The Proposed Revisions to Japan's Juvenile Law: If Punishment Is Their Answer, They Are Asking the Wrong Question

Jessica Hardung
THE PROPOSED REVISIONS TO JAPAN'S JUVENILE LAW: IF PUNISHMENT IS THEIR ANSWER, THEY ARE ASKING THE WRONG QUESTION

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Abstract: The Juvenile Law in Japan turned fifty years old on January 1, 1999. Japan enjoys one of the lowest overall crime rates of any industrialized nation, but its juvenile crime rate is on the rise. The rise in juvenile crime has prompted Japanese legislators to propose changes to the Juvenile Law. This Comment argues that the majority of the proposed revisions, which do not focus on rehabilitation, should not be adopted and that social controls already in place are sufficient to combat any increase in juvenile delinquency. Japanese culture has unique characteristics that contribute to its low crime rate. In the United States, the adoption of retributive juvenile justice laws has not stemmed increases in the juvenile crime rate. Japan should not resort to the U.S. model of juvenile justice to solve the problem of juvenile crime.

I. INTRODUCTION

The Japanese government is seeking an effective solution to the growing problem of juvenile crime in Japan. From January 1998 to November 1998, 144,228 juveniles between the ages of fourteen and nineteen were arrested or put under protective custody for alleged criminal offenses. This figure represented a 3.1% increase from the same period in 1997, even though the overall juvenile population had decreased. The number of teenagers in Japan arrested for felonies rose forty-three percent from 1988 to 1998. Additionally, in 1998 the number of teenagers arrested for violent crimes such as murder, rape, and robbery exceeded 1,000 for the third consecutive year. These recent trends and violent crimes prompted Japan’s Liberal Democratic Party to propose several revisions to the current Juvenile Law. The revisions would drastically alter juvenile court proceedings in Japan for the first time in fifty years.

1 Japan is currently experiencing its fourth juvenile crime wave since World War II. See ROBERT Y. THORNTON & KATSUYA ENDO, PREVENTING CRIME IN AMERICA AND JAPAN: A COMPARATIVE STUDY 107 (1992) (mentioning the first three crime waves that occurred in 1951, 1964, and 1982).
3 Id.
5 Id.
Members of Japan's Liberal Democratic Party approved a package of reforms to the Juvenile Law that were submitted during the 1999 session of the Japanese Diet ("Diet").7 One of the bills contained revisions that would require a three-judge panel to sit in cases involving serious offenses, whereas currently a single judge presides.8 The bill contained another provision that would permit prosecutors to participate in juvenile cases involving potential sentences of more than three years imprisonment.9 It would also give prosecutors the right to appeal and would increase the detention period for questioning juveniles from four weeks to twelve weeks.10 A second controversial bill would lower the age at which a juvenile could be tried in an adult criminal court from sixteen to fourteen.11 The proposals contained in the first bill were discussed during the 1999 Diet session. However, voting on the bill was postponed until at least the next Diet session, which begins in early 2000.12 The bill to lower the age for criminal trials will not be submitted until it is certain that the other revisions will become law.13

The procedures that would be enacted under the proposed revisions to the Juvenile Law are similar to juvenile justice procedures already in place in the United States. Indeed, the proposed revisions are likely modeled after such procedures. Japan does not need to resort to Western practices to combat juvenile delinquency effectively. Despite Japan’s rising juvenile crime rate and a number of heinous crimes committed by juveniles in the last two years, Japan is still far more successful in its prevention of juvenile crime than other industrialized nations.14 Part II of this Comment examines the juvenile justice system in Japan and how formal and informal social controls operate jointly to reduce juvenile crime there. Part III compares the juvenile justice systems in Japan and the United States and discusses the

10 Id.
12 Govt [sic]. LDP Delay Revisions to Juvenile Law, YOMIURI SHIMBUN, June 28, 1999, available in 1999 WL 17755104. The proposed revisions were carried over to the next Diet session so members could “concentrate on other important bills.” Id.
13 Id. This proposal was not submitted in the 1999 Diet session due to its controversial nature and the possibility that it might prevent the passage of the other proposed bills. Japan: Juvenile Law Reforms Nixed, ASAHI SHIMBUN, Mar. 5, 1999, available in 1999 WL 5636722.
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major attributes and shortcomings of each system. Part IV discusses the proposed revisions to Japan’s Juvenile Law and analyzes the possible effects of each proposal, using the experience of the United States to demonstrate the detrimental effects that can occur when a system dealing with juveniles focuses on punishment. Part V concludes that Japan should not adopt retributive methods of dealing with juvenile crime. Instead, Japan should continue to emphasize its goal of rehabilitation and to utilize cultural prohibitions on crime to control juvenile delinquency.

