of recognized cases per students among prefectures and it is reported that “serious cases” such as suicide due to bullying have shown no sign of decline. After the enforcement of the Act, serious bullying victimization continues to occur, disputes over recognition of bullying have increased and overlooking of bullying and concealment of materials related to bullying are still commonplace among boards of education, thus there is no sign of improvement.

41. The MEXT, in a review after 3 years of “Basic Policy of National Government,” permitted instruction without indicating bullying, although the facts fall under a new definition of bullying, which shows the inconsistency of the Act that adopted a broad definition of bullying. In order to address the inconsistency, the Federation proposes amendment to the Act to clarify how to care for children who feel pain both mentally and physically at school, the definition which can be recognized by everyone, and handling of bullying by schools<sup>8</sup>.

(2) Information on measures taken to mitigate the negative consequences of the extremely competitive school environment

42. As the surveys on national academic ability and learning situation (hereinafter referred to as “National Academic Ability Test”) were revived and publication of the results by prefecture, municipality and school was permitted, curriculum (exercise of the previous questions) for the National Academic Ability Test was adopted across Japan to increase the rank of the nation. As a result of forced competition, children, guardians, schools and teachers are exposed to stressful study environments. The achievement

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<sup>8</sup> The Federation as of January 18, 2018 “Statement of Opinions on ‘Review after 3 years’ of Act for Promoting Bullying Prevention Measures”



targets of educational administration is set by the initiative of politicians under the guidepost of average correct answer rate of each prefecture published by the MEXT based on the results of National Academic Ability Test and the achievement competition of average correct answer rate is taking place among local governments and schools.

43. In Fukui Prefecture, which once recorded the top National Academic Ability Test ranking, a junior high school student in Fukui City killed himself due to inappropriate instruction by a teacher. Fukui Prefectural Assembly took the case seriously and adopted on December 19, 2017 a “statement of opinion requesting fundamental review of educational administration of Fukui Prefecture,” recognizing that the incident occurred against the backdrop of excessive competition as a matter of prefectural pride in “academic ability as No.1 in Japan” and the busy scheduling of teachers. In other prefectures, such movements can be seen as some deciding to stop academic ability surveys specific to the prefecture, which had been conducted to “improve academic ability” based on the results of the National Academic Ability Test. The MEXT, however, presented an academic ability model in a new course of study and adopted a policy of narrowing professional discretion at schools by determining in detail the instruction and evaluation methods of academic ability, which does not have any intention to mitigate competition in education.

11. Please inform the Committee about any steps taken to provide a legal framework to prevent the detention of asylum-seeking children and their separation from parents. Please also inform the Committee about any access by asylum-seeking children to social services.

44. There is no legal framework to prevent the detention of asylum-seeking children and their separation from parents. It depends on the resident status of the asylum-seeker whether the asylum-seeker can access social services or not (JFBA Report, paragraph 101).

45. (Reference) An asylum-seeker may join health insurance with a permission of provisional stay and registered as a resident even without resident status, but operation status is as follows according to the Ministry of Justice<sup>9</sup>.

In 2017, the number of persons who applied for a permission of provisional stay was 784 and only 35 persons were permitted. Major reasons for non-permission are as follows.

- The person made an application for recognition as a refugee after six (6) months passed from the date of landing in Japan (or the date on which the person became aware of the fact that the circumstances in which he/she might have become a refugee arose while he/she was in Japan): 426 persons
- There are reasonable grounds to suspect that the applicant is likely to flee: 330 persons
- The person had already been issued a written deportation order: 214 persons

46. In Japan, while application for asylum has rarely been accepted (JFBA Report, paragraph 100), the Japanese Government permitted reapplication and has not executed deportation in fact to provide a balance between them to some extent. But in January 2018, the Japanese Government changed its posture not to grant resident status to re-applicants and detained persons would not be released until deportation<sup>10</sup>. There are not a few cases where a person residing in Japan for more than 10 years as an asylum-seeker having children in Japan and some having lived in Japan since their infancy, but the principle of best interests of the child has not been applied at all in determining the appropriateness of granting resident status to such families and detention of parents.

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<sup>9</sup> <http://www.moj.go.jp/content/001254267.pdf>

<sup>10</sup> [http://www.moj.go.jp/ENGLISH/m\\_nyuukokukanri03\\_00003.html](http://www.moj.go.jp/ENGLISH/m_nyuukokukanri03_00003.html)

12. Please specify any concrete steps that have been taken to guarantee the full implementation of the Convention in the juvenile justice system, and describe in detail the reintegration and psychological support and services that are available to children in conflict with the law, child victims and child witnesses. Please provide information on any measures taken to eradicate the preventive detention of children. Please also inform the Committee of any study into the root cause of juvenile delinquency and of any preventive measures taken.

