

## **Criminal majority in Japan: what was decided and implemented**

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# Criminal Majority in Japan: What was Decided and Implemented

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## Abstract

On a cross-national continuum of juvenile justice, with a welfare model at one end and a criminal justice model at the other (Hazel, 2008 23 24), by sending all cases of those under 20 to the Family Court, Japan still more closely resembles the former. Retention of twenty as the age of criminal maturity stands out against the shift to adulthood at eighteen in the Civil Code and in voting. It recognises the efficacy of protective measures to reduce recidivism, and perhaps also recent neuro-scientific evidence that mental development of young people is not complete until their mid-twenties (Blakemore, 2012). However by widening instances when 18 and 19 year olds may be tried in adult courts, removal from them of protective juvenile probation and attendance at Juvenile Training and, in some instances, allowing their names to be made public, a distinct and controversial move in the direction of the latter part of continuum has taken place by amendments to the Juvenile Law, brought into effect on 1<sup>st</sup> April, 2022.

**Keywords:** Juvenile Crime, Law Revision, Adulthood.

## Adulthood at 18 for most purposes.

Revision of the Civil Code of Japan in 2018, which took effect on 1<sup>st</sup> April, 2022, lowered the age of adulthood in law to 18 from 20—an age set by the Imperial government in 1876, then placed in the Civil Code of 1896—adding over two million new adults to the population who no longer requiring parental consent to enter contracts, marry with permission of guardians and who may also legally change gender.[1] Amongst numerous related laws, altered because of the revision, 18 and 19 year olds will be eligible to serve as lay judges in the system of mixed courts (*saiban'in seido*), but, for administrative reasons, will not be selected until next year. Those attaining 18 have been able to vote in elections since 2016. These reforms, according to the government, are to promote independence and to encourage young people to participate more in society.

## A later age for criminal majority.

Criminal majority is when a criminal justice system regards offenders as adults, when they cease to have protections of process under the juvenile system, no longer receive different types of sentences from adults, and serve any sentences with adults. It was predicted with confidence in an article published in this journal at the end of 2018 (Watson 2018) that the government would soon reduce the age of criminal majority in Japan from 20, late by most international standards, to 18, amounting to the most significant alteration in juvenile criminal justice in Japan since 1948. This has not come to pass. Instead on the same day when adulthood for the Civil Law Code was reduced to 18, a more limited, but nonetheless substantial, reform of the Juvenile Law was introduced. The age of 20 for criminal majority is preserved but 18 and 19 year olds charged with certain serious offences will be transferred by Family Courts for trial and sentence in the adult courts.

## **Deliberations of the Legislative Council and decisions by the LDP and Komeito.**

In February 2017 the Minister of Justice formally consulted the Ministry of Justice Legislative Council, an advisory body, on lowering the age of criminal adulthood to 18 and other revisions of the Juvenile Law. The Council, composed of ten academics, two judges, two attorneys, one public prosecutor, one person from a victims' group, one representative from the National Police Agency, and one civil servant, was expected to produce a report in late 2018, following which the Ministry intended to submit amendments to the Juvenile and Penal Law in the Diet. This time scale slipped considerably and it was not until October 2020 that the report was produced. Much of the delay was because of lack of agreement amongst members of the Council whether the age of criminal majority should be reduced to 18 with some arguing trenchantly that it should. Because of the appreciable passage of time and disagreements between members, which were reported in the press, representatives of the Liberal Democratic Party and Komeito met some months before the Legislative Council reported to agree their position. In essence, this was to state that the procedure of sending all criminal offenders under twenty to the Family Court be kept, but the number of those sent back for prosecution in the adult courts should be expanded to include 18 and 19 year olds charged with offences carrying a minimum of imprisonment of one year. Resulting from its inability to agree, amongst recommendations finally submitted by the Council was the age criminal majority should be determined by discussion in the legislature. Other more concrete recommendations by the Council were contained in legislation passed on the 21<sup>st</sup> May, 2021, amending the Juvenile Law,<sup>[2]</sup> and which took effect in 1<sup>st</sup> April, 2022.

