Information for Prison Inmates

November 2016 (Fourth Edition)

Japan Federation of Bar Associations

Foreword

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 will provide inmates with precautions or a guidebook. Such information, however, is not sufficient to prepare inmates for imprisonment.

This booklet is to give advices based on our experience as lawyers with consulting inmates or receiving appeals for human rights relief, including cases where only the explanations of the prison are considered to be insufficient, and questions frequently asked, bearing in mind the actual operations in prisons. Hopefully this will help any of inmates for solving problems.

The first edition of this booklet was published in 2003 under the old Prison Law and the first revised edition was published under the Law Concerning the Treatment of Inmates which was enacted in 2005 where partial amendment was made regarding the treatment of detainees, and the second revised edition was published in 2006 at overall amendment of Act on Penal Detention Facilities and Treatment of Inmates and Detainees (hereinafter referred to as "Law Concerning the Treatment of Inmates") that includes amendment of treatment of inmates sentenced to death and unsentenced detainees. By these amendments, contact with the outside world, such as visits and communication, seemed to increase, however, many says that the contacts thereafter has been decreasing gradually.
Therefore, we consider the actual operation as well as the philosophy of the amended law, so that this commentary is in line with the operational actual treatments.
If you have any comment or request on this booklet, please do not hesitate to contact us.

March 2016

Japan Federation of Bar Associations (JFBA)

Information for Prison Inmates

(Fourth Edition)

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Section 1 Contact with the Outside World

Q1-1 Who can visit an inmate?

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 the inmate; (ii) person with the necessity to have a visit in order to carry out a business pertaining to personally, legally, or occupationally important concern of the inmate (hereinafter referred to as "Executor of Important Business"); and (iii) person whose visit is deemed instrumental to the reformation and rehabilitation of the inmate.

In addition, application to visit an inmate by the other people may be approved, since Article 111, Paragraph 2 of the Law Concerning the Treatment of Inmates sets forth "…. if it is deemed that there is a circumstance where the visit is necessary for the maintenance of good relationship with the person or for any other reasons, and if it is deemed that there is no risk of causing either disruption of discipline and order in the penal institution or hindrance to the adequate pursuance of correctional treatment for the sentenced person, then the warden of the penal institution may permit the sentenced person to receive the visit."

Specific explanation of possible visitors will be given in Q1-2.

Article 66 and succeeding articles of the Enforce Regulation of Law Concerning the Treatment of 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.

1 Those who can visit

(1) Relatives

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

Although an adopted child or parent is also considered as "relatives", if the adoption is considered as for "the purpose of visiting prisons", a prison prohibits the visit.

(2) Executor of Important Business

The following shows major examples of the Executor of Important Business:

(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 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;

In addition, it is permitted, as a rule, a visit by officials of state or local public authorities for an official business.

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

Specifically, the phrase "person whose visit is deemed instrumental to the reformation and rehabilitation of the inmate" means, for example, a guarantor for fidelity after his/her release or those who employ inmates after his/her release. Regarding those who are going to employ inmates, possibility of the employment must be realistic, and the person must be approved to contribute to inmates' reformation and rehabilitation by the visits.

2 Individuals who may visit

The visit applied by friends, acquaintances, former teacher or professor, colleagues, etc. of inmates, will be permitted in general unless the visit disturbs the discipline or order of the prison or disrupts correctional treatment of inmates.

The visits may not be permitted when the relationship between the visitors and inmates is not confirmed. Although previous notification and submission of documents are required for possible visitors, 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. However, it would be better to go through the previous formalities to make a visit smooth.

Exchanging letters before the visits may be effective for friends and acquaintances since their continuous association needs to be confirmed objectively.

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 will decide to deny the visit.

Q1-2 How long can a visit last?

The duration should not be less 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.

Q1-3 In what kind of cases does not a prison officer attend during the visit?

The visits may be without prison officers' observation when the inmates are designated as Restriction Category 2 or higher.
Also, when a civil litigation case against the penal institution is brought by the inmate on ground of the measures taken by the warden of the institution toward the inmate, or any other treatment the inmate received, or an appeal to the Bar Association for human rights relief (please refer to Section11 for appealing for human rights relief) is filed, prison officers are not able to attend an inmate during visit (i) by national or local government official who conducts an inquiry or (ii) by attorneys.

Q1-4 To whom and how often can inmates send letters?

1 Recipients of letters

Under the Law Concerning the Treatment of Inmates, there is no restriction as a general rule (Article 126 of the Law Concerning the Treatment of Inmates).

However, the warden of the institution may prohibit exchange of letters with persons "who have criminal tendencies" or "who are likely to either disrupt discipline and order in the penal institution or hinder the adequate pursuance of correctional treatment for an inmate" (for example, inmates, members of anti-social groups such as gang, an accomplice, a person who has criminal records, a person who was released from the same penal institution, a person who repeatedly disturbs reformation and rehabilitation of inmates, etc.). Sending letters to relatives and communications "in order to carry out a business pertaining to personally, legally, or occupationally important concern of the inmate, such as reconciliation of marital relations, pursuance of a lawsuit, or maintenance of a business" (for the details please refer to the explanation set forth in 1(2) of Q1-1) 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 practice.

2 Frequency

With regard to the number of letters that an inmate may claim to send, although the Law stipulates that the warden of the institution "may impose restrictions necessary for the management and administration of penal institution," the frequency restriction imposed on an inmate may not be less than four times per month (Article 130 of the Law Concerning the Treatment of Inmates).

However, (i) a letter submitted to the Penal Institution Visiting Committee, (ii) letters claiming for review, reclaiming for review, making reports of cases, and the filing of complaints, and (iii) letters to a defense counsels from an inmate who is a defendant or a suspect are exceptionally not counted as the number (Article 79 of Rules of Law Concerning the Treatment of Inmates). For other than these exceptions, very rarely, the letters can be sent more than restricted frequency.

Q1-5 What should I do when the prison interferes with the content of a letter?

The prison may not delete nor erase 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.

However, except for the above-mentioned examples, if the letter as a whole or a part of it is found "inappropriate," the prisons demand rewriting and if you do not agree with rewriting, the parts of the letter may be deleted or 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 will probably be deleted or the letter will be disapproved.

