Information for Prison Inmates

October 2006 (Third Edition)

(New Version Corresponding to the Newly Enacted Law
Concerning the Treatment of Sentenced Inmates)

Japan Federation of Bar Associations

Introduction to the Publication of Third Edition

The Prison Law which has been untouched without major changes since 1908 was materially revised.

In the fall of 2002, a series of incidents in which inmates died or were injured by violent assaults using leather handcuffs, etc. in protection cells in Nagoya Prison were revealed. Multiple prison officers participated in the assault were arrested and prosecuted, which became a center of social attention being discussed at the Diet and through heavy coverage of the media. As a result of these incidents, "the Correctional Administration Reform Council" consisting of fifteen eminent persons from the private sector was organized under the Minister of Justice at the end of March in 2003.

This Advisory Panel announced its recommendation entitled "Recommendation from the Correctional Administration Reform Council: Aiming at Prisons that Gain the Understanding and Support of the Citizens" on December 22, 2003.

Based on the recommendation, the revision of the Prison Law was brought about for the first time in nearly 100 years, and the "Law Concerning Penal Institutions and the Treatment of Sentenced Inmates" (hereinafter referred to as the "Law Concerning the Treatment of Sentenced Inmates") was newly enacted and effectuated throughout Japan as of May 24, 2006. (For more details about the revision of the law, please refer to Section 1 of this booklet.)

In preparing this third edition, we revised the contents substantially in response to the enactment of the Law Concerning the Treatment of Sentenced Inmates. We hope this booklet will be helpful your inmate life.

Sections concerning unconvicted and suspected persons (suspects and defendants) and convicts with death penalty in the Prison Law were diverged and developed to a new law in the form of amendments of this Law Concerning the Treatment of Sentenced Inmates, on June 2, 2006. This new law will be enforced by June 7, 2007.

The new law created from the amendments of the Law Concerning the Treatment of Sentenced Inmates is given a new name "Law Concerning Penal and Detention Facilities and the Treatment of Inmates," which will apply to those who are detained in the penal and detention facilities including convicts, unconvicted and suspected persons and convicts with death penalty. When describing provisions of the law, firstly we show the clause of the Law Concerning the Treatment of Sentenced Inmates, and then the clause of the "Law Concerning Penal and Detention Facilities and the Treatment of Inmates." (hereinafter referred to as "Law Concerning the Treatment of Inmates") following in the brackets.

October 2006
Japan Federation of Bar Associations (JFBA)

Foreword (for the first edition)

For most inmates, it is the first experience staying in prisons. So, it is often difficult for them to solve the problems happen there.

Of course, the prisons provide the inmates with precautions or a guidebook. Such information, however, is not sufficient to prepare the inmates for imprisonment.

This booklet consists of advice for the frequently asked questions which we feel need more explanations. We hope this booklet will help the inmates to solve their problems.

Since this is our first attempt to make this sort of booklet for the inmates, it may be insufficient. We will improve and revise this booklet, and so we welcome any written comments and opinions from you.

November 2003
Japan Federation of Bar Associations (JFBA)

For the Second Edition

We added a chapter to the first edition of this booklet for foreign prison inmates, and made an English version. If you wish to have a copy of the English version, please contact us.
Both Japanese and English versions are also available on our website. (Please refer to the publication data at the end of this booklet for the URL)

March 2004
Japan Federation of Bar Associations (JFBA)

Information for Prison Inmates

(Third Edition-Revised)

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Section 1　New Law Regarding Inmates

Q1-1 I heard the Prison Law was changed into a new law. Is it true?

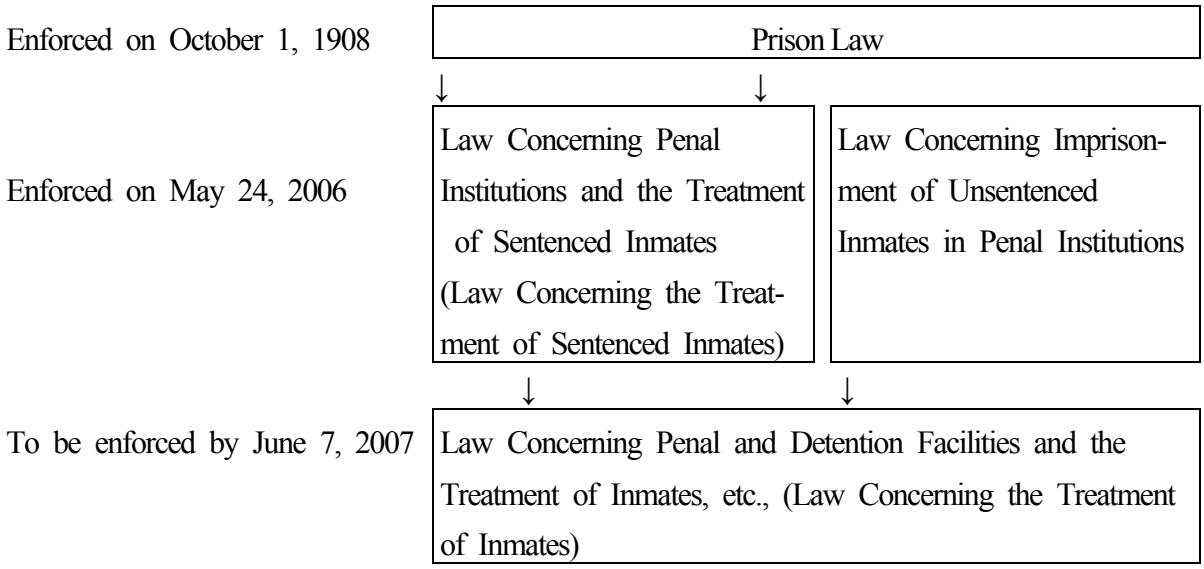
In the fall of 2002, a series of incidents involving violent assaults by prison officials that caused the deaths and injuries of inmates taken place in Nagoya Prison was revealed, and became a center of social attention. As a result of these incidents, "the Correctional Administration Reform Council" consisting of fifteen eminent persons from the private sector was organized under the Minister of Justice at the end of March of 2003.

This Council announced its recommendation entitled "Recommendation from the Correctional Administration Reform Council: Aiming at Realizing Prisons that Gains the Understanding and Support of the Citizens" on December 22, 2003 after vigorous review and discussions expanding for nine months including visits to domestic and overseas prisons and surveys by questionnaire to inmates and officers. Based on the recommendation, the revision of the Prison Law was brought about for the first time in nearly 100 years, and the "Law Concerning Penal Institutions and the Treatment of Sentenced Inmates" (hereinafter referred to as "Law Concerning the Treatment of Sentenced Inmates") was newly enacted and the application thereof started as of May 24, 2006 throughout Japan.

Sections concerning unconvicted and suspected persons (suspects and defendants) and convicts with death penalty in the Prison Law were diverged and developed to a new law, on June 2, 2006, in the form of amendments of this Law Concerning the Treatment of Sentenced Inmates. This new law will be enforced by June 7, 2007. From May 24, 2006 to the enforcement of the new law, the "Law Concerning Imprisonment of Unsentenced Inmates in Penal Institutions", renamed from the Prison Law, will apply to unconvicted and suspected persons and convicts with death penalty.

The new law created from the amendments of the Law Concerning the Treatment of Sentenced Inmates is given a new name "Law Concerning Penal and Detention Facilities and the Treatment of Inmates," (hereinafter referred to as "Law Concerning the Treatment of Inmates") which will apply to those who are detained in the penal institutions and substitute prisons (police detention facilities), including convicts, unconvicted and suspected persons and convicts with death penalty.

In this booklet, when describing provisions of the law, firstly the clause of the Law Concerning the Treatment of Sentenced Inmates is shown, and in the brackets follows the clause of the Law Concerning the Treatment of Inmates.


Enforced on October 1, 1908
Prison Law
Law Concerning Penal Institutions and the Treatment of Sentenced Inmates (Law Concerning the Treatment of Sentenced Inmates)
Law Concerning Imprisonment of Unsentenced Inmates in Penal Institutions
Enforced on May 24, 2006
To be enforced by June 7, 2007
Law Concerning Penal and Detention Facilities and the Treatment of Inmates, etc., (Law Concerning the Treatment of Inmates)

Section 2 Board of Visitors for Inspections of Penal Institutions

Q2-1 What is the Board of Visitors for Inspections of Penal Institutions?

By the Law Concerning the Treatment of Sentenced Inmates, the "Board of Visitors for Inspections of Penal Institutions" was established in penal institutions (prisons, juvenile prisons, and detention houses) throughout Japan and started its activities.

The Board of Visitors for Inspections of Penal Institutions is a completely new kind of organization that came into establishment through the recommendation of the Correctional Administration Reform Council. The Board was established with the aim of being helpful in improving the operation of institutions through transforming the institutions into those to be understood and supported by citizens, informing the real conditions related to the operation of the institutions to citizens and conveying outsiders' views to prison officers in order to prevent reoccurrences of assaults by officials.

