Revising Shonenho: A Call to a Reform That Makes the Already Effective Japanese Juvenile System Even More Effective

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Revising *Shonenho*: A Call to a Reform That Makes the Already Effective Japanese Juvenile System Even More Effective

**Abstract**

*Shonenho*, the Japanese Juvenile Law, is based on ideas of protection, love, and tolerance towards the juvenile offender. Its main purpose is to protect him from the stigma of the crime or delinquent act that he has committed, as well as from the environment in which he was when he committed the crime or delinquent act. Punishment does not have a role within the Japanese juvenile system. Rather, *Shonenho* strives to reform the juvenile so that he can return to society as a fully functional member within a relatively short period of time. Looking at the low juvenile criminal and recidivism rates in Japan compared to other industrial nations, as well as the fact that the incidence of juvenile crime has decreased compared to when *Shonenho* was enacted in 1949, it is clear that *Shonenho* has proven effective.

Nevertheless, especially since the Kobe case in 1997 involving a juvenile who committed two murders and assaulted others, Japan has been contemplating revising *Shonenho* so that harsher penalties can be imposed on juvenile offenders. Such proposals have resulted from sharp criticism towards the current system that some people claim overprotects juvenile offenders. The two main proposals, introduced to the Japanese government by the leading political party, include allowing prosecutors to try juveniles and having a three-judge panel hear juvenile cases. The Japanese Diet will consider these proposals in the near future.

The proposals directly contravene the purpose of *Shonenho*. Hence, they do not have the best interest of the juvenile offender in mind. Despite the respectable track record of *Shonenho*, in the wake of the Kobe case lawmakers have been influenced much by the public outrage over several uniquely heinous juvenile crimes.

The focus of a reform that would truly improve the already effective system should be on enforcing *Shonenho*. One way to do this is to add enforcement provisions to
Shonenho. As it stands now, Shonenho does not provide any legal recourse for the violation of provisions designed to protect the juvenile offender. In addition, lawmakers should place more of an emphasis on ensuring that Shonenho complies with international standards of juvenile justice by guaranteeing juveniles certain rights when they proceed through the juvenile justice system.

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I. INTRODUCTION

A fourteen-year-old commits a murder. What is the juvenile's name? What does he look like? Where does he go to school?

The press and media would answer such questions almost immediately should such an incident occur in the United States. In many situations in the United States, the juvenile would be tried as an adult. The more sensational and shocking the crime, the more likely the public would know and remember the juvenile offender's face and name.

In Japan, however, the story is much different. A provision in Shonenho, the Japanese Juvenile Law, explicitly forbids the publishing of any information about the juvenile offender that could possibly lead to disclosure of his identity. The purpose of the law is that the rehabilitation of the juvenile will not be hindered, and no one in the public will recognize him when he returns to society. The law further forbids the victim's family any access to information about the juvenile offender. It is not an option for the prosecutor to have the juvenile tried as an adult. In fact, the prosecutor is not a part of the juvenile's trial. All of these provisions exist to protect the juvenile offender in a system that does not make punishment its primary goal, but

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1. For juvenile criminal law cases and materials in the United States, see generally WALTER WADLINGTON ET AL., CHILDREN IN THE LEGAL SYSTEM, CASES AND MATERIALS (1983). For a comparison between the Japanese justice system and that of other nations including the United States, see DAICHI TOKYO BENGOSHIKAI SHONENHOKUINKAI, Q&A SHONENHIVO TO SHONENHO: SHONEN WA "KYOAKUKA" SHITEIRU 39-41 (1998) [hereinafter SHONENHIVO]; TOSHIO SAWANOBORI, SHONENHO NYUMON 230-40 (1994) [hereinafter SAWANOBORI].

2. SHONENHO, art. 61, reprinted in HIROKO GOTO, ed., SHONEN HANZAI TO SHONENHO 213 (1997) [hereinafter GOTO].

3. See id. art. 1, at 201.

4. See Kobe Victim's Parents Sue, ASAHI EVENING NEWS, Aug. 27, 1998, available in 1998 WL 12789355. The victim's family is not allowed to be present at the Family Court, where all juvenile criminal proceedings take place. See SHONENHO, art. 3, reprinted in GOTO, supra note 2, at 201; see also Pain of Kobe Killings Lingers for Parents of Victims, MAINICHI DAILY NEWS, Oct. 18, 1997, available in 1997 WL 14873972. Victims' rights have also been the topic of much debate, coupled with the call to reform the Japanese Juvenile Law. However, that topic will not be the subject of this Note, apart from the very brief treatment of it in infra Part III.B.

5. See generally SAWANOBORI, supra note 1, at 38-41. For exceptions to this, see infra Part II.A.

6. See SAWANOBORI, supra note 1, at 38-41.
rather, reform. Shonenho governs all those under the age of twenty.  

Shonenho has been in effect for over fifty years and has proven effective, without any significant changes since its enactment. Nevertheless, the 1997 Kobe Renzoku Jido Sassho case (Kobe case) has triggered a call for Shonenho's drastic reform. The heinous nature of the crimes involved in the Kobe case, combined with sensational press coverage and a misconception that Shonenho is ineffective, have led to a national discussion on why the alleged overprotective nature of Shonenho should be revised.

Indeed on its face, Shonenho appears to focus exclusively on protecting the juvenile offender, rehabilitating him, and ensuring that the system does not further corrupt the youthful offender. This goal is precisely what has been the subject of much criticism, especially since the Kobe case. It is questionable, however, if the system has done everything possible to ensure the protection that Shonenho guarantees. As applied, the Japanese Juvenile Law may not be living up to its own goal of protecting the juvenile offender.

Now, three years after the Kobe case, Shonenho continues to be debated, and the possibility of major revisions is on the table. The leading Japanese political party has suggested two major ideas for revision, which the Japanese Diet will consider in the near future: (1) allowing a prosecutor to be a part of the juvenile trial; and (2) having a panel of three judges, instead of one, hear the juvenile case. In addition, although not explicitly suggested as part of the reform, since the Kobe case, the press and even the courts have violated the guarantees of Shonenho in protecting the identity of the juvenile offender. Yet, because of a lack of enforcement provisions in Shonenho, such violations, for the most part, have gone unpunished.

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7. *See* Shonenhiko, supra note 1, at 9-12.
8. *Shonenh*o, art. 2, reprinted in Goto, supra note 2, at 201.
11. *See*, e.g., Sawanobori, supra note 1, at 19-20.
14. The Diet is the equivalent of the U.S. Congress; it is the legislative body of the Japanese government.
The current suggestions for revision and blatant violations of *Shonenho* pose the danger of losing entirely the vision with which the Japanese Juvenile Law was enacted in the first place. The focus of the current revisions has been on how to punish more effectively, even though that directly contravenes the purpose and spirit of *Shonenho*, and how to please and protect the public.

This Note will explain why the current proposals go directly against the purpose behind *Shonenho* and why they are not desirable. This section will also discuss the need for a reform that will ensure that *Shonenho*, as it stands, will be more strictly enforced. Part II will lay out the history and current status of juvenile crime in Japan. This section will also describe the Japanese juvenile system, its purpose, and its goals. Part III will discuss the *Kobe* case and how it has led to the recent call to reform *Shonenho*. It will also describe the Japanese government's early efforts to revise *Shonenho*, as well as the current proposals. Part IV will expose why the proposals will not work. Finally, Part V will suggest a different kind of reform that is necessary in order for the full potential and goals of *Shonenho* to be realized and will more closely adhere to international standards of juvenile justice.

II. *SHONENHO*: THE JAPANESE JUVENILE LAW

The protective nature of *Shonenho* is based on an assumption that delinquency, as discussed in *Shonenho*, has two components. The first component is that which harms others, and the second is that which harms the juvenile himself.16 When the juvenile commits delinquent acts, he often harms others. Because these acts label the juvenile as “delinquent,” and he subsequently may be shunned by society, there is harm to the juvenile himself.17 By putting the juvenile offender through rehabilitation programs and by taking the juvenile out of circumstances in which he committed the delinquent acts, *Shonenho* seeks to protect the juvenile from the harm and stigma he put on himself.18 *Shonenho*'s goal is to erase the offense completely, not only from the juvenile’s own past, but also from the mind of the rest of society.19

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16. See *SAWANOBORI*, supra note 1, at 4.
17. *Id.*
18. *See id.*
19. *See generally SAWANOBORI*, supra note 1, at 1-55.
A. The Purpose of Shonenho: Protecting the Juvenile Offender

Article 1 of Shonenho states the purpose of the Juvenile Law as follows:\(^{20}\)

This Law is instituted with the purpose of promoting the welfare and wholesomeness of the juvenile, and for the juvenile who is delinquent, that his character will be reformed and that his circumstances would be improved. It is also the purpose of this Law to outline the special treatment that the juvenile will undergo should he be involved in the committing of adult crimes.\(^{21}\)

Shonenho, therefore, contains no reference to retribution or punishment of juvenile offenders. The focus is on reforming the juvenile.\(^{22}\) The principle of making protection the main focus is known as hogoshugi.\(^{23}\) Hogo is translated as "protection" or "care" and "patronage" or "to keep from harm."\(^{24}\) The word hogo is made up of two characters that mean "maintain," "keep," or "preserve," and "protect," "guard," "shield," and "defend," respectively.\(^{25}\) The first character, for example, is used in the word "nurture" or "upbringing."\(^{26}\) Juvenile crimes are often referred to as shonen no hogo jiken, loosely translated as "a crime that calls for a juvenile's protection."\(^{27}\) The hearing, conducted in Family Court, and the "penalty" phase of a juvenile crime, are sometimes collectively referred to as hogo-tetsuzuki, or "the process of protection [of the juvenile]."\(^{28}\) The punishment component is found in the fact that the juvenile is forced to undergo reform, even if he does not feel it is necessary.\(^{29}\) It is clear that Shonenho has been designed so that punishment is not the primary focus.\(^{30}\)

The Japanese Constitution provides that all minors are guaranteed the right to grow, advance, and develop.\(^{31}\) These rights are said to be implicit in Articles 13, 25, and 26 of the

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20. All translations of Shonenho and other original documents in this Note are by the author, unless otherwise indicated.
21. SHONENHO, art. 1, reprinted in GOTO, supra note 2, at 201.
22. See SAWANOBORI, supra note 1, at 19-25.
23. See id.
25. Id. "Juvenile correctional institution" is called shonen hogo kanbetsusho, which again shows the underlying principle of protection of the juvenile system in Japan. Id.
26. Another example of a word using such characters is hogosha, which means "guardian." Literally translated, it means "protector." Translation by the author.
27. Translation by the author.
28. SAWANOBORI, supra note 1, at 38.
29. See GOTO, supra note 2, at 9.
30. See id.
31. See SAWANOBORI, supra note 1, at 29.
Constitution. Thus, the Japanese government has a duty to enable and aid the juvenile offender to grow, advance, and develop, despite his delinquency, through the protective nature of the juvenile system. *Shonenho* is also based on rights that international communities have traditionally guaranteed children.