(1) Concrete steps that have been taken to guarantee the full implementation of the convention in the juvenile justice system

47. It is essential to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (Hereinafter referred to as “the 3rd Protocol”). International human rights treaties ratified by the Japanese Government, including the Convention on the Rights of the Child have domestic legal effect without any special legislation measures (Constitution, Article 98, paragraph 2). But even if any arguments were made on violation of the Convention on the Rights of the Child in the juvenile judicial procedures, the Supreme Court had ignored any argument based on the Convention. If the 3rd Protocol is ratified, as the case can be referred to the Committee on the Rights of the Child after the domestic court decisions, domestic courts are forced to make adequate review of infringement of rights provided for in the Convention on the Rights of the Child at the stage of domestic trial and ensure that the rights under the Convention will be promoted.

(2) Reintegration of children in conflict with the law and psychological support and services available to child victims, etc.

48. It is provided that volunteer probation officers are engaged in probation programs, but as stated in JFBA Report, paragraph 131, the level of expertism of volunteer probation officers is inadequate and there is no system to provide specialized counseling, etc.

49. While support for child victims of abuse is given mainly by child guidance centers, with respect to general criminal victimization, there is no support or services specific to children. Services are available for general support to victims of crimes, including adults, which can be used by children, but there is no support or services specific to child witnesses.

(3) Study into the root cause of juvenile delinquency

50. It is one of the problems in Japan that there are few studies into the root cause of juvenile delinquency. According to the results of questionnaires on experiences of victimization to those who are detained in juvenile training schools, which were published in 2001 by the Research and Training Institute of Ministry of Justice, over 70% of juveniles answered that they experienced offensive acts by persons other than their families or families.

19. Please provide data, disaggregated by age, sex, type of disability, ethnic origin and geographic location, for the past three years, on the number of children with disabilities in all areas of the State party:

- (a) Living with their families;
- (b) Living in institutions;
- (c) Attending early childhood education;
- (d) Attending regular primary schools;
- (e) Attending regular secondary schools;
- (f) Attending special schools;
- (g) Out of school;
- (h) Abandoned by their families.

51. According to the Statistics of 2017 by the MEXT<sup>11</sup>, there are approximately as many as 140,000 children who are enrolled in special needs schools. Children enrolled in special needs classes at regular schools are approximately 150,000 at elementary schools

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<sup>11</sup> Statistical Abstract by the Ministry of Education, Culture, Sports, Science and Technology (2017 edition) [http://www.mext.go.jp/b\\_menu/toukei/002/002b/1383990.htm](http://www.mext.go.jp/b_menu/toukei/002/002b/1383990.htm)

and over 65,000 at junior high schools. They have increased on a yearly basis, which are situations contrary to the philosophy of inclusive education. Besides, the “number of “enrollments” includes the number of children not attending school. There is a possibility that reasonable care for education is not adequately given to children with disabilities.

52. It is reported that approximately 4,000 children are enrolled in institutions for children with intellectual disabilities and the largest reason for enrollment is the lack of upbringing ability and there are not a few children with intellectual disabilities who were abused. When such children with disabilities are enrolled in institutions, they must remain in institutions for a long time.

## II Overview of “Child Guidance Center” in Japan

### 1. Child Guidance Center

53. According to the guidelines for operation of child guidance center issued by the MHLW, it is stated that child guidance centers have the following functions. In Japan, child guidance centers provide a broad range of services related to child welfare.

#### [1] Function to support municipalities

54. Regarding responses to child and family consultations by municipalities, functions to coordinate communications among municipalities, provide information to municipalities and any other necessary support (Child Welfare Act, Article 12, paragraph 2)

#### [2] Consultation Function

55. Among consultations from families and others concerning children whose care requires specialized knowledge and skills, functions to conduct comprehensive investigation, diagnosis, judgement (comprehensive diagnosis) of families, regional conditions, life history, development, personality and behavior, etc., of children from specialized viewpoints as necessary and determine the guidelines for support based thereon and give consistent support to children independently or utilizing related institutions, etc. (Act, Article 12, paragraph 2)

#### [3] Temporary Child Protection Function

56. Functions of taking temporary custody to separate children from their families as necessary (Act, Article 12, paragraph 2, Article 12-4, Article 33)