The board members are to be appointed by the Minister of Justice among the people with deep insight and high integrity as well as eagerness in improvement of operation of penal institutions. The number of board members is defined as ten or less under the law, and differs from four to ten depending on the size of institutions. Every board comprises one attorney member who is recommended by local bar association. A physician who is recommended by the local medical association and an officer of municipal government are included in the committee as well. Those board members are under obligation of confidentiality regarding privacy of detainees as part time national service officers.

Q2-2 What kind of activities does the Board of Visitors for Inspections of Penal Institutions engage in?

The Board of Visitors for Inspections of Penal Institutions is expected to visit institutions and to make comments to wardens on the operation of those institutions. The members will not only merely watch institutions, but also interview detainees, inspect documents prepared in the criminal institution or they may question an official of institutions according to need. And if a member requests, he/she may interview a detainee without being accompanied by a staff of the institution. Any staff of an institution may not censor or inspect a "comment or proposal" (please refer to Q2-4) addressed to the Board of Visitors for Inspec-

tions of Penal Institutions by a detainee. In addition, the warden of institution must cooperate with visits and interviews being conducted by the Board when necessary.

Thus, the Board will express its opinion or recommendation regarding the operation of a relevant institution to the warden at least once a year based on its activities including visits and interviews. The summary of opinion will be publicized once a year, with the description of how the warden of the relevant institution responded to the recommendation. The recommendation by the Board has no binding power over institutions, but each warden of institutions is expected to reflect the recommendation on the institutional operation.

Q2-3 May inmates convey their opinions to the Board of Visitors for Inspections of Penal Institutions?

Of course, they may express their opinions. However, the Board is not vested with any power to directly respond to the opinion and solve such with the relevant institution. The task of the Board is to form a summarized common opinion based on your opinions to improve the operation of penal institutions as a whole. Therefore, you inmates may feel the reaction is not enough, as each of individual cases is not to be dealt with. Since without your information, however, the board could not find a problem, if any, please do not hesitate to send your letters of comment or opinion regarding problems in the institution to the Board or put your proposal in a suggestion box.

Q2-4 Is there any possibility that a "comment or proposal" placed in the "suggestion box" may be read by staff of institution? Will a proposal be realized?

Pursuant to recommendation of the Correctional Administration Reform Council stating that "the environment should be improved and maintained so that detainees may be able to make comments to the Board," each institution is required to place a "suggestion box". Forms of "comment or proposal" to be posted in the suggestion box will be provided by each institution (Please refer to the attachment at the end of this booklet.), and detainees may put this form after filling it to the suggestion box, or may write on his/her stationery. The comment or proposal form also has a space for you to fill in your comment freely. In either way, the contents of such writing will not be inspected. And suggestion boxes can be unlocked solely by the Board.

Thus the suggestion box has a system that enables comments, etc. of detainees to be conveyed to the Board smoothly without any intervention by officers of institutions. However, how to respond to such opinion or proposal is entrusted to the judgment of each Board. Therefore, although the idea of comments

or proposals may not necessarily be realized, the Board may decide to make investigations such as interviews with interested persons or seek for measures to improve the facility after reviewing comments or proposals, thus possibly resulting in the improvement of institutional operation.

For your reference, if a Board member inspects facts by making inquiries to officers about a comment or proposal submitted, the nature of the proposal or comment may become apparent to the authorities to some extent.

Q2-5 I hope to make an interview with a Board member. Does he/she meet me without fail? Will institution staff be present at the interview?

Interview is a method that will directly convey your opinion regarding operation of the institutions to Board members, like comment and proposal.

There are two ways for detainees to meet Board members.

One way is that you request for an interview and ask to place your name on the "List of Interview Applicants" which is prepared in the institution. The Board will decide whether the Board makes an interview with someone on the list. If there are too many applicants for interviews, you may not make an interview.

Another way is that, regardless of the list, the Board requests to meet certain detainees. For example, it may designate "inmates who is engaging in __ work at __plant" or it may appoint an individual. In the event when a detainee has not requested for an interview but a Board member asks for an interview, it is up to the detainee to make a decision whether to meet the member or not.

In either way, a prison officer would not be present at the meeting with a Board member unless the member expressly requests to do so. Therefore, the details of the interview would not be revealed to an officer of the institution. However, as in the case of comment and proposal, when a Board member is making inspection, the content discussed in an interview may be known to an officer to a certain extent.

Q2-6 Through "comments and proposals" or interviews, I would like to appeal to improve the treatment of me. Does it work?

As we set forth from Q2-3 through Q2-4, comments and proposals are useful vehicle to convey frank opinions of detainees to the Board. However, the purpose of the Board of Visitors for Inspections of Penal Institutions is to improve the operation of institutions as a whole, and it is not an organization to deal with

improvement of treatment of each individual detainee or to seek for remedies in human rights infringement cases. (If you seek for such remedy directly, you should use the Grievance Mechanism for Sentenced Inmates, etc. to be described in Section 3.)

Sometimes, however, problematic treatment or infringement of human rights is inherent in the system itself. If such is the case, improvement of the system and operation thereof as a whole will be necessary. And to keep demanding for such improvement to the authorities is, in fact, the task of the Board of Visitors for Inspections of Penal Institutions. Thus the scope of services that the Board of Visitors for Inspections of Penal Institutions handles is extremely broad.

As stated in the section Q2-1, there are an attorney and a physician among the Board members. By reading comments and proposals or making interviews, they may raise an issue from a professional point of view. As a result, recommendation for improvement might be issued to the warden of relevant institution.

Therefore, we think appealing to the Board would count for a great deal.

Section 3　Grievance Mechanism for Sentenced Inmates

Q3-1 What is the newly created Grievance Mechanism for Sentenced Inmates?

The Law Concerning the Treatment of Sentenced Inmates abolished the petition program existed under the previous Prison Law, and instead newly established the Grievance Mechanism for Sentenced Inmates. This new program is consisted of three parts: Applying for Examination; Stating Facts; and Making a Complaint.

Q3-2 What kind of program is the "Applying for Examination"?

The Applying for Examination will be made to the superintendent of regional correction headquarters if you have complaint against measures by the warden of relevant institution set forth in Article 112 of the Law Concerning the Treatment of Sentenced Inmates (Article 157 of the Law Concerning the Treatment of Inmates).

Typical examples may be: prohibition or restriction on reading books or others; prohibition or restriction on receiving or sending letters; segregation from other detainees; or punishments. For details, please refer to the list set forth below.

The Applying for Examination shall be made as a general rule, in writing, by the subject inmate himself/herself within 30 days starting from the next day of the announcement of such disposition, but you may ask a prison officer to fill in the application for you if you cannot prepare it by yourself.

In the event when you cannot do so in time due to an inevitable event, you may make the application only in one week after such event ceased to exist. In any means, these time restrictions are extremely rigid, therefore, you have to be careful as the time frame will be lapsed easily if you lingeringly consider consulting with your outside friends or an attorney.

The superintendent of regional correction headquarters who receives the application must inspect the matter as required and try his/her best to make a decision on the matter within 90 days.

If you are not happy with this decision as well, you may file the "Request for re-examination" (please refer to Q3-4).

Measures of which the Applying for Examination may be filed in connection with them:

1. Prohibition of using money in retention or personal belongings or of grant of articles kept in custody or money in retention;
2. Refuse or suspend to see a appointed doctor;
3. To prohibit or restrict religious rituals that a detainee engages in by him/herself;
4. To prohibit or restrict inmates from reading their own books, newspapers, etc.;
5. To charge translation fees to inmates in order for the prison to determine whether to prohibit reading their own books, etc. in a foreign language or not;
6. Segregation from other inmates (excluding separation to prevent infectious diseases);
7. Disposition regarding grant of remuneration
8. Decision on payment of indemnity when injured or got ill in the course of works or related to emergency services and some disability remained though the injury or sickness was cured;
9. Decision on payment of special indemnity when injured or got ill in the course of works or related to emergency services and such injury or sickness has not been cured at the time of release;
10. To forbid, suspend or restrict to receive or send letters, deliver books and paintings;
11. Not to return the whole or a part of letters, etc. or copies thereof, which the institution holds pursuant to prohibition of receiving and sending them, at the time of release;
12. Measures to charge translation or interpretation fees to inmates incurred in association with visits or exchange of letters in a foreign language;
13. Disciplinary punishment;
14. Disposition of vesting inmate's items related to actions against rules in the National Treasury ;
15. Separation in order to investigate actions against rules;

Q3-3 What kind of system is the "Stating Facts"?

The Stating Facts may be made by an inmate to the superintendent of regional correction headquarters if (i) an officer of relevant institution illegally exercised any physical force (assault) against the inmate; (ii) an officer of relevant institution illegally or unreasonably used restraining device; or (iii) the inmate was detained in a protection cell illegally or unreasonably.

It is a unique system for the administration to find as of whether such act was actually committed or not through strict procedures of complaint filing, which could not be seen in other administrative procedures.