The spirit of *Shonenho* is that of love and tolerance. It presumes that the juvenile will be reformed with appropriate help and that making mistakes is a necessary step for growth. The fact that punishment is not one of the main purposes of the juvenile system distinguishes it from the adult criminal system. Thus, when the Old *Shonenho* (*Kyu-Shonenho*) (1923) was revised and became what we know as the *Shonenho* today in 1949, one major change was to move all juvenile proceedings to Family Court. The reason for this change is based on the presumption that juvenile crimes are in some way related to problems within the juvenile’s home or family. Furthermore, the move to Family Court...

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32. See id.; see also KENPO, arts. 13, 25, 26, reprinted in BASIC JAPANESE LAWS 6, 8 (HIROSHI ODA, ed., 1997). The translation here is the official translation, and therefore, no attempt has been made to revise it. Articles 13, 25, and 26 provide as follows:

Article 13:
All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 25:
1. All people shall have the right to maintain the minimum standards of wholesome and cultured living.
2. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26:
1. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.
2. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Id. at 6, 8.

33. See SAWANOBORI, supra note 1, at 29.
34. See SHonen KEISATSU KATSUDO TO KODOMO NO JINKEN: KODOMO NO KENZEN NA SEICHOU 0 NEGATrE 86 (Nihonbengoshiirengokai, ed., 1998) [hereinafter KODOMO NO JINKEN]; see infra Part V.C.
35. KODOMO NO JINKEN, supra note 34, at 86.
36. See id.
37. See SAWANOBORI, supra note 1, at 29.
38. See id.
39. See id.
Court held a symbolic significance, creating an entirely different system from that which deals with adult crimes.\textsuperscript{40} Article 61 exemplifies the protective policy of \textit{Shonenho}. It forbids the publication of any information that may lead to the identification of the juvenile offender.\textsuperscript{41} It prevents the juvenile from being identified after he has been rehabilitated.\textsuperscript{42} Article 61 provides:

The name, age, occupation, address, physical features, and any other information that leads to the identification [of the juvenile] may not be published in the form of an article or a photograph in a newspaper or other publication, for any juvenile who goes through a Family Court proceeding.\textsuperscript{43}

Along with Article 61, Article 22 guarantees that the juvenile offender's identity is protected. Article 22, clause 2, guarantees that "[t]he juvenile trial is not to be open to the public."\textsuperscript{44} There are two main reasons for this guarantee. First, it allows the Family Court to understand what kind of "help" the juvenile needs in order for him to change or to be removed from the circumstances that caused him to commit a crime.\textsuperscript{45} The Family Court must extensively and carefully investigate the juvenile's private information such as his upbringing and details about his family.\textsuperscript{46} It would be a violation of the juvenile's privacy to release such information to the public.\textsuperscript{47} Second, once the juvenile is rehabilitated, and when he attempts to return to society-at-large, it would be against the spirit of \textit{Shonenho} to have him suffer then because of a mistake of his youth.\textsuperscript{48} This second reason is strongly related to the purpose underlying Article 61, which protects the juvenile's privacy from the press.\textsuperscript{49}

\begin{itemize}
\item[40.] See id.
\item[41.] See \textit{Shonenho}, art. 61, reprinted in \textit{Goto}, supra note 2, at 213.
\item[42.] See \textit{Goto}, supra note 2, at 128-29.
\item[43.] \textit{Shonenho}, art. 61, reprinted in \textit{Goto}, supra note 2, at 213. A major weakness with this particular provision is that there is no penalty provision to ensure compliance. See \textit{When the Law is Toothless}, supra note 15, at 1; \textit{infra} Part V.A.
\item[44.] \textit{Shonenho}, art. 22, reprinted in \textit{Goto}, supra note 2, at 205. The trial is closed to the public, which means that the victim's family cannot attend. See \textit{Pain of Kobe Killings Lingers for Parents of Victims}, supra note 4, at 1. \textit{But see infra} Part V.B.
\item[45.] \textit{Goto}, supra note 2, at 128-19.
\item[46.] See \textit{id.} at 128.
\item[47.] See \textit{id.}
\item[48.] See \textit{id.} at 129.
\item[49.] Especially after the recent \textit{Kobe} case, the fact that even the victim's family cannot attend the hearing has been the subject of much criticism. See, \textit{e.g.}, \textit{Editorial: Amending the Juvenile Law}, \textit{Mainichi Daily News}, Jan. 15, 1999, available in 1999 WL 7538214; \textit{Pain of Kobe Killings Linger for Parents of Victims}, supra note 4.
\end{itemize}
B. The Juvenile Criminal Process

The purpose of the juvenile criminal process is to understand the reason behind the juvenile’s criminal or delinquent acts.\(^5^0\) The basic framework of the process begins with the juvenile’s acknowledgment of having committed the crime or delinquent act.\(^5^1\) Then, in the “gentle and amicable” atmosphere of the Family Court, a discussion between the judge and juvenile will lead to a quick discovery and understanding of the circumstances and reasons behind the juvenile’s having committed a crime or delinquent act.\(^5^2\)

1. The Investigation and Trial

After a juvenile is arrested, he is sent to the prosecutor within forty-eight hours.\(^5^3\) Thus, the police are entitled to a maximum of forty-eight hours in which to conduct all their questioning before the juvenile is transferred to the prosecutor for further questioning.\(^5^4\) After the juvenile is transferred, the prosecutor has twenty-four hours in which to question the juvenile. If it is absolutely necessary to conduct additional questioning and investigating, the prosecutor may request an extension for ten days. If still more time is absolutely necessary, he may request a second ten-day extension.\(^5^5\) Article 48 of Shonenho clearly states that unless it is “absolutely necessary,”\(^5^6\) the prosecutor must not detain the juvenile for longer than the

\(^{50}\) See Sawanobori, supra note 1, at 38.

\(^{51}\) See id.


\(^{53}\) See Goto, supra note 2, at 108.

\(^{54}\) See Kodo no Jinen, supra note 34, at 25.

\(^{55}\) See id.

\(^{56}\) Article 48 provides as follows:

1. The extension [of the period in which the juvenile remains in a holding cell during which the prosecutor continues the questioning] must not be granted unless it is absolutely necessary.

2. If the juvenile is to be held for an extended time, he may be retained in a juvenile correctional center.

3. Even if the offender reaches the age of 20 during the investigation, clauses 1 and 2 continue to apply.

Shonenho, art. 48, reprinted in Goto, supra note 2, at 211.
twenty-four-hour period, in order to avoid delay of the juvenile’s return to society.

Shonenho’s purpose here is to prevent the juvenile from experiencing excessive pressure from the prosecutor, as well as to keep to a minimum a situation in which the juvenile is in solitary confinement. Before a trial begins, the police department sends all of its findings to the Family Court.

The juvenile trial system, or the hearing, is arranged so that the juvenile offender is given ample opportunity to express his opinions freely, but those who accused him are not. All juvenile cases are held in front of a single judge. A court-appointed investigator presents the information to the judge. The judge hears the evidence and other pertinent information and then makes a decision based on what he has heard. The only people allowed at the hearing are the juvenile, the judge, the court-appointed investigator, the guardian, and in some cases, the chaperon as well. The prosecutor is not allowed to attend the hearing. These rules create a system in which all participants are on the “same side,” working toward the same goals—to ensure a “gentle and amicable” atmosphere and to protect the juvenile.

In an ordinary parent-child relationship, if the child does something “bad,” the parent asks him first what he has done and confirms what the “bad” act was. Then, the parent asks him why he committed such an act in order to understand the child’s emotions and intent behind the act. So it is with the juvenile trial—the judge acts firmly when he confirms the facts and then

57. See Kodomo no Jinken, supra note 34, at 25.
58. See id. Unfortunately, however, the short time limits placed on the police often lead them to use coercive tactics, and in some cases, even violence, in an attempt to get the juvenile to confess. See infra Part V.B.
59. See Goto, supra note 2, at 109.
63. See Sawanobori, supra note 1, at 111-13.
64. See id.
65. See Goto, supra note 2, at 122. Because the prosecutor is not there to present evidence for the government in a juvenile trial, unlike in an adult criminal trial, the judge’s duty is not to decide which side is more credible. See id. at 121-22. Instead, his role is to decide what kind of protection or help the juvenile needs. See id. at 124. Thus, in some respect, the judge plays the role of both the prosecutor and the lawyer. See id.
66. See Ensuring Fair Rulings for Minors, supra note 52.
67. Id.; see also Shonenho, arts. 6, 7, reprinted in Goto, supra note 2, at 202.
68. Id. at 125.
69. See id.
is kind and gentle when he asks about the motives behind the act.70

Article 22, clause 1, provides that "[t]he juvenile trial must have the objective of being conducted in a kind, cordial, and peaceful way."71 There are no specific provisions as to how this objective should be met.72

The Family Court can reach one of five possible decisions: (1) no trial necessary; (2) no decision necessary (fushobun); (3) requirement of counseling at the Children's Counseling Services; (4) further investigation by the public prosecutor; and 5) decision to protect (hogo-shobun)—that is, the juvenile is sent to either reform school or a juvenile correctional institution.73

The first possible decision, governed by Article 19, clause 1, is entered into when a case is closed without an actual trial.74 This decision is equivalent to a situation in which a charge is dropped in an adult criminal trial. If the juvenile is not present at the trial because of his death or because he is missing, this decision is also entered.75 It is also possible that his offense is minor, and thus the court deems that his protection is unnecessary.76 In such a situation, depending on the need and the judge's discretion, the court may nevertheless provide guidance and advice.77 Shonenho allows the Family Court to provide guidance to not only the juvenile who has committed a crime, but also to one whom the court in its judgment believes might commit a crime in the future.78 This option illustrates, once again, the protective purpose of Shonenho.

