

2000

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

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Recommended Citation

Masami I. Tyson, *Revising Shonenho: A Call to a Reform That Makes the Already Effective Japanese Juvenile System Even More Effective*, 33 *Vanderbilt Law Review* 739 (2021)
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol33/iss3/6>

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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.¹ 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.² 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.³ The law further forbids the victim's family any access to information about the juvenile offender.⁴ It is not an option for the prosecutor to have the juvenile tried as an adult.⁵ In fact, the prosecutor is not a part of the juvenile's trial.⁶ All of these provisions exist to protect the juvenile offender in a system that does not make punishment its primary goal, but

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 SHONENHO IINKAI, Q&A SHONENHIKO TO SHONENHO: SHONEN WA "KYOAKUKA" SHITEIRUKA 39-41 (1998) [hereinafter SHONENHIKO]; 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.⁷ *Shonenho* governs all those under the age of twenty years.⁸

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.⁹ 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.¹⁰

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.¹¹ This goal is precisely what has been the subject of much criticism, especially since the *Kobe* case.¹² 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.¹³ The leading Japanese political party has suggested two major ideas for revision, which the Japanese Diet¹⁴ 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.¹⁵

7. See SHONENHIKO, *supra* note 1, at 9-12.

8. SHONENHO, art. 2, reprinted in GOTO, *supra* note 2, at 201.

9. See Susumu Yonezawa, *Shonenshiho Kaikaku ni Motomerareteiru Mono*, JYU TO SEIGI 108, 112 (Dec. 1998).

10. See, e.g., . . . *And Discussions Continue*, DAILY YOMIURI, Sept. 8, 1997, available in 1997 WL 12801731.

11. See, e.g., SAWANOBORI, *supra* note 1, at 19-20.

12. See SHONENHO, art. 2, reprinted in GOTO, *supra* note 2, at 201; see also *Kobe Still Stunned by 1997 Beheading*, ASAHI EVENING NEWS, Feb. 10, 1998, available in 1998 WL 7720003.

13. See, e.g., *Shonenho Kaiseian Sohki Seiritsu Mezasu: Usui Housou*, SANKEI SHIMBUN, Feb. 8, 2000, at 1.

14. The Diet is the equivalent of the U.S. Congress; it is the legislative body of the Japanese government.

15. See *When the Law is Toothless*, ASAHI EVENING NEWS, July 12, 1997, available in 1997 WL 11414505.

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

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

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.*

24. THE NEW CROWN JAPANESE-ENGLISH DICTIONARY 298-99 (4th ed. 1981).

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.³² Thus, the Japanese government has a duty to enable and aid the juvenile offender to grow, advance, and develop, despite his delinquency,³³ through the protective nature of the juvenile system. *Shonenho* is also based on rights that international communities have traditionally guaranteed children.³⁴

The spirit of *Shonenho* is that of love and tolerance.³⁵ It presumes that the juvenile will be reformed with appropriate help and that making mistakes is a necessary step for growth.³⁶ The fact that punishment is not one of the main purposes of the juvenile system distinguishes it from the adult criminal system.³⁷ 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.³⁸ 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.³⁹ Furthermore, the move to Family

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 O NEGATTE 86 (Nihonbengoshirengokai, 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.⁴⁰

Article 61 exemplifies the protective policy of *Shonenho*. It forbids the publication of any information that may lead to the identification of the juvenile offender.⁴¹ It prevents the juvenile from being identified after he has been rehabilitated.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.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."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.⁴⁵ The Family Court must extensively and carefully investigate the juvenile's private information such as his upbringing and details about his family.⁴⁶ It would be a violation of the juvenile's privacy to release such information to the public.⁴⁷ Second, once the juvenile is rehabilitated, and when he attempts to return to society-at-large, it would be against the spirit of *Shonenho* to have him suffer then because of a mistake of his youth.⁴⁸ This second reason is strongly related to the purpose underlying Article 61, which protects the juvenile's privacy from the press.⁴⁹

40. See *id.*

41. See SHONENHO, art. 61, reprinted in GOTO, *supra* note 2, at 213.

42. See GOTO, *supra* note 2, at 128-29.

43. SHONENHO, art. 61, reprinted in GOTO, *supra* note 2, at 213. A major weakness with this particular provision is that there is no penalty provision to ensure compliance. See *When the Law is Toothless*, *supra* note 15, at 1; *infra* Part V.A.