This filing shall be made by the subject inmate himself/herself, as a general rule, within 30 days starting from the next day of the such act, and the superintendent of regional correction headquarters is under obligation to endeavor to notify the applicant of the finding of the existence or nonexistence of such fact within 90 day. The same rules as Applying for Examination regarding secrecy or documents being possibly filled in by an official for the inmate apply with the case of Stating Facts (Please refer to Q3-2). In case of discontent with the decision , the person may file the Applying for Re-Examination (Please refer to Q3-4).

Q3-4 Is it true that in case of discontent with decision or notification, the inmate may make an appeal to the Minister of Justice?
(Applying for Re-Examination; Stating Facts to the Minister of Justice; and Complaint Review Panel)

If you are not satisfied with the decision made by the superintendent of regional correction headquarters with regard to the Applying for Examination (please refer to Q3-2), you may file the Applying for Re-Examination to the Minister of Justice. In case of discontent with details of notification in relation to the Stating Facts (please refer to Q3-3), you may also make the Stating Facts to the Minister of Justice.

Either of the Applying for Re-Examination or the Stating Facts to the Minister shall be made within 30 days starting from the next day of the decision or notification.

The Minister of Justice shall ask advice from the "Review and Investigation Panel on Complaints by Inmates in Penal Institutions" (for the purpose of this booklet, hereinafter referred to as the "Complaint Review Panel "), consisting of experts such as attorney, physician, law scholar, etc., about cases that the Minister of Justice is going to judge as having no grounds of complaint among submitted applications. The Minister will make the final judgment on the case , taking into consideration the opinions of the Complaint Review Panel and after reinvestigation, if necessary. Since the Complaint Review Panel is a private consultative body of the Minister of Justice, inmates may not appeal to the Complaint Review Panel directly.

Persons who are not satisfied with the result of the complaint filed to the Minister of Justice may bring to administrative litigation or sue for compensatory damages (about litigations, please refer to Section 10).

Q3-5 What kind of system is the "Making a Complaint "?

The "Making a Complaint" may be made regarding actions you received in general and they are not necessarily restricted to measures taken by the warden against you. You may make the "Making a Complaint" either to the Minister of Justice, an inspector general who performs actual inspections, and the warden of the institution and it may be done by orally except to the Minister of Justice where submission in writing is required. There is no time restriction such as in case of the Applying for Examination. When the Making a Complaint is made, the relevant receiver shall handle it faithfully and notify the result to the person who submitted.

Q3-6 Are those filings kept secret? Is there any possibility that the filing adversely affects the inmate who filed it?

Any of the applications for the "Applying for Examination," the "Stating Facts" and the "Applying for Re-Examination" is to be made in confidentiality, and any officer may not learn the contents. Prescribed forms of these applications are available in each institution. When you want to make application, first you have to ask an officer for a form. After filling in, you seal the envelope yourself and submit it. An officer who fills a form for you is under obligation of confidentiality.

Claimers, of course, shall not be treated adversely for the reason of making applications.

Section 4 Visit and Outside Contact

Q4-1 Who can visit an inmate?

1 Legal basis for visit

Under the Prison Law, only relatives were able to visit inmates.

However, Article 89, Paragraph 1 of the Law Concerning the Treatment of Sentenced Inmates (Article 111, Paragraph 1 of the Law Concerning the Treatment of Inmates) stipulates that visits to inmates by the following persons may be allowed; (i) relatives of inmates; (ii) persons who are required to meet inmates to deal with material businesses of inmates relevant to their status, legal or professional conditions (hereinafter referred to as "Material Business Dealer"); and (iii) those who's visits are considered to give good effects on inmates in connection with their rehabilitation.

In addition, application to visit an inmate by the other people may be approved, since Article 89, Paragraph 2 of the Law Concerning the Treatment of Sentenced Inmates (Article 111, Paragraph 1 of the Law Concerning the Treatment of Inmates) sets forth "…a visit may be permitted if it is considered that the inmate is under conditions that require visits in order to maintain friendship or other relationships and if such visit would not cause interference of appropriate implementation of correctional treatment of the inmate."

Specific explanation of possible visitors will be given in Q4-2.

Article 60 and succeeding articles of the Enforce Regulation of Law Concerning the Treatment of Sentenced Inmates stipulate more specific provisions such as the duration of a visit, frequency of visits, and procedures for application. The "Guide to Prison Life" distributed by your prison authorities sets forth rules, including visits, that are provided for by the warden based on such laws and regulations.

2 Those who can visit

(1) Relatives

"Relatives," as used here, are interpreted to include common-law spouse, but not boyfriend, girlfriend, or fiancée.

As mentioned in 1, since only relatives were able to visit inmates under the Prison Law, when an adopted child or parent, with whom the inmate has entered into adoption after imprisonment, was considered as a

"relative for the purpose of visit," a prison sometimes prohibited the visit.

However, under the new Law Concerning the Treatment of Sentenced Inmates, a broad range of people such as friends or acquaintances in addition to relatives become accepted, which will be explained in the next Section 3. No longer adoption for the purpose of visit is necessary, and there would be no more refusals based on the ground of a "relative for the purpose of visit."

(2) Material Business Dealer

The following shows major examples of the Material Business Dealer:

(i) those with whom an inmate has to consult for arrangement or coordination for marriage, parental authority , rearing of a child, inheritance and employment related matters, and other matters;
(ii) an attorney or supporters that represent or give advice to inmates on civil litigations or petition for retrial, etc.;
(iii) interested parties such as employees with whom an inmate need to consult regarding material decisions of a company that he or she manages including its operations and policies;

(3) Those who are considered to give good effects on inmates for their rehabilitation

Specifically, the phrase "those who give good effects on inmates for their rehabilitation" by visits means, for example, a guarantor for fidelity after his/her release or those who employ inmates after his/her release.

3 Individuals who may visit

If an applicant for a visit has continuous and previous relationship with an inmate, including friends, acquaintances, former teacher or professor, colleagues, etc. who need to meet the inmate, the visit will be permitted in general unless the visit disturbs the discipline or order of the prison or disrupts correctional treatment of inmates.

Previous notification and submission of documents are required for possible visitors, however, a visitor without previous notification will not be denied by the prison automatically. They will examine the application for visit at the site and will make a decision on it. It would be better to go through the previous formalities to make a visit smooth.

In case an applicant for visit does not clarify his/her identity or is a gang member or the visit may pose a threat to smooth rehabilitation of inmates, the prison may decide to deny the visit.

Q4-2 How long can a visit last?

As a rule, a visit is allowed for more than 30 minutes. However, depending on inevitable conditions or situations related to the prison including conditions of applications or the number of visiting rooms available, the duration may be limited to more than five minutes to less than 30 minutes.

Q4-3 In what kind of cases does a prison officer attend during visit?

1 In principle, the Law does not require the attendance of a prison officer during visit.

Article 90 of the Law Concerning the Treatment of Sentenced Inmates (Article 112 of the Law Concerning the Treatment of Inmates) sets forth that inmates may meet visitors without the attendance of a prison officer during visit, and that "in case of necessity," a prison officer will be in attendance or make a recording or video recording the meeting at a warden's discretion.

2 How to determine the necessity of attendance

The necessity of attendance, recording or video recording will be determined after taking into account physical or mental conditions or behaviors of inmates, etc.

With very rare exceptions, prison officers are not able to attend an inmate during visit (i) by officials of state or local public authorities who are to investigate or (ii) by attorneys, when a civil litigation case against the penal institution is brought by the inmate on ground of treatment by the warden of the institution or dispositions against the inmate or an appeal to the Bar Association for human rights relief (please refer to Q-12 for appealing for human rights relief).

Q4-4 To whom and how often can inmates send letters?

1 Recipients of letters

Though the Prison Law only permitted to send letters to "relatives," under the Law Concerning the Treatment of Sentenced Inmates, there is no restriction as a general rule (Article 93 of the Law Concerning the

Treatment of Sentenced Inmates (Article 126 of the Law Concerning the Treatment of Inmates)).

However, the warden of the institution may prohibit exchange of letters with "persons of criminal nature" or "those who may disturb the discipline and order of the criminal institution or hamper performing smooth correctional treatment" (for example, members of anti-social groups such as gang, etc.). Sending and receiving letters to and from relatives and communications in order to deal with "material businesses of inmates relevant to their status, legal or business conditions including coordination of marriage, proceeding of litigations and sustaining business" (for the details please refer to the explanation set forth in 2(2) of Q4-1) may not be prohibited.

Immediately before the enforcement of the Law, the judgment was made by the Supreme Court, saying "sending and receiving to and from non-relatives of sentenced inmates may be restricted only when it is recognized that permitting communications would cause damages, with considerable possibilities, from views of maintaining discipline and order in the prison, securing detention of inmates, and rehabilitation, that cannot be neglected after taking into account specific conditions of character and behaviors of the inmate, management and security conditions of the prison and contents of subject letters" (Decision by the 1st Petty Bench of the Supreme Court on March 23, 2006). This judgment is considered a fair interpretation of the Law. It is expected that this Supreme Court case be a guideline in practicing.

