

**An enlarged role for probation in Japan to reduce drug offending**

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# An enlarged role for probation in Japan to reduce drug offending.

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## I. Introduction.

In Chiba on the 2nd June, 2016 the District Court sentenced a 37 year old woman to two years imprisonment, six months of which was suspended, for possession and use of illegal stimulant drugs. She was ordered to be supervised after her release by a probation officer for two years. The presiding judge said this sentence would allow the defendant to receive sufficient guidance from a probation office with a drug abuse prevention program. Partly suspended sentences for similar offences were also passed later that day in both Osaka and Nagoya District Courts<sup>1</sup>. The courts were exercising powers under a law, passed in 2013, but which came into effect the previous day, to lessen recidivism amongst drug offenders and aid their rehabilitation. Important new responsibilities have been placed on probation officers. It is the intention of this article to: explain the distinctive nature of the Japanese

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<sup>1</sup>Kyodo Press, 3<sup>rd</sup> June, 2016.

probation system; outline the nature of drug abuse and offending in Japan; consider, with particular reference to the newly introduced partly suspended sentence of imprisonment linked to probation, the role of the probation service in reducing drug offence recidivism and promoting rehabilitation; and highlight some matters which must also be addressed if this is to be substantially achieved.

## II. Some features of the modern probation system.

Although organized rehabilitation of offenders is clearly traceable to the late 19<sup>th</sup> Century, the present system arose after the Second World War<sup>2</sup>. As part of sweeping reforms of pre-war criminal procedure in Japan by the mainly American “General Headquarters of the Allied Powers”, which operated until 1951<sup>3</sup>, the Offenders Rehabilitation Law 1949 introduced a modern rehabilitation system to protect society, promote the welfare of the public and aid the reformation and rehabilitation of offenders.<sup>4</sup>

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<sup>2</sup>Offenders Rehabilitation of Japan, Rehabilitation Bureau, Ministry of Justice, Japan, (2015), 2-4.

<sup>3</sup> H. ODA, Japanese Law, Oxford University Press. 2<sup>nd</sup> Edition. 1999: 29-31; 423.

<sup>4</sup> Article 1. The law relating to probation and parole is now contained in the Offenders Rehabilitation Act 2007, often referred to as the “Basic Law”, replacing both the Offenders Rehabilitation Law (1949) and the Law for Probationary Supervision of Offenders under Suspended Execution of Sentence

There are 50 probation offices, 3 branches and 29 local offices throughout Japan <sup>5</sup>, administered by the Rehabilitation Bureau, one of six departments within the Ministry of Justice. A striking feature of the Japanese probation system is how few Professional Probation Officers (“PPOs”) are appointed compared to the large number of Voluntary Probation Officers (“VPOs”). Figures supplied by the Rehabilitation Bureau show that at the end of 2014 there were approximately 1,000 PPOs, employed as civil servants by the Ministry of Justice, in the field (additionally some 112 PPOs work for Regional Parole Boards.) and 48,000 VPOs who support them by providing offenders with additional supervision and assistance. The foremost duties of PPOs in both adult and juvenile cases are supervision of probationers and parolees which requires close working with VPOs; inquiry into domestic circumstances for purposes of possible parole from prison or Juvenile Training School; aftercare for discharged offenders who apply for it ( this may include

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(1954) . The Offenders Rehabilitation Act 2007 deals with: the organisation of rehabilitation services; categories of persons eligible for parole and probation, conditions they must meet while subject to them, and length of supervision; parole and probation procedures, including termination and revocation; aftercare for discharged prisoners; and crime prevention activities.

<sup>5</sup> F.AKASHI, Community –Based Treatment of Offenders in Japan, Materials for a Presentation to the 162<sup>nd</sup> International Senior Seminar, United Nations Asia and Far East Institute For the Prevention of Crime and the Treatment of Offenders (“UNAFEI”) (2015) : 5.

financial assistance for accommodation, meals , transport and clothing <sup>6</sup> ); liaison with halfway houses run by voluntary organisations to obtain accommodation for persons released from prison or Juvenile Training School; promoting crime prevention activities and investigation and application for individual pardons <sup>7</sup> ) . A further important task is organising and conducting training for VPOs and staff in halfway houses.

An offender placed on probation or released on parole is required to report immediately to a probation office for an interview with a probation officer during which how probation or parole supervision operates is explained. The probation officer then designs a treatment plan based on the interview, relevant records and an assessment of need and risk<sup>8</sup>. As well as general conditions that apply to all supervisees, including attending interviews and residing at an agreed address, special conditions may also be imposed such as avoiding contact with a certain person or group, attending a special programme on preventing sex offending, violence or stimulant drug taking and, since 2015, participating in social contribution activities, a form of community work.<sup>9</sup>

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<sup>6</sup> Offenders Rehabilitation of Japan , *supra* note 2, 30.

<sup>7</sup> Offenders Rehabilitation of Japan, *supra* note 2, 32.

<sup>8</sup> F. AKASHI, Community-Based Treatment of Offenders in Japan, United Nations Asia and Far East Institute For the Prevention of Crime and the Treatment of Offenders (“UNAFEI”) , (2016) : 31-32 .

<sup>9</sup> Offenders Rehabilitation of Japan, *supra* note 2, 22.

The Director of the Probation Office assigns a VPO as the day-to-day supervisor of the offender. Regular meetings, two or three times a month, take place with the VPO, usually at his or her home, but visits to offenders homes are also sometimes made. In accordance with the treatment plan, the VPO visits and works with the supervisee's family and provides guidance and practical support for the him or her , often helping to obtain employment .The VPO submits a monthly progress report to the PPO who, if necessary, intervenes with the offender and can begin procedure to revoke parole or probation<sup>10</sup> .

If thought unsuitable to be assigned to a VPO a parolee may be supervised directly by a PPO. In certain circumstances a parolee or probationer can be allocated to more than one VPO.

Another key task undertaken by VPOs is visiting the families of those serving custodial sentences to investigate their domestic circumstances. Information about family relationships, accommodation and employment prospects is then sent to PPOs who make it available to Regional Parole Boards. In the course of these duties VPOs write to inmates or visit them to confirm information and ascertain their future

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<sup>10</sup>In 2014 4.6 percent of adult parolees had parole revoked. Revocation was 25percent for those subject to probation orders by the courts. (AKASHI (2015), *supra* note 5, 10.)

plans. It is not unusual for a VPO who has already contacted a prisoner to be appointed as his or her supervisor on release.

### **III. Volunteer Probation officers.**

Volunteer Probation Officers (VPOs) are appointed to office by the Minister of Justice under the Volunteer Probation Officer Act 1950 (the “VPO Act”).

Under Article 1 of the VPO Act :

*“The Mission of all volunteer probation officers shall be in the spirit of volunteer social service to assist persons who have committed crimes and juvenile delinquents to improve and rehabilitate themselves and to enlighten the public on crime prevention , thereby enhancing the local community and contributing to the welfare of both individuals and the public”.*

Legally defined, VPOs are non-permanent government officials and remain private citizens. As such they are not prohibited from political activities or bound by the civil service code of ethics. The maximum age of appointment is 66. Although their term of office is two years, they can be continuously reappointed (Article 7, VPO Act)



until a retirement age of 76 is reached. More than half all VPOs have served for more than eight years, nearly a quarter fifteen years and over a tenth twenty or above years.<sup>11</sup> They are not paid a salary but are entitled to be reimbursed for expenses necessary to perform their duties up to set limits in approved categories. VPOs are also eligible for compensation for injury sustained during their work. The scope of compensation was expanded in 2012 to include damage to property and injury to family members and damage to their property due to the acts of probationers, parolees or their families.<sup>12</sup> The VPO Act ( Article 3) requires VPOs to be: highly thought of for their character and conduct; enthusiastic and have sufficient time to accomplish their necessary duties; financially stable ; and healthy and active.