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70. See id. at 126.
71. SHONENHO, art. 22, reprinted in GOTO, supra note 2, at 205.
72. See id. at 130; see also SAWANOBORI, supra note 1, at 151. A juvenile case in 1983, the Nagareyama case, determined that Article 22, clause 1, does not mean that it is up to the absolute discretion of the judge to determine how to conduct a trial to achieve that objective. See GOTO, supra note 2, at 131. The Nagareyama case involved more than ten juveniles that severely vandalized a high school in Chiba prefecture. Id. Seven juveniles were arrested. See KODOMO NO JINKEN, supra note 34, at 40.
73. See GOTO, supra note 2, at 137.
74. See SHONENHO, art. 19, reprinted in GOTO, supra note 2, at 205; SAWANOBORI, supra note 1, at 48.
75. See SAWANOBORI, supra note 1, at 48.
76. See id.
77. Id.
78. See, e.g., GOTO, supra note 2, at 77. Article 3, clause 3 provides: [The following juvenile will be subject to judgment by the Family Court:] Because of one of the following reasons, his personality or his surroundings make him susceptible to, in the future, committing a crime or an act that goes against the criminal laws:
(1) He is not under the proper supervision of a guardian.
The second possibility, *fushobun*, is the equivalent of an acquittal in an adult criminal case.\textsuperscript{79} This category also includes cases in which the court orders juveniles to be observed by a court-appointed social worker for a specific time period following the acquittal.\textsuperscript{80}

Articles 19 and 20 govern situations in which the court sends the case back to the public prosecutor.\textsuperscript{81} There are two reasons for sending a case back to the prosecutor.\textsuperscript{82} First, the offender will be sent back to the prosecutor if the court in its discretion determines that he is actually not a juvenile, that is, if he is older than twenty years of age.\textsuperscript{83} In that case, he will enter the adult criminal system. Second, the case can be sent back to the prosecutor at the discretion of the court only if the juvenile is over the age of sixteen, and if he has committed a crime punishable by the death penalty or imprisonment if it were an adult criminal case.\textsuperscript{84} In this situation, the case also enters the adult criminal system.

The final possibility is that the Family Court will find the juvenile to be in need of *hogo-shobun*, the equivalent of a guilty verdict. Yet the purpose of this decision is not to punish the juvenile offender, but rather to protect him.\textsuperscript{85}

In 1996, 131,786 juveniles entered Family Court proceedings.\textsuperscript{86} Of those, approximately ninety percent of juvenile cases (excluding traffic violations) either did not go to the trial stage (73.5%) or were acquitted (15.1%).\textsuperscript{87} Still, *Shonenho* requires that all cases be decided in Family Court, before a judge,\textsuperscript{88} because a juvenile who commits or is involved in an insignificant incident may nevertheless need a large amount of help or protection.\textsuperscript{89} Thus, a presumption exists that because a juvenile is in such a proceeding means that the juvenile is in need

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(2) He interacts with persons who have a criminal tendency or those who are immoral, or he frequents indecent places.

(3) He has the tendency of harming the moral character of himself or others.

*Shonenho*, art. 3, cl. 3, *reprinted in Goto*, supra note 2, at 201; *see also Sawanobori*, supra note 1, at 89-92.

\textsuperscript{79} See *Kodomo no Jinken*, supra note 34, at 144.

\textsuperscript{80} See *Sawanobori*, supra note 1, at 49.

\textsuperscript{81} See *Shonenho*, arts. 19, 20, *reprinted in Goto*, supra note 2, at 205; *Sawanobori*, supra note 1, at 48-49, 168-74, 200-06.

\textsuperscript{82} See *Sawanobori*, supra note 1, at 48-49.

\textsuperscript{83} See *id.* at 48.

\textsuperscript{84} See *id.* at 49.

\textsuperscript{85} See *infra* Part II.B.1. (providing a detailed discussion of *hogo-shobun*).

\textsuperscript{86} See *Goto*, supra note 2, at 136.

\textsuperscript{87} See *id.* at 136-37.

\textsuperscript{88} See *id.* at 137-38.

\textsuperscript{89} See *id.* at 138.
of a change of circumstance, attitude, or some other factor that would make him no longer require that extra protection. Looking at it another way, the mere fact that a juvenile has appeared before a Family Court does not mean that he is delinquent or a criminal.90

The juvenile, the court-appointed attorney, or the guardian can appeal a decision to the Japanese Supreme Court.91 The appeal is allowed for any of the following reasons: (1) an illegal error in the procedure occurred that affected the decision; (2) a crucial factual error occurred; or (3) the decision entered into absolutely did not fit the crime.92 The appeal must occur within two weeks of the day after the decision of the Family Court.93 The prosecutor, who is not part of the juvenile trial, is not allowed to appeal a decision by the Family Court.94

2. The “Penalty” Phase

If it is determined that a juvenile needs to be in protection—that is, found guilty—he will be: (1) placed under *hogo kansatsu* or “protective observation”; (2) placed in a *jido jiritsu shien shisetsu*, a type of reform school; or (3) sent to a correctional institution.95 The purpose of each of these options is to reform or rehabilitate the juvenile.96 When a juvenile is placed under *hogo kansatsu*, he immediately returns to society.97 While he continues with his ordinary life, the juvenile receives guidance from a court-appointed *hogo-shi*, or “protector,” who usually meets with the juvenile bi-weekly and counsels him.98 There are

90. *See id.*
91. *See SAWANOBORI, supra note 1, at 52.*
92. *See id.*
93. *See id.; see also SHONENHO, art. 35, reprinted in GOTO, supra note 2, at 208-09. Article 35 provides as follows:*

For a decision [of the Family Court] to be overturned, there must have been a violation of the Constitution, a misinterpretation of the Constitution, or the Supreme Court or an appellate level court must reach a decision contrary [to the Family Court’s decision]. An appeal can be brought before the Supreme Court by the juvenile, the court-appointed lawyer, or the guardian within two weeks [of the Family Court’s decision]. However, the guardian may not appeal if it is contrary to the intent of the guardian[-parents] that appointed the guardian.

SHONENHO, art. 36, reprinted in GOTO, supra note 2, at 208-09.
94. *See SAWANOBORI, supra note 1, at 52.*
95. *GOTO, supra note 2, at 140-43.*
96. *See SAWANOBORI, supra note 1, at 49.*
97. *See SHONENHO, art. 24, reprinted in GOTO, supra note 2, at 205; GOTO, supra note 2, at 140.*
98. *See GOTO, supra note 2, at 140.*
two types of goals in this arrangement. The first is the general goal of helping the juvenile follow the rules of society and everyday living. The second is an individualized goal, such as trying to control anger, for example, for a juvenile who committed an assault.

*Jido jiritsu shien shisetsu* under the second option literally means "a facility in which the child is supported while he learns to become independent." A social worker lives with the juvenile within the facility. The facility is an open one, with little sense of institutionalization. In 1996, only 0.1% of the juveniles processed through the Family Court system were sent to such a facility.

Under the third option, there are four types of juvenile correctional institutions: elementary level, middle level, special type, and medical. The purpose of each correctional institution is to reform the juvenile, and each provides instruction on everyday living, education, job training, and necessary medical treatment. Programs at these institutions are designed so that the juvenile can become fully equipped to return to society. Job training is geared toward enabling the juvenile to achieve some sort of qualification or certificate, such as specialized computer skills or a driver's license. The skills should enable the juvenile to be ready to find a job immediately after he leaves the facility. For those who have not yet completed compulsory education, equivalent education is provided within the facility, and the juvenile will receive a diploma from the school that he attended before entering the facility. In some situations, the homeroom teacher or principal from the juvenile's old school actually presents him the diploma at the training facility. The goal is to ensure that the juvenile does not suffer a disadvantage.

99. See id. at 141-42.
100. See id.
101. See id. at 142.
102. See GOTO, supra note 2, at 140-43.
103. See SAWANOBORI, supra note 1, at 178.
104. See id.
105. See GOTO, supra note 2, at 136. In general, the percentage of juveniles that get sent to the *jido jiritsu shien shisetsu* remains around 0.1% every year. See id.
106. See SAWANOBORI, supra note 1, at 49.
107. See id. at 178. As of March 31, 1996, there were are total of 54 juvenile correctional facilities in Japan. See GOTO, supra note 2, at 142.
108. See id. at 146.
109. See id. at 146-47.
110. See id. at 147.
111. See id.; see also Kobe Killer Student Graduates from Junior High, JAPAN ECON. NEWSIRE, Mar. 13, 1998, available in WESTLAW, Japannews Library, Jwire File; infra Part I.C.
112. See GOTO, supra note 2, at 147.
educationally because of his time at the correctional facility.113

Allowing the juvenile to receive a regular middle school diploma
further ensures that his stay at a correctional institution will not
be known to others after the juvenile returns to society.114

The Family Court judge determines which course of action
best suits the particular juvenile, depending on his
circumstances.115 The judge also determines what type of
treatment the juvenile should receive in a particular facility.116
Thus, the protection or treatment is individualized, depending on
the need. The general rule is not for a judge to impose a sentence
of a number of years, but rather, the juvenile must remain in a
facility until he is deemed reformed and ready to re-enter
society.117 After the Family Court sets a rehabilitation period,
heads of the correctional facilities have the authority to decide
whether to keep the juveniles beyond that period.118

The elementary level correctional facility is for juveniles
between fourteen and sixteen years of age with no remarkable
physical or mental disability.119 The middle level is for juveniles
aged sixteen through twenty-three with no remarkable physical or
mental disability.120 The special facility is for juveniles, generally
over the age of sixteen, with no remarkable physical or mental
disability but with a history of having committed a serious
crime.121 The medical facility is for those between the age of
fourteen and twenty-six with a remarkable physical or mental
disability.122

This system has now been in effect for over fifty years in
Japan. As the following section will demonstrate, statistics on
juvenile crime show that it has been an effective one.

113. See id.
114. See id.
115. See SAWANOBORI, supra note 1, at 48.
116. See id.
117. See Hidehisa Watanabe, Effectiveness of Juvenile Detention Limits
118. See GOTO, supra note 2, at 143-44.
119. See id.
120. See id. at 143. Extending the age limit to 23 was a very recent change
as a result of the public uproar concerning the Kobe case and criticism about the
leniency of Shonenho. See, e.g., Ministry to Allow Juveniles to be Locked Up Until
Age 23, JAPAN ECON. NEWSIRE, Sept. 8, 1997, available in WESTLAW, Japanews
Library, Jwire File. Furthermore, the three-year detention limit has also been
changed, and now the detention period can be extended by more than a year as
well as multiple times, with permission from the head of the jurisdiction. See,
e.g., Ministry Extends Punishment Allowed Under Juvenile Law, DAILY YOMIURI,
Sept. 10, 1997, available in 1997 WL 12801779; see also Part III.C.
121. See id.
122. See id.; see also SAWANOBORI, supra note 1, at 178. This upper age
limit was also extended recently as a result of the Kobe case. See, e.g., Ministry to
Allow Juveniles to be Locked up Until Age 23, supra note 120.
C. Juvenile Crime in Japan

In 1949, when *Shonenho* came into effect, the incidence of juvenile crime was much higher than it is today.\(^{123}\) By looking at this simple fact, it can be deduced that *Shonenho* has proven effective during the fifty years since its enactment.