2 Frequency

Although the Law stipulates that with regard to the number of letter sending the warden of the institution "may impose restriction necessary for administration and operation of penal institutions," the frequency restriction imposed on an inmate may not be less than four times per month (Article 97 of the Law Concerning the Treatment of Sentenced Inmates (Article 130 of the Law Concerning the Treatment of Inmates)).

Q4-5 What should I do when the prison interferes with the content of a letter?

1 In principle, the Law does not require to censor contents of letters.

The Prison Law required that every letter sent by an inmate was censored by prison officers, but under the Law Concerning the Treatment of Sentenced Inmates its principle is not to censor the contents; provided, however, if "it is considered necessary to do so for reasons of maintaining discipline and order of the penal institution, enforcing proper treatment for inmates," prison officers may censor contents of letters (Article 94, Paragraph 1 of the Law Concerning the Treatment of Sentenced Inmates (Article 127, Paragraph 1 of the Law Concerning the Treatment of Inmates)).

However, the prison may not inspect letters addressed to national or local public agencies that investigate

dispositions imposed on inmates by the warden of institution or treatment suffered by inmates as well as letters addressed to attorneys with regard to dispositions or treatment (Article 94, Paragraph 2 of the Law Concerning the Treatment of Sentenced Inmates (Article 127, Paragraph 2 of the Law Concerning the Treatment of Inmates)). A letter addressed to an attorney, however, may be censored its content when special circumstances arise.

2 Deletion, erasure, withdrawal

As a result of censorship, if the letter as a whole or a part of it is found "inappropriate," parts of the letter may be deleted and erased, or the letter itself may be refused to be sent (suspension).

The content that threatens or defames the recipient or extorts a visit or money was deleted or the letter was rejected under the Prison Law, and even under the new Law Concerning the Treatment of Sentenced Inmates such content will be probably deleted or the letter be rejected.

3 When the prison interferes with the content of a letter?

An officer in charge may instruct an inmate to rewrite a letter because it has inappropriate contents. Although the officer may feel that he is doing the inmate a favor to avoid deletion or rejection, the inmate may see the instruction as "inappropriate interference." If the issue can be resolved merely by changing expressions, for example, it would be to the inmate's advantage to agree to the instruction.

If the inmate disagrees with the instruction, he/she may refuse to make changes. In this case, the officer may decide to delete parts of the letter or refuse to send the letter. The inmate may then contest the decision by filing the Applying for Examination or the Making a Complaint (please refer to Section 3), appealing for human rights relief to the Bar Association (please refer to Section 12), or, as the last resort, filing a lawsuit (please refer to Section 10).

Q4-6 Are there restrictions on the letters that an inmate can receive?

Under the Prison Law an inmate can only receive letters written by "relatives" and letters written by those "deemed specially necessary" by the warden, but under the Law Concerning the Treatment of Sentenced Inmates, there is no restriction regarding sender of the letter unless, as stated in Q4-4 (when sending letters), it is considered necessary to do so for reasons of maintaining discipline and order of the penal institution, or enforcing correctional treatment properly. Further, there is no restriction on the number of letters an inmate may receive.

However, as stated in the case of sending letters, the content of letters may be censored when the warden

considers necessary. If the content is found to be inappropriate, then parts may be deleted or an inmate may not be allowed to receive the letter.

Section 5 Medical Care

Q5-1 I have requested the prison officer in charge and medical staff for medical examination, but I have yet to receive one. What can I do?

There is a serious shortage of physicians at prisons. The Ministry of Justice has acknowledged that not every prison has the required number of physicians and that even prisons which have required number rarely have full-time physicians who work from morning to evening, Monday to Friday. As a result, we have received many reports from inmates that they do not receive timely medical care.

Unfortunately, unless medical staff feels that a medical examination by a physician is warranted, practically an inmate cannot receive a medical examination. First of all, try to explain the symptoms persistently to medical staff.

If that fails, appeal to someone outside of the prison, and have that person negotiate with the prison. Sometimes it is effective having a relative appeal to the Correction Bureau of the Ministry of Justice. If you know an attorney, it would be advisable to consult that attorney.

On the other hand, to propose to the newly established Board of Visitors for Inspections of Penal Institutions (please refer to Section 2) would be another choice. One of Committee members is a physician; he/she may make a recommendation to the prison from professional point of view, if he/she finds the treatment by the prison improper.

Q5-2 I received a medical examination, but the physician failed to provide appropriate medical care. What can I do?

Unfortunately, in practice, higher priority is placed on the diagnosis of the physician who performed the examination than on what the inmate claims. Persistently describe the symptoms and explain that the symptoms have not improved. You may choose to have someone outside of the prison to negotiate. It would be even better if you can have that person explain the symptoms to a physician outside of the prison and ask for that physician's opinion.

Recently, the Tokyo High Court made a judgment that could be an authority on this issue.

On April 26, 2006, the Tokyo High Court decided "Given disadvantages that the said patient suffers resulting from restrictions on gathering medical information on its own, with regard to the explanation to the patient by a physician regarding the medical activities that the physician of the detention facility is going to perform on the patient, more objective and proper explanation will be sought for than to the general public." This is a noticeable judgment because it made clear that physicians are under heavier obligations to explain in providing medical services in prisons than those for the general public.

Or, as stated in Q5-1, to appeal to the Board of Visitors for Inspections of Penal Institutions could be another effective way.

You may choose to appeal for human rights relief to the Bar Association, but the information that the Bar Association can obtain from the institution will be limited. Furthermore, you should note that appealing for human rights relief does not necessarily guarantee that you will receive medical treatment that you would be satisfied with, and it will take considerable time after filing the appeal until you may actually receive medical care that you would be satisfied with. If the symptoms are severe, it is important that you consult an attorney and take the required legal steps.

Q5-3 Since I feel medical treatment in prison is insufficient, I would like to receive medical examination and treatment at an outside medical institution. What can I do?

Article 39 of the Law Concerning the Treatment of Sentenced Inmates (Article 62 of the Law Concerning the Treatment of Inmates) stipulates that if an inmate gets injured or ill, a prison physician (including dentists) shall provide medical care as a rule. If required, however, and only when the warden considers it necessary, the inmate may receive medical care of outside physicians or visit or stay in an outside hospital.

If a patient who apparently needs medical care at an outside medical institution can not obtain approval, he/she may choose to submit his/her comment or proposal to the Board of Visitors for Inspections of Penal Institutions (please refer to Section 2). The Board of Visitors for Inspections of Penal Institutions is not a body to handle complaints or redress each individual human rights abuse, but a physician is included as a committee member, so he/she may make a recommendation for improvement to the prison from professional point of view, if he/she finds the treatment by the prison improper.

Apart from this method, under Article 40 of the Law Concerning the Treatment of Sentenced Inmates (Article 63 of the Law Concerning the Treatment of Inmates), a new system "Medical Care by Appointed Doctor" was established. This system is to approve an inmate to receive medical care by outside physicians that he/she designates if certain conditions are satisfied. These conditions are (i) certain types of illnesses or injuries and seriousness thereof; (ii) the inmate had received treatment by the physician he/she designated before the detention; and (iii) taking into account other conditions it is considered appropriate

for the inmate to receive such treatment. When such conditions are met, the inmate may receive medical treatment he chose at his own expenses. Further it is required that in accordance with an official instruction such injury or illness must be such complicated injury or illness that the prisons would not be able to provide treatment. When such conditions are not met but the warden recognizes it especially beneficial from the medical point of view, the warden may permit the inmate to receive such medical treatment.

As such, it would not easily be approved to receive medical care of an appointed doctor, if you have not been a patient of the physician, or if you feel insufficient while receiving a certain medical treatment of a prison doctor.

In addition to the preceding requirements, the inmate who applied for medical treatment by an appointed doctor must submit prima-facie documents within one month when required by the prison. Of course, you have to find an appointed doctor who agrees to give you medical treatment. Therefore, to use this system, you inevitably need reliable outsiders (favorably an attorney) who work for you to gather reference materials and find a possible appointed doctor.

Section 6 Punishment

Q6-1 Under what circumstances would I be subject to punishment?
What are the consequences of punishment that would be to my disadvantage?

Major cases when an inmate is subject to disciplinary punishment under the Law Concerning the Treatment of Sentenced Inmates are as follows (Article 105, Paragraph 1 of the Law Concerning the Treatment of Sentenced Inmates (Article 150, Paragraph 1 of the Law Concerning the Treatment of Inmates)):

(i) when the inmate has violated a rule stipulated by the relevant prison; and
(ii) when the inmate has violated an instruction given by a prison officer.

It is a problem that each prison prohibits actions in such a detailed and broad manner by the rules. This section, however, discusses the actual practices.

In practice, when an inmate gets in bad with a prison officer, he/she may be subjected to severe punishment for even a minor rule violation.