When the prison interferes with the content of a letter?

An prison officer in charge may instruct you 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 disapproval, you may see the instruction as "inappropriate interference." If the issue can be resolved merely by changing expressions, for example, it would be to your advantage to agree to the instruction.

If you disagree with the instruction, you can refuse to make changes. In this case, the prison officer may decide to delete parts of the letter or reject to send the letter. You may then contest the decision by filing the Claim for Review (please refer to Section 7), or, as the last resort, filing a lawsuit (please refer to Section 9).

Q1-6 Are there restrictions on the letters that an inmate can receive?

There is no restriction regarding sender of the letter unless it is considered necessary to do so for reasons of maintaining discipline and order in the penal institution, or the adequate pursuance of correctional treatment of an inmate. 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 will be censored. 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 2 Medical Care

Q2-1 I have requested the prison officer in charge and medical staff for medical treatment, 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 treatment.

Unfortunately, unless medical staff feels that a medical treatment by a physician is necessary, practically an inmate cannot receive a medical treatment. 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. If you know an attorney, it would be advisable to consult that attorney.

On the other hand, to propose to the Penal Institution Visiting Committee (please refer to Section 8) 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.

Q2-2 I received a medical treatment, 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 treatment 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.

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 Q2-1, to appeal to the Penal Institution Visiting Committee could be another effective way. However, as the Committee is not an organization to deal with improvement of treatment of each individual inmate, it is not guaranteed that you will immediately receive medical treatment by appealing to the Committee.

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.

Q2-3 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 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 treatment as a rule. If required, however, and only when the warden considers it necessary, the inmate may receive medical treatment of outside physicians or visit or stay in an outside hospital.

If a patient who apparently needs medical treatment at an outside medical institution cannot obtain approval, he/she may choose to submit his/her comment or proposal to the Penal Institution Visiting Committee (please refer to Section 8). The Penal Institution Visiting Committee 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 63 of the Law Concerning the Treatment of Inmates, a system "Medical Treatment by Appointed Doctor" has been established. This system is to approve an inmate to receive medical treatment by outside physicians that he/she designates if certain conditions are satisfied. This is a system which allows an inmate to receive a treatment at his/her own expenses at approval of medical adequacy considering level of the sickness and injury under the following 5 conditions, (i) presently an inmate an inmate is

sustaining an injury or suffering from a disease, (ii) the name of the physician is specified, (iii) the medical treatment can be provided inside the prison, (iv) his/her injury or disease is difficult to be treated by the treatment in the prison, (v) and the appointed doctor agreed to treat in the prison. Nevertheless, the treatment by appointed doctor may be approved without satisfying condition (iv) if it's accepted as medically beneficial for the inmate.

As such, it would not easily be approved to receive medical treatment of an appointed doctor, 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 3 Disciplinary Punishment

Q3-1 Under what circumstances would I be subject to disciplinary punishment? What are the consequences of disciplinary punishment that would be to my disadvantage?

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

(i) when the inmate refused to comply with the compliance rules stipulated by the relevant prison; and
(ii) when the inmate disobeyed the instruction of a staff member of the penal institution

There are extensive and detailed compliance rules stated by Guide for Life in Prison (or Understanding of Life in Prison) or Compliance Rules for Inmates. Though there might be some problem in the rules, it is important for inmates to read it carefully and understand it well since they will be subject to disciplinary punishment by violating those rules.

In practice, when an inmate is kept an eye on by a prison officer for various reasons, he/she may be subjected to severe punishment for even a minor rule violation.

Primary categories of disciplinary punishments are as follows (Article 151 of the Law Concerning the Treatment of Inmates).
According to the category, degree and gravity of the violence, two or more of (ii) Suspension from the work for a period not exceeding 10 days, (iii) suspension from using self-supplied articles, (iv) suspension of access to books, etc., (v) reduction of incentive remuneration may be imposed cumulatively; and the (vi) disciplinary confinement and the (v) reduction of incentive remuneration may be imposed cumulatively.

(i) Admonition (Reprimand)
(ii) Suspension from the work for a period not exceeding 10 days
(iii) Complete or partial suspension from the use or consumption of self-supplied articles for a period not exceeding 15 days
(iv) Complete or partial suspension of access to books, etc. for a period not exceeding 30 days
(v) Reduction of up to one-third of calculated amount of incentive remuneration
(vi) Disciplinary confinement for a period not exceeding 30 days (if the circumstances are especially serious, for a period not exceeding 60 days)

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

(i) Using self-supplied articles, etc.
(ii) Receiving religious teachings
(iii) Reading books, magazines, etc.,
(iv) Engaging in self-contracted works
(v) Receiving visits
(vi) Sending and receiving letters

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

While under disciplinary confinement, inmates will be, as a rule, detained in a solitary cell, and will be given correctional treatment, etc. to the extent the treatment is not inconsistent with the purpose of the confinement (Article 152 of the Law Concerning the Treatment of Inmates).

When an inmate receives punishment, his/her privilege measure (Article 89 of the Law Concerning the Treatment of Inmates) will be canceled, and his/her class of the privilege measure (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.

Q3-2 What is the procedure for imposing disciplinary punishment?

When a prison officer reports that an inmate under his/her supervision has violated a rule, first an inquiry is conducted. (the supervising officer may conduct inquiry himself/herself.) The inmate shall be, in writing, notified of (i) the date and time of, or the deadline for, the explanation to be given; and (ii) the summary of the facts being the basis of the disciplinary punishments, in advance, and be given an opportunity for explanation.
Once inquiry starts, normally the inmate will be placed in his/her room throughout day and night until the completion of the inquiry. The eyewitnesses and persons concerned are to be interrogated as well as inmates and the result will be reported in a report or a record of statement.

When an inquiry of the inmate him/herself and a person concerned is completed, next, to decide whether to impose disciplinary 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 an opportunity for explanation is given to inmates, examination of witness or retaining an attorney is not allowed. Even though the person in charge of the inmate's assistance has a role similar to the lawyer at a criminal trial by standing on inmate's side to defend him/her, most of the time, the assistance would listen to what the inmate needs to say only once before the meeting of the disciplinary punishment council.