II. JUVENILE JUSTICE IN JAPAN—A BRIEF OVERVIEW

Rehabilitation is the primary goal of the current juvenile justice system in Japan. Although the system was modeled after the United States juvenile justice system, Japan has been more effective in maintaining a focus on rehabilitation. The Juvenile Law defines a juvenile as any person less than twenty years of age. The Japanese system utilizes formal social controls, with emphasis on the family court system and police involvement, to reduce juvenile crime. Informal social controls, which include active participation by the family and community to control juvenile delinquency, are an equally important component.

Formal controls are institutional structures that seek to maintain conformity to accepted social norms. In Japan, these formal controls include the laws, the courts, and law enforcement. Formal controls operate

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15 Although this Comment generally compares the juvenile justice systems in Japan and the United States, it is important to mention that each state in the United States is responsible for adopting its own juvenile laws. Japan’s judicial system, however, is unified under the nation’s Supreme Court. SUPREME COURT OF JAPAN, JUSTICE IN JAPAN 13 (1998).


The object of this Law is, with the aim of the sound upbringing of juveniles, to carry out the protective dispositions relating to the character correction and environmental adjustment of delinquent juveniles and to take special measures with respect to the criminal cases of juveniles and adults who are harmful to the welfare of juveniles.

Id.


18 Juvenile Law, supra note 16, art. 2.

19 Family courts in Japan are specialized courts that have original jurisdiction over juvenile delinquency and other family matters. For a detailed discussion of family courts, see infra Part II.A.1.

20 For a detailed discussion of informal controls in Japan, see infra Part II.B.


22 Id.
by imposing negative sanctions on nonconforming citizens.\textsuperscript{23} In order to be successful, negative sanctions must be thorough and consistent in their application.\textsuperscript{24}

Informal controls also operate to ensure conformity to societal norms.\textsuperscript{25} These types of controls are rooted in interpersonal relationships, such as those between family or community members.\textsuperscript{26} There are two types of informal controls. The first type consists of controls that are internalized by individuals.\textsuperscript{27} Developed during the socialization process, this type of informal control is based on the internalization of norms and expectations that are associated with approval and acceptance by others.\textsuperscript{28} The second type of informal control is based on responsive interaction, or behavior that is influenced by family members or peer groups.\textsuperscript{29} The success of informal controls depends upon the ability of outside influences to affect an individual's actions by praising appropriate behavior and sanctioning behavior that is inappropriate.\textsuperscript{30} The concept of attachment, or the degree to which an individual bonds to others, is vital to the effectiveness of informal controls because an individual with a strong attachment to a group will be more likely to conform to that group's accepted norms.\textsuperscript{31}

A. Formal Controls—The Role of Family Courts and Police in Fighting Juvenile Crime

Formal controls at work in Japan strengthen and maintain order in an already orderly society. The family court system is comprised not only of distinguished judges, but also expert laypersons that work together to promote the best interests of a child.\textsuperscript{32} The police share this goal, and they consider themselves to be in a partnership with the community in striving to prevent delinquency.\textsuperscript{33} These formal controls are effective for two reasons.

\begin{itemize}
\item \textsuperscript{23} Id.
\item \textsuperscript{24} Id.
\item \textsuperscript{25} Id. at 35.
\item \textsuperscript{26} Id.
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id. (summarizing Hirschi's findings).
\item \textsuperscript{30} Id.
\item \textsuperscript{31} Id.
\item \textsuperscript{32} THORNTON & ENDO, supra note 1, at 114 (distinguishing family courts in Japan from those in the United States).
\item \textsuperscript{33} Interview with Satoru Morizane, Assistant Director of the Criminal Investigation Planning Division of the National Police Agency, Tokyo, in Seattle, Wash. (May 5, 1999) [hereinafter Morizane]. Mr. Morizane spent two years studying in the United States at the University of Washington School of Law.
\end{itemize}
First, the core societal values of homogeneity and respect for authority that are instilled in Japanese youth early in life contribute to the legitimacy of the police and the legal system in general. Second, the informal controls that are prevalent in Japanese society impose few constraints on the formal system, allowing it to operate freely and effectively.