Primary types of punishment are as follows (Article 106 of the Law Concerning the Treatment of Sentenced Inmates (Article 151 of the Law Concerning the Treatment of Inmates)):

(i) Reprimand
(ii) Ban on using articles self-supplied, etc., for not more than 15 days
(iii) Ban on reading books, magazines, etc., for not more than 30 days
(iv) Curtailment of the estimated remuneration due, of less than one third
(v) Confinement for not more than 30 days (when the circumstances of the case are serious, 60 days)

Under confinement punishment, the inmate is banned from the following activities:

(i) Using articles self-supplied, etc.
(ii) Receiving religious instruction Reading books, magazines, etc.,
(iii) Engaging in self-contract works
(iv) Being visited
(v) Sending and receiving letters

In addition, restriction will be imposed on length of exercise and frequency of taking a bath.

While under confinement punishment, inmates will be, as a rule, detained in a solitary cell, and correctional treatment will be performed but no more than is appropriate for the order of behaving him/herself (Article 107 of the Law Concerning the Treatment of Sentenced Inmates (Article 152 of the Law Con-

cerning the Treatment of Inmates)).

When an inmate receives punishment, his/her privilege (Article 66 of the Law Concerning the Treatment of Sentenced Inmates (Article 89 of the Law Concerning the Treatment of Inmates)) will be canceled, and his/her class of the privilege (classification set forth under the Enforcement Regulations) is usually reduced to Class 5 category. Consequently, the inmate suffers disadvantages in all aspects of prison life, including less frequent visit and letter exchange, and less opportunity to purchase or use items at his/her own expense.

Q6-2 What is the procedure for imposing punishment?

When a prison officer reports that an inmate under his/her supervision has violated a rule, first an investigation ("interrogation") is conducted. (the supervising officer may conduct interrogation himself/herself.) The inmate shall be, in writing, notified of (i) the time and date or time limit that the inmate should explain him/herself; and (ii) summary of the fact that caused the punishment, in advance, and be given a chance to offer excuses.

While the inmate is under interrogation, he/she is generally placed in a solitary cell. After the interrogation, the prison prepares a written statement of the inmate.

Next, to decide whether to impose punishment, the inmate is called to the meeting of the disciplinary punishment council, which is made up of prison officers at management level, and the inmate is assisted by other prison officer such as the chief of the Education Section. Although a chance to offer excuses is given to inmates, examination of witness or retaining an attorney is not allowed.

If you want to contest the decision of the punishment, you may file the Applying for Examination (Article 112 of the Law Concerning the Treatment of Sentenced Inmates (Article 157 of the Law Concerning the Treatment of Inmates)) to the head of the relevant Division of Correctional Jurisdiction. (As for the Applying for Examination, please refer to Q3-2.)

Q6-3 A prison officer accused me of violating a rule, and subjected me to interrogation. How can I protect myself from receiving unfair punishment?

First, to prevent receiving punishment, it is necessary to consistently assert the truth during the interrogation and prevent the investigator from taking a false confession statement. The same holds true for the disciplinary punishment council hearing. If the inmate confesses to the violation, that would only make it easier for the disciplinary punishment council to impose the penalty.

However, in practice, rarely will the claim by the inmate be taken into account in the disciplinary procedure. In addition, if the inmate denies rule violation, the disciplinary punishment council may decide to impose even heavier punishment for the reason that the inmate is not repentant. You have to be careful.

Q6-4 I received unfair punishment. How can I contest the punishment?

Previously, there was no avenue for filing appeal against the punishment imposed, but under the Law Concerning the Treatment of Sentenced Inmates a new system for appealing is provided, and inmates may file the "Applying for Examination." (Please refer to Section 3.)

Inmates have to file the Applying for Examination for him/herself and may not retain an attorney. The Applying for Examination shall be made, in writing, within 30 days starting from the next day of the announcement of such punishment by the subject inmate him/herself. In case of a punishment over a long period of time, he/she would have to get an application form while under the punishment, if he/she wants to contest, so as to be able to file in time.

The superintendent of regional correction headquarters makes decision responding to the Applying for Examination. If the inmate is unsatisfactory with the decision, he/she may file the Applying for Re-Examination to the Minister of Justice, which shall be submitted in writing, within 30 days starting from the next day of the announcement of such decision.

If the person is still unsatisfactory with the result of the Applying for Re-Examination, he/she may file a lawsuit. (Please refer to Section 10 with regard to litigation.)

Section 7 Protection cell & Restraining Device

Q7-1 Under what circumstances could I be placed in a protection cell?

Article 56, Paragraph 1 of the Law Concerning the Treatment of Sentenced Inmates (Article 79, Paragraph 1 of the Law Concerning the Treatment of Inmates) permits a prison to detain inmates in a protection cell in case of the following:

(1) When the inmate may inflict injury upon him/herself
(2) If any of the following cases applies to the inmate and specifically required in order to maintain discipline and order in the penal institution:
    (i) When the inmate yells or causes noise by ignoring prison officer's orders to stop
    (ii) When the inmate may assault or inflict injury on another individual
    (iii) When the inmate may destruct or contaminate facilities, equipment or other property of the penal institution

In the past, however, there were cases where inmates were detained in a protection cell for a purpose of discipline. Further, inmates suffered from mental illness or deterioration were placed in a protection cell for considerable time because of their abnormal behavior (making strange sounds, contamination, etc.) without providing proper medical treatment to ease the symptoms.

Q7-2 How long would I be placed in a protection cell?

Article 56, Paragraph 3 of the Law Concerning the Treatment of Sentenced Inmates (Article 79, Paragraph 3 of the Law Concerning the Treatment of Inmates) provides that an inmate placed in a protection cell shall be released within 72 hours, however, it also sets forth "if there is a need to be continued," the prison may extend the period every 48 hours.

Therefore, there remains fear that an inmate may be placed in a protection cell for an indefinite period of time.

Q7-3 What are the prison's responsibilities while I am in a protection cell?

First, placing an inmate in a protection cell must be based on the warden's orders (Article 56, Paragraph 1 of the Law Concerning the Treatment of Sentenced Inmates (Article 79, Paragraph 1 of the Law Concerning the Treatment of Inmates)). In the event there is an urgent need to place an inmate in a protection cell, however, it is set forth that prison officers may place the inmate in the protection cell without seeking for the warden's orders (if such is a case, report to the warden shall be made without delay)(Paragraph 2 of same Articles).

Next, an inmate must be promptly released from a protection cell when the reason for placing him/her in a protection cell has been resolved (Paragraph 4 of same Articles).

Further, before placing an inmate in a protection cell or extending the time of restraint, the prison must consult with a physician who is an officer of the criminal institution about the physical conditions of the inmate (Paragraph 5 of same Articles).

And to videotape inside of a relevant protection cell is instructed.

Q7-4 Under what kind of situations is restraining device used?

The "leather handcuffs" once a center of controversy as being used as a torture device were abolished.

Currently class 1 and class 2 handcuffs are permitted to use under the law. In addition to arresting rope and handcuffs, straitjacket is newly designated. (Please refer to the drawings below.)

Arresting rope and handcuffs may be used when escorting inmates or when an inmate may take any of the following actions:

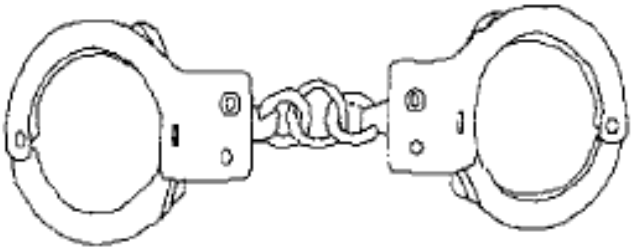
(i) When the inmate may escape
(ii) When the inmate may inflict injury upon him/herself
(iii) When the inmate may destruct facilities, equipment or other property of the penal institution

Comparing with the time leather handcuffs had been used, the frequency that the new Class 2 handcuffs are used is remarkably decreasing, and currently they are mainly used to prevent an inmate from inflicting injury upon him/herself or committing suicide. And the shape has changed from previous fixing wristband with belt wrapped around the abdomen; therefore, they are often used to secure both hands behind the back. To hold both hands behind the back can be quite painful depending on an individual. We have to

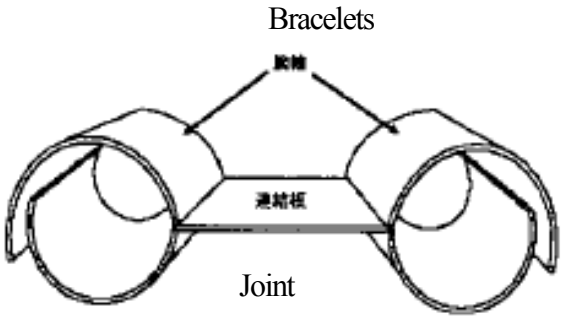
make sure to prevent handcuffs from using as a tool for torture.