The first stage in recruiting VPOs involves listing by the probation office director of candidates on the basis of information supplied by the VPOs' Association for the area covered by the office or from other sources. Candidates are usually recommended by present VPOs. The director then seeks an opinion on each candidate's suitability from the VPOs' Screening Committee, established at each probation office under

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<sup>11</sup> S. MINOURA, *Volunteer Probation Officers in Japan*, UNAFEI (2015):3.

<sup>12</sup>MINOURA, *supra* note 11, 9

the VPO Act, made up of representatives of the courts, prosecutors, local bar association, correctional institutions, other public associations in the community and learned citizens. Candidates found to be acceptable by the Committee are then recommended to the Minister of Justice for appointment<sup>13</sup>.

The maximum number of VPOs permitted by the VPO Act is 52,500 nationwide. Statistics kindly provided by the Rehabilitation Bureau show that on the 1<sup>st</sup> January 2015 the actual number was 47,872 of whom 26% were women. Although 90% of appointments are filled the rate is decreasing, especially in urban areas<sup>14</sup>. The average age of VPOs was 64.7 years<sup>15</sup>. The majority (51.4%) were 60 to 69 years old, followed by 70 years of age and above (28.5%), 50 to 59 years old (15.7%) and under 50 years (4.5%). They are drawn from various occupational backgrounds. The largest group (27.1%) was persons not in paid employment, including housewives, followed by employees of

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<sup>13</sup>MINOURA, *supra* note 11, 3-4; Y. MURAKI, *Recruitment, Capacity-Building and Public Recognition of Volunteer Probation Officers in the Tokyo Probation Office*. Chief Probation Officer, Tokyo Probation Office (2015) : 2-3.

<sup>14</sup> For example in Tokyo 80 percent were occupied - 3,507 out of the 4,375 places allocated to the jurisdiction Tokyo Probation Office. See MURAKI, *supra* note 13, 12.

<sup>15</sup> In 1953 the average age was 53. By 1974 it had risen to 60. Women constituted 7 percent of the total number of VPOs in 1953. This had increased to 20 percent by 1986. See White Paper on Crime, Training and Research Institute, Ministry of Justice, Japan, 2014, Figure 2-5-3-2.

companies or other organisations (22.6%), members of religious professions (11.1%), persons in commerce service industries (9.2%), those working in agriculture, forestry or fisheries (7.6%), and other occupations, which included manufacturers, schoolteachers and those engaged in social welfare.<sup>16</sup>

VPOs are allocated to a "probation district" and become involved in activities within it. Probation districts are administrative areas created by subdividing the territory of each probation office. As of 1<sup>st</sup> January 2015, there were 886 probation districts. Probation officers are assigned to one or more probation districts. Acting as district case managers they are responsible for supervision of those on probation or parole within them.

VPOs in each probation district are required, by an amendment to the VPO Act in 1998, to establish a VPOs' Association (similar organisations existed in many areas on a voluntary basis beforehand). Associations each year hold a general meeting and elect a chairman, vice chair and board members. Their various activities include: providing

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<sup>16</sup> T. OTSUKA, Volunteer Probation Officer System in Japan, Rehabilitation Bureau, Ministry of Justice, Japan, (2015) 2.

assistance to individual VPOs from those who are more experienced; offering VPOs opportunities to meet others and “network”; training which may comprise holding seminars for newly appointed VPOs, organising case study meetings, visiting penal institutions and inviting police officers, school teachers and lawyers to deliver lectures; maintaining relationships with probation offices and other organisations such as local authorities; and organising community activities, publicity, social events and the circulation of a newsletter <sup>17</sup>.

The Probation Office provides training for VPOs within its area. New appointees must attend an initial course which mainly covers basic information about the system of offender rehabilitation. This is followed by a course, run annually, for VPOs who have served less than two years, on basic treatment skills. VPOs of between two and four years experience, attend a training course, also presented each year, designed to reinforce their abilities of leadership and, like the previous course, to expand their practical knowledge and skills. Special training courses, delivered usually by probation officers specialising in these areas, are also taken on treatment for sex offenders, drug offenders and the mentally disordered. In addition to the training already outlined, guidelines issued by the Rehabilitation Bureau of the Ministry of Justice oblige Professional Probation Officers (“PPOs”) to provide regular

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<sup>17</sup> OTSUKA, *supra* note 16, 4 -5.

training for VPOs at each probation district. Held about every three months, they cover various themes and are designed to develop VPOs knowledge and practical skills <sup>18</sup>.

The Ministry of Justice has encouraged probation offices to establish Offender Rehabilitation Support Centres (“ORSCs”) to assist VPOs and their associations. By March 2015 some 345 were open. Located in buildings rented from local government, or other public bodies, they are staffed on weekdays by experienced VPOs. VPOs' Associations may use ORSCs to hold meetings, cooperate with related agencies and consult with the public.<sup>19</sup> If they wish, individual VPOs can conduct interviews at these locations, rather in their homes or those of probationers or parolees. Opposition from family members to visits by offenders and limited domestic space for interviews in the large cities has been identified as discouraging some people from becoming or remaining VPOs.<sup>20</sup> Provision of these centres may help recruitment and retention, enhance co-operation with local government and

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<sup>18</sup>AKASHI (2016), *supra* note 8, 13; OTSUKA, *supra* note 16, 5; MURAKI, *supra* note 13, 4-5.

<sup>19</sup> M. NAKUTA . Ota City VPOs proactive in environmental management, Ota City Volunteer Probation Officers Association, 2016.

<sup>20</sup>MURAKI, *supra* note 8, 7-8.

other bodies and help gain wider public understanding of VPOs' work.

Although facing some challenges, notably in recruitment, and not immune from critical scrutiny <sup>21</sup>, there is general agreement the VPO system has a number of strengths including: geographical closeness between supervisees and VPOs enabling them, if necessary, to intervene rapidly; social resources and useful practical assistance, including introductions, an important form of social capital, that can be offered to supervisees; supervisees and their families frequently see VPOs more like neighbours, and often similar to unthreatening and helpful uncles and aunts, rather than government officials and may be more responsive to them; many VPOs demonstrate genuine concern for supervisees helping offenders to re-gain respect, or gain it for the first time, and identify with a law-abiding and pro-social culture; and, in contrast to PPOs who are

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<sup>21</sup> T. MORIKAWA, Recent Challenges in Community-Based Treatment in Japan. Rehabilitation Bureau, Ministry of Justice, Japan, 2-5; T. OSAKI, Volunteer probation officers face uphill battle, *Japan Times*, 28<sup>th</sup> August, 2013.

moved to different offices every two or three years, provide continuity of support which sometimes extends beyond the period of supervision adding to stability in the lives of former offenders.<sup>22</sup> Continuity of contact is contributed to by the fact that over half the number of VPOs have been in that role for more than eight years .It is worthy of note that the VPO system in Japan has been a major influence on probation services in a number of other countries including Kenya, Malayasia, Philippines Singapore, South Korea and Thailand.

#### IV. Halfway houses and other voluntary bodies.

Halfway houses are an important feature of rehabilitation in Japan. They accommodate persons on parole from prison or Juvenile Training School, who otherwise be ineligible because they lack a place to live, and on probation and other persons released from prison or Juvenile Training School at the end of their custodial sentence because they did not obtain

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<sup>22</sup> AKASHI(2016) *supra* note 8,15; OTSUKA, *supra* note 16, 4.

parole. The average stay is three months. Staff help parolees cope with the sudden change of release from a highly disciplined and regimented prison regime, foster a sense of self-reliance and assist them to find housing and employment in co-operation with public employment offices and employers who are members of the Cooperative Employers Organisation (a national non-profit making body of employers willing to employ former offenders). Additionally in recent years social skills training and programmes for drug and alcohol abuse have been developed. The Ministry of Justice is currently carrying out training courses for halfway house staff on treating these conditions. Some halfway houses collaborate closely with Nihon DARC, a nationwide voluntary organisation which holds self-help meetings and provides residential and day centre treatment for drug addicts and alcoholics.

Most halfway houses were founded in the 1880s by volunteers.<sup>23</sup> They remain privately run and number

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<sup>23</sup> Offenders Rehabilitation of Japan, *supra* note 2, 2-3.