44. SHONENHO, art. 22, reprinted in GOTO, *supra* note 2, at 205. The trial is closed to the public, which means that the victim's family cannot attend. See *Pain of Kobe Killings Lingers for Parents of Victims*, *supra* note 4, at 1. But see *infra* Part V.B.

45. GOTO, *supra* note 2, at 128-19.

46. See *id.* at 128.

47. See *id.*

48. See *id.* at 129.

49. Especially after the recent *Kobe* case, the fact that even the victim's family cannot attend the hearing has been the subject of much criticism. See, e.g., *Editorial: Amending the Juvenile Law*, MAINICHI DAILY NEWS, Jan. 15, 1999, available in 1999 WL 7538124; *Pain of Kobe Killings Linger for Parents of Victims*, *supra* note 4.

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.⁵⁰ The basic framework of the process begins with the juvenile's acknowledgment of having committed the crime or delinquent act.⁵¹ 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.⁵²

1. The Investigation and Trial

After a juvenile is arrested, he is sent to the prosecutor within forty-eight hours.⁵³ 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.⁵⁴ 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.⁵⁵ Article 48 of *Shonenho* clearly states that unless it is "absolutely necessary,"⁵⁶ the prosecutor must not detain the juvenile for longer than the

50. See SAWANOBORI, *supra* note 1, at 38.

51. See *id.*

52. *Ensuring Fair Rulings for Minors*, DAILY YOMIURI, July 10, 1998, available in 1998 WL 12845181; see also Akira Hattori, *Hikou Jijitsu no Nintai to Kensatsukan Kanyo*, 527 HOUGAKU SEMINAA 61, 61 (Nov. 1998).

53. See GOTO, *supra* note 2, at 108.

54. See KODOMO NO JINKEN, *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,⁵⁷ in order to avoid delay of the juvenile's return to society.⁵⁸

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.⁵⁹ Before a trial begins, the police department sends all of its findings to the Family Court.⁶⁰

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.⁶¹ All juvenile cases are held in front of a single judge.⁶² A court-appointed investigator presents the information to the judge.⁶³ The judge hears the evidence and other pertinent information and then makes a decision based on what he has heard.⁶⁴ 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.⁶⁵ The prosecutor is not allowed to attend the hearing.⁶⁶ 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.⁶⁷

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.⁶⁸ Then, the parent asks him why he committed such an act in order to understand the child's emotions and intent behind the act.⁶⁹ 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.

60. See *Kobe Case Tests Public Patience with Law*, DAILY YOMIURI, Sept. 8, 1997, available in 1997 WL 12801730.

61. See *Ideas Sought on Juvenile Trials*, ASAHI EVENING NEWS, July 10, 1998, available in 1998 WL 12788652.

62. See *Family Court System Put on Trial*, DAILY YOMIURI, July 27, 1997, available in 1997 WL 12800193.

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*.

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.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.⁸⁰

Articles 19 and 20 govern situations in which the court sends the case back to the public prosecutor.⁸¹ There are two reasons for sending a case back to the prosecutor.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.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.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.⁸⁵

In 1996, 131,786 juveniles entered Family Court proceedings.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%).⁸⁷ Still, *Shonenho* requires that all cases be decided in Family Court, before a judge,⁸⁸ because a juvenile who commits or is involved in an insignificant incident may nevertheless need a large amount of help or protection.⁸⁹ Thus, a presumption exists that because a juvenile is in such a proceeding means that the juvenile is in need

- (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.

79. *See* KODOMO NO JINKEN, *supra* note 34, at 144.

80. *See* SAWANOBORI, *supra* note 1, at 49.

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.

82. *See* SAWANOBORI, *supra* note 1, at 48-49.

83. *See id.* at 48.

84. *See id.* at 49.

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

86. *See* GOTO, *supra* note 2, at 136.

87. *See id.* at 136-37.

88. *See id.* at 137-38.

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.⁹⁹ The first is the general goal of helping the juvenile follow the rules of society and everyday living.¹⁰⁰ The second is an individualized goal, such as trying to control anger, for example, for a juvenile who committed an assault.¹⁰¹

Jido jiritsu shien shisetsu under the second option literally means "a facility in which the child is supported while he learns to become independent."¹⁰² A social worker lives with the juvenile within the facility.¹⁰³ The facility is an open one, with little sense of institutionalization.¹⁰⁴ In 1996, only 0.1% of the juveniles processed through the Family Court system were sent to such a facility.¹⁰⁵

Under the third option, there are four types of juvenile correctional institutions: elementary level, middle level, special type, and medical.¹⁰⁶ 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.¹⁰⁷ Programs at these institutions are designed so that the juvenile can become fully equipped to return to society.¹⁰⁸ 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.¹⁰⁹ The skills should enable the juvenile to be ready to find a job immediately after he leaves the facility.¹¹⁰ 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.¹¹¹ In some situations, the homeroom teacher or principal from the juvenile's old school actually presents him the diploma at the training facility.¹¹² 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 a 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 II.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 GOTO, *supra* note 2, at 143-44.