Handcuffs(Class 1)、Handcuffs(Class 2)、Strait Jacket
(from the Schedule of the Ordinance for Enforcement)

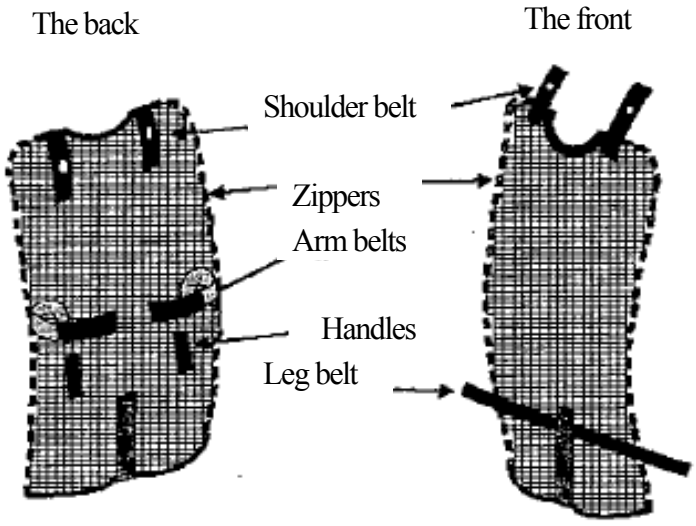
Handcuffs (Class 1)



Handcuffs (Class 2)



Strait Jacket



Section 8 Assault and Bullying

Q8-1 I was injured in an assault by a prison officer. How can I protest the incident?

You may make the "Stating Facts" in accordance with the Law Concerning the Treatment of Sentenced Inmates if you were battered by a prison officer (Please refer to Section 3).

This Stating Facts may be done in the following cases (Article 118 of the Law Concerning the Treatment of Sentenced Inmates (Article 163 of the Law Concerning the Treatment of Inmates)):

(i) When assaulted
(ii) When unreasonably handcuffs or strait jacket were used
(iii) When placed in a protection cell unreasonably

As a rule, this filing shall be made, in writing, within 30 days starting from the next day of occurrence of the fact (for instance, the day of an assault) to the head of the relevant superintendent of regional correction headquarters.

The superintendent shall investigate the incident and notify the result. If discontent with the result, further you may file the Stating Facts regarding the notified result to the Minister of Justice. This filing also has to be done in writing within 30 days starting from the next day of receipt of the notification.

Other than the Stating Facts, you may (i) file appealing for human rights relief to the Legal Affairs Bureau; (ii) file appealing for human rights relief to the Bar Association; or (iii) file a lawsuit against the Japanese government for damages.

However, in the case of appealing for human rights relief, the Legal Affairs Bureau or the Bar Association is not vested with power to enforce investigations and it is difficult and problematic to prove the assault, etc. Further, there is another disadvantage in appealing for human rights relief to the Bar Association that it would take time to reach to the conclusion. (For the details, please refer to Section 12.)

A lawsuit against the Japanese government for damages would be difficult to win, and the likely negative consequences of the suit would be placement in solitary confinement by day and night.

The Board of Visitors for Inspections of Penal Institutions (please refer to Section 2) is not for redress of human rights abuses case-by-case, but if you inform the board of the violation made by a prison officer on you may have some effect leading to solution.

Q8-2 I still have prominent scars left from an assault by a prison officer. What should I do to protect the evidence?

First, promptly request for an examination by a physician, and tell the physician the symptoms in detail. It is important that you insist on requesting an examination by a physician. During the examination, ask the physician to accurately record the condition and cause of the injury in the medical records. Ask the physician to take photographs, as some physicians are willing to do so. It is also a good idea to insist on receiving the necessary tests.

It is also important for you to record the condition of the injury before it heals, write to a person outside of the prison about the injury in detail, and have him/her visit you to directly see the injury in person. Likewise, it is important to draw sketches of the injury in a notebook. When a person visits you, have the person record your conditions during the visit, and have the record dated and notarized.

Combined with these steps, if you succeed in retaining an attorney, then have the attorney take the procedure for preserving the evidence. This procedure is taken to preserve evidence that may be concealed or discarded by such means as taking their photographs before the suit is filed. The procedure is presided by a court. As evidence preservation is conducted on the premise that a suit will be filed, the precautions for filing a suit must also be observed. (Please refer to Section 10.)

Section 9 Solitary Confinement by Day and Night (Strict Solitary Confinement)

Q9-1 What kind of treatment is solitary confinement by day and night?

Article 53 of the Law Concerning the Treatment of Sentenced Inmates (Article 76 of the Law Concerning the Treatment of Inmates) permits the prison to segregate an inmate from the other and to place him/her in a solitary cell by day and night. The following individuals shall be placed in solitary confinement:

(i) Individual who may hamper discipline and order of the criminal institution, by making contact with other inmates.

(ii) Individual who is susceptible to psychological or physical pressure from other inmates, and there is not any other way to avoid such.

An inmate in solitary confinement will be placed in a solitary cell all the time except for exercises, bathing, and visits. The inmate will do exercises and bathing all by him/herself in extremely small facilities for exclusive use of an inmate in a solitary cell. Unless the inmate receives a visit, he/she may not talk with others except prison officers. This strict solitary confinement by day and night is sometimes called strict solitary confinement.

Q9-2 Is the prison required to provide a reason for placing an inmate in solitary confinement by day and night?

Solitary confinement is, as a rule, limited to three months, but the duration can be extended every month "when the extension is needed specifically".

It is provided that the prison shall notify the inmate of the reason for the segregation (Article 4 of the Official Instruction concerning Segregation of Sentenced Inmates). Further, it is provided that the prison shall provide the segregated inmate with "close and frequent monitoring," and "consultation, advice and other appropriate measures to remove the causes of the segregation."

The relevant inmate may file the "Applying for Examination," which is a part of the Grievance Mechanism for Sentenced Inmates, to the Regional Correction Headquarters Superintendent (Article 112 of the Law Concerning the Treatment of Sentenced Inmates (Article 157 of the Law Concerning the Treatment of Inmates). For the details of the Applying for Examination, please refer to Q3-2). In the event of discon-

tent with the decision, the person may file the "Applying for Re-Examination" to the Minister of Justice (Article 117 of the Law Concerning the Treatment of Sentenced Inmates (Article 162 of the Law Concerning the Treatment of Inmates). (Please refer to Q3-4.)) Ground of the segregation shall be presented as the outcome of these procedures.

In addition, inmates may file a Making a Complaint to the Minister of Justice, the inspector general who will conduct inspection on site, or the warden (Article 121 of the Law Concerning the Treatment of Sentenced Inmates (Article 166 and beyond of Law Concerning the Treatment of Inmates) Please refer to Q3-5.)) Upon the receipt of complaint, the recipient is liable to process such in good faith and to inform the person who filed such of the result; therefore, a reason of the segregation may be explained.

Q9-3 What is court precedence on solitary confinement by day and night?

There are many cases in which solitary confinement by day and night has been disputed. Only Tottori District Court in March 1985 and Tokushima District Court in July 1986 ruled that solitary confinement is illegal, but, unfortunately, both decisions were overturned by appellate courts (high courts).

Although the district courts that ruled the practice to be illegal found such practice to force upon the inmate a closed and unnatural life that is nothing like how the life of human beings should be, most courts have ruled that the form of confinement is within the broad discretion of prison wardens. The protection of human rights has been ignored in the case of inmates.

The new law, however, clearly expresses that solitary confinement by day and night is a disposition unbeneficial to inmates and may be imposed only when justified by certain reasons. Therefore, this concept may be improved through the judgment of the Complaint Review Panel (please refer to Q3-4) or court cases in years ahead.

Q9-4 If I am placed in solitary confinement by day and night, what can I do to be returned to prison factory?

This is an extremely difficult question to answer. First, you may persistently keep asserting that there is no reason to be segregated through procedures mentioned above such as the Making a Complaint (please refer to Q3-5), the Applying for Examination (please refer to Q3-2), or the Applying for Re-Examination (please refer to Q3-4). When filing the Applying for Re-Examination, opinions of the Complaint Review Panel will be heard as well; this may result in different judgment from previous ones.

On the other hand, you may inform the Board of Visitors for Inspections of Penal Institutions (please refer to Section 2) of the problem in the extension of period of segregation. Since the Board of Visitors for Inspections of Penal Institutions is entitled to make recommendations, if any, to the warden of the institution regarding general operations of the penal institution, it may inspect the facility as of whether the procedures to extend the term are rightfully executed and make recommendations for improvement.

Section 10 Lawsuit (Litigation)

Q10-1 How can I file a lawsuit concerning mistreatment?

As the prison warden has the authority to decide how inmates are treated, you will file a lawsuit claming that the decision by the warden was illegal.

Such a lawsuit may be carried out in one of the following two ways.

1 Administrative litigation (litigation for decision cancellation)

The first way is to demand the cancellation of the prison warden's decision. This would be administrative litigation (which means a type of litigation that contests the legality of a decision made by administrative agencies seeking for cancellation of the original decision) based on the Administrative Case Litigation Law. The defendant would be the Japanese government.

2 Civil litigation (lawsuit against the Japanese government for damages)

In the second type of lawsuit, the inmate would claim compensation for moral damages he/she suffered due to the illegal decision. This type of litigation is often called a lawsuit against the Japanese government for damages, but it is a type of civil suit. The defendant, in this case, would be the Japanese government.