If you want to contest the decision of the disciplinary punishment, you may file the Claim for Review (Article 157 of the Law Concerning the Treatment of Inmates) to the head of the relevant Superintendent of the Regional Correction Headquarters. (As for the Claim for Review, please refer to Q7-2.)
Even if the Claim for Review is filed, the disciplinary punishment will not be suspended. However, reduction of incentive remuneration may possibly be cancelled exceptionally.

Q3-3 A prison officer accused me of violating a rule, and subjected me to inquiry. How can I protect myself from receiving unfair disciplinary punishment?

First, to prevent receiving disciplinary punishment, it is necessary to consistently assert the truth during the inquiry 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 procedures for imposing disciplinary punishments. 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.

Q3-4 I received unfair disciplinary punishment. How can I contest the punishment?

Under the Law Concerning the Treatment of Inmates, a system for appealing is provided, and inmates may file the "Claim for Review." (Please refer to Section 7.)

Inmates have to file the Claim for Review for him/herself and may not retain an attorney. A claim for review must be filed within 30 days from the day immediately following the day on which the notification of a disposition was made.. 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.

Claim for Review needs a specific application form. Please request the application form. Fill in the application briefly and well summarized. Make the claim point clear such as unsatisfactory of finding fact, excessiveness of the punishment without disputing facts and/or injustice compared to the other cases.

A Claim for Review will be examined by one of the 8 regional correction headquarters. The regional correction headquarters are regional bureau of the Ministry of Justice and responsible for the management and the operation of the penal institutions in its own region. The superintendent of regional correction headquarters makes decision whether the prison's decision of the punishment has to be permitted or to be revised by examining the Claim for Review from the inmate. If the inmate is dissatisfied with the determination on a claim for review, he/she may file a reclaim for review with the Minister of Justice, which shall be submitted in writing, within 30 days from the day immediately following the day on which the notification of the determination on a claim for review has been made.

If the person is still dissatisfied with the result of the Reclaim for Review, he/she may file a lawsuit. (Please refer to Section 9 with regard to litigation.)

Section 4 Protection Room, Padded Room and Restraining Device

Q4-1 Under what circumstances could I be placed in a protection room?

Article 79, Paragraph 1 of the Law Concerning the Treatment of Inmates permits a prison to confine inmates in a protection room in cases of the following:

(1) Cases where the inmate is likely to commit self-injurious acts
(2) Cases falling under any of the following subitems (i) to (iii) inclusive where such confinement is especially necessary in order to maintain discipline and order in the penal institution:
    (i) Cases where the inmate generates a loud voice or noise, against a prison officer's order to cease doing so
    (ii) Cases where the inmate is likely to inflict injury on others
    (iii) Cases where the inmate is likely to damage or defile facilities, equipment, or any other property of the penal institution

Q4-2 How long would I be placed in a protection room?

Article 79, Paragraph 3 of the Law Concerning the Treatment of Inmates provides that the period of confinement in a protection room is 72 hours or less, however, it also sets forth " if there is a special necessity to continue the confinement," the prison may renew the period upon expiration thereof, and every 48 hours thereafter.

Actual period of confinement will be from a few hours to 3 or more days. Release from confinement will be decided by whether the inmate is back in the normal mental state with calm and is able to be placed in his/her own room. Accordingly, you need to be careful not to wander around in the room or talk to himself/herself while confined in the protection room since these actions might make the inmate regarded as still in excited condition, which may delay the release.

Q4-3 What are the prison's responsibilities while I am in a protection room?

First, placing an inmate in a protection room must be based on the warden's orders (Article 79, Paragraph 1 of the Law Concerning the Treatment of Inmates). If there is an urgent need and is no time to wait for the order from the warden, then prison officers may confine the inmate in a protection room without the order, but in such case, the prison officers must report promptly to this effect to the warden of the penal institution. (Paragraph 2 of same Articles).

Next, in cases where the necessity of confinement ceases to exist, the warden of the penal institution must immediately order to suspend it. (Paragraph 4 of same Articles).

Further, in cases where he/she has confined an inmate in a protection room or renewed the period of confinement, the warden of the penal institution must promptly obtain the opinion of a medical doctor on the staff of the penal institution concerning the health condition of the inmate. (Paragraph 5 of same Articles).

In cases where an inmate is confined in a protection room or handcuffs are used for the inmate being placed in a protection cell, the situation in the room for the entire period from the start of confinement or the use of handcuffs to the termination of it will be recorded by the surveillance camera in the room, and the condition of the video-taping will be left on record in Recording Book for Protection Room.

Similarly, in cases where prison officers resort to use force to inmates, they will be video-taped by a portable video camera and record will be kept in Visiting Record in Inmate Identification Book (Record of Inmate Movement, March 31, 2004, Notification 1199 by Director-General of the Correction Bureau).

Q4-4 What is a padded room? Under what circumstances could I be placed in a padded room?

A padded room is a single room with soundproof facility for those who violate living environment in a prison by shouting, making noise or being boisterous (Placing in a Padded Room, March 7, 2011, Notification 1255 by Director-General of the Correction Bureau). This is a special soundproof room located away from other rooms to prevent leak sound and disturbance to other rooms. Unlike a protection room, a padded room is close to a normal room, and allows an inmate to flush toilet by him/herself, but no TV or radio is installed.
A padded room is a room to accommodate those who make noise or a loud voice against prison officer’s order, but in order to confine in mate to a padded room, it is not necessary to take measures that are needed for confinement to a protection room. The inmates who should be place in padded room are the ones who (i) makes noise or a loud voice and/or (ii) made

noise or a loud voice in past, and likely to repeat similar conducts according to the current conditions, and who is unlikely to committee self-injurious activities and damage or defile facilities (Placing in a Padded Room, March 7, 2011, Notification 1256 by Director of the Prison Service Division, Correction Bureau).

Q4-5 Under what kind of situations is restraining device used?

Restraining devices are arresting rope, handcuffs and restraint suit. Handcuffs has two types: class 1 and class 2.
(Please refer to the drawings below.)