## **Changes introduced into Juvenile Law.**

As recommended by the Legislative Council, in alignment with the previously established LDP and Komeito position, the basic approach of sending all juvenile suspects to family courts by prosecutors is retained. Aided by reports written by Family Court Probation Officers about their character, personal and family background, environment and facts of the case, judges decide how offenders should be treated. The age of criminal majority remains twenty. However juveniles who are eighteen and nineteen are now classified as "specified juveniles." There is now a strong presumption—expressed as a general principle—that juveniles in that category charged with offences carrying a minimum period of imprisonment for one year will be referred back to prosecutors for trial in the adult courts. Amongst these offences are robbery, forcible sexual intercourse, and arson in habitable premises. Exception to trial and sentencing in the Family court was limited previously to juveniles aged sixteen and above charged with crimes that led to loss of life. Eighteen and nineteen year olds convicted in adult courts will not receive protective measures such as juvenile probation and attendance at Juvenile Training Schools, where individual treatment plans are drawn up on admission and emphasis is on "living guidance" programmes, including much individual counselling, to address offending behaviour; vocational training; academic education; health and physical education; and "special activities," including voluntary work and club activities (Justice in Japan, 2014: 43-45). It is widely held amongst probation officers and university academics that juvenile probation and juvenile training schools are effective in achieving rehabilitation with rates of reoffending below that of prison (Ueno, 2017: 4).

Sentences now available for specified juveniles will include prison, fundamentally places of punishment with forced, usually industrial, labour eight hours each day five days a week (*choeki*), and strict military style discipline,<sup>[3]</sup> suspended prison

sentences, to which probation supervision is attached, and partially suspended sentences of imprisonment of which probation forms a final part.

The revised Juvenile Law sets out that offenders sentenced in adult courts will not receive indeterminate sentences. Those aged 17 and younger convicted in the adult courts will be subject to a maximum custodial sentence of 15 years while for those 18 and 19 the most that can be imposed is 30 years. The death penalty remains unaltered under changes to the Juvenile Law and remains at least possible, although highly unlikely to be passed, for 18 and 19 year olds convicted of murder.

Before the 1<sup>st</sup> April, 2022, it was possible for offenders believed at risk of committing future offences to have periods in juvenile training school or on probation ordered by the Family Court extended beyond their original length. Upper limits, however, will now be placed on periods of juvenile training and probation according to an assessment by that court of the seriousness of the crime.

Incorporating further recommendations made by the Legislative Council, under the revised Juvenile Act Family Courts may no longer consider protective measures for juveniles who have not committed a crime but are considered at risk of doing so because of their circumstances and influences of others. Numbers of such juveniles coming before Family Courts were small (Ellis and Kyo, 2017a: 11 12). Commenting on this change the Japan Federation of Bar Associations, Nichibenren, saw provisions previously in the Juvenile Act functioning as a “social safety net” and called for additional welfare type support, especially outreach programmes, to be provided for troubled children and 18 and 19 year olds ( Nichibenren, 2021)

In accordance with recommendations made by the Legislative Council, and decided previously at the meeting between the LDP and Komeito, the revised Juvenile law permits media reporting of the names of 18 and 19 year olds indicted for trial in adult courts.

During Diet debates on the revised Juvenile Act, some members opposed removing the prohibition against reporting the names of 18- and 19-year-olds because of concern stigma would hinder their reintegration into society. Judicial Affairs Committees in both lower and upper chamber adopted a supplementary resolution stating that “when publicising a case, consideration must be given so as not to interfere with the healthy development and rehabilitation (of those indicted).”

The Supreme Public Prosecutors Office in February, 2022 issued High and District Court public prosecutors offices with guidance when names of defendants should be made public. Under this document healthy development and rehabilitation is to be weighed carefully on a case by case basis against the seriousness of the crime and severity of its impact on the community. Cases tried under the lay judge system (*saiban'in seido*)—mainly reserved for serious cases that carry possible sentence of death or life imprisonment—were mentioned as typical examples suitable for disclosure.