While it is a myth that Japan is an entirely crime-free society, the juvenile crime rate is low compared to most other industrialized nations.\(^{124}\) In 1996, juvenile arrests made up roughly half of all crimes.\(^{125}\) Of all juvenile arrests, over seventy percent were drug-related offenses.\(^{126}\) About seventeen percent of juvenile arrests consisted of *kyoaku* (atrocious) crimes, including burglary, aggravated assault, rape, murder, and arson.\(^{127}\) In recent years, the number of juveniles arrested for *kyoaku* crimes has made up less than 0.02% of the juvenile population in Japan.\(^{128}\) Homicide by juveniles is on the decline.\(^{129}\) According to the Annual Judicial Statistics Report for 1996, major juvenile crime was at its highest level in 1959 with 8213 incidents, declined to about 1000 cases per year in 1976, and since then has remained at that level.\(^{130}\) In 1996, only fourteen percent of juvenile crime was committed by juveniles with prior convictions—a record low.\(^{131}\) While 1997 statistics show an increase in juvenile crime, a rise in theft accounts for most of the increase.\(^{132}\) The number of juvenile homicides again decreased, twenty-two fewer compared to the previous year, to a total of seventy-five in 1997.\(^{133}\)

123. See *Shonenho*, supra note 1, at 35.
124. The total number of all arrests in Japan, excluding juvenile offenders, was 190,620 in 1996. See *Kodomo no jinken*, supra note 34, at 165. In 1994, the number of murder arrests in the United States was 23,305, compared to 1279 in Japan. See *Shonenho*, supra note 1, at 44.
125. See id.; see also *Sawanobori*, supra note 1, at 14.
126. There were 7601 drug-related juvenile arrests. See *Kodomo no jinken*, supra note 34, at 167.
127. Statistics for 1996 are unavailable. See id. at 169.
128. See id. In 1996, for every 1000 juveniles (age 14-19), there were 0.17 arrests of *kyoaku* crimes. See id. In 1995, for every 1000 juveniles, 0.12 *kyoaku* juvenile arrests. See id.
130. See Katsumi Kawakami, Legal Circles Remain Cautious About Revising Juvenile Law, Mainichi Daily News, July 30, 1997, available in 1997 WL 12115385. The fact that the total number of juvenile crimes has decreased as much as it has is especially significant in light of the fact that the juvenile population has approximately doubled between 1959 and 1996. See *Sawanobori*, supra note 1, at 14.
131. See Kawakami, supra note 130, at 2.
133. See id.; see also infra Part V.A.
When *Shonenho* was first instituted in 1949, the number of murders committed by juveniles was 344, over three times the number of juvenile murders in the 1990s. Likewise, for armed robberies, in 1949 the number of incidences was 2866, at least double the number in the 1990s.

In the face of such statistics showing that *Shonenho* has been effective, several uniquely heinous crimes, especially the *Kobe* case, have prompted the call to reform *Shonenho*.

### III. The Recent Call to Reform *Shonenho* and the LDP Proposals

While several cases involving juvenile offenders in the 1990s have contributed to the sentiment that a revision of the Japanese Juvenile Law is necessary, it is the *Kobe* case of 1997 that directly fueled the current discussions. A state of nationwide panic followed the arrest of the juvenile in the *Kobe* case with everyone blaming everyone else for the occurrence of such a heinous crime.

134. *See* *Shonenniko*, *supra* note 1, at 35.
135. *See* id.
136. *See* id.
137. In 1996, before the *Kobe* incident, talks had begun between the Ministry of Justice, the Japanese Supreme Court, and the Japan Federation of Bar Associations (JFBA) in order to identify some of the problems with the juvenile system. However, there is no doubt that the *Kobe* case propelled the discussions to where they are today. *See* Yonezawa, *supra* note 9, at 108.
138. For facts of the case, see *infra* Part III.A. Based on the theory that a rise in violence results from violent video games and movies, some cabinet ministers called for tighter regulations governing access to magazines and television. *See* *Media Controls Urged Over Crime*, *Asahi Evening News*, July 2, 1997, *available in* 1997 WL 11414301. One theory tried to link the 1995 Great Hanshin Earthquake, which hit *Kobe*, with the alleged rise in juvenile delinquency. *See* Studies Link Kobe Quake With Juvenile Delinquency, *Daily Yomiuri*, Oct. 28, 1997, *available in* 1997 WL 12803060. Another point of focus was education. *See*, e.g., Government Committee Urges 'Education of the Heart,' *Daily Yomiuri*, July 17, 1997, *available in* 1997 WL 12252858. This was partly because the *Kobe* juvenile had written in the note that he left with his victim's head that he was "taking revenge . . . on the education system." *Key Developments of Kobe Case*, *Daily Yomiuri*, Oct. 18, 1997, *available in* 1997 WL 12802917. In addition, the juvenile had, prior to the killings, shown violent behavior at school, but the teachers allegedly did not do anything about it. *See* Government Committee Urges 'Education of the Heart,' *supra*. "Education of the heart," according to the House of Councilors' Educational Committee, was aimed at "fostering generosity and moral sensibilities" in students. *Id.* Referring to violence in videos and movies, then Education Minister Takashi Kosugi explained that schools had a responsibility to teach children to pick out good information from the flood of information that they receive daily. *See* id.

Educators, however, expressed doubts on whether the Education Ministry's approach would really decrease juvenile crime or even school violence. *See* New Slogans Won't Help Japan's Students, *Daily Yomiuri*, July 28, 1997, *available in*
In the wake of the Kobe case, the Japanese government made some harried efforts to assemble committees in order to discuss possible revisions to Shonenho. As a result, there are now two main proposals for the revision of Shonenho on the table for the Japanese government to consider in the near future: (1) allowing prosecutors to be a part of juvenile trials, and (2) having a three-judge panel hear juvenile trials instead of the current single-judge system.

A. The Kobe Case

On May 24, 1997, in the Suma Ward of the port city of Kobe, Japan, an eleven-year-old boy, Jun Hase, was reported missing after leaving home to visit his grandfather in a nearby neighborhood.139 Three days later, Jun's severed head was discovered in front of the main gate of a middle school in Suma Ward.140 With the head was a note, written by the killer, expressing his hatred of school and society in general.141 Later the same day the rest of Jun's body was discovered in a wooded hill not far from the middle school.142 A little over a week later, the Kobe Shimbun newspaper office received a letter, similar in content and style as the one found with Jun's head.143

Immediately after Jun's body was found, an investigator with the Hyogo police department heard that a teenager living in Suma Ward had been bullying Jun.144 After the letter arrived at Kobe Shimbun, police borrowed a stack of compositions written by students of this teenager's class at middle school so that an
expert could examine the teenager's handwriting along with the letter. The day after the handwriting analysis was completed, while the results were inconclusive, police arrested a fourteen-year-old boy, whom the press referred to as "Shonen A" (Boy A) after the arrest.

The arrest of a fourteen-year-old for the Kobe incident shocked not only the Suma Ward community but the entire nation. The suspect's note left with the head, as well as the letter sent to Kobe Shimbun, indicated that he had committed the murder in response to his anger toward the Japanese education system as well as toward society in general. Japan, especially the Suma Ward, lived in fear for a month while the police looked for the killer. There had been four separate incidents of assaults on primary school girls in Suma Ward in February and March of the same year. One of the girls sustained serious stab wounds, while another was bludgeoned to death by hammer blows to the head. No arrests had been made during the time the police were looking for Jun's killer. Shonen A eventually confessed to committing these assaults and murder as well.

B. Criticism of Shonenho

The Kobe case triggered a national debate on whether Shonenho is effective. Investigators and some judges have insisted that the "unfair" juvenile trial system should be corrected in order for the public to maintain confidence in the judicial system. Many have argued that Shonenho is based on "exaggerated and outdated assumptions of childish innocence."
Critics also find it problematic that *Shonenho* allows the juvenile to be completely free from his criminal past once he leaves the correctional facility.\textsuperscript{154} Others have argued that "minors are getting smart," committing crimes because they realize that they will not be punished severely.\textsuperscript{155}

Articles 22 and 61, which protect the identity of the juvenile offender, have been the root of much criticism since the *Kobe* case. Some have demanded that they have the right to know the face and name of the juvenile who commits such a terrible crime.\textsuperscript{156} In fact, since the *Kobe* case both the press and the Family Court have issued some publications concerning juvenile offenders that have violated Articles 22 and 61.\textsuperscript{157} There has also been much criticism of the lack of laws protecting the privacy of the victims' families in such situations.\textsuperscript{158} *Shonenho* has been criticized as having the tendency to "treat perpetrators as victims and victims as nuisances."\textsuperscript{159} Under the current system, the only recourse for the victims' families is to bring civil suits against the...
juvenile offender's family. Protecting victims' rights is certainly an important issue with which the Japanese legal system must deal. Nevertheless, it is a separate issue from protecting juvenile offenders. These issues, however, are not mutually exclusive. Yet critics of Shonenho have argued that the law needs to impose harsher penalties on juvenile offenders in order for victims to attain their rights.

C. The Government's Early Efforts to Revise Shonenho

Immediately following the Kobe incident, various government Ministries, associations, and scholars formed no less than a dozen committees and panels for the purpose of reviewing and revising Shonenho. Less than a month after Shonen A's arrest, then Justice Minister Matsuura announced the abolition of the three-year limit on the detention of juveniles at training schools. A few months later, the Justice Ministry announced a new directive allowing juveniles to be detained in correctional facilities until they turned twenty-three and allowing juveniles requiring medical treatment to remain until they turned twenty-


161. See, e.g., SHONENHIKO, supra note 1, at 48-54. The victims and their families, unlike the general public, do have a legitimate need to know what happened, or why the juvenile committed the offense. Attending the trial or at least having some access to information may likely help the victims and their families come to a sense of closure on an incident. This, however, is an issue that should remain separate from reforming Shonenho.