[4] Function to Take Measures

57. Functions to cause children or their guardians to be guided by a child welfare officer or a commissioned child welfare volunteer (including chief commissioned child welfare volunteers. The same shall apply hereinafter.) and child and family support center, etc., or admit the child to a child welfare institution, and designated medical institutions or entrust to a foster parent, etc. (Act, Article 26, Article 27 (Delegation of Authorities of Prefectural Governors (including Mayors of Designated Cities or City with Child Guidance Center under the Act, Article 32))

[5] Authorities under the Civil Code

58. Child guidance center may request family court for adjudication of forfeiture of parental authority request appointment or dismissal of guardian of a minor (Act, Article 33-6, Article 33-7, and Article 33-8)

[6] Relations with Juvenile Cases

59. Among minors less than 14 years of age who committed acts violating the criminal laws, the cases in which minors committed serious crimes or which the police consider appropriate to be subject to a trial in a family court shall be refer to a child guidance center (Juvenile Act, Article 6-6). Among Juvenile, in light of personality or environment of the Juvenile, is likely to commit a crime or violate laws and regulations of criminal nature in the future, where there are statutory causes, those who are under 14 years of age and considered by police or custodian that it is appropriate to be subject to measures under the Child Welfare Act in preference to direct referral or notification to the family court, they shall be notified to child guidance centers (Juvenile Act, Article 6, paragraph 2). Child guidance center shall conduct investigations on such children and provide guidance or welfare measures (including admission to a child welfare institution and entrustment to a foster parents) as necessary. If the child guidance center's director considers it to be appropriate to refer to a trial in a family court, the child shall be referred to a family court (Juvenile Act, Article 6-7).

60. When it is found appropriate to refer the child to the child guidance center's director as a result of a trial in a family court, the child guidance center's director shall accept referral from the family court and shall consider guidance by a child

welfare officer, admission to a child welfare institution or entrustment to a foster parent (Juvenile Act, Article 18).

## 2. Separation of Child from Parents by Child Guidance Center and Judicial Review

61. Where a child guidance center admit a child to a child welfare institution or entrust a child to a foster parent, if a person with parental authority expresses intention contrary thereto, the child guidance center shall be required to make an application to a family court a trial in place of consent (Child Welfare Act, Article 28, paragraph 1). The period for a measure by the trial shall not exceed two (2) years from the date of commencement of the measure and it shall be required to refer to a trial in a family court every two years (Same Article, paragraph 2). In this regard, cases decided under the Child Welfare Act, Article 28, paragraph 1 were 277 cases and out of which 207 cases were admitted, 16 cases were dismissed and 52 cases were withdrawn. The reason why the number of dismissals is small is that, in addition to that child guidance center narrow down applications to the cases with high probability of acceptance, child guidance center voluntarily withdraw in a case where persons with parental authority change to give consent in the course of hearing or where it is expected to be dismissed.

62. Furthermore, in some cases, child guidance centers request a family court to restrict parental authority (forfeiture of parental authority, temporary suspension of parental authority (2 years at the longest), and forfeiture of controlling authority). Looking at the statistics in 2016, although they are not limited to applications by child guidance centers, regarding forfeiture of parental authority, 89 cases were decided and out of which, 25 cases were admitted, 13 cases were dismissed and 49 cases were withdrawn. Regarding suspension of parental authority, 205 cases were decided, out of which, 83 cases were admitted, 25 cases were dismissed and 96 cases were withdrawn and regarding forfeiture of controlling authority, 3 cases were decided which were admitted.

([http://www.courts.go.jp/vcms\\_lf/20170414sinkenseigenjihuku28\\_h28.pdf](http://www.courts.go.jp/vcms_lf/20170414sinkenseigenjihuku28_h28.pdf))

63. By amendment in 2017, in a case where temporary custody exceeds two (2) months over the expressed intent against thereto by the person with parental authority, it

becomes necessary to refer to a trial in a family court and also refer to a trial in a family court every two months thereafter. The amendment became effective as of April 2, 2018.

### III Overview of Attendant (Attorney of Juveniles) System and Likelihood of Committing a Crime

#### 1. “Attendant” System in Juvenile Case Proceedings

##### (1) Defense Counsel and “Attendant”

64. For procedures from arrest in the case to referral to a family court, the Code of Criminal Procedure shall also be applied to juveniles in the same manner as adults. Lawyers who support juveniles during the above stage are also called defense counsels in the same system as adults (counsels carry out activities in the procedures set forth in \*1 of the figure).

65. In the process of interrogation by the police, juveniles tend to be induced. Also, after the amendment to the Code of Criminal Procedure in 2016, video recording is not required and in fact, in many cases video recording is not made even though video recording of interrogations is particularly necessary. In most cases defense counsels cannot attend interrogations.