Although the administrative litigation would seem more straightforward and preferable as the plaintiff is demanding for the cancellation of the warden's decision, due to the specialized and technical nature of such administrative litigation, if there is not a "benefit of suit," i.e., "sufficient benefits and needs to be settled through lawsuit," the case would not be accepted. Therefore, since the demand for the cancellation of the warden's previous decision has been considered to have no "benefit of suit", most cases have been dismissed before the trial (i.e., lost lawsuit).

However, as the Administrative Case Litigation Law that stipulates matters concerning administrative litigation was amended to accept that there exists a benefit of suit when "legal benefit to be redressed through cancellation of disposition or decision still exists after the effects of the disposition or decision have terminated through lapse of time or otherwise," some court cases may be judged as to have a benefit of suit (for example, cancellation of a previous decision may change his/her class of the Prisoner's Privilege System) in the future, and we have to keep monitoring the further operation of the law.

As a general rule, administrative litigation (lawsuit for cancellation) must be filed within six months from the day when the person learnt the disposition or arbitration.

When it is considered difficult to bring administrative litigation before court, an inmate would file a lawsuit against the Japanese government claiming for moral damages.

Although the amount of damages differs by case, the amounts awarded by courts are generally extremely small.

You may file a lawsuit by yourself, but first you have to find out as of whether really the litigation should be brought up or not. And since litigation requires special procedures, you had better consult with and retain a lawyer (to this effect, please refer to Section 8).

If you are unable to take court procedures in a legal dispute due to lack of money, you may use the Civil Legal Aid Program. For details of the Civil Legal Aid Program, please refer to Section 11.

Q10-2 Is there a chance that an inmate would win a lawsuit against the Japanese government (prison)?

1 When an inmate files a lawsuit against the Japanese government for damages caused by assault and punishment he/she received, unfortunately, under the current conditions, there is little chance that he/she would win the suit.

(1) First, courts, as a rule, respect the decisions made by the administration. According to court precedence, in general, prison wardens are deemed to have broad discretion, and the decision of a prison warden is considered illegal only when he has deviated from or abused his/her discretion. In essence, courts inherently envision an extremely limited scope of cases that inmates can win.

(2) Next, witnesses to incidents that occur in a prison are, in most cases, only prison officers. Even if another inmate has witnessed an incident, he is unlikely to give a testimony that is unfavorable to the prison for fear of a backlash. Therefore, there is little chance that you will obtain testimony from a third party.

(3) In addition, prison officers keep extensive records every day to prove the righteousness of the prison's decisions. All these records are used as evidence to support the prison's case. Therefore, it would be extremely difficult for the inmate to prove his/her claim to be true.

(4) For all these reasons, although numerous inmates have sued the Japanese government, very few have won and most have lost. Moreover, it is not rare that even those who barely won the first instance (district courts) have had the decisions overturned in the appellate courts (high courts).

Recently, however, such tendency has been changing, little by little, and in a few court cases, inmates were granted state compensation for damages.

2 The newly enforced Law Concerning the Treatment of Sentenced Inmates allows inmates to communicate with broad range of outsiders by visits or exchanges of letters. (Please refer to Section 4.) That means inmates may file a lawsuit against the Japanese government as he/she suffered from unreasonable restriction on communications with outsiders.

(1) In this case, an inmate would have greater chance to win than cases of 1.
Since issues of "whether visit and outside contact was restricted or not" and "what kind of visits and contents of outside contacts were restricted?" will be clarified from the record the prison produces, the existence of the facts is not subject to dispute, which is different from the case 1 mentioned above, and

courts may judge only as of the legality of the decision by the prison.

(2) For example, if a prison doesn't approve a visit pursuant to old practice under the Prison Law, while under the Law Concerning the Treatment of Sentenced Inmates it should be permitted; the decision of the prison is likely to be judged illegal.

3 We have stated that there are some ways to contest treatment inmates received in addition to bringing up a lawsuit against the government (litigation), and again we summarize here as follows:

(1) First, if you are discontent with a certain decision imposed on you by a warden, you may file the Applying for Examination (Please refer to Q3-2.) to the superintendent of regional correction headquarters that have jurisdiction over the area of the relevant prison. You may also make the Stating Facts (please refer to Q3-3) regarding a certain action made by a prison officer to the head of the relevant Division of Correctional Jurisdiction.

(2) Secondly, you may submit a complaint regarding the decision by the warden or treatment you suffered to the Minister of Justice. For the details regarding the Grievance Mechanism, please refer to Section 3.

(3) You may choose to file appealing for human rights relief to the Human Rights Protection Committee under the Bar Association. For the details, please refer to Section 12.

Q10-3 What should I do to preserve evidence to improve my chances in the lawsuit?

Inmates basically cannot become involved in the preparation of documents by prison officers.

You can, however, refuse to sign the written statement after interrogation if the prison officer fails to correctly write your statement. Therefore, it is important that you make an effort to have the officer accurately write in the statement what you remember about the incident.

One of the ways you can correctly record memories is to keep a diary. Although you need to get permission of the prison warden even to keep a school notebook in your cell, you may think of asking for permission for the notebook by stating that you will use it as a notebook for memo, and keep a diary. You may also keep records by receiving permission for the notebook by stating that you wish to keep information for when you file the lawsuit.

In addition, as prisons, as a rule, properly store all the request forms submitted by inmates, you can submit as many requests as possible so they may serve as records. For example, if you are assaulted by a prison

officer, repeatedly write a detailed account of the incident in request forms, and repeatedly request for medical care. If you can't obtain even request forms, in addition to the "Stating Facts" (please refer to Q3-3), you may need to make the "Making a Complaint" (please refer toQ3-5) with regard to such denial of request forms. Then, if the requests were made in writing, at the very least, you will have established evidence that many such requests have been submitted.

Finally, you may use a court procedure called preservation of evidence before filing the civil suit to prevent relevant documents from being altered. This procedure requests a judge to visit the prison, order the prison to provide relevant documents, and take copies of the documents so they can be used for a trial in the future. As this procedure is practically impossible without the services of an attorney, it should only be used if you plan to file a lawsuit by retaining an attorney.

Q10-4 Is there a drawback to an inmate filing a lawsuit against the Japanese government (prison)?

When an inmate files a lawsuit against the Japanese government or the prison, the authorities will regard the inmate as a rebellious, and will feel that he/she should not come in contact with other inmates. Therefore, if you file a lawsuit, the chances are great that you will be placed in solitary confinement by day and night (strict solitary confinement).

The possibilities are also great that your class under the Prisoner's Privilege System may be adversely affected. If this happens, you would suffer disadvantages in all aspects of prison life.

Thus, filing a lawsuit is accompanied by great risks.

Furthermore, as mentioned before, as chances of wining the lawsuit are generally slim, you must give consideration with all possible deliberation before actually filing the lawsuit.

Q10-5 How can I decide whether or not to file a lawsuit?

As described above, under the current conditions, you may have to expect serious disadvantages in treatment as the consequences of filing a lawsuit. Therefore, unless you are mentally and physically capable of withstanding strict solitary confinement until you are released from prison on the expiration of term, it would be difficult to sustain a trial.

As the chances of wining a lawsuit are minimal, it would be impractical to file a lawsuit for the purpose of

actually receiving compensation.

It would be worthwhile to file a lawsuit if you cannot forgive the prison for the severe treatment and would like to prevent a similar incident from recurring in the future, even at the cost of being placed in strict solitary confinement until release on the prison term expiration.

Q10-6 Should I retain an attorney to file a lawsuit?

Since trials require specialized knowledge, you should retain an attorney.

As such cases are extremely complex and there is little chance of winning, it would be difficult to find an attorney who is willing to take the case. Even if you win the case, the amount of compensation would normally be far less than the attorney's fees.

If the case involves censoring of a book or refusal to send a letter that does not require the plaintiff to contest the facts but only the illegality of such an act, the inmate may be able to carry out the lawsuit without retaining an attorney if he studies the litigation procedure (plaintiff representing himself); actually there are some cases that prevailed in litigations without an attorney.

When the case requires the plaintiff to contest facts (e.g., in a case where the inmate was assaulted by a prison officer), the trial would entail examination of witnesses, who would be prison officers. Therefore, it would be extremely difficult to prepare for the case and to proceed with the trial without an attorney.

In order to determine whether your case is worthwhile to file a lawsuit or not, you had better consult with professionals regarding legal matters. (Some bar associations provide consultation service by visiting a facility, but very rare at preset. You should ask your relative or acquaintance to go for consultation.)

Section 11 Civil Legal Aid Program

Q11-1 What is the Civil Legal Aid? Is it available to inmates?

1 What is legal aid?

Legal aid is a system that attempts to ensure the right to trial to economically disadvantaged individuals who wish to ask an attorney to sue by introducing an attorney or lending attorney's fees when such individuals are unable to take court procedures in a legal dispute due to lack of money

The system had been primarily run by the Japan Legal Aid Association, but from October 2006, the Japan Legal Support Center (whose pet name is "Houterasu." It is a new corporation established in April, 2006 in order to provide information and legal services so as to help any person to settle troubles in need.) assumes the task and operates it as the "Civil Legal Aid."