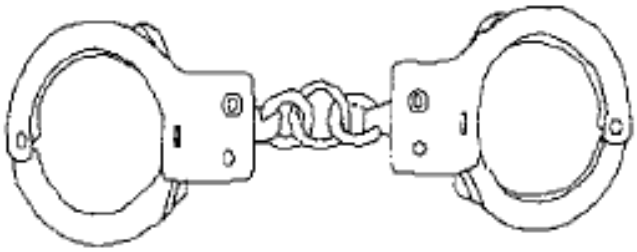
Arresting rope and handcuffs may be used where either prisons officers escort inmates, or where an inmate is likely to commit any of such acts as are set out under the following items:

(i) Escaping;
(ii) Committing self-injurious behavior or inflicting injury on others;
(iii) Damaging facilities, the instruments, or any other property of the penal institution.

Currently Class 2 handcuffs are mainly used to prevent an inmate from inflicting injury upon him/herself or committing suicide. It is also used when high possibility of assaulting prison officers is acknowledged. And the shape of the class 2 handcuffs has changed from previous fixing wristband with belt wrapped around the abdomen; therefore, they are often used to secure both hands behind the back in order to deprive him/her of freedom of both arms. To hold both hands behind the back can be quite painful depending on an individual. It is necessary to make sure to prevent class 2 handcuffs from being used as a tool for torture.

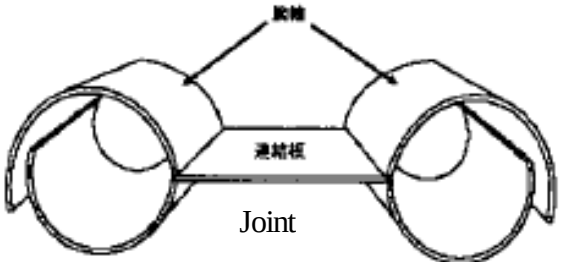
Handcuffs(Class 1)、Handcuffs(Class 2)、Restraint suit
(from the Schedule of the Ordinance for Enforcement)

Handcuffs (Class 1)

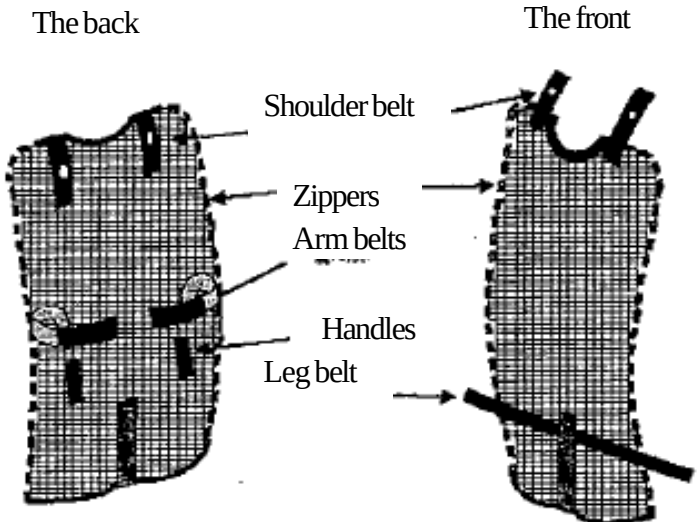


Bracelets

Handcuffs (Class 2)



Restraint suit



Section 5 Assault and Bullying

Q5-1 I was injured in an assault by a prison officer. How can I protest the incident?

You may make the "Report of Case" in accordance with the Law Concerning the Treatment of Inmates if you were battered by a prison officer, etc. (Please refer to Section 7).

An inmate may report the case in the following cases (Article 163 of the Law Concerning the Treatment of Inmates):

(i) When there is an assault (use of physical force) against the inmate;
(ii) When there is unjust use of handcuffs or restraint suit;
(iii) When there is unjust confinement in a protection room.

As a rule, a report must be filed within 30 days from the day immediately following the day on which the case with regard to the report has occurred (for instance, the day of an assault) in writing to the Superintendent of the Regional Correction Headquarters.

The superintendent shall investigate the incident and notify the result. If dissatisfied with the result, further you may report the case to the Minister of Justice. A report must be filed in writing within 30 days from the day immediately following the day on which the inmate has received the notification.

Other than this Report of Cases, you may (i) file an appeal for human rights relief to the Legal Affairs Bureau; (ii) file an appeal for human rights relief to the Bar Association; or (iii) file a lawsuit against the Japanese government for compensation according to State Redress Act.

However, in the case of appealing for human rights relief, since the Legal Affairs Bureau or the Bar Association is not vested with power of investigations that can enforce the penal facilities to answer, 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 11.)

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

The Penal Institution Visiting Committee (please refer to Section 8) is not an organization for redress of human rights abuses case-by-case, but if you inform the Committee of the illegal acts of a staff member of the penal institution taken against you, it may have some effect

leading to make the situation better.

Q5-2 I still have prominent scars left from an assault by a prison officer. What should I do to preserve 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 you might want to consider to have the attorney take the procedure for preserving the evidence. This is a procedure which 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 lawsuit will be filed, the precautions for filing a suit must also be observed. (Please refer to Section 9.) Since this procedure would take time, persistently request for an examination by a physician as mentioned above since the scars may disappear as time passes.

Section 6 Solitary Confinement throughout Day and Night

Q6-1 What kind of treatment is Isolation?

Article 76 of the Law Concerning the Treatment of Inmates permits the prison, in cases where an inmate falls under any of the cases set out under the following items, to isolate him/her from the other inmates, and place him/her in the inmate's room throughout day and night:

(i) Cases where there is a risk of disrupting discipline and order in the penal institution by making contact with other inmates;

(ii) Cases where there is a risk of being exposed to harm by other inmates and no other solutions are available to avoid it.

When an inmate is isolated, he/she 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 through day and night was sometimes called strict solitary confinement under the former Prison Law which was enacted in Meiji era.

Q6-2 Is the prison required to provide a reason for Isolation?

The period of such Isolation, as a rule, is limited to three months, but “if there is a special necessity to continue the isolation,” then the period may be renewed for one month upon expiration thereof, and every month thereafter.