118. See Hidehisa Watanabe, *Effectiveness of Juvenile Detention Limits Questioned*, MAINICHI DAILY NEWS, Oct. 19, 1997, available in 1997 WL 14873985.

119. See GOTO, *supra* note 2, at 142.

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, Japannews 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 SHONENHIKO, *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 SHONENHIKO, *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.*

129. See Editorial: *Juvenile Murder Suspect*, MAINICHI DAILY NEWS, June 30, 1997, available in 1997 WL 12114671.

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.

132. See Report Reveals Increase in Juvenile Crime, DAILY YOMIURI, Oct. 27, 1998, available in 1998 WL 12847901.

133. See *id.*; see also *infra* Part V.A.

When *Shonenho* was first instituted in 1949, the number of murders committed by juveniles was 344,¹³⁴ over three times the number of juvenile murders in the 1990s.¹³⁵ Likewise, for armed robberies, in 1949 the number of incidences was 2866, at least double the number in the 1990s.¹³⁶

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.¹³⁷ 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.¹³⁸

134. See SHONENHIKO, *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 hurried 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

1997 WL 12800226. They were uncertain about whether this type of education, if it were possible, fell within the scope of a school's responsibility, as opposed to the home. *See id.* Fewer than one in ten of a select group of junior high school teachers thought that schools were responsible for the recent juvenile crimes. *See Schooling Not Behind Violent Youth Crime, Say Teachers*, JAPAN ECON. NEWSIRE, Jan. 22, 1998, available in WESTLAW, Japannews Library, Jwire File.

The Education Ministry also recommended that schools strengthen ties with institutions such as police stations and counseling centers. *See Schools Urged to Strengthen Ties With Police*, YOMIURI DAILY, Mar. 27, 1998, available in 1998 WL 6591927. These suggestions were made for the purpose of preventing juvenile delinquency and violence. *See id.* The Ministry called for schools to realize that there may be an increasing number of problems that schools are not equipped to deal with alone, and thus should develop relationships with other institutions that can help. *See id.*

139. *See Key Developments of Kobe Case*, *supra* note 138.

140. *See id.*

141. *See id.*

142. *See id.*

143. *See id.* In response to these incidents, the Hyogo prefectural police formed a 160-officer task force to find the killer. *See id.*

144. *See Kobe Murder Still Haunts Community*, ASAHI EVENING NEWS, Nov. 26, 1997, available in 1997 WL 14782395.

expert could examine the teenager's handwriting along with the letter.¹⁴⁵ The day after the handwriting analysis was completed, while the results were inconclusive, police arrested a fourteen-year-old boy,¹⁴⁶ 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.¹⁴⁷ Japan, especially the Suma Ward, lived in fear for a month while the police looked for the killer.¹⁴⁸ There had been four separate incidents of assaults on primary school girls in Suma Ward in February and March of the same year.¹⁴⁹ One of the girls sustained serious stab wounds, while another was bludgeoned to death by hammer blows to the head.¹⁵⁰ 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.¹⁵¹

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.¹⁵² Many have argued that *Shonenho* is based on "exaggerated and outdated assumptions of childish innocence."¹⁵³

145. See *id.* By June 3, the day before the letter arrived at *Kobe Shimbun*, the police had formed a team of nine investigators whose mission was to follow the teenager. See *id.*

146. See *Key Developments of Kobe Case*, *supra* note 138.

147. See *Editorial: Juvenile Murder Suspect*, *supra* note 129.

148. See *id.*

149. See *id.*

150. See *id.*; see also *Key Developments of Kobe Case*, *supra* note 138.

151. See *Kobe Murder Still Haunts Community*, *supra* note 144.

152. *Ideas Sought on Juvenile Trials*, *supra* note 61.