103 throughout Japan.<sup>24</sup> Most are in urban areas. Three halfway houses receive only juveniles, 19 house just adults, whilst 81 take both. Ninety house only men. Seven halfway houses exist exclusively for women and six provide accommodation for both men and women.<sup>25</sup> On the 1<sup>st</sup> November 2015 the total half way house capacity was 2,354 places. During the financial year 2014 some 8,237 persons were accommodated. Halfway houses took more than a quarter of prison parolees. A total of 710 persons were employed nationally in half way houses, an average of 6.9 staff in each. More than 60% of all employees were concurrently appointed as VPOs in 2015.<sup>26</sup> Further local VPOs and VPO Associations in the area often assist in various activities. Practical help may also be provided by Members of the Women's Association for Rehabilitation Aid ("WARA"), a voluntary nationwide organisation with nearly thirteen hundred branches and a very large membership <sup>27</sup>.

The Ministry of Justice supervises half way houses. They receive 75 percent of their budget from the national government.

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<sup>24</sup>For a map showing their geographical distribution see AKASHI (2015), *supra* note 5, 7.

<sup>25</sup> AKASHI (2015), *supra* note 5, 7.

<sup>26</sup> AKASHI (2016), *supra* note 8, 17-18.

<sup>27</sup>At the Step Oshiage Halfway House, Tokyo, visited on 26<sup>th</sup> July, 2016, it was explained that members of the local VPO Association provide various forms of entertainment including a twice yearly "curry feast" and WARA collect clothes for residents and donate cooking.

Professional Probation Officers contact halfway houses and ask them to accept a particular parole candidate or probationer. Despite willingness to change and progress demonstrated by individuals in custody, it remains true to say that, principally because of concerns about neighbouring residents, many halfway houses are hesitant to accept those convicted of sex and drug offences, violence, arson and members of organised crime groups. To help such categories of offenders the Ministry of Justice established National Centres for Offender Rehabilitation to provide temporary accommodation, coupled with intensive supervision and assistance in finding employment by probation officers. However, the total capacity of the four centres created is only 58. Plans to build another centre in Kyoto have met with strong opposition from local residents. Since 2009, the Ministry of Justice has encouraged, with some limited success, halfway houses to widen the types of offenders they will accept <sup>28</sup>.

In addition to VPOs, and halfway houses other voluntary organisations give considerable support to adult and juvenile offenders and have close ties with the probation and rehabilitation system already described.

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<sup>28</sup> Because of an exceptionally good relationship with its neighbours, the Step Oshiage Halfway House in Tokyo, which has 38 places, is prepared to take persons that other halfway houses might be reluctant to receive.

The Women's Association for Rehabilitation ("WARA") is a large organisation that conducts a variety of activities including promoting the idea of rehabilitation of offenders, support and encouragement for probationers and parolees, co-operation with VPOs, crime prevention measures, and assisting young mothers experiencing difficulty in raising their children. In 2015 WARA had 170,066 members and 1,293 branches.<sup>29</sup> It is almost a convention that the wife of a male appointed as a VPO will join WARA. Many women who are appointed as VPOs joined WARA earlier in their lives.

Big Brothers and Sisters Association ("BBS") is a youth organisation with 50 local branches, including in universities and high schools, and a membership of just over 4,500. Its members try to relate to juveniles similar to a responsible older brother or sister to deflect them from crime. Members take part in "befriending activities", such as sports, karaoke, barbecuing and talking and studying together, to gain their trust, give them a greater sense of stability and act as positive role models. BBS intervention is usually requested by Probation officers, who suggest the approach to be taken for each young person, but may be initiated directly by Family Courts or child guidance centres <sup>30</sup>. Some BBS members are interested in becoming Professional Probation

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<sup>29</sup> AKASHI (2016) , *supra* note 8, 19.

<sup>30</sup> T. OSAKI, Troubled youths find friend, ally in students, *Japan Times*, 28<sup>th</sup> August, 2013.

Officers or VPOs later in life. A number of VPOs interviewed expressed the hope that BBS will expand to counterbalance the increasing average age of VPOs, seen by some as an impediment to understanding young people.

“Co-operative Employers” is a national non-profit making voluntary body, with nearly fourteen and a half thousand members who have said they are willing to employ former offenders<sup>31</sup>. Construction firms account for about half, followed by the service industry, approximately 15 percent and manufacturing just over 13 percent. However, despite the large number of firms who claimed they were prepared to take former offenders, a survey conducted for the Ministry of Justice Rehabilitation Bureau in 2013 showed a mere 3.4 percent of the then membership had done so. Following this the Ministry renewed requests to employers to employ former offenders. Membership of Co-operative Employers subsequently rose by nearly four and a half thousand. Amongst employers who have taken on convicted persons are former offenders. Since April 2015, employers may receive payment from the Ministry of Justice when they employ and support a probationer or parolee for a certain period. This scheme is expected to boost the number of parolees and probationers

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<sup>31</sup> AKASHI (2016), *supra* note 8, 19.

in work. More and more local governments are introducing schemes to employ probationers and parolees as temporary staff or to give preferential treatment in considering tenders to employers who hire them.

## V. Types of supervision undertaken by the probation service.

### I. Adult parole.

A Regional Parole Board (of which there are eight) may order the conditional release of a prisoner if : he or she has served one-third of a sentence of a fixed number of years, or after 10 years of life imprisonment; repentance and motivation to rehabilitate him or herself has been proved; there appears no likelihood of reoffending on parole; supervision of rehabilitation will take place while on parole and society will accept the prisoner's parole<sup>32</sup>.

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<sup>32</sup> The Penal Code, Article 28, the Offenders Rehabilitation Act, 2007, Article 34 and the Ministry of Justice Ordinance. For a description of the system and procedure of parole , in which information supplied by PPOs is of great importance, see AKASHI (2016) , *supra* note 8, 22-25 ; AKASHI (2015), *supra* note 5, 10-16.

In 2014 the parole rate was 56.5 percent. Despite parole being available in law after one third of a defined term sentence, 80 percent of parolees had served 80 percent or more of their original sentence. Some 10, 692 persons obtained parole in 2014.<sup>33</sup>

Parolees have to comply with general conditions including attending interviews with PPOs and VPOs ; living in the residence notified to the Probation Office, seeking permission to change residence or to travel for more than seven days; and explaining about his or her job, domestic circumstances and associates when asked.<sup>34</sup> Special conditions may also be imposed . These include to work, or make efforts to find a job; not to associate with particular individuals and members of organised crime groups; to obey rules of a halfway house, if accommodated there; to participate in Special Contribution Activities,( essentially community work supported by VPOs, and members of BBS and WARA, introduced in 2015, after an amendment in 2013 to the Offenders Rehabilitation Act 2007) and to attend a Special Treatment programme delivered by a probation officer at a probation office. Special treatment programmes cover sex offending, drug offending, violence prevention and impaired driving prevention. They are delivered one to one or in groups and are based on Cognitive

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<sup>33</sup>AKASHI (2015), *supra* note 5, 10.

<sup>34</sup> Offenders Rehabilitation Act, 2007, Article 50.

Behavioural Therapy, much influenced by its practice in Britain. Some 95.1 of adult parolees successfully completed their term in 2014.<sup>35</sup>

## 2. Juvenile Parole.

In order to be released on parole from a Juvenile Training School by a Regional Parole Board the law states that the juvenile – a person under the age of twenty in Japan – must have reached the highest stage of training suitable for his or her improvement and rehabilitation, or it is specially necessary for his or her improvement and rehabilitation to be released on parole.<sup>36</sup>

Whilst the rate of parole among adults is more than half, the parole rate for juveniles is astonishingly high – 99.9 percent, 3,122 persons in 2014<sup>37</sup>. The difference is chiefly because being committal by the Family Court, where all Juvenile cases are sent from the public prosecutor's office, to a Juvenile Training School is considered a protective measure, rather than a sentence, and there is an expectation all juveniles will be released after receiving training for a certain period.