66. When police investigations are completed, a public prosecutor shall refer all juvenile cases to a family court.

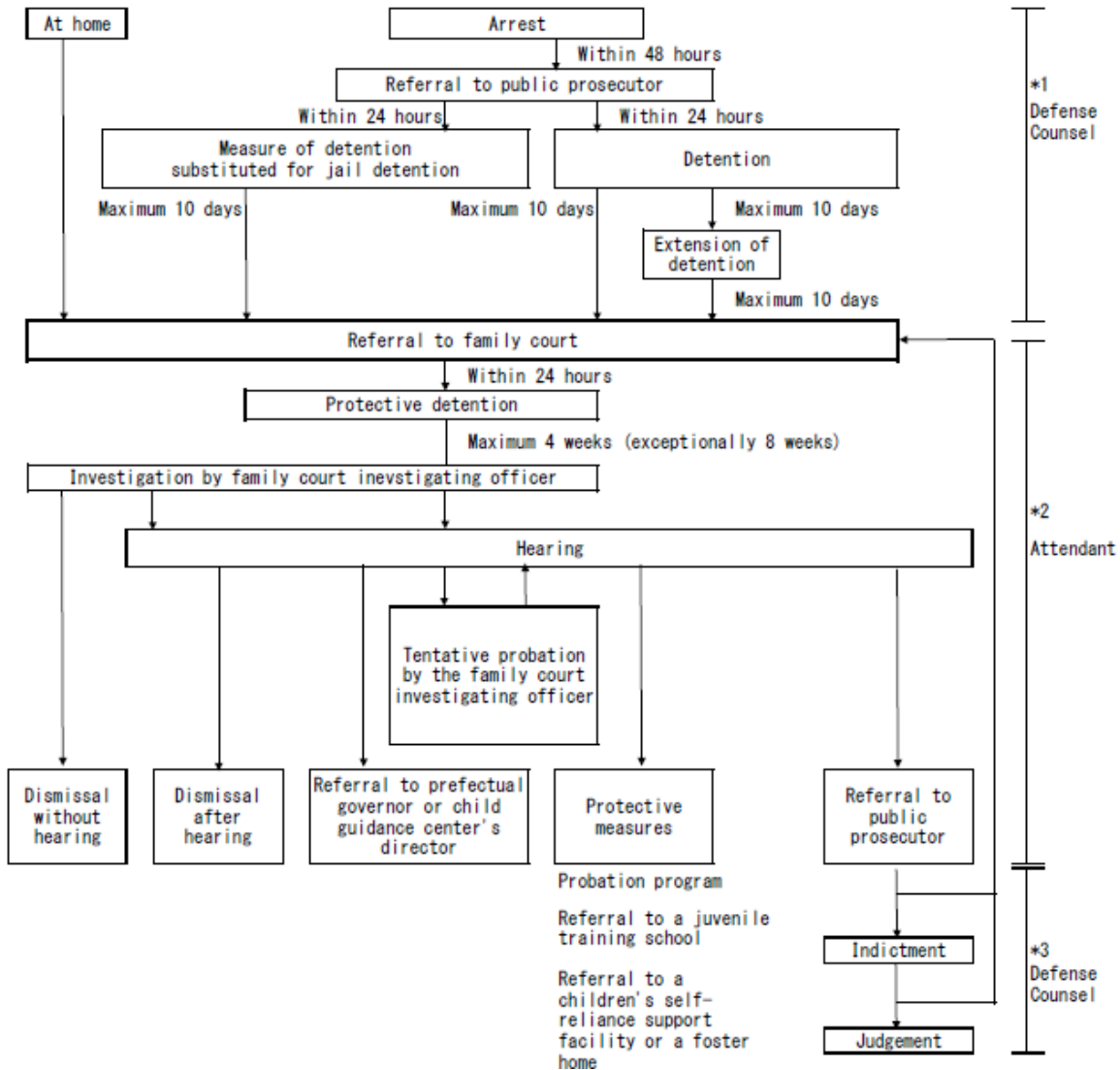
67. Lawyers who support juveniles for the period from referral to a family court to the end of a hearing shall be referred to as “Attendants.” It is the duty of Attendants to protect the rights of juveniles in the same manner as defense counsels of adults and in addition, they are requested to be involved with juveniles from an educational point of view (attendants carry out activities in the procedures set forth in \*2 of the figure).