1. **The Role of Family Courts in Japan**

The family courts are specialized courts that deal with juvenile delinquency cases and other family matters. The courts have primary jurisdiction over the following juveniles: (1) any juvenile who is alleged to have committed a crime; (2) any juvenile under fourteen years of age who is alleged to have performed an act in violation of any criminal law or ordinance; and (3) any juvenile who, as perceived by authorities, has the potential to commit a crime or perform an act in violation of a criminal law or ordinance given the juvenile's character or surroundings. The three groups are called juvenile offenders, law-breaking children, and pre-delinquent juveniles, respectively.

These characterizations often affect the way a family court chooses to proceed with a case and may constrain the options for disposing of a case. For example, a juvenile under the age of fourteen cannot be held criminally liable for his acts. Such youths are categorized as law-breaking children and are usually sent first to a child guidance center. The center can decide to refer the case to family court. The harshest punishment a family court may impose upon such a youth is to send him or her to a child education and training home.

Despite the juvenile classifications, the family courts maintain flexibility in case development and disposition. When the family court receives a case, pre-sentence investigators interrogate the juvenile and his or

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34 WESTERMANN & BURFEIND, supra note 21, at 77.
35 Id. at 36.
36 SUPREME COURT OF JAPAN, supra note 15, at 33. Family courts are situated near district courts (courts of original general jurisdiction) throughout Japan. Id.
37 Juvenile Law, supra note 16, art. 3. The first two categories are distinct, since juveniles under the age of 14 cannot be held criminally liable for their actions. Id.
41 Id. See also infra Part II.A.1.b (discussing juvenile training schools).
her guardians to compile the information necessary to make a recommendation on whether to pursue the case. The majority of cases are dismissed, and the juvenile is immediately reintegrated into society. A judge's decision to dismiss is based on an assessment of the circumstances of the case, including the number of prior offenses, if any, and the severity of the offense. If, upon hearing a case, the judge finds dismissal inappropriate, the court may place the juvenile under probation, refer him to a home for dependent children, or send him to a juvenile training school.

The family court may, due to the nature and circumstances of a specific case, decide that a juvenile should be treated as an adult criminal. This alternative is available to the family court only if the juvenile is over the age of sixteen and the alleged offense is punishable by death or imprisonment. The court may then transfer the case to a public prosecutor for the initiation of a regular criminal proceeding. Conviction is nearly inevitable, since public prosecutors in Japan are known to investigate cases thoroughly and only prosecute cases when they are certain of the outcome. If the juvenile is found guilty in criminal court, he could be sent to one of eight juvenile prisons. These prisons house adults under the age of twenty-six and emphasize vocational education.

a. The role of probation officers and medical personnel in family courts

In Japan, family courts delve deep into the circumstances surrounding juvenile delinquent acts. In order to find the best solution for a child, a judge utilizes court personnel with specialized training, including probation

43 JOHNSON, supra note 40, at 165 (noting an 89.9% dismissal rate of family court cases in 1990).
44 Id.
45 TRENDS, supra note 42, at 3. See also infra Part II.A.1.b (discussing juvenile training schools).
46 Juvenile Law, supra note 16, art. 20.
47 Id. Examples of such offenses include murder, rape, and robbery.
48 SUPREME COURT OF JAPAN, supra note 15, at 34.
49 Morizane, supra note 33.
50 JOHNSON, supra note 40, at 163.
51 Id.
52 Article 9 of the Juvenile Law reads as follows:

[E]very effort shall be made, as far as possible, to make efficient use of medical, psychological, pedagogical, sociological and other technical knowledge, especially the result of the classification conducted by the Juvenile Classification Office with regard to the conduct, career, temperament and environment of the juvenile, his guardians or of any other person concerned.

Juvenile Law, supra note 16, art. 9.
officers and medical officers who are experts in psychiatry. These officers are crucial to the overall success of the family court’s goal of encouraging rehabilitation.

Probation officers assist the family court judge by conducting pre-hearing investigations, a process similar to that which occurs in the United States. The investigation can include an examination of the home life of a child, her performance and attendance in school, and her mental and physical condition. Japanese probation officers receive extensive education and training that allows them to offer the judge a well-informed opinion.