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). And it is stated that “The reason for the solitary confinement shall be disclosed when it is considered to be appropriate for his/her treatment” (Instructed notification). 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 “Claim for Review,” which is a part of the Appeal Mechanism for Sentenced Inmates, with the Superintendent of the Regional Correction Headquarters (Article 157 of the Law Concerning the Treatment of Inmates. For the details

of the Claim for Review, please refer to Q7-2). In the event of dissatisfaction with the determination, the inmate may file the "Reclaim for Review" with the Minister of Justice (Article 162 of the Law Concerning the Treatment of Inmates. Please refer to Q7-4.) Ground of the segregation shall be presented as the outcome of these procedures.

In addition, inmates may file a complaints to the Minister of Justice, the inspector conducting the on-the-spot inspection, or the warden (Article 166 and beyond of Law Concerning the Treatment of Inmates. Please refer to Q7-5.) 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.

Q6-3 If I am isolated, how is it stopped and what can I do to be returned to prison factory?

The period of isolation is announced at beginning. It is normally for three months. The law stated "If the necessity for isolation has ceased to exist, then the warden of the penal institution must immediately suspend the isolation" even during the period set forth at beginning (Paragraph 3 Article 76 the Law Concerning the Treatment of Inmates).

If the reason for the isolation is "Cases where there is a risk of disrupting discipline and order in the penal institution by making contact with other inmates," please try to get a reputation of "no risk of disrupting discipline and order" by prison officers by conforming the regulations in prison. The procedures mentioned later such as the Filing Complaints (please refer to Q7-5), the Claim for Review (please refer to Q7-2), or the Reclaim for Review (please refer to Q7-4) may also be used. When filing the Reclaim for Review, opinions of the "Review and Investigation Panel on Complaints by Inmates in Penal Institutions" (hereinafter referred to as the "Complaint Review Panel". Please refer to Q7-4.) will be heard as well; this may result in different judgment from previous ones.

On the other hand, you may inform the Penal Institution Visiting Committee (please refer to Section 8) of the problem in the extension of period of segregation. Since the Committee 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.

Q6-4 Though I am not isolated, I am treated in a single room throughout day and night. What is this treatment?

It is Restriction Category 4.
The inmate will be designated as Restriction Category 4 when he/she is considered to be the one “who has low possibility of being motivated for reformation and rehabilitation and developed the adaptability to life in society”. When you are designated as Restriction Category 4, basically, you will be treated in a single room (Act Article 49 Paragraph 5). Except two times of a group treatment (exercise with others) a month, he/she is unable to join the factory and is to bath individually (Instructed notification).

Q6-5 How could I be released from Restriction Category 4?

The inmate who is in Restriction Category 4 must be evaluated every six months (Instructed notification).
Evaluation includes the following factors (Instructions);

(i) Motivation for reformation and rehabilitation, and consciousness for responsibility and remorse of the crime.
(ii) Will to work and the level of useful skill and knowledge for the occupation.
(iii) Level of knowledge and the attitude in life necessary for adapting to social life.
(iv) Attitude towards the punishment.
(v) Mental and physical health condition.
(vi) Academic ability fundamental for the social life.

Please try to be well evaluated for these factors by working seriously and conforming to regulations.
Claim for Review can be filed for Restriction Category 4 (Please refer to Q7-4), but the effect cannot be expected.

Section 7 Appeal Mechanism for Sentenced Inmates

Q7-1 What is the Appeal Mechanism for Sentenced Inmates?

The Law Concerning of the Treatment of Inmates establishes the Appeal Mechanism for Sentenced Inmates, which is consisted of three measures: Claim for Review; Report of Cases; and Filing Complaints.

Q7-2 What kind of system is the "Claim for Review"?

The Claim for Review may be filed with the Superintendent of the Regional Correction Headquarters if you are dissatisfied with such measures as are set out in Article 157 of the Law Concerning the Treatment of Inmates and taken by the warden of the penal institution.

Typical examples may be: Prohibition of or restriction on access to books, etc.; suspension or restriction on receiving or sending letters; isolation from other detainees; or disciplinary punishments. For details, please refer to the list on the following page.

The Claim for Review must be filed, as a general rule, in writing, by the subject inmate himself/herself within 30 days from the day immediately following the day on which the notification of a disposition was made, but you may ask a prison officer to fill in the application for you if you cannot prepare it by yourself. Even an attorney cannot represent the inmate. The claim must be treated as secret, and even prison officers are not allowed to know the content. However, this does not mean the fact of application would also be secret.

In cases where there are compelling reasons for not having filed a claim for review within the deadline, a claim for review may be filed within one week from the day immediately following the day on which the said reasons have ceased to exist. In any case, 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 conduct necessary inquiry into the mattes and endeavor to make a determination within 90 days as much as practicable.

If you are dissatisfied with this determination as well, you may file the "Reclaim for Review" (please refer to Q7-4).

Measures for which the Claim for Review may be filed are:

1. Prohibition of use of retained cash, or prohibition of delivery of self-retained articles, or retained cash and articles;
2. Prohibition of receiving a medical treatment pursuant, or suspension of medical treatment by a designated doctor;
3. Prohibition of or restriction on religious that an inmate performs individually;
4. Prohibition of or restriction on access to self-supplied books, newspapers etc.;
5. Disposition of charging expenses to the inmate in cases where a translation of self-supplied books, etc. is necessary in order to examine whether or not to prohibit the access;
6. Isolation from other inmates (excluding separation to prevent infectious diseases);
7. Disposition with regard to the payment of incentive remuneration;
8. Disposition with regard to the payment of compensation for disabilities in case of injury or illness of an inmate incurred in the course of work or by engaging in an emergency work, or where an inmate who suffered an injury or illness in the course of work or an emergency work still remains physically disabled after recovery;
9. Disposition with regard to the payment of special compensation in case of injury or illness of an inmate incurred in the course of work or by engaging in an emergency work, or where an inmate who suffered an injury or illness in the course of work or an emergency work is yet to be recovered is yet to be recovered from said injury or illness at the time of release;
10. Any prohibition or suppression of, or restriction on correspondence or delivery of documents and drawings;
11. Prohibition on the delivery of the whole or a part of prohibited letters, etc., or copies thereof, which the institution holds, at the time of release;
12. Disposition of charging translation expenses to inmates incurred in association with visits or exchange of letters in a foreign language;
13. Disciplinary punishment;
14. Disposition of vesting objects related to disciplinary offense in the national treasury;
15. Isolation in order to inquire into of disciplinary offense;

Q7-3 What kind of system is the “Report of Cases”?