68. If a juvenile was referred to a public prosecutor after a hearing in a family court and subject to a criminal trial, lawyers who support juveniles after referral to a public



prosecutor shall be referred to as defense counsels in the same manner as adults (counsels carry out activities in the procedures set forth in \*3 of the figure).

General Flow of Juvenile Procedures (In a case of juvenile who have been committed crimes)



69. Issues of lawyers referred to in JFBA Report primarily mentions the stage of an “attendant” (\*2).

(2) “Court-appointed Attendant System” and “Aid for Attorney Attendants in Juvenile Cases” of the Federation (Hereinafter referred to as “Aid for attorney attendants”)

70. After referral to a family court, a juvenile may appoint an attendant.

71. Cases subject to court-appointed attendants were expanded by the amendment in 2014, which are the cases of crimes subject to the death penalty or life imprisonment or imprisonment or imprisonment without work of more than 3 years and under protective detention. But court-appointed attendants are not appointed in all above-mentioned cases. Appointment is made at the discretion of courts to the cases deemed necessary by courts and the appointment rate remains approximately 70%. Therefore, the appointment rate of court-appointed attendants to the number of juveniles under custody is only approximately 50% at the current time.

	Cases subject to court-appointed attendants	Number of appointments of court-appointed attendants/ number of juveniles under protective detention
Before the amendment in 2014	Cases punishable by death penalty, life imprisonment with or without work, or imprisonment with or without work for not less than 2 years	320/9,196 (2013) 3.5%
After the amendment in 2014	Cases punishable by death penalty, life imprisonment with or without work, or imprisonment with or without work with the maximum term of 3 years or more	3,248/6,297 (2016) 51.6%

72. 50% of juveniles to whom court-appointed attendants are not appointed can appoint an attendant lawyer free of charge using the Aid for attorney attendants of the Federation. This system is provisionally provided for juveniles who cannot receive support by court-appointed attendants. This is not paid for by public expense and is operated by a fund established by special membership fees paid by lawyers of the Federation. The Federation requests the Japanese Government to establish the system in which all juveniles under custody can receive support by court-appointed attendants.

(3) Expansion of subject of court-appointed defense counsel system for suspects and relationship with court-appointed attendant system

73. By amendment to the Code of Criminal Procedure since June 2018, the subject cases of court-appointed defense counsels for suspects were expanded to all detained cases. Therefore, juveniles can appoint court-appointed defense counsels in all cases

under police investigation. But after referral to a family court, cases subject to court-appointed attendants are limited, and even if the case is covered, appointment is limited at the discretion of the family courts. Therefore, although a court-appointed defense counsel was appointed under police investigation a lawyer is not appointed after referral to a family court, which is a serious problem.

## 2. Likelihood of Committing a Crime

74. Likelihood of committing a crime is not a crime. It is provided that the causes involving the likelihood of committing a crime and its nature, protective measures can be imposed on juveniles (Juvenile Act, Article 3, paragraph 1, item (iii)).

75. Causes involving the likelihood of committing a crime require any of the following reasons under the Act.

- a. Has a propensity not to submit to legitimate supervision by the custodian.
- b. Stays away from home without a justifiable cause.
- c. Associates with persons with a criminal nature or immoral persons, or frequents in places of ill repute.
- d. Has a propensity to engage in harming own morals of the Juvenile or that of others.

76. The nature of likelihood of committing a crime is defined as “a juvenile, in light of personality and environment of the juvenile, is likely to commit a crime or violate laws and regulations of criminal nature in the future.”

77. Total number of defendants finally decided in general cases was 27,210 persons in 2016, out of which, the number of juveniles involving the likelihood of committing a crime was 219 persons. Out of which, the breakdown of major causes involving the likelihood of committing a crime is shown in the table below.

	Runaway		Illicit sexual relationship		Bad companionship	
	Male	Female	Male	Female	Male	Female
Younger than 14 years of age	2	3			1	
14 years of age	6	8	2	3		
15 years of age	2	5		1		1
16 years of age	2	1		7	1	1
17 years of age	2	8				2
18 years of age		1			1	1
19 years of age					1	
Total number	14	26	2	11	4	5

78. Rate of referral to juvenile training schools is 8.4% for general cases, but 27.8% involving the likelihood of committing a crime, which is very high.

79. The likelihood of committing a crime is considered in practice to be necessary to protect juveniles in dangerous situations. The Federation evaluates that recognition of requirements involving the likelihood of committing a crime has been made based on a considerably strict interpretation. But as the provisions of the text are abstract, it is a problem that the cases are not defined as requiring court-appointed attendants, although it is necessary to be checked by attendants so that arbitrary determination shall not be made.