153. *Legal Loophole*, MAINICHI DAILY NEWS, Dec. 13, 1998, available in 1998 WL 21773277. These critics point to statistics that allegedly show an increase in juvenile crime. See *Report Reveals Increase in Juvenile Crime*, *supra* note 132. In 1997, although the number of juvenile murders declined from the previous year, the total number of juvenile crimes increased, primarily due to an increase in theft. See *id.* The mass media contributed to much of the sensationalism of the *Kobe* case, feeding on the public's high level of interest. An author and panelist at a symposium entitled "Juvenile Crime and Freedom of Reporting" held in Tokyo stated that "the media should ask themselves why they attach so much importance to getting reports out as quickly as possible. Japan's mass media reported the *Kobe* incidents (as quickly) as if they were natural disasters." *Truth*

Critics also find it problematic that *Shonenho* allows the juvenile to be completely free from his criminal past once he leaves the correctional facility.¹⁵⁴ Others have argued that “minors are getting smart,” committing crimes because they realize that they will not be punished severely.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.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 61.¹⁵⁷ There has also been much criticism of the lack of laws protecting the privacy of the victims’ families in such situations.¹⁵⁸ *Shonenho* has been criticized as having the tendency to “treat perpetrators as victims and victims as nuisances.”¹⁵⁹ Under the current system, the only recourse for the victims’ families is to bring civil suits against the

Also a Victim in Juvenile Trials, YOMIURI DAILY, June 23, 1998, available in 1998 WL 12844479.

154. See *Report Reveals Increase in Juvenile Crime*, *supra* note 132. According to the White Paper on Crime, in 1997, for the first time in five years, the majority of crimes were committed by juveniles. See *id.* Theft, swindling, and embezzlement accounted for more than 80% of all juvenile crime. See *id.* The number of armed robberies rose by 619 from the previous year to 1701 in 1997, which was the highest number since 1967. See *id.* As for the number of juvenile murders in 1997, it declined by 22 from the previous year to a total of 75. See *id.*

155. *Ministry Studies Juvenile Crimes*, ASAHI EVENING NEWS, July 25, 1997, available in 1997 WL 11414810.

156. See, e.g., *Magazine Blasted for Killer Report*, ASAHI EVENING NEWS, Apr. 17, 1998, available in 1998 WL 7720996.

157. See *supra* Part V.B.

158. See *‘Victims’ Rights Unprotected*, DAILY EVENING NEWS, Oct. 18, 1997, available in 1997 WL 12802916. The irony of the situation was that the press criticized this while at the same time taking advantage of the lack of such laws and invading the privacy of the victims’ families. See, e.g., *Kobe Murder Still Haunts Community*, *supra* note 144. “After [Jun’s] murder, a note with the words, ‘Please leave us alone’ was posted on the door of the Hase residence.” *Id.* Following the ruling of the Family Court in the *Kobe* case, Mamoru Hase, the father of the victim, issued a statement to the press. *‘Victims’ Rights Unprotected*, *supra*. One of the comments he made reflected on the fact that “the human rights and privacy of criminals were overprotected, while the rights of victims and their families were not protected at all.” *Id.* The statement also said, “[b]ecause of media reports, the privacy and rights of our family were infringed, making it impossible to lead a normal life.” *Id.* Kyoko Yamashita, the mother of the 10-year-old girl who died from a blow in the head with a hammer caused by *Shonen A*, also expressed anger toward the system. See *Pain of Kobe Killings Lingers for Parents of Victims*, *supra* note 4. She said, “[w]e have the right to know the suspect’s motive for killing our daughter.” *Id.*

159. *What About the Victim?*, MAINICHI DAILY NEWS, Nov. 9, 1997, at 1, available in 1997 WL 14874227.

juvenile offender's family.¹⁶⁰ 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.¹⁶¹

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*.¹⁶² 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.¹⁶³ 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-

160. In the *Kobe* case, the parents of the victim filed a civil suit seeking monetary compensation from *Shonen A* and his parents. See *Parents File Suit Against Schoolboy Killer of Son*, JAPAN ECON. NEWSIRE, Aug. 26, 1998, available in WESTLAW, Japannews Library, Jwire File. Jun Hase's parents were awarded 104 million yen (approximately \$1 million) compensation. See *Japanese Teen Killer, Parents Ordered to Pay Huge Damages by Shingo Ito*, AGENCE FRANCE-PRESSE, Mar. 11, 1999, available in 1999 WL 2561745.