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<sup>35</sup> AKASHI (2015), *supra* note 5, 10.

<sup>36</sup> Offenders Rehabilitation Act 2007, Article 41.

<sup>37</sup>AKASHI (2016), *supra* note 8, 21-22.

The period of supervision after release by the probation service lasts until the parolee's twentieth birthday or the last day of a fixed period of custody imposed by the Family Court. Statistics for 2014 indicate that 19.3 percent of those on juvenile parole were discharged early; 65.4 percent completed their term and 15.1 percent had orders revoked.<sup>38</sup>

### 3. Adult Probation.

Probation for adults in Japan is not an independent sentence. It is always attached to a suspended sentence. Suspended sentences are more widely used than immediate custody. In 2014 55 percent of prison sentences in the District and Summary Courts were suspended.<sup>39</sup>

To be eligible for a suspended sentence three minimum requirements are necessary: the sentence is of imprisonment for three years or less, or is of a fine of 500,000 Yen (£3,650 approximately) or below; the offender has not been sentenced to imprisonment in the last five years; and the offence was not committed during a previous

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<sup>38</sup>AKASHI (2015), *supra* note 5, 10.

<sup>39</sup>T. SAKAIYA, Japan, How Safe? Asia Crime Prevention Foundation ,2015, 47.



suspended sentence with a probation order.<sup>40</sup> A person subject to a suspended sentence without probation who commits a further offence during the period of suspension and is subsequently sentenced to not more than one year of imprisonment may be granted a further suspended sentence if there exist especially favourable circumstances for him or her<sup>41</sup>. However in such a case attachment of probation is mandatory. In all other cases it is discretionary. The length of probation is from one to five years and, subject to provisions for early completion because of good behaviour, runs for the period of suspension set by the sentencing court. About 10 percent of persons who receive a suspended sentence are placed on probation. At the end of 2014 the number of adult probationers numbered 5,364.<sup>42</sup>

In addition to obeying general conditions of probation, adult probationers must also comply with special conditions imposed at their supervising probation office. Both general and special conditions are similar to those outlined above for adult parolees. In 2014 the rate of successful completion of adult probation was 71 percent while 25 percent of orders were revoked because of a further offence had been

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<sup>40</sup> Penal Code Article 25 (1).

<sup>41</sup> Penal Code Article 25 (2).

<sup>42</sup> MINOURA, *supra* note 11, 1.

committed or because of failure to comply with conditions of probation.<sup>43</sup>

#### 4. Juvenile Probation.

Unlike probation for adults, juvenile probation stands alone as a sentence. Numerically young people placed on probation by the Family Court are the largest group supervised by the probation officers. In 2014 they numbered 17,480, amounting to 46 percent of the probation service's caseload. Juvenile Probation accounted for nearly 21 percent of disposals made in the Family Court during that year (Source: Annual Report of Judicial Statistics). The maximum period of supervision is until the probationer's twentieth birthday or at least two years whichever is longer.<sup>44</sup>

Like adult parolees and probationers juvenile probationers must conform with general conditions of supervision and any special conditions imposed by the probation office responsible for them. In 2014 76.7 percent of juvenile probationers were discharged early, 9.5 percent completed their term and 13.7 had orders revoked because of further offences or failure to comply with probation conditions.<sup>45</sup>

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<sup>43</sup> AKASHI (2015), *supra* note 5, 10.

<sup>44</sup> Juvenile Law 1948, Article 24.

<sup>45</sup> AKASHI (2015) , *supra* note 5, 10.

At the end of 2014, there were 37,990 parolees and probationers made up of: 10,692 Adult Parolees, 4,454 Juvenile Parolees; 5,364 Adult Probationers and 17,480 Juvenile Probationers. Related to reduction of reported crime in Japan,<sup>46</sup> the total figure for persons under supervision has steadily decreased since 2009 when it stood at 48,488. By far the biggest fall, over 7,500, has been in juveniles on probation.( Figures kindly supplied by the Ministry of Justice.) .

## 5. Partly suspended sentences and probation.

On the 1<sup>st</sup> June, 2016 two new laws came into effect. The first, the Partial Revision of the Penal Code<sup>47</sup>, applies to three groups of convicted offenders: those not imprisoned before ; persons who have previously received a suspended sentence; and individuals who have had a prison sentence but have not subsequently received another within five years of its completion. If given a prison sentence of not more than three years, a person falling in one of these categories may now have part of it suspended. The period of suspension cannot be less

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<sup>46</sup> Figures for 2015 produced by the National Police Agency (“NPA”) showed reported crimes as the lowest since the Second World War. For a summary of NPA statistics see *Independent* 16<sup>th</sup> January, 2016.

<sup>47</sup> Law No 49, June 19, 2013.

than one year or more than five. When a court suspends a sentence it may in its discretion add probation to run concurrently with the suspension.

Under the second law now in force , The Act on the Suspension of Execution of Part of a Sentence for Persons who Committed the Crime of the Use of Drugs etc<sup>48</sup> , a person convicted of self –use or simple possession of controlled substances, including stimulant drugs, cannabis ,narcotics or poisonous materials such as toluene ( a solvent sometimes inhaled recreationally with the potential to cause severe neurological harm ), and sentenced to no more than three years imprisonment may have part of that sentence suspended. The period of suspension is not less than one or more than five years. However, unlike the first law described, the offender must be put on probation for that time and is obliged to complete a drug offender treatment programme as a special condition. For example a court might pass two years imprisonment with six months suspended for two years on probation. After one and a half years the offender will be released and two years supervision begin. The requirement that judges determine the part of the sentence to be suspended has led to calls for pre-sentence investigations written by professional probation officers with a firm base in sociology, psychology and criminology. Although pre-sentence reports are prepared on

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<sup>48</sup> Law No 50, June 19, 2013.

juveniles by Family Court Probation Officers <sup>49</sup>, employed by the Supreme Court, not the Ministry of Justice, no such system exists for adults.

Judges rely on information about those they sentence from the Public Prosecutors and Defence Attorneys. A former prosecutor, now a professor of law at Doshisha Law School<sup>50</sup>, expected prosecutors to take a greater interest in drug rehabilitation, and bodies working in the area, to inform judges and support whatever sentencing recommendations they may make.

Usually persons convicted for the first time of drug offences receive a suspended sentence normally without probation. Although an immediate custodial sentence is more likely, a further offence may again result in a suspended sentence but this time coupled with probation. According to criminal justice statistics, 3,686 people were given suspended sentences in 2014 for breaking the stimulant drugs control law. Of them, slightly more than 10 percent or 439 were given probation.

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<sup>49</sup> There are about 1,600 Family Court Probation Officers throughout Japan, 55 percent of whom are women. Their duties include extensive investigations and submission of reports to Family and High Courts to aid adjudication in disputes about child custody and welfare and to assist court sentencing in criminal cases ( Guide to the Family Court of Japan, Supreme Court of Japan, 2013: 6-9 ).

<sup>50</sup> Interviewed on 10<sup>th</sup> July, 2016.

The object of the new law is to reduce repeat drug offending by adding probation supervision to custodial sentences. It is a recognition of the importance of sustained rehabilitation in the community, and of the limitations of measures in the artificial conditions of prison<sup>51</sup> .

## VI. Drug misuse in Japan.

Drug misuse in Japan is significantly lower than in many countries. Statistics issued by the Ministry of Health, Labour and Welfare in 2014, indicate 0.4 percent of the Japanese population aged between 15 and 64 years old have taken stimulants at least once in their life. By contrast in the United States, 5.1 percent of the population over the age of 12 has tried methamphetamine at least once. While, 41.9 percent of Americans have tried marijuana, in Japan it is 1.2 percent of the population<sup>52</sup>. Since the Second World War drug taking has been dominated by stimulants – methamphetamine and amphetamine – “*kakuseizai*” or “shabu” in Japanese. Methamphetamine was first synthesized in Japan from ephedrine in 1893. It was then commercially marketed to cope with fatigue. During World War II

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<sup>51</sup> For an exposition and commentary on the laws introducing partly suspended sentences and probation, see *Waseda Bulletin of Comparative Law*, Vol.33 28-31.