The Juvenile Law grants medical personnel access to information regarding the conduct, career, temperament, and environment of a juvenile and his or her guardian. Much of this investigation occurs while the juvenile is in a juvenile classification home, where a juvenile may be detained prior to the family court proceeding. A psychologist conducts diagnostic interviews and various tests, the results of which are compiled in reports and submitted to the family court judge to aid in his or her decision.

b. Juvenile training schools—a needed focus on rehabilitation

An advantage of the family court system in Japan is the flexibility offered in case disposition. A delinquent youth may be assigned to a probation officer for a period of time or, in more serious cases, may be sent to a juvenile training school. A less drastic course of action, such as probation, is usually tried before a juvenile is sent away. Juvenile training schools are used for serious offenders under the age of sixteen and older juveniles convicted of minor crimes. These training schools function as rehabilitative institutions that educate offenders and prepare them for their return to society. A youth sent to a juvenile training school receives

53 SUPREME COURT OF JAPAN, supra note 15, at 34.
54 Berezin, supra note 17, at 58.
55 Id.
56 Id.
57 See Juvenile Law, supra note 16, art. 9.
58 JOHNSON, supra note 40, at 165-66.
59 Id. at 165-67 (discussing the organization of juvenile classification homes).
60 Id. at 163.
61 THORNTON & ENDO, supra note 1, at 116. Alternative methods are not considered in the case of felony offenses such as rape, homicide, or arson. Id.
62 A minor who is 16 or older and commits a serious crime would probably be transferred to criminal court. See supra note 61 and accompanying text. There were 5500 juveniles interned in Japanese reform schools in 1998, compared to 3800 in 1995. French, supra note 4.
63 THORNTON & ENDO, supra note 1, at 116.
instruction in both academic subjects and vocational skills. Although a stigma attaches to juveniles who receive such a sentence, the schools have been effective in reforming juveniles and preventing further delinquency. In addition, they have had a salutary effect as an example to other delinquents and potential delinquents.

Four different types of training schools exist in Japan and are classified according to the age, mental state, and criminal dispositions of their occupants. Primary schools are for juveniles between the ages of fourteen and sixteen who have no mental or physical deficiencies. Middle schools house juveniles between the ages of sixteen and twenty who are also free of serious mental and physical ailments. Advanced schools retain those older juveniles (sixteen to twenty-three years of age) who are at risk of committing serious crimes. Finally, medical training schools are maintained for delinquents aged fourteen to twenty-six who are physically or mentally ill. This rigid classification system is crucial to Japan's effort to provide adequate attention to the unique rehabilitative needs of each juvenile.

2. The Role of Japanese Police in Preventing Juvenile Crime

The police play an integral role in the prevention of juvenile delinquency in Japan. Police employ a variety of preventative measures designed to identify at-risk juveniles in order to stop juvenile crime before it occurs. Without diminishing the effectiveness of the family court system, the police come in contact with more juveniles than the family court and are able to deal with many juvenile problems without the family court's involvement. This type of police intrusion is accepted in Japanese culture at a level that far exceeds what would probably be tolerated in the United States.

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64 Id.
65 Id. at 117 (noting the remarks of Judge Akihiko Kobayashi of the Kawagoe family court: "Even if these sanctions [juvenile training schools] are called protective measures, they are very effective in getting the young offender's attention and cooperation").
66 Id. (citations omitted).
67 Berezin, supra note 17, at 61. There are approximately 65 juvenile training schools in Japan.
68 Id.
69 Id.
70 Id.
71 Id.
72 Id. at 60.
73 WALTER L. AMES, POLICE AND COMMUNITY IN JAPAN 82 (1981).
74 Murai, supra note 38, at 5.
75 See infra Part II.A.2.b (comparing police involvement in Japan and the United States).
a. Juvenile guidance (Shonen Hodo)

A program of police guidance for juveniles, referred to as “juvenile guidance” (Shonen Hodo), is considered one of the most important activities undertaken by juvenile police. The purpose of juvenile guidance is to identify juvenile delinquents or juveniles that could become delinquent and encourage a course of good behavior. The police occasionally designate a special month during which they increase their presence on the street. Frequently, such special months occur during a school holiday. Police officers even meet periodically with school principals to inform them of trends related to certain offenses and any other problems that need to be confronted. The success of a program such as juvenile guidance also depends on the involvement of community volunteers and parents.

b. Comparison of police involvement in Japan and the United States

The level of police involvement in Japan differs significantly from that in the United States. Japanese police have a much closer relationship with the public than U.S. police do. Robert J. Smith, an expert on Japanese culture, described this unique relationship as follows: “It is today the assumption of the vast majority of Japanese that public and police alike are on the same side in the unremitting effort to maintain order and to minimize the dangers encountered by ordinary people in the conduct of their daily lives.” This relationship creates a cohesive police/community unit that can focus on crime prevention.