The Report of Cases may be made by an inmate to the Superintendent of Regional Correction Headquarters if there is (i) Illegal use of physical force against body by a staff member of the penal institution against the inmate; (ii) Illegal or unjust use of restraining device; or (iii) Illegal or unjust confinement in a protection room.

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. However, the inquiry of the case is done by the staff members of regional correction headquarters in order to confirm if there was such fact as stated in the report by reviewing the documents prepared by penal institution. When when they find that the examination is not enough, the case will be investigated by the prison officers themselves again, and no interview to the applicant and the prison officers is done by external examiners. Therefore, the actual effectiveness is doubtful and the Report of Cases has rarely been approved in most of the cases.

As a rule, this filing also must be filed within 30 days from the day immediately following the day on which the notification of a disposition was made by the subject inmate him/herself, in writing, and the Superintendent of Regional Correction Headquarters is under obligation to endeavor to notify the person of whether or not the case has happened within 90 days. The same rules as Claim for Review regarding secrecy or documents being possibly filled in by an official for the inmate apply with the case of Report of Cases (Please refer to Q7-2). In case of dissatisfaction with the determination, the person may file the Reclaim for Review (Please refer to Q7-4).

Q7-4 Is it true that in case of dissatisfaction with the determination or notification, the inmate may make an appeal to the Minister of Justice?
(Reclaim for Review; Report of Cases to the Minister of Justice; and Complaint Review Panel)

If you are not satisfied with the determination made by the Superintendent of Regional Correction Headquarters with regard to the Claim for Review (please refer to Q7-2), you may file the Reclaim for Review to the Minister of Justice. In case of dissatisfaction with details of notification in relation to the Report of Cases (please refer to Q7-3), you may also make the Report of Cases to the Minister of Justice.

Either of the Reclaim for Review or the Report of Cases to the Minister shall be made within 30 days from the day immediately following the day on which the notification of a disposition was made.

In case where the Minister of Justice is going to determine that a Claim for Review or Report of Case has no ground, the Minister shall ask advice from the Complaint Review Panel, consisting of experts such as attorney, physician, law scholar, etc. 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.

The Compliant Review Panel is held about twice a month; however, in reality, it takes quite a long time for the applications to be reviewed by the Complaint Review Panel, taking minimum of 6 months to a year from the first application to the inquiry. However, in case where the inmate's release is approaching, they seem to endeavor to make determination before the day of release.

There are no staff members who exclusively belong to the Complaint Review Panel, so the confirmation of the fact will be done only by the document and if that is not enough, reexamination is requested by the Regional Correction Headquarters etc. Therefore, as pointed out above, the effectiveness of Report of Cases is very doubtful. To date, the Compliant Review Panel was held for 183 times (as of December 11, 2014) for 2008 inquiries, in which 1980 cases were considered to be handled appropriately (application not approved), and 21 cases were considered to be handled inappropriately (application approved), 90 cases were to be reexamined, and 7 cases were disagreement of opinions among the Panel. All of approved cases are restriction of sending letters, prohibition of reading books, prohibition of buying newspapers, and cancelling the suspension of compensation for disabilities, etc. There was a rare case where the Panel suggested cancellation of disciplinary punishment upon acknowledging inmate's refusal to work due to his/her mental disorder (148th Panel).

The decision by the prison has never been overturned for restriction of self-supply for adult magazines (Gossip and porno magazines).

The record of proceeding of the Complaint Review Panel and the outline of the opinion about the approved cases and reexamined cases are open to the public on the web site of the Ministry of Justice.
(http://www.moj.go.jp/shingi1/kanbou_shinsa_index.html)

If you are dissatisfied with the result of the appeal to the Minister of Justice, legally, you are able to start an administrative litigation or a litigation over a claim for damages. However, collecting evidences and securing eyewitness are extremely difficult in actual circumstances (about litigations, please refer to Section 9).

Q7-5 What kind of system is the "Filing of Complaints"?

The "Filing of Complaints" 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 "Filing of Complaints" either to the Minister of Justice, an inspector conducting the on-the-spot inspection inspector, 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 Claim for Review. When the Filing of Complaints is made, the relevant receiver shall handle it in good faith and notify the complainant of the results of such handling.

Q7-6 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 “Claim for Review,” the “Report of Cases”, the “Reclaim for Review” and the “Filing of Complaints” 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 8 Penal Institution Visiting Committee

Q8-1 What is the Penal Institution Visiting Committee?

By the Law Concerning the Treatment of Inmates, the "Penal Institution Visiting Committee" was established in penal institutions (prisons, juvenile prisons, and detention houses) throughout Japan.

The Committee 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 Committee members are to be appointed by the Minister of Justice from among the persons of advanced integrity and insight with enthusiasm for the improvement of the administration of the penal institution. The number of Committee members is defined as ten or less under the law, and differs from four to ten depending on the size of institutions. Every Committee includes 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 Committee members are under obligation of confidentiality regarding privacy of detainees as part time national service officers.

Q8-2 What kind of activities does the Penal Institution Visiting Committee engage in?

The Penal Institution Visiting Committee is expected to inspect the penal institution and to provide the statement of its opinions to the warden of the penal institution with regard to the administration of the penal institution. The members will not only merely observe institutions, but also hold an interview with inmates, inspect documents prepared in the penal institution, or they may question prison officers when the Committee finds it necessary. And if a member of the Committee requests, he/she may interview an inmate without being accompanied by a prison officer. Any staff of an institution may not examine a "comment or proposal" (please refer to Q8-4) or a letter addressed to the Committee by an inmate. In addition, The warden of the penal institution must provide the necessary cooperation for such visit and interview conducted by the Committee.