<sup>52</sup> M. ITO, Dealing with addiction : Japan’s drug problem, *Japan Times*, 23<sup>rd</sup> August, 2014.

methamphetamine was taken by military personnel and production workers to help keep them active and alert. In what has been described as the first epidemic of methamphetamine abuse, between 1945 and 1957<sup>53</sup>, military stocks of the methamphetamine came into civilian hands and were widely sold to young impoverished inhabitants of cities. At its height in 1954, police reports estimated there were 550,000 addicts and about 2 million people who had tried it. Originally methamphetamine was mainly taken in pill form but by the end of this period came to be injected intravenously; this method has not altered.

The Stimulant Control Law, enacted in 1951, made unlawful the production, importation, possession or use of methamphetamine. It was rigorously enforced by the police. As a result methamphetamine arrests dramatically fell from 55,664 in 1954 to 271 in 1958, the lowest number in postwar history. However, a second epidemic, lasting from 1970 to 1994, occurred, marked by organized gangs selling supplies of methamphetamine, mainly from Taiwan and later Korea. Arrests peaked at 24,372 in 1984 and from 1990 decreased annually. This halted

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<sup>53</sup> K. WADA, The history and current state of drug abuse in Japan, *Annals of the New York Academy of Sciences*, 1216 (2011) : 63 -64 ; A. SATO, Japan's Long Association with Amphetamines : What can we learn from their experiences?, in R .Pates and D. Riley (Eds) *Interventions for Amphetamine Misuse*, Wiley –Blackwell, 2009, 151 -153.

in 1995 when an upward trend signified the start of the third epidemic of methamphetamine abuse, which is not yet over. Since 1976 the number of arrests has consistently been above 10,000 people.

Most people investigated or arrested for using stimulant drugs are recidivists. According to the National Police Agency <sup>54</sup>, the police in 2015 investigated or arrested some 13,000 people for possession or use of narcotics or psychoactive drugs, 11,000 of these ( 80 percent) were for stimulant drugs. Recidivists accounted for 64.8 percent those arrested or investigated. The rate of recidivism increased as the age of stimulant drug abusers went up — 36.0 percent among users in their 20s and 57.9 percent among users in their 30s. The rate was highest at 72.2 percent among users in their 40s. Clearly from these , and earlier similar statistics, it is not possible to gauge the extent of stimulant addiction in Japan, but the Ministry of Health Labour and Welfare believes they expose just a small part of the problem<sup>55</sup>.

The cost of illegal stimulants, currently said to be 70,000 Yen ( Approximately 610 Euro) per gram, is high. Relatively affluent people, particularly those in middle age, are tempted to buy them to help

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<sup>54</sup> 'Helping Drug Addicts Kick the Habit' , *Japan Times* 5th June,2016.

<sup>55</sup> ITO, supra note 52.



manage with stress at work and difficult personal relationships. They, and members of the “*talento*”, media and sports personalities, whose arrests and subsequent court appearances attract very much publicity, are often supplied by gangsters, members of the yakuza. Other users are people who started to inhale solvents when young, usually at school, before graduating, sometimes via other substances, to stimulants. They too frequently receive methamphetamine from members of gangs with whom they form associations or join. About half of all drug offenders in Japan are involved in a gang. Persons released from prison, perhaps with hopes of leaving addiction behind them, because of few opportunities available, often re-establish their gang links and return to drug taking.

In addition convictions result from possession, use and sale of cannabis (under the Cannabis Control Law), seen as a “gateway drug”, heroine, cocaine (prohibited by the Narcotics and Psychotropics Control Law and the Opium Law) and increasingly proscribed synthetic designer drugs (made unlawful by the Pharmaceutical Affairs Law).

According to the 2015 White Paper on Crime, forty nine percent of those released for stimulant control law offences returned to prison within five years between 2010 and 2014, whereas the rate of re-imprisonment of persons who committed other types of offences was

thirty six percent during this period. About a quarter of prison inmates are convicted of drug offences. Others are incarcerated for offences related to the need to buy drugs such as theft, deception and robbery. <sup>56</sup>

Users of stimulant drugs — such as amphetamine and methamphetamine — frequently develop a strong dependency, making it hard to stop and escape addiction. Further crimes may be motivated by the need for money to buy drugs. Social factors also combine to explain why so many offenders return to prison. A criminal history, stigmatic and socially marginalizing almost everywhere, but particularly in Japan, reduces opportunities. Former inmates are likely to find difficulty in obtaining employment, housing, maintaining positive social relationships and developing new ones.<sup>57</sup> Policing has been successful in limiting the number of illegal drug users in Japan. Over the last twenty or so years the Ministries of Justice and Health have promoted a mass media campaign, with its watchwords “*Dame Zettai*” ( No never do it!), to dissuade people from

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<sup>56</sup> In 2014 at Fuchu Prison, which holds about 2,400 inmates and is the country’s largest gaol, around 800 inmates, or 33 percent, were serving custodial sentences for drug or drug related offences. *Japan Times* 23<sup>rd</sup> August 2014.

<sup>57</sup> S. SUH and M. IKEDA, *Compassionate Pragmatism on the Harm Reduction Continuum: Expanding the Options for Drug and Alcohol Addiction Treatment in Japan, Communication-Design*. 2015, 13 P.63-72.

trying drugs. Though generally seen as successful, it is said the campaign has widened the distance between non drug takers and confirmed a popular view that drug taking is evil and that those who do have only themselves to blame for their difficulties.<sup>58</sup> Arrests and court appearances of celebrities are reported sensationally in the press<sup>59</sup> and much is made of the dangerousness of the substances involved prompting public calls for tough action against drugs and the people who consume them. The involvement of Korean and Chinese drug smugglers is sometimes emphasized, especially by nationalists.<sup>60</sup> Very little is said about the problems of addiction. The idea of substance abuse as a disease has yet to be recognized in society at large.

## 1. Limited medical and psychological facilities.

The relatively small scale of drug addiction in Japan is said to have contributed to a lack of interest among medical professionals in treatment for addicts, sometimes labelled as troublesome and

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<sup>58</sup> SUH and IKEDA, *supra* note 57, 67.

<sup>59</sup> A recent example is Kazuhiro Kiyohara, a former baseball star, sentenced at Tokyo District Court on the 30<sup>th</sup> May, 2016 to two and a half years in prison suspended for four years for purchasing, possessing and using stimulant drugs. The prosecutor had asked for an immediate custodial sentence of thirty months. His attorney had requested a suspended prison sentence with probation which would have required him to attend a drug offender treatment programme. ( See *Japan Times* 31<sup>st</sup> May, 2016 and *Asahi Shimbun* 31<sup>st</sup> May, 2016.).

<sup>60</sup> SATO, *supra* note 53, 155 – 156.

problematic <sup>61</sup> . The main focus in hospitals has been upon detoxification and dealing with psychotic symptoms. Because taking drugs is a crime, some doctors, although not legally or ethically obliged, call the police, undermining the relationship with patients and deterring others from seeking help, a point made strongly by a DARC worker interviewed in Wakayama, where, unlike neighbouring Osaka, this practice was reported to occur.<sup>62</sup> In recent years a small number of psychiatrists and clinical psychologists have introduced specialized treatment such as motivational interviewing, anger management, social skills training and Cognitive Behavioural Therapy (“CBT”), one being the Serigaya Methamphetamine Relapse Prevention Programme ( “SMARPP”). Developed by Toshihiko Matsumoto, a doctor seeking more widespread acceptance of substance abuse as a disease, the treatment is based on a CBT approach originally used in California. An evaluation, published in 2016, of a sample of outpatients who had undergone SMARPP showed a high abstinence rate of 60 percent one year afterwards.<sup>63</sup> Worthy of

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<sup>61</sup> SUH and IKEDA, *supra* note 57, 68.

<sup>62</sup> Interview 28<sup>th</sup> July, 2016.