Police are given a high level of respect in Japanese society. This stems partly from a cultural ideal of harmony that supports an active police

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76 Murai, supra note 38, at 5 & n.4 (explaining that there is not a separate police force called the juvenile police, but only a section of the police department that specifically deals with juvenile delinquency). See also AMES, supra note 73, at 82-84 (discussing generally the role of police in juvenile crime prevention).
77 Murai, supra note 38, at 5.
78 Id.
79 Id.
80 AMES, supra note 73, at 83.
81 Id. For further discussion on the role of parents and community in preventing juvenile crime, see infra Part II.B.
82 WESTERMANN & BURFEIND, supra note 21, at 77.
83 Id. (quoting ROBERT J. SMITH, JAPANESE SOCIETY: TRADITION, SELF, AND THE SOCIAL ORDER 5 (1983)).
84 Id. at 77.
85 Id. at 78.
presence. Police in Japan are not thought of as overly intrusive, but rather as highly regarded public servants. Additionally, the Japanese sense of hierarchy and the high value Japanese place on government service puts police in a position of respect. Finally, respect for authority is a part of traditional Japanese culture.

The Japanese attitude toward law enforcement provides a sharp contrast to the “us versus them” mentality that seems to pervade American opinions regarding police personnel. This contrast is the result of key differences in the core values and cultural characteristics of both nations. The values central to American society diminish the perceived legitimacy of the police. First, many U.S. citizens are skeptical of centralized authority, especially government organizations. Since the police are a form of centralized authority, it follows that they are distrusted. This distrust has been aggravated by publicized incidents of police misconduct. Second, there is a conflict in the United States between the need to retain freedom, that is, to remain free from police intrusion, and the desire to enjoy the security and protection offered by police. Finally, while Japanese police function as public servants and moral enforcers, police in the United States play only a single role—the role of law enforcers.

B. Informal Controls—The Role of Family and Community in Fighting Juvenile Crime

Japanese society utilizes a number of informal social controls, such as the involvement of the family and the community, to curtail juvenile delinquency. Additionally, the use of apology in Japanese culture functions as another control on juvenile delinquency. Informal controls center on interpersonal relationships and are usually successful in Japan because of the importance of group membership in Japanese culture. A Japanese individual derives substantial self-worth from membership in a family or

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86 Id. at 77.
87 Id. at 77-78.
88 Id. at 78.
89 Id.
90 Id.
91 Id.
92 Id.
93 Id.
94 Id.
95 Id.
96 See generally Haley, supra note 14.
97 WESTERMANN & BURFEIND, supra note 21, at 21.
work community. In Japan, group consciousness is pervasive throughout society.

The importance of homogeneity in Japanese society also contributes to the success of informal controls. In general, Japanese citizens are culturally similar and possess similar core values. In contrast, Americans take pride in cultural diversity and rugged individualism. Japan’s homogeneity creates a climate of harmony and reciprocity that leads to a shared concern for group welfare. Such community values significantly enhance efforts to prevent crime.

1. The Role of Family and Community

a. Family involvement

Family involvement is critical to the prevention of juvenile crime in Japan. Children are taught from an early age to conform to societal norms of accepted behavior. In addition, parents often maintain a close relationship with their child’s school to ensure that the child is on the road to good behavior. Japan and the United States are similar in this regard. However, it is common in Japan for a parent to feel ultimately responsible for the delinquent youth’s failures. For example, Japanese parents will take the initiative to apologize for the crimes of their children. This approach is effective because in Japanese society, where group welfare is placed ahead of individual welfare, youths may be deterred from future criminal behavior that would shame their parents.

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98 Id.
99 Id.
100 Id. at 22.
101 Id.
102 Id. at 21-24.
103 Id. at 22 (quoting Robert Smith’s description of the value of harmony:

In the conduct of their daily lives, the Japanese are at pains to avoid contention and confrontation. Reciprocity is a virtue taught to children from an early age, and much of the definition of a “good person” involves restraint in the expression of personal desires and opinions, empathy for the feelings of others, and the practice of civility.

ROBERT SMITH, JAPANESE SOCIETY: TRADITION, SELF, AND THE SOCIAL ORDER 71 (1983)).

104 Id.
105 Id.
106 Morizane, supra note 33.
107 Id.
108 See generally Haley, supra note 14.
109 Id. at 87 (citation omitted).
110 Id.
The importance of the family is highlighted by the fact that recent increases in the juvenile crime rate have been attributed to an increasing number of family failures. Breakdowns in the traditional family unit result in less structure for juveniles, leading to delinquent behavior. Since the family is the first social group that a child is exposed to, its structure is critical in the development of a child's character.