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. NEWSIRE, July 1, 1997, available in WESTLAW, Japannews 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, Japannews Library, Jwire File. Up until that point, the longest confinement of a juvenile offender had been 886 days. See *id.*

163. See *Minister: Juvenile Law Will Be Reviewed After Kobe Case*, YOMIURI Daily, July 26, 1997, available in 1997 WL 12800157.

six.¹⁶⁴ This new regulation became effective immediately and was applied to the *Kobe* juvenile.¹⁶⁵

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*.¹⁶⁶ The committee published its recommendations in April 1998 and presented these proposals (LDP proposals) to the Ministry of Justice in October of 1998.¹⁶⁷ 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.¹⁶⁸ As of March 2000, the proposals still await discussion by the Japanese Diet.¹⁶⁹

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.¹⁷⁰ 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.¹⁷¹

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.¹⁷² 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

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).

168. See, e.g., *Diet Opposition Puts Juvenile Law Reforms on Hold*, ASAHI EVENING NEWS, May 10, 1999, available in 1999 WL 17698739.

169. See, e.g., *Shonenho Kaiseian Sohki Seiritsu Mezasu: Usui Hohso*, *supra* note 13.

170. See, e.g., *LDP Panels Approve Juvenile Law Changes*, MAINICHI DAILY NEWS, Jan. 23, 1999, available in 1999 WL 7538237.

171. See, e.g., *Shonenho Kaiseian Sohki Seiritsu Mezasu: Usui Hosou*, *supra* note 13.

172. See, e.g., *LDP Panels Approve Juvenile Law Changes*, *supra* note 170.

Shonenho.¹⁷³ 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.¹⁷⁴ Specifically, the proposal is for cases that involve potential custodial sentences of more than three years.¹⁷⁵ Prosecutors would also be allowed to appeal a Family Court's decision.¹⁷⁶

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.¹⁷⁷ When this problem arises, the judge must question the juvenile repeatedly, thus compromising his initial role as the mediator in the juvenile system.¹⁷⁸ In addition, it is argued that there is inherent benefit to bringing in another party to help establish complicated facts.¹⁷⁹

The need for a system that can determine facts more accurately was highlighted with the 1993 *Yamagata Matto-shi* case (*Yamagata* case).¹⁸⁰ A student at a junior high school was found dead in a rolled-up gymnastics mat at the school gymnasium.¹⁸¹ The police arrested seven juveniles for the murder of the student, and six juveniles confessed to the murder.¹⁸² At the juvenile hearings, however, all six juveniles denied involvement in the murder, claiming that the police coerced their confessions.¹⁸³ 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

173. See Toshio Sawanobori, *Hogo Tetsuzuki ni Okeru Tekisei Tetsuzuki no Jitsugen: Genten ni Modotte Kensatsukan Kanyo no Zehi o Saikousuru*, JIYU TO SEIGI 120, 121 (Dec. 1998) [hereinafter *Hogo Tetsuzuki ni Okeru Tekisei Tetsuzuki no Jitsugen*].

174. See Tadashi Sakamaki, *Shonen Shinpan Tetsuzuki ni Okeru Kensatsukan no Chii: Kensatsukan Kanyo Seido ni Tsuite*, JURISUTO 57, 57 (Mar. 15, 1999).

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

176. See Akira Abe, *Hiko Jijitsu no Nintai to Kensatsukan Kanyo*, 527 HOUGAKU SEMINAA 61, 63 (Nov. 1998). The Japanese government endorsed this portion of the bill in March 1999, in spite of the fact that the Japan Federation of Bar Associations opposed the bill. See *Cabinet Approves Bill on Child Trials*, MAINICHI DAILY NEWS, Mar. 10, 1999, available in 1999 WL 7538925.

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.¹⁸⁴ The court never made clear its reasons for releasing three of the six juveniles when it discredited all of their alibis.¹⁸⁵ On appeal, the three juveniles were eventually found innocent of the crime.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 *Yamagata* case in which the facts are complicated.¹⁸⁷ Through the prosecutor's questioning of juveniles and witnesses, facts supposedly would be established clearly.¹⁸⁸

2. Instituting a Three-Judge Panel in Juvenile Trials

The second proposal to change *Shonenho* is to install a three-judge panel to hear juvenile trials instead of a single judge.¹⁸⁹ In general, scholars and lawyers alike have accepted this proposal more widely than the one concerning prosecutors.¹⁹⁰ In fact, guardians and defense attorneys in juvenile hearings have requested such an arrangement in the past and were denied.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.¹⁹²

The main reason for this proposal, just as the first proposal, is to ensure more accurate fact-finding.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.¹⁹⁴ The judge believed that a panel of judges would contribute to the creation of

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

185. See *A Panel Discussion*, *supra* note 166, at 10-11.

186. See KODOMO NO JINKEN, *supra* note 34, at 316.

187. See, e.g., *A Panel Discussion*, *supra* note 166, at 10-11.

188. See, e.g., Sakamaki, *supra* note 174, at 58.

189. See Tada, *supra* note 167, at 16.

190. See Hiroshi Sato, *Waga Kuni no Shonenshingi to Saiteigogisei no Dounyu*, 1152 JURISUTO 47, 47 (Mar. 15, 1999); see also Sakamaki, *supra* note 174, at 65.