<sup>63</sup> Y.TANIBUCHI, T.MATSUMOTO, F.IMANURA, Efficacy of the Serigaya Methamphetamine Relapse Prevention Program (SMARPP) for patients with drug abuse disorder. –A study on factors influencing 1 year follow-up outcomes. *Nihon Arukoru Yakubutsu Igakkai Zasshi* 2016 Feb : 51(1) : 38-54.

interest, a study has commenced on the effectiveness of running SMARPP online with tailored feedback for participants.<sup>64</sup>

According to a survey conducted by the Ministry of Justice just three percent of persons on parole and probation with drug dependence received specialized hospital treatment. Only about forty hospitals provided specialist treatment for drug dependence and there were none in twenty four of the country's forty seven prefectures.<sup>65</sup>

In a press interview Doctor Matsumoto said “*Japan is successful in keeping the number of drug users low but is behind in treatment of drug dependence*”.<sup>66</sup> His opinion closely matched that of Doctor Nobuya Naruse, deputy head of Saitama Prefectural Psychiatric Hospital who, nearly two years earlier, is reported as saying “*Japan is very good at regulating drug-related crime — one of the leading nations in the world — and depends on regulation to keep the crime*

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<sup>64</sup> A. TAKANO, Y. MIYAMOTO, N. KAWAKAMI, T. MATSUMOTO, Web-Based Cognitive Behavioral Relapse Prevention Program With Tailored Feedback for People With Methamphetamine and Other Drug Use Problems: Development and Usability Study, *JMIR Ment Health*. 2016 Jan-Mar; 3(1): e1. Published online 2016 Jan 6.

<sup>65</sup> T. TOMINAGA, Drug dependence needs to be seen as disease requiring long-term care, *Kyodo News*, 30<sup>th</sup> June, 2016.

<sup>66</sup> TOMINAGA, *supra* note 65.

*rate down in terms of drug use. But that is why it has fallen way behind in terms of the treatment and recovery of addiction.”<sup>67</sup>*

The main source of rehabilitation and social care and for persons released from prison or discharged from hospital are organisations run by recovering addicts. Chief amongst these is Nihon Drug Addiction Rehabilitation Centre ( “DARC “) established in Tokyo in 1985 <sup>68</sup> , DARC now has 57 branches with 78 centres all over Japan. Every branch is autonomous and separately funded and has established its own support network of doctors and hospitals to help members with medical and psychological problems.<sup>69</sup>

Most members, on average in their early thirties, live in dormitories and generally attend two internal meetings and one Narcotics Anonymous meeting held elsewhere every day, usually in the evening. Narcotics Anonymous in Japan was founded in 1981. It has over 150 groups and holds meetings in churches, public halls and hospitals.<sup>70</sup>Cleaning, cooking and shopping are done by members at DARC centres. Work may also be performed outside, for example, as in Osaka in a restaurant. Social activities, including sports, regarded as

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<sup>67</sup> ITO, *supra* note 52.

<sup>68</sup>T. KOBAYASHI, A light in the DARC’ *Metropolis*, 2002, Issue 409, January.

<sup>69</sup> SATO, *supra* note 53, 152 – 154.

<sup>70</sup> SATO, *supra* note 53, 149 – 150.

physical exercise therapy, are undertaken. Members pay 150,000 Yen (about 1,310 Euro) per month. Some receive financial help from local authority livelihood protection, others are paid for by their families. While a number of DARC branches receive financial help from local authorities, many do not. Funding for those that do is often decided on a yearly basis which, it was explained by an Osaka DARC worker, causes much uncertainty and a sense of precariousness.

DARC is based on the “ twelve steps” approach derived from the method used by Alcoholics Anonymous. The suitability of this, with its emphasis on a supreme or divine power, in whom it is necessary to invest trust, in a predominantly non monotheistic Japan has been questioned in some quarters. DARC’s ultimate aim is a life without using harmful substances. Members are, however, encouraged to disclose relapses. These are not regarded as failures, but inevitable during the process of recovery and something from which they learn about themselves.<sup>71</sup> The majority of employees at each centre are recovering addicts.

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<sup>71</sup> SATO, *supra* note 53, 148-149.

The number of people who attend DARC was described in an interview with a worker at Osaka DARC as just the tip of the iceberg of people struggling with addiction.<sup>72</sup>

## 2. Steps towards treatment.

Unlike many Western countries that favour harm reduction - such as access to clean needles and methadone substitution - and diversion from the system of criminal justice, policy in Japan has been prevention, strict enforcement of the law, “no tolerance”, and custodial sentences, regardless of the level of criminality. Although sentencing is more severe by most European standards<sup>73</sup>, it is considerably less so when compared to many other Asian countries.<sup>74</sup>

Examination of alternative models such as drug courts in the United States, where addicts are ordered to undergo various forms of treatment, and that in Portugal, with its strategy, since the early 2000s, of prevention, decriminalization for possession, treatment, harm reduction and

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<sup>72</sup> Interview 14<sup>th</sup> July, 2016.

<sup>73</sup> SATO, *supra* note 53, 148.

<sup>74</sup> M. BALASEGARAM, *Asia’s misguided war on drugs*, *Japan Times*, 16<sup>th</sup> May, 2006.



reinsertion, has occurred but seldom beyond university academics. An exception was a discussion in the Ministry of Justice preceding the Prison Law 2006 in which it was suggested that those that those arrested for Stimulant Law offences might be sent to self-help groups instead of custody. This was rejected because of their small number and doubts about their effectiveness.<sup>75</sup>

Nevertheless, a provision (Chapter 82) of the Prison Law 2005, which substantially reformed prison law in Japan, did mark a turn towards treatment by requiring prisons to provide prisoners convicted of drug offences with “guidance on overcoming drug addiction”. This resulted in the introduction of courses intended to give prisoners insight into their problems with drugs use and how to avoid them on release. Until recently they typically consisted of lectures from prison staff, often reading from a textbook, and videos about experiments with rats which graphically showed the dangers of drugs. These methods were criticised as inadequate to tackle the physical and psychological problems of addiction. In an attempt to make them more

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<sup>75</sup>Minutes of Council of Legislation (2006). Meetings on the Policy to Make Proper the Population of Penal Institutions, 3. Ministry of Justice 15<sup>th</sup> December.

effective some prisons enlisted members of external bodies, especially DARC, to assist. Their direct experience of addiction and recovery, often time served in prison, and ability to conduct meetings in which all participants are encouraged to contribute is said to have greatly strengthened prison drug rehabilitation courses. A DARC worker involved in teaching the course at Wakayama Prison <sup>76</sup> explained it was important to talk about life after prison, depression that might be suffered, temptations to take drugs, drawing up plans for personal recovery, communicating with doctors and what sources of help are available. She was concerned the prison authorities in Wakayama may soon phase out DARC's involvement as an economy measure. If this happened DARC would seek to continue its involvement on a voluntary basis. It was explained by the DARC worker that some prisoners regard prison ,indeed almost welcome it, as a safe place where at least their basic needs, including health, which may have been neglected, will be met and where, away from the many stresses, complicated relationships and other influences that lead to their consumption, they can become physically free of drugs ( none enter Japan's well -staffed , highly ordered and austere prisons where even smoking is banned) . According to her, the real ordeal, which many fail, is managing to live without them on the outside.

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<sup>76</sup> Interview 28<sup>th</sup> July, 2016.

She said it is not uncommon for inmates to say they will join DARC when they are free. Other addicts, not yet able to contemplate life without them, exchange information about getting drugs more easily when released and often return to prison quite rapidly.

Another step towards rehabilitation of drug offenders took place in 2010 when the stimulant drug offender treatment was introduced as a special condition for adults on parole or probation. After an initial session they are obliged to attend another five over a period of three months and then a meeting each month to prevent relapse. The course, grounded in cognitive behavioural therapy and containing elements of role play, is delivered to groups, or occasionally individually, by probation officers at their offices. It is combined with “quick screen” drug tests. Parolees and probationers not subject to the special condition of taking the course, but who have a history of drug abuse, may volunteer to be tested. Because drug taking is an offence, a positive test result is reported to the police unless the person him or herself agrees to report it to them. A subsequent conviction will lead to revocation of parole or probation.