Another factor that may contribute to juvenile delinquency is the pressure parents put on children to succeed in school. Japanese schools are very competitive, with only the best students continuing their education at universities. It is not uncommon for a Japanese youth to attend school for most of the day and then spend the evening studying intensely at a juku, or private cram school. Frustrated and unable to cope with the pressure, youths often retaliate with unacceptable behavior. Recognizing the importance of parental involvement in preventing delinquent behavior, Toshiko Toriyama, a former elementary school teacher in Japan, noted, "Most kids want positive attention, but if they can’t get that, they will seek other kinds of attention. This includes robbery or committing real acts of violence."

b. Community involvement

Community involvement to reduce juvenile crime in Japan is based on coalitions consisting of community members, parents, and police. Rather than looking for a quick solution after the fact, the community plays an active role in providing juveniles with moral direction. Community volunteers seek out at-risk youth and offer much needed guidance and moral direction. Such personal involvement is often exactly what a pre-offense juvenile needs.

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111 Morizane, supra note 33.
112 Id.
113 TRENDS, supra note 42, at 22-23.
114 Morizane, supra note 33. See also French, supra note 4. In an effort to pinpoint sources of rising juvenile crime, French notes the "gutting of family life and playtime in the name of workplace performance and school achievement." Id.
115 Morizane, supra note 33.
116 French, supra note 4.
117 Id.
118 Id. Toshiko Toriyama has studied and written books on the problems of youth in Japan. Id.
119 Morizane, supra note 33.
120 Id.
For example, the city of Kawagoe involves community members in preventing delinquency.121 The youth section of the city welfare department is responsible for identifying at-risk youth and offering them guidance.122 The agency operates a youth guidance center and sponsors a variety of activities for children.123 The youth guidance center in Kawagoe has approximately 1,600 volunteers to aid in its mission.124 Centers like the one in Kawagoe are successful only if they have the necessary community participation.125

The success of the informal controls described above has reduced the need for excessive formal controls in Japanese society.126 Although formalized structures are necessary to deal with crimes that have already been committed, informal controls prevent criminal behavior effectively. Therefore, to the extent informal controls successfully reduce crime, formal controls such as the juvenile justice system are less burdened and better able to perform necessary functions.

2. The Role of Apology

Japan has been successful in reducing the number of juvenile criminals and the number of juvenile crimes.127 One factor in its success is the effective use of apology, repentance, and restoration.128 Apology not only implies accountability, but it also allows the offender to remedy the situation through some form of reparation.129 Although apology is an effective informal control, it is also an integral part of the formal justice system.130 In many cases, it reduces the likelihood that victims will pursue future civil litigation even if the offender is liable.131

Although it is usually the offender who apologizes for his act, an apology by the parent on behalf of the child also acts as an effective deterrent.132 For example, in one case a father apologized for his son’s

121 THORNTON & ENDO, supra note 1, at 109. Kawagoe, Japan is the sister city of Salem, Oregon. This book is a case study of crime prevention in the two cities. Id. at ix-x.
122 Id.
123 Id. Sports competitions, essay contests, and other group activities are among those sponsored. Id.
124 Id.
125 Id.
126 WESTERMANN & BURFEIND, supra note 21, at 46.
127 Haley, supra note 14, at 849-50.
128 See generally id.
129 Id. at 81.
130 Id. at 87.
131 Id.
132 Id. See also Book Written by Kobe Teen’s Parent to Be Published, Japan Econ. Newswire, Mar. 16, 1999, available in WESTLAW, Japanews Database. The parents of a Kobe teen who committed
misbehavior\textsuperscript{133} with a deep bow, saying he was very sorry.\textsuperscript{134} The apology was made in his son’s presence and moved the child to tears.\textsuperscript{135} The event was considered “a turning point” for the juvenile that changed his way of life.\textsuperscript{136} In contrast to the punitive methods sometimes used with Japanese juveniles, the use of apology facilitated a successful resolution of that case.\textsuperscript{137}

The family court system, the police/community coalition, and the role of apology have contributed significantly to Japan’s historically low juvenile crime rate. Although current societal circumstances, including the increased breakup of the traditional family unit, have been linked to a recent surge in juvenile crime, there are still mechanisms in place to deal with this problem. A shift to a system that focuses on punishment will hinder Japan’s ability to rehabilitate juvenile delinquents. In addition, such a shift could have detrimental consequences, as it has in the case of the U.S. juvenile justice system.