Thus, the Committee shall provide the statement of its opinions to the warden of the penal institution with regard to the administration of the penal institution at least once a year based on its activities including visits and interviews. The outline of both the opinions expressed by the Committee to the warden of the penal institution will be publicized once a year, with the description of the measures taken by the warden of the penal institution responding to the opinions. The opinions by the Committee has no binding power over institutions, but each warden of institutions is expected to make an effort to take a necessary measure to reflect the recommendation on the administration of the institution as much as possible.

Q8-3 May inmates convey their opinions to the Penal Institution Visiting Committee?

Of course, they may express their opinions. However, the Committee is not vested with any power to directly respond to the opinion and solve such with the relevant institution. The task of the Committee 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 case is not to be dealt with. However, since the Committee cannot find a problem without your information, if there is any, please do not hesitate to send your letters of comment or opinion regarding problems in the institution to the Committee or put your proposal in a suggestion box.

Q8-4 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?

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 fill in this form or write on his/her own letter paper, and submit it to the suggestion box. Some institution require inmates to ask for a request sheet in order to fill in a specific form to submit to the suggestion box, however there is no need to use specific form. The comment or proposal form also has a space for you to fill in your comment freely. You are able to post it anonymously and the contents of such writing will not be inspected. And suggestion boxes can be unlocked solely by the Committee.

Thus the suggestion box has a system that enables comments, etc. of detainees to be conveyed to the Committee smoothly without any intervention by officers of institutions, but how to respond to such opinion or proposal is entrusted to the judgment of each Committee. Therefore, the idea of comments or proposals may not necessarily be realized. However, the

Committee may decide to make investigations such as interviews with interested persons or ask the warden to seek for measures to improve the facility after reviewing comments or proposals, thus comments or proposals may possibly result in the improvement of institutional operation.

For your reference, if a Committee 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.

Q8-5 I hope to have an interview with a Committee 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 Committee members, like comment and proposal.

There are two ways for detainees to meet Committee 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 by the institution. The Committee will decide whether they should have an interview with the persons on the list. If there are too many applicants for interviews, you may not be able to have an interview.

Another way is that, regardless of the list, the Committee requests to meet certain detainees. For example, it may designate "inmates who is engaged in work at plant X" or it may appoint an individual. In the event when a detainee has not requested for an interview but a Committee 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 Committee 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 "comments and proposals", when a Committee member is making inspection, the content discussed in an interview may be known to an officer to a certain extent.

Q8-6 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 Q8-3 through Q8-4, comments and proposals are useful vehicle to convey frank opinions of detainees to the Committee. However, the purpose of the Committee 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 Appeal Mechanism for Sentenced Inmates, etc. to be described in Section 7.)

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 Committee. Thus the scope of services that the Committee handles is extremely broad.

As stated in the section Q8-1, there are an attorney and a physician among the Committee 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 Committee would count for a great deal.

Section 9 Lawsuit (Litigation)

Q9-1 How can I file a lawsuit concerning mistreatment?

As the prison warden has the authority to decide how inmates are treated, if you hope to file a lawsuit concerning treatment, you should claim that the decision by the warden was illegal. Unjust decision on disciplinary punishment or restriction of sending and receiving letters, violent behavior, refusal of medical treatment or malpractice on inmates can be a subject matter for a litigation. However, since the warden has a certain scope of discretion, not every incident can be legally disputed. Dissatisfactory assignment of work at a factory, job training, educational classes or sessions, and privilege measures and alleviation of restrictions are very difficult to be suited.

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 Act. 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 itself, 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 Act that stipulates matters concerning administrative litigation was amended to accept that there exists a benefit of suit when “a

person who has legal interest to be recovered by revoking the original administrative disposition or administrative disposition on appeal even after it has lost its effect due to the expiration of a certain period or for other reasons," 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 5).

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 10.

Q9-2 Is there a chance that an inmate would win a lawsuit against the prison?

1 When an inmate files a lawsuit against the Japanese government for damages caused by assault or disciplinary 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 Law Concerning the Treatment of Inmates allows inmates to communicate with broad range of outsiders by visits or exchanges of letters. (Please refer to Section 1.) 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, while under the Law Concerning the Treatment of 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 Claim for Review (Please refer to Q7-2.) to the Superintendent of Regional Correction Headquarters that have jurisdiction over the area of the relevant prison. You may also make the Report of Cases (please refer to Q7-3) 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 Appeal Mechanism, please refer to Section 7.

(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 11.

Q9-3 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 investigation if the prison officer fails to correctly write your claim. Therefore, it is important that you make an effort to have the officer accurately write in the statement what you remember about the incident.

Making a memorandum or keeping diary is a good way to record your memory. If there is a record of points at issue, they may become useful afterwards.

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 that 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 cannot obtain even request forms, in addition to the “Report of Cases” (please refer to Q7-3), you may need to make the “Filing of Complaints” (please refer to Q7-5) with regard to such refusal of providing 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.

Q9-4 Is there a drawback to an inmate filing a lawsuit against the prison?

When an inmate files a lawsuit against the Japanese government or the prison, the authorities will regard the inmate as 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 throughout day and night.

The possibilities are also great that your class under the privilege measure 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 winning the lawsuit are generally slim, you must give consideration with all possible deliberation before actually filing the lawsuit.

Q9-5 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 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 winning 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.

Q9-6 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 10 Civil Legal Aid

Q10-1 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 has been run by the Japan Legal Support Center (usually called "*Houterasu.*") that assumes the task and operates it as the "Civil Legal Aid."

2 Conditions to be eligible for legal aid

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 lawsuit to satisfy the retaliatory emotion, for advertisement, or for an abuse of right will not be approved). The problem, however, is condition (ii). In particular, when the inmate is filing a lawsuit to claim for damages against the Japanese government (defendant) for violation of his/her rights (lawsuit against the Japanese government for damages), regardless of the number of complaints that the one who is filing the suit (plaintiff) may present, he/she would often have difficulty finding evidence to support those complaints. Therefore, in order to be considered that you satisfy 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 Q9-3.)