191. See Tada, *supra* note 167, at 16-17.

192. See Kazuhiro Murakoshi, *Housei Shingikai ni Okeru Shingi no Kei*, 1152 JURISUTO 37, 38 (Mar. 15, 1999).

193. See *id.* at 37.

194. See *A Panel Discussion*, *supra* note 166, at 13-14.

a more accurate and objective fact-finding body.¹⁹⁵ 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.¹⁹⁶

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.¹⁹⁷

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.”¹⁹⁸ 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.¹⁹⁹ 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.²⁰⁰

The LDP committee has explicitly admitted that its primary reason for proposing the allowance of prosecutors in juvenile

195. See *id.* at 14.

196. See *id.*

197. The proposals attempt to add changes to the current system without changing its framework, but that is an impossibility, as the proposals, if adopted, will change the entire purpose of *Shonenho*. See *id.* at 10.

198. As I See It: *Juvenile Delinquents Need Nurturing, Not Jails*, MAINICHI DAILY NEWS, Dec. 16, 1998, available in 1998 WL 21773320.

199. See *supra* Part II.

200. See Sakamaki, *supra* note 174, at 58.

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.²⁰¹ Likewise, the reason for instituting a three-judge panel lies in protecting the public.²⁰² According to the proposal, the police are considered to be those who cooperate with the judges.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 *Shonenho*. The Japanese Juvenile Law has been built on principles of love and tolerance.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 *Shonenho* is not lessened.

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 *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.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.²⁰⁶ Thus, the idea of proving the guilt of the juvenile is not a part of the system.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.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.²⁰⁹ The proposal allows the prosecutor to state the facts as he sees them and to declare

201. See *id.*

202. See Tada, *supra* note 167, at 17; see also *A Panel Discussion*, *supra* note 166, at 14.

203. See *id.*

204. See KODOMO NO JINKEN, *supra* note 34, at 86; see also *supra* Part II.A.

205. See SAWANOBORI, *supra* note 1, at 30; see also *supra* Part II.B.1.

206. See *supra* Part II.B.1.

207. See SHONENHIKO, *supra* note 1, at 62.

208. See *supra* Part II.B.1.

209. See GOTO, *supra* note 2, at 126.

his opinions to the judge.²¹⁰ 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.²¹¹ 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.²¹² 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.²¹³ In addition, the proposal would give the prosecutor the right to appeal a decision, and hence, increase the possibility of prolonging the process.²¹⁴

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.²¹⁵ 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.²¹⁶ 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.²¹⁷

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.²¹⁸ 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.²¹⁹ The spirit of *Shonenho* requires that the police conduct the interview with a

210. See Tada, *supra* note 167, at 16.

211. SHONENHO, art. 17, reprinted in GOTO, *supra* note 2, at 203-04.

212. See Tada, *supra* note 167, at 18.

213. See *id.*; see also Yonezawa, *supra* note 9, at 111.

214. See *id.*

215. See *id.* at 110.

216. See, e.g., Hiroshi Shimizu, *Shonenho Ichijo no Mokuteki to Shissuru Kaikaku 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).

217. See, e.g., Hattori, *supra* note 52, at 61-62.

218. See, e.g., *A Panel Discussion*, *supra* note 166, at 10.

219. See KODOMO NO JINKEN, *supra* note 34, at 316.

suspect in a sensitive manner.²²⁰ Further, the short investigation period described in Article 17 was designed to protect the juvenile from long periods of isolation in a holding cell.²²¹ 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.²²² 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.²²³ This is true especially in light of the fact that the sentiment behind the proposal is to "ensure that no guilty juvenile goes free."²²⁴

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.²²⁵ 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.²²⁶

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.²²⁷ 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

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.

223. See Yukio Yamashita, *Chofu Jiken kara Kangaeru Kaiseiron no Mondaiten*, 334 HOU TO MINSHUSHUGI 32, 32 (Dec. 1998).

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 *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.