III. JUVENILE JUSTICE IN THE UNITED STATES—A GENERAL COMPARISON

Although the juvenile justice system in the United States once favored rehabilitation over punishment, some would argue that drastic increases in juvenile crime have forced a shift from its original focus on rehabilitation.\textsuperscript{138} Moreover, political pressure for states to “get tough” on juvenile delinquents has had unfortunate consequences not only for juveniles but also for American society as a whole.\textsuperscript{139} Each state in the United States is responsible for adopting its own juvenile laws, whereas Japan’s system is unified under the nation’s Supreme Court.\textsuperscript{140} There are, however, enough common attributes among the states to warrant a general discussion and brief comparison with the Japanese system.

\textsuperscript{133} Haley, supra note 14, at 851 (citation omitted). The juvenile had allegedly intimidated his classmates and extorted money from them. \textit{id.}
\textsuperscript{134} \textit{id.}
\textsuperscript{135} \textit{id.}
\textsuperscript{136} \textit{id.}
\textsuperscript{137} \textit{id.}
\textsuperscript{138} See generally Paula R. Brummel, \textit{Doing Adult Time for Juvenile Crime: When the Charge, Not the Conviction, Spells Prison for Kids, 16 LAW & INEQ. J. 541 (1998).}
\textsuperscript{139} \textit{id.}
\textsuperscript{140} SUPREME COURT OF JAPAN, supra note 15.
A. Formal Controls in the United States—Letting "the System" Deal with Juvenile Crime

The United States has relied primarily on formal controls to combat rising rates of juvenile delinquency. Historically, juvenile courts have been given wide latitude in dealing with juveniles. However, statutory changes in several states have severely limited the flexibility of courts in this respect. The result is a system that is constricted by punitive statutes that prevent rehabilitation, which was once the system’s primary goal.

The most visible contrast between Japan and the United States in the area of juvenile delinquency is the degree to which formal controls are relied upon. Japan has successfully used informal controls to prevent juvenile crime. As a result, Japan relies less on the formal controls that are triggered after a crime is committed. The use of informal controls in the United States has not been as successful as it has been in Japan. Thus, the United States has increased its reliance on formal mechanisms, namely law enforcement and the legal system. This reactive strategy of punishment and the forced shift to formal controls, in contrast to Japan’s proactive approach, could be a contributing factor to the ongoing problem of juvenile crime in the United States.

The juvenile justice system in the United States, now a century old, was originally based on the goal of rehabilitation. Early proponents of juvenile courts recognized that juveniles, in contrast to adults, were not entirely responsible for their behavior since it was often caused by circumstances beyond their control. Factors thought to cause juvenile delinquency included fateful life circumstances, poor parenting, and a lack of properly instilled values. Thus, it was deemed critical that there be a separate forum to hear cases involving juveniles. This forum has remained in place over the years, but its characteristics have changed.

142 See infra Part III.A.2 (discussing transfer statutes that allow juveniles to be tried in adult court).
143 See supra Part II.B.
144 See infra Part III.B (discussing informal controls in the United States).
146 Schwartz et al., supra note 141, at 535. The first juvenile court was located in Cook County, Illinois. After the establishment of this court, other states followed suit and enacted similar systems. Id.
147 Id. (citation omitted).
148 Id.
149 Id.
dramatically. States have altered their juvenile laws in an effort to "get tough" on juvenile crime. The result had essentially been a procedural convergence of the juvenile courts and the criminal courts, two systems that were once worlds apart.

1. Early Notions of Juvenile Justice

The early procedural framework of juvenile courts was very flexible and allowed a judge to focus on the specific circumstances of the offender, the charge, and other variables. Since the court was seen as a welfare institution, the procedural guarantees given to adult criminals were not given in the juvenile courts. In fact, many felt that procedural limitations would interfere with the court's ability to find a solution that was in the best interest of a delinquent child.

In 1967, the Supreme Court held that juvenile courts must provide juveniles with the same due process rights as adults. In In re Gault, the Supreme Court required a juvenile court to guarantee certain constitutional rights to juveniles, including the right to assistance of counsel during delinquency proceedings, the right to cross-examine their accusers, and the privilege against self-incrimination. Gault ushered in the first of many procedural changes that have narrowed the difference between the juvenile and adult justice systems. Although these particular changes were warranted, others that have taken place have created a modern juvenile court system that is more concerned with punishment than rehabilitation. These changes, such as punishing a greater percentage of juveniles and trying juveniles as adults, have interfered with the ability of the juvenile justice system to function both as a disciplinary institution and as a welfare institution.