162. See, e.g., Youth Trial Reform Urged, ASAHI EVENING NEWS, Jan. 30, 1998, available in 1998 WL 7719788. Less than a week after the arrest of Shonen A, then Chief Cabinet Secretary, Seiroku Kajiyama, announced that he believed it was necessary to revise the Juvenile Law. See Kajiyama Wants Juvenile Law Changed, JAPAN ECON NEWSWIRE, July 1, 1997, available in WESTLAW, Japanews Library, Jwire File; see also Media Controls Urged Over Crime, supra note 138. A day later, then Justice Minister Isao Matsuura clearly stated that his Ministry would continue to protect the rights of juveniles, and that there should not be any "careless and emotionally charged dismissal of the Juvenile Law." Id. Yet, less than ten days after that, Matsuura directed Justice Ministry officials to consider extending the penalty term for juvenile offenders. See Review of Circular on Juvenile Offenders Ordered, JAPAN ECON NEWSIRE, July 11, 1997, available in WESTLAW, Japanews Library, Jwire File. Up until that point, the longest confinement of a juvenile offender had been 886 days. See id.

six. This new regulation became effective immediately and was applied to the Kobe juvenile.

D. The Current Proposals

Beginning in October 1997, the Japanese ruling political party, the Liberal Democratic Party (LDP), formed a committee to discuss the possibility of revising Shonenho. The committee published its recommendations in April 1998 and presented these proposals (LDP proposals) to the Ministry of Justice in October of 1998. Although the committee urged the government to adopt the proposals immediately, and the LDP has submitted bills reflecting the proposals to the Diet, they have been put on hold. As of March 2000, the proposals still await discussion by the Japanese Diet.

There are two main parts to the LDP proposals. The first is to allow prosecutors to participate in juvenile trials, and the second is to create a panel of three judges, instead of the current single-judge system, to hear juvenile cases. The two proposals are recommended and submitted as a package. In addition to these two options, other proposals and suggestions have been discussed, including publicizing more information about juvenile trials and offenders and protecting the rights of victims of juvenile offenders.

1. Allowing Prosecutors to Take Part in Juvenile Trials

The first of the two main proposals is to allow prosecutors to take part in juvenile trials. This proposal has been the most controversial among the various suggestions and proposals that have been made at different stages of the discussions to revise

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164. See Ministry to Allow Juveniles to be Locked Up Until Age 23, supra note 120.
165. See id.; see also Ministry Extends Punishment Allowed Under Juvenile Law, supra note 120.
166. See Zadankai: Hosei Shingikai Tohshin o Megutte, 1152 JURISUTO 8, 9 (Mar. 15, 1999) [hereinafter A Panel Discussion].
167. Id. See also Gen Tada, Shonen Shinpan ni Okeru Gogisei Dounyuron no Imi: Saibankan ga Fuerukotode Nani ga Kawarunoka, 334 HOU TO MINSHUSHUGI 16, 16 (Dec. 1998).
172. See, e.g., LDP Panels Approve Juvenile Law Changes, supra note 170.
According to the proposal, prosecutors would participate in "serious" trials, such as those in which the juvenile denies having committed or being involved in the crime. Specifically, the proposal is for cases that involve potential custodial sentences of more than three years. Prosecutors would also be allowed to appeal a Family Court's decision.

One justification for this proposal afforded by the Japanese Supreme Court, which took part in the discussions and supports the LDP proposals, is that Family Court judges have had much difficulty in ascertaining the facts in many of the recent juvenile trials. When this problem arises, the judge must question the juvenile repeatedly, thus compromising his initial role as the mediator in the juvenile system. In addition, it is argued that there is inherent benefit to bringing in another party to help establish complicated facts.

The need for a system that can determine facts more accurately was highlighted with the 1993 Yamagata Matto-shi case (Yamagata case). A student at a junior high school was found dead in a rolled-up gymnastics mat at the school gymnasium. The police arrested seven juveniles for the murder of the student, and six juveniles confessed to the murder. At the juvenile hearings, however, all six juveniles denied involvement in the murder, claiming that the police coerced their confessions. Although the Family Court ruled that none of the six juveniles' claims to an alibi were trustworthy, it nevertheless found just three of them to be in need of protection.

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175. See Diet Opposition Puts Juvenile Law Reforms on Hold, supra note 168.


177. See Sakamaki, supra note 174, at 58. The Supreme Court's Formal Opinion said, "[c]urrently, what needs to be especially focused upon about the juvenile process is how to deal with serious crimes in which the juvenile is denying having committed the crime." *Hogo Tetsuzuki ni Okeru Tekisei Tetsuzuki no Jitsugen, supra note 173*, at 124.

178. See Sakamaki, supra note 174, at 58.

179. See id.

180. See A Panel Discussion, supra note 166, at 10.

181. See KODOMO NO JINKEN, supra note 34 at 316.

182. See GOTO, supra note 2, at 135.

183. See KODOMO NO JINKEN, supra note 34, at 316.
for having committed the murder and sent them to the elementary level correctional facility.\textsuperscript{184} The court never made clear its reasons for releasing three of the six juveniles when it discredited all of their alibis.\textsuperscript{185} On appeal, the three juveniles were eventually found innocent of the crime.\textsuperscript{186} To this day it is not clear how the judge made his decision when all the facts were not clearly established.

Proponents of the LDP proposal have claimed that the presence of a prosecutor would enhance fact-finding and avoid decisionmaking without all the facts, especially in cases such as the \textit{Yamagata} case in which the facts are complicated.\textsuperscript{187} Through the prosecutor's questioning of juveniles and witnesses, facts supposedly would be established clearly.\textsuperscript{188}

2. Instituting a Three-Judge Panel in Juvenile Trials

The second proposal to change \textit{Shonenho} is to install a three-judge panel to hear juvenile trials instead of a single judge.\textsuperscript{189} In general, scholars and lawyers alike have accepted this proposal more widely than the one concerning prosecutors.\textsuperscript{190} In fact, guardians and defense attorneys in juvenile hearings have requested such an arrangement in the past and were denied.\textsuperscript{191} The proposal does not specify what kinds of juvenile hearings should occur before a three-judge panel, and so it is understood to apply to all juvenile hearings.\textsuperscript{192}

The main reason for this proposal, just as the first proposal, is to ensure more accurate fact-finding.\textsuperscript{193} In support of this proposal, one Family Court judge has said that especially with the rise of sophisticated and complicated juvenile crimes, it will be beneficial for a panel of judges, by using their experiences and different viewpoints, to arrive at a decision together.\textsuperscript{194} The judge believed that a panel of judges would contribute to the creation of

\textsuperscript{184} See \textit{id.}; see also supra Part II.A.2. The three juveniles continued to claim their innocence after the hearing and appealed the decision. See \textit{KODOMO NO JINKEN}, supra note 34, at 316.

\textsuperscript{185} See \textit{A Panel Discussion}, supra note 166, at 10-11.

\textsuperscript{186} See \textit{KODOMO NO JINKEN}, supra note 34, at 316.

\textsuperscript{187} See, e.g., \textit{A Panel Discussion}, supra note 166, at 10-11.

\textsuperscript{188} See, e.g., \textit{Sakamaki}, supra note 174, at 58.

\textsuperscript{189} See \textit{Tada}, supra note 167, at 16.

\textsuperscript{190} See Hiroshi Sato, \textit{Waga Kuni no Shonenshingi to Saiteigogisei no Douyuu}, 1152 JURISO 47, 47 (Mar. 15, 1999); see also \textit{Sakamaki}, supra note 174, at 65.

\textsuperscript{191} See \textit{Tada}, supra note 167, at 16-17.

\textsuperscript{192} See Kazuhiro Murakoshi, \textit{Housei Shingikai ni Okeru Shingi no Keii}, 1152 JURISO 37, 38 (Mar. 15, 1999).

\textsuperscript{193} See \textit{id.} at 37.

\textsuperscript{194} See \textit{A Panel Discussion}, supra note 166, at 13-14.
a more accurate and objective fact-finding body. Proponents of this proposal claim that a multi-judge panel is especially necessary in cases in which a judge disagrees with the recommendation submitted by the court investigator.

IV. IS THIS THE RIGHT KIND OF REFORM?

The LDP proposals, as well as the general reasons behind the call to reform *Shonenho*, have an altogether different purpose than that of *Shonenho*. It is questionable whether the purpose, on which a set of laws that have proven effective for over fifty years has been built, should be changed so hastily in response to several high-profile cases. It is also questionable whether the LDP proposals will bring about the claimed effect, such as enhanced fact-finding in juvenile trials. Even if they did, the proposals, if adopted, will bring changes to *Shonenho* that directly contravene its purpose.

A. A Reform for Whose Benefit?

One troubling fact about the recent call to reform *Shonenho* is that its purpose is to appease the public that has been demanding a change in the law that supposedly “pamper[s] young wrong-doers.” As evidenced by the fact that it took no less than three months to make a change in a set of laws that has proven effective for half a century, much of the call for reform has been a knee-jerk reaction to a particularly unique and heinous crime. Many of the ideas for reform, including the LDP proposals, do not have the best interest of the juvenile offender in mind.

*Shonenho* is a set of laws that prioritizes the benefit to the juvenile offender. Its entire purpose, as articulated in Article 1, is to reform, help, and protect him. One of the major problems with the LDP proposals is that this purpose has not been considered. Instead, the proposals make the ultimate goal to convict the juvenile offender.

The LDP committee has explicitly admitted that its primary reason for proposing the allowance of prosecutors in juvenile trials...
trials is to improve the system for establishing and confirming the facts in such trials so that the public can more fully trust the system.\textsuperscript{201} Likewise, the reason for instituting a three-judge panel lies in protecting the public.\textsuperscript{202} According to the proposal, the police are considered to be those who cooperate with the judges.\textsuperscript{203} In this way, the main role of the judges will shift from the original parents to that of investigators and prosecutors. This proposal also implies that the panel of judges will become a body that makes punishment its ultimate goal.

Instituting the LDP proposals may result in the demise of the entire framework of \textit{Shonenho}. The Japanese Juvenile Law has been built on principles of love and tolerance.\textsuperscript{204} Even in the rare case in which a juvenile commits a terrible crime, the presumption that he is in need of "help" remains true—in fact, the more heinous the crime, the truer it is. Just because a case is high profile, the need to preserve the carefully crafted system embodied in \textit{Shonenho} is not lessened.