A record high rate of recidivism in 2011, 43 percent among nondrug related adult offenders and almost 60 percent for stimulant

users<sup>77</sup>, prompted the Ministry of Justice to examine if probation would be more effective to prevent repeat offending.( Statistics then available showed the likelihood of offenders released from prison on parole and supervision re-offending was about half that for those released at the end of their sentences without parole<sup>78</sup>. ) In both the Ministry and the Ministry of Health Labour and Welfare, acceptance grew that substance dependence, acknowledged as such by the World Health Organisation, is an illness requiring treatment.

The Prosecutor General addressing at meeting of senior prosecutors in 2012 urged prosecutors to pay more attention to helping criminal offenders re-integrate into society. Following this it was reported that a number of applications were made by prosecutors to courts to pass suspended sentences coupled with probation and undergoing a stimulant drug offender course. Previously such requests were almost unheard off because most prosecutors subscribed to the view severe punishment was a necessary deterrent.<sup>79</sup>

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<sup>77</sup> White Paper on Crime, 2012, Training and Research Institute, Ministry of Justice, Japan, Chapter 6 .

<sup>78</sup>*Japan Times*, 29<sup>th</sup> December, 2012.

<sup>79</sup>*The Japan News* , 21<sup>st</sup> May 2013.

The government inter-ministerial Council for Promoting Measures to Prevent Drug Abuse, in its Fourth Five year Drug Abuse Prevention Strategy, published in 2013, set preventing relapse into drug misuse as an objective to be achieved by treatment, re-integration into society and assistance to drug users families. Measures identified to accomplish this included: better medical treatment of acute symptoms of drug abuse; developing treatment and rehabilitation programmes and explaining their usefulness to health professionals; building a network of institutions, including private and voluntary organizations, concerned with the treatment and recovery of drug addicts according to their specific needs; enhancing courses on drug addiction in prison and the knowledge of those who teach them; improving transition from prison by obtaining accommodation, medical and welfare assistance before release ; recruiting volunteer probation officers well able to supervise and support drug offenders; fostering closer cooperation with public employment offices and other related agencies to find work for released inmates; equipping counsellors at health care, mental health and welfare centres with a greater knowledge of drug treatment; improving support and counselling for families of drug abusers; and promoting research on drug abuse and methods of treating drug dependence .<sup>80</sup>

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<sup>80</sup>Council for Promoting Measures to Prevent Drug Abuse (2013),*Fourth Five year*

In 2013, to reduce re-offending, rehabilitate offenders and assist their re-integration into society, the Diet passed the two laws, which took effect in June 2016, introducing partially suspended sentences, described earlier. As will be recalled, the one which specifically applies to drug offenders requires them to be placed on probation and attend a stimulant drug offender course. This marked a recognition of the limitation of courses to achieve rehabilitation in the artificial environment of prison, confidence in programmes held outside, belief in the efficacy of prolonged supervision by professional and volunteer probation officers and of their abilities to assist in housing and employment. A senior probation officer attached to the Ministry of Justice was of the opinion that the Japanese “no tolerance and punishment” approach to drugs, the success of which he considered was demonstrated by a decline in arrests over the last five years, (although a university professor interviewed suggested this was mainly because of less police activity, rather than a reduction in the scale of drug taking) ,

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*Drug Abuse Prevention Strategy*, Government of Japan. 11 -15.  
[www8.cao.go.jp/souki/drug/pdf/know/4\\_5strategy-e.pdf](http://www8.cao.go.jp/souki/drug/pdf/know/4_5strategy-e.pdf). Last visited 10<sup>th</sup> November, 2016.

had been preserved : However treatment and rehabilitation had been added to punishment.<sup>81</sup>

## VII. When and how frequently will Partially Suspended Sentences and Probation be used?

Press reports, based on Ministry of Justice estimates, when Bills to introduce partially suspended sentences were before the Diet spoke of approximately 3,000 persons each year being released from prison on probation.<sup>82</sup> There is, however, uncertainty how much ,and in what circumstances judges, will use this form of sentence in drug cases. A suspended sentence is usually passed for a first offence of possession and use of drugs. If compelling reasons exist, a second offence may result in another suspended sentence plus probation; however an immediate custodial sentence is more likely.

An attorney interviewed in Wakayama recounted how difficult it was to obtain a second suspended sentence notwithstanding submission of material from the Ministry of Health, Labour and Welfare and DARC as evidence that drug dependency is a disease.<sup>83</sup>

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<sup>81</sup> Interview 26<sup>th</sup> July, 2016.

<sup>82</sup> OSAKI, *supra* at note 21.

<sup>83</sup> Interview 28<sup>th</sup> July ,2016.

Partially suspended sentences are expected by the Ministry of Justice, to be used by judges where an immediate full sentence of imprisonment would otherwise be imposed. Although they obtain some information about the offender from the prosecutor and his attorney, judges do not receive a pre-sentence report as these are not compiled on adults by the probation service in Japan. A professor of criminal procedure, interviewed at Osaka City University, predicted many judges, might consider it safer to impose a full sentence of imprisonment and leave release and supervision on parole to the Regional Parole Board, supplied with considerable and contemporary information about the offender's personal circumstances, attitudes to the offence and determination to avoid re-offending<sup>84</sup>, rather than deciding on less than full information when in the future a person should be freed, put on probation and for what period. It was considered by a professor of criminal procedure at Doshisha University Law School that some judges may use partially suspended sentences "in grey areas" of indecision between immediate and suspended sentences with the result that people will be imprisoned who previously would not. He thought this would become a matter of clear concern for defence attorneys.<sup>85</sup> It was the opinion of a criminology professor at Rissho University Faculty of Law that court sentencing would be improved if judges and lawyers had a

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<sup>84</sup>Interview 11<sup>th</sup> July, 2016.

<sup>85</sup>Interview 10<sup>th</sup> July, 2016.



greater knowledge of criminology, psychology and social administration, subjects studied less than in the past in law departments.<sup>86</sup>

Despite reports, before partially suspended sentences came into force, of some recommendations made for suspended sentences coupled with probation, the great majority of prosecutors had little interest in, and knowledge of, probation and rehabilitation of drug offenders – their main concern being getting convictions. Indeed most sentencing recommendations were for immediate imprisonment. As they are now required to consider partial suspension as a possible sentence they will have to acquaint themselves much more with these matters. It is conceivable greater comprehension of addiction, treatment and rehabilitation may lead to them recommending more suspended sentences and probation. This would be in keeping with a view, reportedly found increasingly amongst prosecutors, they should not only obtain guilty verdicts but also seek the most appropriate punishment.

Doubt exists whether defence attorneys will often ask courts for partially suspended sentences in drug cases, preferring instead to request complete suspension, perhaps with probation. A widespread opinion, related by an attorney who deals with many drugs cases in Wakayama <sup>87</sup>, is that partially suspended are dangerous – almost

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<sup>86</sup>Interview 25<sup>th</sup> July,2016.

<sup>87</sup> Interview 28<sup>th</sup> July,2016.

setting up people to fail - because they do not match the process of recovery in which relapses do occur. Reconviction, perhaps the consequence of failing just one drugs test administered by the probation service, within the period of probation, which may be up to five years, will result in an offender serving the unexpired period of imprisonment plus another sentence. Accordingly, it is reasoned, a partially suspended sentence and probation is not necessarily lighter than a full sentence, which may be safer because it is over sooner. A criminology professor at Rissho University Faculty of Law <sup>88</sup> (a strong proponent of a social welfare, rather than criminal approach, to drug addiction), saw granting parole earlier than at present, during which intensive medical, psychological and social help would be given, as preferable to partially suspending sentences, prolonging time, and with it the danger of more time, in the criminal justice system.