2 To be eligible for legal aid, an individual must satisfy the following conditions:

(i) Unable to pay for expenses for court procedures on his/her own;
(ii) There is a possibility of winning the case; and
(iii) The purpose is suitable for the intention of legal aid system (the purpose shall be rightful).

With regard to these conditions, the managing director of each local branch of the Japan Legal Support Center will examine each case.

Most prison inmates would satisfy condition (i), and we believe condition (iii) would pose no problem in general. The problem, however, is condition (ii). In particular, when the inmate is filing a lawsuit to claim for damages against the prison defendant for violation of his/her rights (lawsuit against the Japanese government for damages), regardless of the number of reasons that the one who is filing the suit (plaintiff) may present, he/she would often have difficulty finding evidence to support those reasons. Therefore, to be considered satisfied the condition of (ii) "there is a possibility of winning the case," materials have to be prepared, when applying for a legal aid, to show that "you have sufficient supporting evidence to win the trial." (Regarding methods to preserve evidence to improve the chance in the lawsuit, please refer to Q10-3.)

3 You have to repay expenses you borrowed later.

As the legal aid is a system to lend the applicant legal expenses, the applicant have to repay the borrowing,

as a rule, by monthly installment after the legal aid was determined.

4 For the details,

In practice, the attorney whom you consult will most likely file the application for legal aid (this procedure is often referred to as "mochikomi"). For further information, please contact a Bar Association in your area or a branch of the Japan Legal Aid Association.

Section 12 Appeal to Bar Association for Human Rights Relief

Q12-1 What is an appeal for human rights relief to the Human Rights Protection Committee of the Bar Association?

Human Rights Protection Committee of the Bar Association is placed within each Bar Association in an area with a district court and the Japan Federation of Bar Associations in Tokyo (with the exception of Tokyo, where three Bar Associations exist). Members of every Human Rights Protection Committee are attorneys. The Human Rights Protection Committees are actively involved in tackling various human rights violations and handle appeals from prison inmates and in other pubic facilities, psychiatric hospitals, etc.

Q12-2 Under what circumstances can I appeal for human rights relief?

If you feel that there has been a violation of human rights, whether the victim is yourself or another inmate in your cell, you may file an appeal for relief. It is necessary, however, to state in your own words specifically "who's," "what right was" violated, "how". Otherwise, the appeal cannot be conveyed to the committee and the committee cannot take further actions.

Q12-3 How can I file an appeal for human rights relief?

Write the document (put the title, "Appeal for Human Rights Relief") specifically and mail it to the Bar Association. Mailing the document is the only way to seek for relief in person claiming occurrence of human rights violation from inside a prison.

Unlike filing a lawsuit, there is no revenue stamp fee or handling fee required for an appeal for human rights relief. The only cost to the inmate is postage.

Q12-4 If the appeal is accepted, can I receive the relief?

When the Bar Association receives an appeal for human rights relief, in many cases, attorneys belonging to its Human Rights Protection Committee will investigate the facts. The investigation is conducted to determine whether the facts claimed in the appeal actually exist and, if so, what human right violation such found facts would constitute.

If the committee finds that a human right has indeed been violated, it proceeds to take actions;
making a warning (this is to notify the violator or his/her supervising institution the opinion of the Committee and seek for his/her apology);
making a recommendation (this is to require the violator or his/her supervising institution to take appropriate steps to provide relief to the victim or prevent future violations); or
making a request (this is to expect the realization of the purpose of the appeal by conveying to the violator or his/her supervising institution the opinion of the committee).

The Human Rights Protection Committees do not, however, provide tangible relief to individuals (e.g., removing the inmate from prison and taking him/her to a hospital). There is no legal basis for providing that type of relief.

The actions of the Human Rights Protection Committees are intended to call the attention of an institution that has committed a human rights violation by the authority of the Committees and by announcing their opinions through the press to urge the institution to make an improvement and, at the same time, to prevent a similar type of human rights violation in the future. In this respect, please note that relievable effect to the victim whose human rights are currently being violated is limited.

Q12-5 If the appeal is rejected, wouldn't I receive even harsher treatment in prison?

There have been some reports that prisons improve the treatment of inmates whose appeals are received by the committees. The reason for that seems that a prison regards an inmate whose appeal has been received as an individual who requires special care, because although he/she may be like any other inmate, he/she does have contacts with the outside world, and fears that the institution may be labeled as a "violator" if it treats him/her improperly. On the other hand, there is little information on how inmates whose appeals are refused are treated by prisons, but there appears to be little change in how they are treated.

Based on the information above, it is most critical, first of all in appealing for human rights relief, to have

your appeal received by the Human Rights Protection Committees. As mentioned in Q12-2, an appeal for human rights relief is more likely to be received if it provides the specific facts in detail. In other words, the document must be written in such a way so the reader can most understand the facts. On the other hand, if the document merely provides a lengthy account of the anger and sorrow of the inmate, the reader would not be able to understand what actually happened, and would refuse to accept the appeal.

Section 13 Issues Unique to Foreign Nationals

Q13-1 Can I exchange letters and receive visits of my family using my native language?

You may receive visits and exchange letters in your native language. For the details such as possible recipients or visitors or frequency of letters or visits, please refer to Section 4. Letters, both those received and sent, may be, however, subject to inspection of the contents. Unless there are special reasons, translation or interpretation expenses incurred for such inspection may not be charged to the inmate him/herself. (Article 103 of the Law Concerning the Treatment of Sentenced Inmates (Article 148 of the Law Concerning the Treatment of Inmates)). Articles 26 and 73 of the Enforcement Regulations of the Law Concerning the Treatment of Sentenced Inmates)

Due to the increase in the number of foreign-national inmates, Fuchu Prison and Osaka Prison have set up international affairs sections, where expert officers and others who are fluent in foreign languages are placed to deal with the treatment of foreign-national inmates. Other prisons are also making efforts to accommodate the needs of foreign-national inmates.

At Fuchu Prison and Osaka Prison, it is possible for a foreign-national inmate to speak in his/her native language with a visitor provided the attendance of an interpreter. This may be limited, however, to certain days, if the language is not handled by the full-time staff. For a smooth visit, it would be better to confirm a prison officer of the availability of an interpreter that you want to use and inform the information to your relatives or friends beforehand.

In addition, Fuchu Prison is linked to Tokyo Detention Center and Tochigi Prison, and Osaka Prison to Osaka Detention Center and Nagoya Detention Center by teleconference system so inmates at these prisons and detention centers can speak to visitors in their native languages by having an interpreter via the system.

Even if a foreign-national inmate is incarcerated at another prison, if his/her native language is handled by the international affairs sections of the two prisons mentioned above, the prison should be able to inspect letters written in foreign languages by having them translated, although it may take considerable time for translation depending on the language. Therefore, the inmates should be able to send and receive letters in his/her native language.

If a prison guard denies your request to exchange letters in your native language, or charges for the translation, ask the guard to request the International Affairs Section at Fuchu Prison or Osaka Prison to translate your letters. (If you are still not happy with the treatment, you may use the program of Applying for Examination mentioned in Q3-2.)

Q13-2 Due to religious reasons, I cannot eat certain types of food. Will the prison accommodate my request?

A direction of "Regarding special menus for those who require special food due to religious reasons or great difference in eating customs" (March 28, 1995 Direction of Director General of the Correction Bureau of the Ministry of Justice) allows prison wardens to provide different menus to inmates who require special food due to religious reasons or great difference in eating customs. For example, the prison may provide bread or noodles instead of rice as the staple food. Meals, however, cannot be substituted merely to accommodate particular eating habits or preferences.

If an inmate declares that he/she is Muslim, the prison will not serve him/her any pork, and should serve him/her halal canned food for meat. If an inmate declares that he/she is Hindu, the prison will not serve him/her any beef.

If a Muslim inmate requests to fast during Ramadan, some correctional facilities will serve meals only after sunset during the Ramadan period.

Q13-3 I heard there is a system that allows a foreign-national inmate to serve his/her sentence in his/her home country. What kind of system is it?

As Japan has ratified a convention regarding transfer of sentenced persons (the Convention on the Transfer of Sentenced Persons: Convention No. 112 of the Council of Europe), if the home country of the inmate is one of the State Parties of this convention, the inmate may serve his/her sentence in his/her home country under certain conditions.

As of now, the following countries are the State Parties of the convention (according to the Council of Europe's web site; 61 countries as of August 24, 2006, listed in alphabetical order).

Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bolivia，Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Former Yugoslav Republic of Macedonia, Malta, Mauritius, Moldova, Montenegro, Netherlands, Norway, Panama, Poland, Portugal, Rumania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tonga, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States of America, Venezuela

The conditions for you to serve your sentence in your home country are that you consent to the transfer, that the crime you committed is also treated as a crime in your home country, that the Japanese government agrees to the transfer, and that the home country agrees to the transfer, etc.

If your home country is among the State Parties on the Convention, the correctional facility is required to inform you of the contents of the Convention. For details, please ask your prison guard.

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