\section*{B. Why the LDP Proposals Will Not Work}

The decision to prohibit a prosecutor from participating in juvenile trials was a deliberate one that the framers of \textit{Shonenho} reached in order to accomplish its purpose. This is so that everyone present at a juvenile hearing is on the same side, working toward a common goal—identifying and understanding the problems that led to the juvenile having committed the crime or delinquent act.\textsuperscript{205} The main goal of the juvenile hearing is to enable the juvenile, through a gentle and amicable atmosphere, to come to terms with what he has done and to work out a protection plan that will reform him.\textsuperscript{206} Thus, the idea of proving the guilt of the juvenile is not a part of the system.\textsuperscript{207} The Family Court judge is not there to judge the juvenile, but instead to talk through what the juvenile has done, as a parent might with a child.\textsuperscript{208} A prosecutor should not be part of this process because his presence would cause the "parent-child" relationship between the judge and the juvenile to break down.\textsuperscript{209} The proposal allows the prosecutor to state the facts as he sees them and to declare

\begin{enumerate}
\item[201.] See id.
\item[202.] See Tada, supra note 167, at 17; see also A Panel Discussion, supra note 166, at 14.
\item[203.] See id.
\item[204.] See \textit{KODOMO NO JINKEN}, supra note 34, at 86; see also supra Part II.A.
\item[205.] See \textit{SAWANOBORI}, supra note 1, at 30; see also supra Part II.B.1.
\item[206.] See supra Part II.B.1.
\item[207.] See \textit{SHONENHIKO}, supra note 1, at 62.
\item[208.] See supra Part II.B.1.
\item[209.] See \textit{GOTO}, supra note 2, at 126.
\end{enumerate}
his opinions to the judge.\footnote{210}{See Tada, supra note 167, at 16.} The addition of a prosecutor will impose a new dimension to the current system—it will mean that there will be dialogue, between the judge and another adult, in which the juvenile will not participate.

As seen in Articles 17 and 48, for example, Shonenho requires that the juvenile adjudication process be conducted swiftly.\footnote{211}{SHONENHO, art. 17, reprinted in GOTO, supra note 2, at 203-04.} This is so that the protection will occur as quickly as possible after the hearing and so that the juvenile can re-enter society as soon as possible.\footnote{212}{See Tada, supra note 167, at 18.} A prosecutor, however, may needlessly prolong the hearing by repeated direct and cross-examinations of the juvenile and witnesses in order to prove the guilt of the juvenile.\footnote{213}{See id.; see also Yonezawa, supra note 9, at 111.} In addition, the proposal would give the prosecutor the right to appeal a decision, and hence, increase the possibility of prolonging the process.\footnote{214}{See id.}

In this way, including a prosecutor in the juvenile trial would create an adversarial system, instead of one in which everyone is working toward a common goal. Shonenho never envisioned such an adversarial system.\footnote{215}{See id.} Further, the presence of a prosecutor may threaten the amicable and gentle atmosphere. Even under the current system, attorneys have expressed the difficulty that a juvenile offender experiences in trying to articulate his thoughts and feelings during a hearing.\footnote{216}{See id. at 110.} With a prosecutor present who may disagree with what the juvenile has to say, it will become even more difficult to ensure that the juvenile feels free to be honest and open about why he committed a certain act.\footnote{217}{See, e.g., Hattori, supra note 52, at 61-62.}

Proponents of the proposals point to the Yamagata case to illustrate the need for a system that can more accurately expose the facts of a case.\footnote{218}{See, e.g., A Panel Discussion, supra note 166, at 10.} While that is true, it is highly questionable that introducing a prosecutor into the juvenile trial system will accomplish that goal. In fact, it may deter the discovery of facts. In the Yamagata case, for example, the juveniles had all confessed to having committed the crime.\footnote{219}{See KODOMO NO JINKEN, supra note 34, at 316.} The spirit of Shonenho requires that the police conduct the interview with a

\begin{footnotesize}
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\item[210.] See Tada, supra note 167, at 16.
\item[211.] SHONENHO, art. 17, reprinted in GOTO, supra note 2, at 203-04.
\item[212.] See Tada, supra note 167, at 18.
\item[213.] See id.; see also Yonezawa, supra note 9, at 111.
\item[214.] See id.
\item[215.] See id. at 110.
\item[216.] See, e.g., Hiroshi Shimizu, Shonenho Ichijo no Mokuteki to Shissuru Kaizukai O, 334 HOU TO MINSHUSHUGI 30, 30 (Dec. 1998). One court investigator said that, in his experience, most juveniles that go through the system are not very articulate and have difficulty expressing themselves. Kazuyoshi Takigawa, Chosakan kara Mita Kaiseiron no Mondai, 334 HOU TO MINSHUSHUGI 34, 34-35 (Dec. 1998).
\item[217.] See, e.g., Hattori, supra note 52, at 61-62.
\item[218.] See, e.g., A Panel Discussion, supra note 166, at 10.
\item[219.] See KODOMO NO JINKEN, supra note 34, at 316.
\end{itemize}
\end{footnotesize}
suspect in a sensitive manner. Further, the short investigation period described in Article 17 was designed to protect the juvenile from long periods of isolation in a holding cell. In reality, however, the time limit placed on the investigators has led to their use of physical violence and verbal threats in an attempt to obtain a confession from the juvenile, and unfortunately, there have been numerous juvenile cases in which the police have employed questionable investigation techniques. In such a case, it is doubtful that the juvenile will be able to plead his innocence and coherently explain that he was coerced into confession by the police at a hearing in which the prosecutor is present and questioning him. This is true especially in light of the fact that the sentiment behind the proposal is to “ensure that no guilty juvenile goes free.”

Fact-finding is obviously a crucial part of the juvenile hearing. The purpose for discovery, however, is not so that the juvenile can be proven guilty, as the proponents of the proposals would say, but rather, so that the judge can devise a proper protection plan for the juvenile. In order for the judge to work out a proper plan for the juvenile, the judge must have all the facts in front of him. Considering that the presence of a prosecutor may intimidate the juvenile and thus hinder the fact-finding process, it would be perhaps more effective to better train the court-appointed investigators, who could present all the information to the judge, or to better train the judges themselves.

A three-judge panel will create an effect similar to the presence of a prosecutor and will likely intimidate the juvenile. The juvenile hearing will be successful only if there is a true partnership created between the judge and the juvenile, and the juvenile sees it as such. In fact, the juvenile’s defense lawyer (guardian) is present only in about one percent of the hearings in order to allow the juvenile to understand and experience that he and the judge are to work together as a team. It is less likely that the juvenile will perceive a partnership between a group of adults and himself, than between just one judge, acting as a “parent,” and himself. This second element of the proposal is certainly less of a threat than the first in

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220. See generally id. at 27-29.
221. See SHONENHO, art. 17, reprinted in GOTO, supra note 2, at 203-04.
222. See KODOMO NO JINKEN, supra note 34, at 24-26; see also infra Part V.B.
224. Tada, supra note 167, at 17.
225. See supra Part II.B.1.
226. See supra Part II.B.1.
227. See Hattori, supra note 52, at 62; see also Yonezawa, supra note 9, at 110.
demolishing the framework of \textit{Shonenho}, since the key players of the hearing will remain the same. Still, there is the danger that the conversation between the juvenile and the judges will not occur, as the juvenile may feel alienated when he cannot fully understand or participate in the dialogue between the judges.

\textbf{V. A CALL FOR A DIFFERENT KIND OF REFORM}

In the midst of all the criticism and emotional debate, that \textit{Shonenho} has proven effective for over half a century has been ignored. In order to bring about reform, lawmakers should make changes so that \textit{Shonenho} is more closely followed and enforced. Reform should make the already effective system even more effective. \textit{Shonenho}, as written, makes its goal the protection of the juvenile offender. This goal, despite the recent criticism, conforms closely to international standards for children's rights, and thus a revision of \textit{Shonenho} must continue to uphold this purpose. In reality, many of the provisions of \textit{Shonenho} are violated, especially because it does not contain enforcement provisions.

The irony is that the recent emotional reaction to the Kobe case has called for the reform of the overprotectiveness of \textit{Shonenho} when, in reality, the lack of penalty provisions has led to numerous violations of the protection provisions.\footnote{See, e.g., Morse Saito, Battling Windmills, \textit{Mainichi Daily News}, Oct. 27, 1997, available in 1997 WL 14874076.} In order to realize the full potential of \textit{Shonenho}, as envisioned by its founders, reform of \textit{Shonenho} should focus on how better to apply and effectuate its provisions.

One of the flaws of the LDP proposals is that they attempt to change major portions of \textit{Shonenho} without anticipating the additional changes that must occur in order for the entire system to work.\footnote{See A Panel Discussion, supra note 166, at 10.} Specifically, the presence of prosecutors in juvenile trials would cause the system to mimic adult criminal trials. That shift would mean that juveniles should be guaranteed certain rights that adults possess. Should the proposals be adopted, the likelihood is great that the protective element of \textit{Shonenho} will be diminished.
A. What Has Been Overlooked: Shonenho Has Proven Effective for Fifty Years

The media frenzy that followed the Kobe case led to inaccurate reports about juvenile crime in Japan. Although the total number of crimes committed by minors is on the rise, the number of serious crimes committed by minors has declined since Shonenho was first enacted in 1949. While the 1998 White Paper on crime showed that the number of juveniles arrested on suspicion of violating juvenile criminal laws in 1997 was up 9.8% from the previous year, the number of murders committed by juveniles declined by twenty-two to seventy-five between 1996 and 1997. The number of “shocking” or “atrocious” crimes, such as the Kobe incident, is small when considered in the broader context of juvenile criminal activity. Yet the media has repeatedly highlighted that juvenile crime is on the rise. Thus, although “the mass media has done a terrific job of frightening the public, the scary headlines are not supported by the statistics.”