3 You have to repay expenses you borrowed later.

As the legal aid is a system to lend the applicant legal expenses, the applicant has to repay the borrowing, as a rule, by monthly installment after the legal aid was determined. You are to pay from your compensation when you win the trial. If the compensation is not enough to pay in full, or you lose the trial, the payment may possibly be exempted.

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 Support Center.

Section 11 Appeal to Bar Association for Human Rights Relief

Q11-1 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 (with the exception of Tokyo, where three Bar Associations exist), and the Japan Federation of Bar Associations in Tokyo. 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, other public facilities, and psychiatric hospitals, etc.

Q11-2 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” in writing. Otherwise, the appeal cannot be conveyed to the committee and the committee cannot take further actions.

Q11-3 How can I file an appeal for human rights relief?

Title the document “Appeal for Human Rights Relief” and write name, address (or residence) and contact of the applicant, violator’s or opponent’s name of individual, group or institute, summary of the case, and request for the handling of the filed case 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.

Q11-4 If the appeal is accepted, can I receive the relief?

When Appeal for Human Rights Relief arrives to Bar Association, preliminary research will be carried out to exclude the cases which is obviously not violating the right (mere complains) and the ones that are exceeding an attorney's authority (such as a plea of not guilty). When a possibility of violation is acknowledged after preliminary research, fact inquiry and hearing to the relevant organization, the petitioner and the relevant persons will be proceeded. If the violation of the human rights is confirmed, the case will move on to the next stage by concerning the circumstances.

Warning: this is to notify the violator or his/her supervising institution the opinion of the Committee and seek for his/her apology

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

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

Besides these actions, they may announce the actions they took to the media depending on cases.
The Human Rights Protection Committees do not, however, provide tangible relief to individuals by above-mentioned actions (e.g., removing the inmate from prison and taking him/her to a hospital).
There is no penalty for the violators who do not follow the measures. Also the matters under the prison warden's discretion such as dissatisfactory assignment of work at factory, job training, educational classes or sessions, and privilege measures and alleviation of restrictions are rarely acknowledged as a human rights violation in general because 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.

Q11-5 If I appeal, wouldn't I receive even harsher treatment in prison?

After the research is started, the prison tends to become cautious because the inmate is now contacting outside world and there is a possibility as well that some actions such as “warning” or “recommendation” might be taken.

Based on the information above, when applying for Appeal for Human Rights Relief, it is important to have them start investigating the fact. As mentioned in Q11-2, an appeal for human rights relief is more likely to be started to investigate if it provides the specific facts in detail. In other words, your application form must be written in such a way so the reader can most understand the facts. On the other hand, if the application form merely provides a lengthy account of your anger and sorrow, the reader would not be able to understand what actually happened, and it ends up not being investigated.

Section 12 Issues Unique to Foreign Nationals

Q12-1 Can I receive visits and exchange letters 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 1. 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 148 of the Law Concerning the Treatment of Inmates, Articles 33 and 84 of the Enforcement Regulations of the Law Concerning the Treatment of 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 in the presence 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 of the language that you want to use and inform your relatives or friends with such information beforehand.

In addition, Fuchu Prison is linked to Tokyo Detention Center and Tochigi Prison, and Osaka Prison is linked 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 officer denies your request to exchange letters in your native language, or charges you for the translation, ask the officer 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 Claim for Review mentioned in Q7-2.)

Q12-2 Due to religious reasons, I cannot eat certain types of food. Will the prison accommodate my request?

As for those who require special food and drink due to religious reasons or great difference in eating customs, a direction of "Regarding provision of special food and drink to detainees" (March 30, 2006 Direction of Director General of the Correction Bureau of the Ministry of Justice) allows prison wardens to provide different menus to inmates. 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 prisons will serve meals only after sunset during the Ramadan period ("White Paper on Crime" 2004 Edition, Part 5, Chapter 3, Paragraph 2, 3, (iv), (c)).

Q12-3 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: European Treaty Series No. 112), 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; 64 countries as of December 10, 2015, 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, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Former Yugoslavia Republic of Macedonia, Malta, Mauritius, Mexico, Moldova, Montenegro, Netherlands, Norway, Panama, Poland, Portugal, Rumania, Russia, 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 penal institution is required to inform you of the contents of the Convention. For details, please ask a prison officer.

Also, there is a bilateral treaty on the transfer of sentenced persons between Thailand and Brazil, so the inmate can possibly serve his/her sentence in his/her own country.

Appendix: Example of Comment / Proposal Sheet

*Please fill in the following blanks and write your comments or proposal on the operation of the penal institution where you are currently placed and post to a suggestion box. You can post it anonymously.

*Posted comment or proposal will be referred for the activities of the Penal Institution Visiting Committee.

*Please notice that the Committee is not allowed to respond to each posted comment or proposal.

Your Status	1 : Inmate 2 : Detainee 3 : Other ( )
Subject of comment or proposal (Please check one subject)	*Hygiene & Medical care ☐Physical Exercise ☐Bathing ☐Haircuts ☐Medical Examination ☐Medical Treatment ☐Other *Discipline & Order ☐Restraint ☐Arresting Ropes, Handcuffs & Restraint Suit ☐Protection room ☐ Other *Correctional Treatment ☐Servitude (①Placement for Servitude ②Vocational Training ③Safety and Health ④Incentive Remuneration ⑤Other) ☐Guidance for Reform ☐Guidance for School Courses *Contact with the Outside World ☐Visiting ☐Letters ☐Other *Other ☐Lending, Supplying, and Self-Supplying of Articles ☐Handling of Cash ☐Religious Acts ☐Access to Books ☐Alleviation of Restrictions ☐Privilege Measures ☐Leisure Activities ☐Disciplinary Punishment ☐Appeal ☐Other
Free description field (Please write the detail of your comment or proposal briefly.)	
Your request	1 : Improvement 2 : Investigation 3 : Informing to the institution or the high official

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Japan Federation of Bar Associations, Judicial Affairs 2nd Division, Judicial Affairs Department

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3 to 5 booklets - ¥300 (250g to less than 500g)
6 to 10 booklets - ¥350 (500g to less than 1kg)

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