V. A CALL FOR A DIFFERENT KIND OF REFORM

In the midst of all the criticism and emotional debate, that *Shonenho* has proven effective for over half a century has been ignored. In order to bring about reform, lawmakers should make changes so that *Shonenho* is more closely followed and enforced. Reform should make the already effective system even more effective. *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 *Shonenho* must continue to uphold this purpose. In reality, many of the provisions of *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 *Shonenho* when, in reality, the lack of penalty provisions has led to numerous violations of the protection provisions.²²⁸ In order to realize the full potential of *Shonenho*, as envisioned by its founders, reform of *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 *Shonenho* without anticipating the additional changes that must occur in order for the entire system to work.²²⁹ 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 *Shonenho* will be diminished.

228. See, e.g., Morse Saito, *Battling Windmills*, MAINICHI DAILY NEWS, Oct. 27, 1997, available in 1997 WL 14874076.

229. See *A Panel Discussion*, supra note 166, at 10.

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,²³⁰ the number of serious crimes committed by minors has declined since *Shonenho* was first enacted in 1949.²³¹ 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,²³² the number of murders committed by juveniles declined by twenty-two to seventy-five between 1996 and 1997.²³³ The number of "shocking" or "atrocious" crimes, such as the *Kobe* incident, is small when considered in the broader context of juvenile criminal activity.²³⁴ Yet the media has repeatedly highlighted that juvenile crime is on the rise.²³⁵ Thus, although "the mass media has done a terrific job of frightening the public, the scary headlines are not supported by the statistics."²³⁶

Furthermore, under the current juvenile justice system, the incidence of juvenile crime is extremely low when compared to other industrialized nations.²³⁷ The same is true for the recidivism rate²³⁸ for juvenile crime.²³⁹ For example, seventeen of forty teenagers convicted of committing vicious crimes such as

230. See Kaoruko Sunazawa, *Does Japan's Juvenile Law Give Criminals an Easy Ride?*, ASAHI EVENING NEWS, July 23, 1997, available in 1997 WL 11414758.

231. See *Kobe Case Tests Public Patience With Law*, *supra* note 60.

232. See *Reported Crimes in Japan Reach Record High in 1997*, BERNAMA, Oct. 13, 1998, available in 1998 WL 20442155.

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.

236. *Crime Stats Show Little Truth Behind the Headlines*, MAINICHI DAILY NEWS, Aug. 24, 1997, available in 1997 WL 13531938.

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.²⁴⁰ 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.²⁴¹ Of the twenty-four juveniles that committed murder in 1996, only two had previously been sent to a juvenile training school.²⁴²

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.²⁴³ Much of it is based on the mentality that juveniles who commit terrible crimes do not deserve such protection.²⁴⁴ 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*.²⁴⁵ *Shonenho* can appear like a series of "policy statements" rather than laws.²⁴⁶ 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.²⁴⁷

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 do anything to stand in the way of rehabilitating minors.

But the nation should review how it should disclose

240. See *Ministry Studies Juvenile Crimes*, *supra* note 155.

241. See *id.*

242. See *id.*

243. See, e.g., Yonezawa, *supra* note 9, at 113.

244. See, e.g., Hiroshi Murayama, *Johou Kokai/Kaiji to Shonenjiken: Hanzai Houdou to Johou Kokai*, 334 HOU TO MINSHUSHUGI 24, 24-26 (Dec. 1998); Kenta Yamada, *Shonen no Hogo to Hyogen no Jiyu*, 1136 JURISUTO 47, 48 (June 15, 1998).

245. See, e.g., *When the Law is Toothless*, *supra* note 15.

246. *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.*

247. See *id.*

information on major cases attracting wide attention from society, based on the measure taken by the family court.²⁴⁸

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.²⁴⁹ 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 to 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 [F]amily [C]ourt 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 . . .

Editorial: Learn Lesson From Kobe Case, DAILY YOMIURI, Oct. 18, 1997, available in 1997 WL 12802923.

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, Japannews 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.*

249. *See, e.g., Key Points of Kobe Family Court Ruling*, DAILY YOMIURI, Oct. 18, 1997, available in 1997 WL 12802920. When announcing its ruling, the Family Court said that it wanted to promote accuracy in press reports on this high-profile case, and that the contents did not violate any confidence. *See Defense Lawyers Protest Court Disclosure of Ruling*, JAPAN ECON. NEWSIRE, Oct. 22, 1997, available in WESTLAW, Japannews Library, Jwire File.