Furthermore, under the current juvenile justice system, the incidence of juvenile crime is extremely low when compared to other industrialized nations. The same is true for the recidivism rate for juvenile crime. For example, seventeen of forty teenagers convicted of committing vicious crimes such as

231. See Kobe Case Tests Public Patience With Law, supra note 60.
233. See Report Reveals Increase in Juvenile Crime, supra note 132.
234. Ensuring Fair Rulings for Minors, supra note 52. Furthermore, the incidence of juvenile crime in Japan is extremely low compared to that in other countries, such as the United States. See Sunazawa, supra note 230; see also Editorial: Amending the Juvenile Law, MAINICHI DAILY NEWS, Jan. 15, 1999, available in 1999 WL 7538124. The United States places less emphasis on rehabilitation than in Japan, and statistics show that harsher penalties have not been a deterrent. See id.; see also Kobe Case Tests Public Patience With Law, supra note 60. In 1998, 257 juveniles were arrested in Japan for serious crimes, including murder and attempted murder. This figure was the highest since police began compiling such statistics in 1972. See Japanese Youth Crime on the Rise, AP ONLINE, Dec. 22, 1998, available in 1998 WL 25272552. However, the call to reform Shonenho occurred before the most recent statistics were published.
235. See, e.g., Report Reveals Increase in Juvenile Crime, supra note 132.
237. See, e.g., SHONENHIKO, supra note 1, at 39-44.
238. The recidivism rate is the rate at which juvenile offenders return as repeat offenders.
239. See Editorial: Amending the Juvenile Law, supra note 49.
murder and robbery between 1965 and 1997 became repeat offenders. Most of the seventeen were held responsible for minor crimes, and only one out of this group was arrested and indicted for robbery with the use of force, a more serious crime. Of the twenty-four juveniles that committed murder in 1996, only two had previously been sent to a juvenile training school.

B. Revising Shonenho So That Enforcement Provisions Are Added

One problematic trend since the Kobe case is that protecting the privacy of the juvenile offender has been ignored. Much of it is based on the mentality that juveniles who commit terrible crimes do not deserve such protection. In order to preserve the framework of Shonenho, such violations must be controlled. Nevertheless, the problem is that there are no enforcement provisions in Shonenho. Shonenho can appear like a series of “policy statements” rather than laws. Although the text of Shonenho reflects its policy of protecting the juvenile offender, its lack of enforcement provisions means that no legal recourse exists when a provision is not upheld.

For example, in the Kobe case, after a total of five hearings, in an unprecedented move the Family Court issued an official eight-page summary of the reasons for its decision in the Kobe case. The summary began as follows:

The Juvenile Law enshrines basic ideas for the protection and the healthy development of minors. It is of course necessary to not to do anything to stand in the way of rehabilitating minors. But the nation should review how it should disclose

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240. See Ministry Studies Juvenile Crimes, supra note 155.
241. See id.
242. See id.
243. See id.
244. See, e.g., Yonezawa, supra note 9, at 113.
245. See, e.g., Hiroshi Murayama, Johou Kokai/Kaiji to Shonenjiken: Hanzai Houdou to Johou Kokai, 334 Hou To Minshuhugi 24, 24-26 (Dec. 1998); Kenta Yamada, Shonen no Hogo to Hyogen no Jiyu, 1136 JURISUTO 47, 48 (June 15, 1998).
246. See, e.g., When the Law is Toothless, supra note 15.
247. Id. Nineteenth-century German legal jurisprudence scholar, Rudolf von Jhering noted that “[l]aws that have no accompanying coercion are like a fire that does not burn.” Id.
248. See id.
information on major cases attracting wide attention from society, based on the measure taken by the family court.  

While the summary was careful to avoid mentioning details about the juvenile's upbringing or his psychological background, it briefly discussed his relationship with his parents and his state of mind at the time of the crimes. Thus, the court gave its stamp of approval for releasing information on a juvenile trial merely 

248. The Family Court's summary, in part, of reasons for its decisions was as follows:

Protection of Minors

The Juvenile Law enshrines basic ideas for the protection and the healthy development of minors. It is of course necessary to not do anything to stand in the way of rehabilitating minors. But the nation should review how it should disclose information on major cases attracting wide attention from society, based on the measure taken by the family court.

Although their behavior is not as bizarre as in the zeg case, more and more delinquents are suffering from distorted personalities or personality disorders.

Medical juvenile training schools differ from ordinary juvenile training schools in that they are primarily aimed at restoring the mental and physical health of minors.

It is expected that the Kobe boy will be kept in the facility for a long time. Because of this, the [family] court advised the medical juvenile training school to work with the boy individually, not as part of uniform treatment for other reformatory residents.

At the same time, the court considered the role of the boy's parents and asked a probation office to help them assist in the boy's rehabilitation as family members. For the boy, the support of his family is essential . . .


Judge Yasuhiro Igaki of the Family Court said additionally, through court officials, that the juvenile may suffer from a serious mental disorder in the future, and that he should undergo treatment at a medical detention facility. See Court Orders Medical Treatment for Teenage Murderer, JAPAN ECON. NEWSIRE, Oct. 17, 1997, available in WESTLAW, Japanese News Library, Jwire File. The judge explained that although the juvenile was not currently mentally ill, he was at risk of schizophrenia, depression, and other kinds of mental illnesses. See id. The ninety-minute closed-door final hearing was attended by the juvenile, Judge Igaki, five defense lawyers, court examiners, and the juvenile's parents. See id. The judge focused on "the mental darkness" which led the juvenile to commit a series of such atrocious crimes, including a deep-rooted sadistic tendency. See id.; see also Editorial: Kobe Court Verdict, MAINICHI DAILY NEWS, Oct. 19, 1997, available in 1997 WL 14873990. The Family Court also said that it "prayed for the day when the juvenile could extend a heartfelt apology to the victims and their families." Id. After the ruling, the juvenile's defense lawyers told the press that he had apologized in tears to his own mother at an earlier meeting. See Court Orders Medical Treatment for Teenage Murderer, supra.

because it "attract[s] wide attention from society," despite being a violation of Article 22. Since the Kobe case, it has become routine for the Family Court to release summaries of juvenile trials.\textsuperscript{250} There is no legal basis or established reason for this practice.\textsuperscript{251} In fact, it clearly violates, at the very least, the spirit of \textit{Shonenho}.

Violations of Article 61 also have occurred regularly since the Kobe case. One magazine publisher published a photograph of the Kobe juvenile following his arrest, with his eyes blacked out to conceal his features.\textsuperscript{252} In a second magazine, it published an unaltered photograph along with the suspect's name.\textsuperscript{253} In both situations, the Justice Ministry requested a recall of the magazines.\textsuperscript{254} The problem, however, was that the request was not binding\textsuperscript{255} because there is no penalty for violating Article 61 of \textit{Shonenho}.\textsuperscript{256} Thus, despite the recall, the publisher insisted that either it had not violated the law because it had altered the photograph, or it had violated the law but the suspect had no true legal protection.\textsuperscript{257}

\textsuperscript{250} See Truth Also a Victim in Juvenile Trials, supra note 153. The lawyers for the Kobe juvenile submitted a written protest to the Kobe Family Court for having made its decision public. See Defense Lawyers Protest Court Disclosure of Ruling, supra note 249. The protest said that "[t]he disclosure went into excessive detail, against the purpose of the Juvenile Law which requires closed-door trials (for juveniles)." Id.\textsuperscript{251} See id.


\textsuperscript{254} See id. This was the first time ever that the Ministry appealed for a recall of a publication in Japan. See id.; see also Editorial: The Juvenile Act, MAINICHI DAILY NEWS, July 4, 1997, available in 1997 WL 12114761. Nichibenren, The Federation of Bar Associations, as well as the Prime Minister, also denounced the publisher's decision. Ministry Chastises Publisher for Kobe Suspect Photograph, supra note 253. The Ministry made clear that its request for the recall was "intended as a severe criticism of the company's disregard for the law." Id.\textsuperscript{255} See id.

\textsuperscript{256} See generally When the Law is Toothless, supra note 15.

\textsuperscript{257} See Ministry Chastises Publisher for Kobe Suspect Photograph, supra note 253. A large majority of booksellers and kiosks throughout Japan made independent decisions to pull these magazines from their shelves. See, e.g., Kiosks in Kansai Halt Sale of Magazine on Kobe Boy, JAPAN ECON. NEWSIRE, Feb. 12, 1998, available in WESTLAW, Japannews Library, Jwire File.

There was a second violation of Article 61 by the same publisher several months later, after the juvenile from the Kobe case was sent to a medical juvenile facility. See, e.g., Magazine Publishes Kobe Boy's Testimony, DAILY YOMIURI, Feb. 11, 1998, available in 1998 WL 6591448. It turned out that an ultra-leftist group based in Tokyo, Kakumaruha, or the Revolutionary Marxist Faction, obtained the juvenile's depositions and distributed it to the media, including the magazine. The group broke into the Kobe medical facility, where the victim's autopsy was performed, and illegally entered the juvenile's home and the facility where the juvenile was detained to install a wire-tapping device. See Extremist Group Had Data on Teen Killer, ASAHI EVENING NEWS, Feb. 24, 1998, available in 1998 WL
Likewise in a 1998 case involving a nineteen-year-old juvenile, the same publisher violated Article 61 once again. On appeal, however, the Osaka High Court, in March 2000, overturned the decision and held that it was not illegal to publish the name of the juvenile offender. The court held that Article 61 did not confer a right to privacy upon the juvenile offender. It held that instead, the provision "served the purpose of enabling the juvenile's return to society and preventing him from becoming a repeat offender." The court further held that "even if Article 61 gives [the juvenile] the right to privacy, it should not necessarily preempt the freedom of expression [and press]." It gave two reasons for this conclusion: (1) the serious and heinous nature of the crime justified the public's interest in knowing what kind of person committed it; and (2) it is unclear how the

7720284; see also Leftist Arrested for Theft of Kobe Killer Statements, MAINICHI DAILY NEWS, Jan. 15, 1999, available in 1999 WL 7538133. The magazine published the testimony of the Kobe juvenile that he gave to public prosecutors concerning the murders. See Extremist Group Had Data on Teen Killer, supra. The head of the Kobe Family Court telephoned the editor-in-chief of the magazine that carried the testimony before the magazine was distributed and urged him to drop the article containing the testimony or to stop sending the magazine out. See id. The Supreme Court also issued a written protest against the publisher. See Supreme Court Blasts Publisher on Kobe Boy's Statements, JAPAN ECON. NEWSIRE, Feb. 10, 1998, available in WESTLAW, Japannews Library, Jwire File. Then Education Minister Nobutaka Machimura said that some disclosure of information in juvenile crime cases is necessary "to prevent meaningless confusion at schools." Minister Favors Release of Some Juvenile Crime Info, JAPAN ECON. NEWSIRE, Feb. 16, 1998, available in WESTLAW, Japannews Library, Jwire File. However, Machimura clearly stated that the publisher exceeded the limit of disclosure necessary, although he refrained from specifying a limit. Id.