Because of the low rate of serious crime, indeed crime generally, committed by juveniles in Japan [4] persons tried by adult courts will not be high. Nonetheless the effects of a more punitive adult sentence on the future lives of those removed from protective and rehabilitative measures of probation and Juvenile Training School may be great. Commenting on the widely held belief in effectiveness of protective and educative measures to reduce recidivism and promote sound development of young people (whose characters are increasingly seen by psychologists and neuroscientists as plastic—not anything like completely moulded until at least their late twenties (Blakemore, 2012)), an editorial in the Asahi Shimbun, three days after

the Diet had amended the Juvenile Law,[5] noted that facts of offences vary in seriousness, as do reasons and motivations of those who carry them out. Approvingly it was observed that in three years preceding, fulfilling their duty to investigate their early backgrounds, family environments, and other circumstances, aided by psychologists and education reports, 2019 Family Courts did not return to prosecutors seven out of twenty six persons aged 18 or 19 eligible for trial in the adult courts where offences had led to death, notwithstanding the general principle they should be. It may be that numbers of “specified juveniles,” 18 and 19 year olds, who undergo adult trial may also be reduced by levels of scrutiny in the Family Court, despite the strong presumption introduced by the revised law. Those who receive an adult sentence may also be decreased in volume by judges who after trial do have a power, albeit not hitherto much used, to remit a case for disposal in the Family Court.

Because of the gravity of their offences, specified juveniles convicted before adult courts may receive sentences of immediate imprisonment. However it is likely suspended prison sentences will be imposed on offenders who commit less serious examples of offences, or because they play lesser roles in offences committed with others (Whether they have offended previously may also be a factor). This form of adult sentence is accompanied by a probation order. Thus they will receive an element of rehabilitative supervision and treatment but of course considerably less than they would have obtained in a Juvenile Training School. Judges who sentence “specified juveniles” will not have the benefit of detailed reports compiled by Family Court Probation Officers. Their sources of information will be restricted to that from prosecutors and defence attorneys.

## **Conclusion and area for future study.**

The revised Juvenile Law represents a compromise between those who support greater retribution and deterrence to deal with juvenile crime, although in reality it has dropped steeply over the last decade (Watson, 2018), and those who consider it is best addressed by protective measures of supervision and education. Support for the second approach is strong amongst academics and those who administer the system of juvenile crime. It will therefore be interesting to study: to what extent Family Courts will seek to retain cases of 18 and 19 year olds rather than refer them back to prosecutors for trial in adult courts; whether judges in adult courts will return cases after conviction for disposition by protective measures in the Family Court; and how many suspended sentences will be passed on 18 and 19 year olds in adult courts.

## **Notes.**

1. In what might be described as paternalism, sensible health and social policy, or a mixture of both, purchase of tobacco and alcohol and gambling remains unlawful until 20. Municipal Coming of Age ceremonies are expected to remain at 20.
2. The Act on Partial Amendment to the Juvenile Act and Other Relevant Statutes 2021.
3. For an overview of prisons in Japan, descriptions of their regime and topical articles, please see [World Prison Brief](#), Institute for Criminal Policy Research, University of London. <https://www.prisonstudies.org> (Last visited on 1<sup>st</sup> April.2022 ).
4. For example in 2019 the Family Court heard 273 cases of robbery, 180 cases of rape and 60 of arson (White Paper on Crime 2020, Training and research Institute, Ministry of Justice, Japan.) These are figures for all juveniles not just 18 and 19

year olds—statistics specifically for that age group, although sought, were not obtainable, nor were any for 18 and 19 year olds currently detained at Juvenile Training School convicted of these offences.

5. 24<sup>th</sup> May, 2021. Reiterating points in editorials from the previous year ( March 9<sup>th</sup> and August 5<sup>th</sup> 2020), the Mainichi Shimbun on the 21<sup>st</sup> May, 2021 expressed concern that expansion of offences triable in adult courts was contrary to the rehabilitative principle of the Juvenile Law which had yielded individual reformation and declining rates of juvenile crime.

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**Andrew Watson** was a visiting scholar at Osaka City University (Now Osaka Metropolitan University). Earlier in life he taught at Niigata University and conducted research at Chuo, Tokyo Metropolitan, and Doshisha Universities. He has written on aspects of Japanese society and criminal justice and has a particular interest in the distinctive probation service in Japan. Currently he is a Senior Research Fellow in the Department of Law and Criminology at Sheffield Hallam University in Britain.

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