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.²⁵⁰ There is no legal basis or established reason for this practice.²⁵¹ In fact, it clearly violates, at the very least, the spirit of *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.²⁵² In a second magazine, it published an unaltered photograph along with the suspect's name.²⁵³ In both situations, the Justice Ministry requested a recall of the magazines.²⁵⁴ The problem, however, was that the request was not binding²⁵⁵ because there is no penalty for violating Article 61 of *Shonenho*.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.²⁵⁷

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.*

251. See *id.*

252. See *Teen Killer Responding to Therapist*, DAILY YOMIURI, Apr. 22, 1998, available in 1998 WL 6592500.

253. See *Use of Suspect's Altered Photo 'Illegal'*, ASAHI EVENING NEWS, July 4, 1997, available in 1997 WL 11414351; *Ministry Chastises Publisher for Kobe Suspect Photograph*, DAILY YOMIURI, July 5, 1997, available in 1997 WL 12252497.

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.*

255. See *id.*

256. See *generally When the Law is Toothless*, *supra* note 15.

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.²⁵⁸ The Osaka District Court held that the nineteen-year-old, who sued the publisher, was entitled to damages.²⁵⁹ 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.²⁶⁰ The court held that Article 61 did not confer a right to privacy upon the juvenile offender.²⁶¹ 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."²⁶² The court further held that "[e]ven if Article 61 gives [the juvenile] the right to privacy, it should not necessarily preempt the freedom of expression [and press]."²⁶³ 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.*

258. The magazine printed a story and photo of a nineteen-year-old paint thinner addict accused of stabbing a five-year-old to death. See *Monthly Flouts Law on Child-Killer*, ASAHI EVENING NEWS, Feb. 18, 1998, available in 1998 WL 7720202.

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.

260. *Jyukyusai Hikoku no Jitsumei/Shashin Keisai: Shinchosha ga Gyakuten Shoso*, ASAHI SHIMBUN, Mar. 1, 2000.

261. See *id.*

262. *Id.*

263. *Sakai Torima Satsujin: Jukyusai Kagaisha no Jitsumei Houdoude Shinchosha ga Gyakuten Shoso*, MANICHI SHIMBUN, Mar. 1, 2000.

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 SAITOH, SHONENHO KENKYU: TEKISEI TETSUZUKI TO GOHAN KYUSAI 68 (1997) [hereinafter SAITOH].

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.²⁷³ Likewise in the *Kobe* case, neither the juvenile's parents nor attorneys were able to attend police interrogation sessions.²⁷⁴ In fact, during the detention the juvenile never saw his parents, and the lawyers' meetings with him were restricted.²⁷⁵ In February 2000, the Japanese Supreme Court overturned the 1985 *Soka* case because it highly doubted the reliability of the juveniles' confessions,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.²⁷⁷ They also violate various international standards of juvenile justice.²⁷⁸

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

Despite all the criticism, *Shonenho*, as written, closely follows the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (U.N. Standard).²⁷⁹ Nevertheless, once again, because of the lack of enforcement provisions, the way *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.

273. See *id.* at 70.

274. See *Does Japan's Juvenile Law Give Criminals an Easy Ride?*, *supra* note 230.

275. See *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 *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 *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 *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 *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.

276. See *Soka Jiken: Saikousai ga Ni-shin Hanketsu Haki, Shinri o Sashimodoshi*, *MAINICHI SHIMBUN*, Feb. 7, 2000.

277. *SHONENHO*, art. 1, reprinted in *GOTO*, *supra* note 2, at 201.

278. See UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE, Part Two, art. 10, cl. 10.1, reprinted in *KODOMO NO JINKEN*, *supra* note 34, at 299 [hereinafter U.N. STANDARD]; see also *infra* Part V.

279. U.N. STANDARD, 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."²⁸⁰ This concept is embraced by *Shonenho*, as its purpose is to "promot[e] the welfare and wholesomeness of the juvenile."²⁸¹

The U.N. Standard also guarantees

[b]asic 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 authority²⁸²

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."²⁸³ 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;²⁸⁴ 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 punishments²⁸⁵—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.²⁸⁶

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.

284. See, e.g., Taro Karasaki, *New Problems in Kobe Case Not Over*, ASAHI EVENING NEWS, Oct. 18, 1997, available in 1997 WL 14781368.

285. See . . . *And Discussions Continue*, *supra* note 10.

286. See GOTO, *supra* note 2, at 12.

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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