259. See Murayama, supra note 244, at 24; Osaka Awards Damages to Murderer, MAINICHI DAILY NEWS, June 11, 1999, available in 1999 WL 18397435. The juvenile sought 22 million yen (approximately $190,000) in damages, and the Osaka District Court ordered the publisher to pay him 2.5 million yen (approximately $20,000). See Osaka Awards Damages to Murderer, supra. In spite of this ruling, however, Judge Michiyo Miyokawa held that using a minor's name would "not necessarily constitute an unlawful act." Victim Forgotten in Protecting Privacy, DAILY YOMIURI, June 24, 1999, available in 1999 WL 17755026.


261. See id.

262. Id.

publication of the juvenile's name specifically interferes with his rehabilitation.264

Thus, the Osaka High Court did not specify that its holding was a narrow one. One can speculate that the age of the juvenile when he committed the crime (nineteen) and that his case was decided in the adult criminal system265 influenced the court. Nevertheless, because the court neither specified nor alluded to any of these factors, it has left open the possibility that its ruling can apply to any juvenile, regardless of age, whose Article 61 rights are violated.266

The provisions of Shonenho concerning the investigation stage present special problems in terms of enforcement.267 These problems exist because the particular provisions related to the investigation stage, Articles 8, 41, and 42, do not at all stipulate how the investigation should be conducted.268 Nevertheless, Article 1, the purpose provision, clearly states that all the provisions of Shonenho should work toward the goal of protecting the juvenile “for the purpose of promoting the welfare and wholesomeness of the juvenile.”269

Again, evidence shows that police and investigators have repeatedly violated Article 1.270 Because of the lack of penalty provisions—apart from token reprimands or issuing statements of apology by the violators—police and investigators have not had to follow this Shonenho provision that is supposed to protect the juvenile offender.271

In the 1981 Chibaken Kashiwa-sho case, when a detained juvenile suspect asked to speak to an attorney, an investigator responded by saying that “a child has no right to have an attorney.”272 In the 1991 Saitamaken Urawa-sho case, the police

264. See id.
265. If a juvenile who is over the age of sixteen has committed a crime punishable by death or imprisonment if it were an adult crime, he can enter the adult criminal system at the discretion of the Family Court. See supra Part II.A. The Osaka District Court sentenced this juvenile to eighteen years in prison. Jyukyusai Hikoku no Jitsumei/Shashin Keisai, supra note 260.
266. As of the date of publication, the juvenile’s attorney had not decided whether to appeal the Osaka High Court’s ruling to the Japanese Supreme Court. See High Court Voids Ruling on Juvenile’s Anonymity, DAILY YOMIURI, Mar. 1, 2000, available in 2000 WL 4643874.
267. See Ensuring Fair Rulings for Minors, supra note 52; see also TOYOJI SAITO, SHONENHO KENKYU: TEKISEI TETSUZUKI TO GOHAN KYUSAI 68 (1997) [hereinafter SAITO].
268. See id.; see also SHONENHO, arts. 8, 41-42, reprinted in GOTO, supra note 2, at 202, 209-10.
269. SHONENHO, art. 1, reprinted in GOTO, supra note 2, at 201.
270. See generally KODOMO NO JINKEN, supra note 34, at 30-82. See supra Part IV.B.
271. See generally KODOMO NO JINKEN, supra note 34, at 30-82.
272. Id. at 42.
denied a juvenile suspect's requests to see his parents.\textsuperscript{273} Likewise in the \textit{Kobe} case, neither the juvenile's parents nor attorneys were able to attend police interrogation sessions.\textsuperscript{274} In fact, during the detention the juvenile never saw his parents, and the lawyers' meetings with him were restricted.\textsuperscript{275} In February 2000, the Japanese Supreme Court overturned the 1985 \textit{Soka} case because it highly doubted the reliability of the juveniles' confessions,\textsuperscript{276} thus bringing into question the tactics used by the police. These are but a few of the numerous examples of violations of Article 1 by the police during the investigation stage. Such acts by the police hardly can be said to be "contribut[ing] to the wholesomeness" of the juvenile.\textsuperscript{277} They also violate various international standards of juvenile justice.\textsuperscript{278}

C. Ensuring That the Revisions Follow International Standards of Juvenile Justice

Despite all the criticism, \textit{Shonenho}, as written, closely follows the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (U.N. Standard).\textsuperscript{279} Nevertheless, once again, because of the lack of enforcement provisions, the way \textit{Shonenho} is being applied does not conform to such standards. If the LDP proposals become law, there will be a greater need to ensure that the standards are met.

\textsuperscript{273} See id. at 70.
\textsuperscript{274} See Does Japan's Juvenile Law Give Criminals an Easy Ride?, supra note 230.
\textsuperscript{275} See \textit{Kobe Case Tests Public Patience With Law}, supra note 60. Because all evidence was circumstantial, the police needed a confession from Shonen A to prove the case. See \textit{Key Points of Kobe Family Court Ruling}, supra note 249. A handwriting analysis showed that it was not possible to determine whether the note left by Jun's head was that of Shonen A. See \textit{KODOMO NO JINKEN}, supra note 34, at 79. Nevertheless, in an attempt to get a confession, investigators lied to the juvenile, saying that a handwriting analysis had clearly determined that the note was written by him. See id. This prompted the juvenile to break down and confess to committing the crime. See \textit{Key Points of Kobe Family Court Ruling}, supra note 249. Lying by police in order to prompt a confession has been documented on numerous occasions in other investigations involving juvenile suspects. See \textit{generally KODOMO NO JINKEN}, supra note 34, at 30-82, 315-33.

Still in other juvenile investigations, police used physical force or violence to get confessions. See id. Police and investigators also often harassed juvenile suspects by asking a juvenile's sexual history when it had nothing to do with the crime for which she was a suspect. See id. at 41.
\textsuperscript{277} SHONENHO, art. 1, \textit{reprinted in GOTO}, supra note 2, at 201.
\textsuperscript{278} See \textit{UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE, Part Two}, art. 10, cl. 10.1, \textit{reprinted in KODOMO NO JINKEN}, supra note 34, at 299 [hereinafter U.N. STANDARD]; see also infra Part V.
\textsuperscript{279} U.N. STANDARD, \textit{reprinted in KODOMO NO JINKEN}, supra note 34, at 296-302.
One of the fundamental principles of the U.N. Standard is that the Member States, including Japan, should seek "to further the well-being of the juvenile and her or his family." This concept is embraced by Shonenho, as its purpose is to "promot[e] the welfare and wholesomeness of the juvenile." The U.N. Standard also guarantees basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority.

There is also a provision in the U.N. Standard that forbids the publication of any information "that may lead to the identification of a juvenile offender." Nevertheless, because of the lack of enforcement of Shonenho, and because of the recent trend to publicize juvenile offenders and trials, the reality is that the current Japanese juvenile system is not protecting these fundamental rights. Incorporating the language of the above U.N. Standard into Shonenho, along with an enforcement provision, for example, will ensure that the juvenile suspected is truly protected during the investigation stage.

As long as the provisions of Shonenho are followed closely, certain rights, without being explicitly listed, are guaranteed for juvenile offenders. For example, an investigation and trial conducted in a gentle and amicable atmosphere should inherently ensure that the juvenile has the right to remain silent if he is not ready to talk, or if he does not want to do so. Nevertheless, because it is evident that Shonenho is not being upheld in many situations, there needs to be additional protection afforded the juveniles who are part of the system. Guaranteeing the above U.N. Standard rights, for example, will be especially crucial if the proposal to allow prosecutors to be a part of juvenile trials passes.

VI. CONCLUSION

It is unlikely that the implementation of the LDP proposals will produce favorable results in the Japanese juvenile system. The proposals will destroy the framework of Shonenho, a law that has proven effective for the Japanese culture for over fifty years.

280. Id. pt. 1, art. 1, cl. 1.1.
281. SHONENHO, art. 1, reprinted in GOTO, supra note 2, at 201.
282. U.N. STANDARD, pt. 1, art. 7, cl. 7.1, reprinted in KODOMO NO JINKEN, supra note 34, at 300.
283. Id. pt. 1, art. 8, cl. 8.2.
The recent effort to reform Shonenho is short-sighted, reflecting the lawmakers' desire to please a public that has been influenced by sensational and even inaccurate media reports. The most recent increase in juvenile crime may not even prove to be a trend. It is clear that the incidence of murders and other serious crimes is lower than when Shonenho was first enacted.

In fact, the root of much criticism, the protective element of Shonenho, is not being enforced in many cases. Those who should be enforcing the crucial protection provisions of Shonenho, such as the police, are blatantly ignoring and violating them. In this way, Shonenho may not be in practice the law it was designed to be.

Shonenho, as written, was carefully designed to create a system in which the juvenile offender can recognize his wrongdoing, receive adequate counseling, and be trained and reformed so that he can return to society. It is supposed to protect the juvenile from the stigma of having committed a crime; thus, the privacy provisions of Articles 61 and 22 are essential. Critics lamented that there was not enough information on the Kobe case; the truth, however, was that too much information was being released to the public about Shonen A. It is more worthwhile to sacrifice the public's right to know in order to protect the juvenile's identity, so that he may return to society without the stigma of having been a juvenile offender.

The revision process of Shonenho should be approached with more caution, mindful that it has proven effective over the last fifty years. As one lawyer said, it would indeed be easy to provide harsher punishments—that would be the simplest way to appease the current public sentiment. Yet the drafters of Shonenho deliberately chose the more challenging but effective way of focusing on helping and protecting the juvenile. For Shonenho, punishment is the last resort.

Nevertheless, the proposals currently on the table emphasize punishment as does the general public sentiment in Japan. The proposals will only cause the system to deviate even further from the vision and goals of Shonenho. They will not contribute to more accurate fact-finding. Instead, they will prevent it, for both the prosecutor and the three-judge panel will create an intimidating atmosphere for the juvenile offender. Such additions will also destroy the framework of Shonenho in which all the players are on the same side.

285. See... And Discussions Continue, supra note 10.
286. See GOTO, supra note 2, at 12.
Reforming the Japanese Juvenile Law

Shonenho will work only if carefully followed and enforced. The main reform that should take place now is that of ensuring enforcement. One way to ensure this is to create enforcement provisions within Shonenho and to guarantee certain rights to juvenile offenders. After these suggestions have been implemented, further reform may be necessary to reflect the changing times and the increase of juvenile crime, if it truly proves to be a trend. Shonenho's track record so far has shown that Japan should wait a few more years, at least, before implementing the kind of drastic reform that the nation is currently contemplating.

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