## VIII. The key role of the probation service.

Turning from conjecture about how often partial suspended sentences will be requested and passed by judges to the key role of the probation service in implementing the law. Both professional and

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<sup>88</sup> Interview 25<sup>th</sup> July, 2016.

volunteer probation officers have experience of supervising drug offenders on probation and parole. Professional Probation Officers (“PPOs”) also run the CBT based stimulant drug offender treatment course. Although of value, especially in conveying to addicts they are not alone and isolated, some, for example Professor Hiroko Goto of Chiba University<sup>89</sup>, doubt whether the sum of this activity is sufficient to deal with the complexity of drug dependency and re-integration into society and stress additional needs for treatment, accommodation, employment and practical skills to survive – matters emphasized by the Council for Preventing Drug Abuse in its Fourth Five year Drug Abuse Prevention Strategy in 2013.

As mentioned earlier, according to a survey conducted by the Ministry of Justice in 2014, merely three percent of persons on parole and probation with drug dependence received specialized hospital treatment. Just forty hospitals provided specialist treatment for drug dependence and there were none in twenty four of the country’s forty seven prefectures. In some Prefectures there are no doctors at all dealing with drug addiction.

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<sup>89</sup> OSAKI, *supra* note 21.

To provide much needed additional capacity for drug dependency treatment, the Ministry of Justice and the Ministry of Health, Labour and Welfare plan closer collaboration between probation officers, hospitals and voluntary bodies such as DARC, to be managed and coordinated by local mental health welfare centres. Members of the Ministry of Justice interviewed in Tokyo considered such cooperation vital and helping to build it a major task ahead<sup>90</sup>.

DARC workers interviewed in Osaka and Wakayama said it is essential to provide stable public funding for their organization, at present dependent on donations, fees from members and help from some local governments, to remove the uncertainty that surrounds many centres, allow them to expand the number of places and develop what they offer to members.

If partially suspended sentences and probation are used extensively extra demands will be made on both professional and voluntary probation officers. PPOs will assess the needs of those to be released on probation, allocate them to voluntary probation officers, whilst still retaining overall responsibility for their supervision, coordinate medical and psychological assistance, organize stimulant

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<sup>90</sup> Interviews 26<sup>th</sup> July, 2016.

drug offender treatment programmes , test probationers for drug use and train voluntary probation officers about drug addiction and the help they can offer. Unlike candidates for parole who, before they can be released, must show they have accommodation and a guarantor to assist them in various matters, persons freed on probation under partially suspended sentences are not subject to such requirements. As a consequence, PPOs may find themselves much involved in obtaining accommodation for probationers and, perhaps, acting as their guarantors. PPOs interviewed in Tokyo<sup>91</sup> and Osaka<sup>92</sup> believed working with drug offenders on parole, probation and on partly suspended sentences would be helped by an increase in their numbers.

Volunteer Probation Officers (“VPOs”) questioned in Kyoto <sup>93</sup> and Tokyo <sup>94</sup>said some VPOs had anxieties about the uncertain number of offenders involved, periods they will require supervision, given probation in a partly suspended sentence can range from one year to five, and the possibility of facing people who might be uncommunicative and behave erratically. There was, however, no disagreement about the concept of the new sentence as a means of rehabilitation in the community. Several spoke about the need to intensify efforts to recruit

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<sup>91</sup> Interviews 25<sup>th</sup> July,2016.

<sup>92</sup> Interview 13<sup>th</sup> July,2016.

<sup>93</sup> Interview 21<sup>st</sup> July,2016.

<sup>94</sup> Interview 26<sup>th</sup> July,2016.

and retain VPOs, especially in the large urban areas where this is most difficult and the majority of drug offenders live. In this respect it was seen as helpful that many probation districts now have Offender Rehabilitation Support Centres where VPOs may meet and interview clients, rather than in their own home, or those of their clients, and can readily call on assistance and expertise from other VPOs. Working closely with PPOs in specific cases was seen as important, as was, if necessary, supervision of demanding cases by more than one VPO. One VPO said that in his experience drug offenders were not particularly difficult to supervise and assist, but problems and re-offending began after probation and parole. He wondered what support could be given subsequently. All the VPOs agreed that it would be beneficial to have more training about drug addiction and methods of dealing with it from PPOs, hospitals and organisations such as DARC. It was suggested that certain VPOs could be selected and specially trained to supervise and assist drug offenders.

## IX. Conclusions and respectful suggestions.

Additional duties placed on the probation service, both PPOs and VPOs, by partly suspended sentences and probation will inevitably require increased expenditure. Extra investment to establish a system of pre-sentence reports may well be wise to help judges decide whether

this form of sentence is necessary and, if so, when a defendant should be released and the period he or she should be supervised. Family Court Probation Officers, employed by the Supreme Court in the Family and High Court, investigate and prepare reports for judges on juveniles' social and family circumstances, attitudes to offences committed and offending generally. Enabling judges in the adult District Court, through being able to order pre-sentence reports, to find more out about offenders may give them greater confidence in considering passing not only partly suspended sentences but also suspended sentences with and without probation. For constitutional reasons if an adult court probation service was established it would, like the Family Court Probation Service, be under the auspices of the Supreme Court, not the Ministry of Justice. In compiling information about juveniles Family Court Probation officers are sometimes assisted by trained volunteers. Given the tradition of voluntary probation activity in Japan, it is possible to conceive volunteers contributing to an adult court probation service.

At a fundamental level, very considerable additional outlay across the country to develop medical and psychological treatment of addiction, with which the probation service may work, is absolutely indispensable. This is so not only for the success of the new partly suspended sentence coupled with probation but also for the effectiveness of suspended

sentences and probation and parole in reducing re-offending rates and promoting individual rehabilitation. It is tentatively suggested that hospitals and institutions with experience in other dependencies such as alcohol might usefully be approached first and asked to expand their activities.

Major commitments should also be made to increase accommodation for parolees and released prisoners, not least by the Ministry of Justice renewing its backing for halfway houses to accept persons with drug convictions and also by expanding the number of places at National Centres for Offender Rehabilitation to provide temporary accommodation, coupled with intensive supervision and assistance by probation officers to find employment.

Finally, away from allocating resources and expenditure, it has been suggested the policy of informing the police when a probationer or a parolee fails a probation service drugs test should be applied less rigidly, quite how would have to be agreed after discussion, but possibly one way might be permitting a number of fails before reporting. This would be more in keeping with the position taken by DARC that relapses on the way to recovery do inevitably occur and are experiences that should be learned from. Given that the probation service is to deepen collaboration with DARC, and similar bodies, it is submitted a closer



approach on relapses, to avoid what might be damaging confusion, would be desirable. Less stringent reporting of drug test failure is inconsistent with the pure principle of no toleration of drugs. However it could be seen as a strictly exceptional, limited and proportionate measure to achieve rehabilitation and reduce recidivism, thus promoting lawful conduct, and accord with recognition by the Ministry of Justice that substance abuse is a lifelong illness requiring support for a long time.

## Summary.

After sketching the origins and administrative structure of the Probation service, the respective roles of Professional Probation Officers (“PPOs”) and the fifty times more numerous Volunteer Probation Officers (“VPOs”) are described. Recruitment of VPOs, their backgrounds, increasing age, methods of work and training is then outlined, followed by activities of local VPO Associations and Offender Rehabilitation Support Centres. Advantages of the Japanese VPO system are analysed. Voluntary organisations related to probation, including “halfway houses”, are then explained. Established types of supervision are dealt with before the new form of partly suspended

sentences and probation is considered. Next addressed is the history and modern extent of drug misuse in Japan ;the popularly supported, “no tolerance” and punishment approach taken; the limited medical and psychological counselling opportunities open to drug addicts ; steps , from the mid - 2000s, towards treatment, albeit within punishment, for drug offenders culminating in partly suspended sentences linked to probation ,spurred by concern about high recidivism, belief probation could reduce it and growing official acceptance of drug dependency as a disease. Discussion continues about how much courts will use the new sentences, demands that will be made on the probation service and the fundamental necessity of providing adequate medical, psychological, accommodation and employment assistance for drug offenders, upon which the service may draw, if it is to achieve the aims of reducing recidivism and promoting rehabilitation.

**Key words.** Japan, Probation, Drugs, Misuse.



