

Legislation

The Rehabilitation and Probation Act 2007 [Kouseihogo Hou]

(Houritsu-jihō, Shin-hourei-kaisetsu, August 2007, p. 15)

There are separate systems for dealing with adult and juvenile offenders in Japan. One is “institutional treatment” where an offender is committed to a penal institution or a detention center. The other is “community treatment”, such as probation.

In Japan ‘rehabilitation’ (kouseihogo) is ‘the activity of supporting an offender in their rehabilitation to become a sound member of society in the community’.

‘Probation’ is where an adult or juvenile an offender or a juvenile delinquent is not sent to a institution, but is supported and supervised by an appropriate person, such as a volunteer probation officer and a Probation Officer, in the community. And, parole is ‘the release of a prisoner from imprisonment before the full sentence has been served’.

The Rehabilitation and Probation Act 2007 (Act No. 88 of 2007) (hereinafter ‘the Act’) describes four categories of “probationer” in Article 48: (1) a person who is placed under probation under Article 24 para. 1 item 1 of the Juvenile Act (Act No. 168 of 1948); (2) a person who is released on parole from a detention center and is placed on probation under Article 40 applied under Article 42 (3) a person who is released on parole from a penal institution and is placed on probation under Article 40; (4) a person who is placed on probation under Article 25-2 para. 1 of the Penal Code (Act No. 45 of 1907).

The purpose of the Act is to reinforce the function of rehabilitation, and to establish a clear and understandable system for citizens. The Act combines the Rehabilitation of Offenders Act (Act No. 142 of 1949) and the Probationary Supervision of Persons under Suspension of Execution of Sentence Act (Act No. 58 of 1954). The Act came into effect on 1 June 2008, and the two earlier acts were repealed.

There were two reasons for the enactment of the Act. First, there were inconsistencies between the provisions of the Rehabilitation of Offenders Act and the provisions of the Probationary Supervision of Persons under Suspension of Execution of Sentence Act. This caused confusion and inconvenience for Probation Officers (full-time government officials of the Ministry of Justice). Therefore, it was necessary to coordinate the laws concerning rehabilitation and probation. Second, there were a series of serious repeat offences by probationers in 2004 and 2005. As a result, the “Study group of experts on rehabilitation and probation” was established by the Minister of Justice in July 2005 to look at rehabilitation and probation. The members of this group were appointed by the Minister of Justice. The study group presented its report to the Minister of Justice on 27 June 2006.

There are five main features of the Act.

1. Purpose

The purpose of the Act is clearly defined. Article 1 (Purpose of this Act) provides as follows:

"The purpose of this Act is to prevent persons who committed a crime and juvenile delinquents from reoffending or relapsing into delinquency and helping them to achieve autonomy and become a good member of society and support their rehabilitation, to make appropriate use of an amnesty and to encourage activities for prevention of crimes, by appropriate treatment in the community, therefore this Act protects the community and improves individual and public welfare."

2. General and Special Rules

The Act provides for "general rules" and "special rules" that a probationer must observe for the period of their probation. If the probationer breaches those rules sanctions will apply, such as revocation of their parole.

The general rules are matters that all probationers must observe for the period of their probation. The Act imposes some specific obligations, for example the duty to have an interview with a Probation Officer and a volunteer probation officer (citizens commissioned by the Minister of Justice to assist with rehabilitation), and the duty to report to a Probation Officer and a volunteer probation officer about where they are living and their daily activities (Art. 50).

A probationer must observe the special rules set out in Article 51 of the Act when one or more of the special rules is to apply to their probation. The special rules address six situations (Art. 51 para. 2 items 1-6) necessary for rehabilitation (Art. 51 para. 2). For example, the probationer must not associate with a person connected with criminal activity, must not visit places where criminal acts may occur, must not gamble, must not drink excessively, or do any act that may lead the probationer to commit an offence (Art. 51 para. 2 item 1). The special rules to apply to a probationer are decided on an individual basis by the Director of the Probation Office based on the opinion of the Family Court, or by the Regional Parole Board (Art. 52).

The Act provides guidelines for appropriate behavior. This is a guide to appropriate behavior that contributes to the rehabilitation of a probationer. Violation of the guidelines does not lead directly to any sanction being applied. This is different from the general rules and the special rules.

3. Participation of victims

The Act introduced a system under which victims can participate in the parole hearing process, and in the probation process.

In the examination of an application for parole, a victim can apply to make a statement giving their opinion about the release on parole of the probationer. When a victim makes such an application the Regional Parole Board should hear this opinion (Art. 38).

When probation is being considered, a victim can apply to make a statement about their state of mind, their present situation resulting from the probationer's actions, and the impact that the crime had on them, or about the victim's opinion for living and behavior of the probationer if they are given probation. When a victim makes such an application, the Director of the Probation Office should consider their opinion, and inform the probationer of the victim's opinion unless this opinion hinders the probationer's rehabilitation (Art. 65).

4. Circumstance of probationers

The Act improved the regulation of probationer's circumstances (Art. 82 and 83). If there are not appropriate circumstances after their release from a penal institution or a juvenile detention center, this might be a factor in whether they reoffend.

5. Cooperation between volunteer probation officers and Probation Officers

The Act improved cooperation between volunteer probation officers and Probation Officers (Art. 2). It aims to solve the problem that the Government has relied heavily upon volunteer probation officers (as at 1 April 2008 there were 48,775 volunteer probation officers across Japan). The Act provides for the Government to promote the activities of rehabilitation volunteers and to make the nation understand the rehabilitation and probation system.

In addition, the Act provides for the special treatment program to decrease the special tendency of offenders; the supply of suitable accommodation for the direction and supervision of probationers; and for temporary release from parole.

(MATSUKURA Haruyo and Stephen GREEN)