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150 See infra Part III.A.2.
151 Schwartz et al., supra note 141, at 533.
153 Id.
154 Id.
155 In re Gault, 387 U.S. 1, 27-28 (1967) (labeling the juvenile court without procedural safeguards as a "kangaroo court").
156 Id.
157 See infra Part III.A.2 (discussing the procedural convergence of juvenile and adult courts through the use of waiver statutes).
158 Gault, 387 U.S. at 28.
159 See generally Deborah L. Mills, United States v. Johnson: Acknowledging the Shift in the Juvenile Court System from Rehabilitation to Punishment, 45 DePaul L. Rev. 903 (1996).
160 Schwartz et al., supra note 141, at 535.
2. Current Notions of Juvenile Justice in the United States—Favoring Punishment over Rehabilitation

In the United States, the rate of juvenile crime is increasing and the average age of juvenile offenders is decreasing. In response, states have enacted statutes that change the way they deal with juveniles, most notably by expanding the jurisdiction of adult criminal courts to hear juvenile cases. These statutes, known as transfer statutes, fall into three general categories and differ in who is given discretion to determine proper jurisdiction. Consequently, an increasing number of juveniles who commit crimes can be punished as adults.

Transfer provisions allow a juvenile court to decide whether a juvenile should be transferred to criminal court. The most common type of transfer statute contains waiver provisions. A waiver only allows transfer upon the order of the juvenile court judge. Waiver provisions are further categorized as follows: (1) discretionary, under which the judge is given total authority; (2) presumptive, which weigh in favor of waiver; and (3) mandatory, under which waiver is required but the process still originates in juvenile court. Discretionary waiver statutes usually require the existence of specified criteria such as a minimum age, a certain type or level of offense, and a previous record of delinquency before a juvenile is transferred to criminal court. Presumptive waiver statutes assume a waiver unless the juvenile successfully argues against transfer. Mandatory waiver statutes require the juvenile court to transfer certain cases, but only after they are initiated in juvenile court.

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162 Id. at iii. “From 1992 through 1995, 40 States and the District of Columbia passed laws making it easier for juveniles to be tried as adults.” Id.
163 Id. at 1. Transfer statutes may contain waiver provisions, direct file provisions, or statutory exclusion provisions. Most statutes have a combination of two or more of these provisions. Id. Depending upon the statute, the responsibility for deciding where a juvenile should be tried may be delegated solely to the judge, the prosecutor, or the legislature. Id.
164 Id.
165 Id.
166 Id. at 3. Forty-six states have some form of waiver statute. Id.
167 Id. at 3-6.
168 Id. at 3. The Supreme Court enumerated these criteria in Kent v. United States, 383 U.S. 541, 566-67 (1966).
169 Trying Juveniles, supra note 161, at 6. The burden of proof regarding a transfer normally lies with the prosecutor. Id.
170 Id. at 4. Mandatory waiver statutes, which allow the juvenile courts limited involvement, should be distinguished from statutory exclusion provisions, which bypass juvenile courts completely. Id.
Direct file statutes define certain cases in which the prosecutor can decide whether to proceed in juvenile or criminal court. Although the details differ by state, the statutes usually list criteria for the prosecutor to consider in making his or her decision about the proper forum. Common factors to be considered include the juvenile's age, the particular offense, and the existence of a prior record.

Statutory exclusion statutes are the most severe because they simply remove certain cases from the juvenile court's jurisdiction. Twenty-eight states currently have this type of statute in one form or another. Juveniles that fall under the statute are automatically treated as adults. In contrast to the direct file statutes discussed above, the prosecutor is not allowed to exercise any discretion. Rather, under statutory exclusion statutes, the legislature decides that no juveniles in certain categories can be defined as "children."

The fact that some type of transfer statute exists in forty-seven states exemplifies how the juvenile justice system now operates more to punish than to rehabilitate. Transfer statutes likely arose as a reactive strategy instituted by states to combat increases in juvenile crime. However, the problem with a reactive strategy is it often fails to consider all of the consequences. For example, a transfer statute in Minnesota caused a juvenile to be incarcerated as an adult for a crime he would not have been punished for as a juvenile. Consequently, statutes that mandate transfers to criminal court interfere with the original notion embodied in the juvenile court, namely the notion of rehabilitation.

3. Nontraditional Alternatives to the Current Juvenile Justice System

There have been attempts in recent years to shift the focus of juvenile justice back to rehabilitation in an effort to mitigate the unfortunate consequences of earlier punitive solutions, such as increased recidivism rates

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171 Id. at 7. The juvenile and criminal court have concurrent jurisdiction until the prosecutor makes a decision. Fifteen states currently have direct file statutes. Id.
172 Id.
173 Id.
174 Id. at 8.
175 Id.
176 Id. Some states may allow the criminal court to transfer the case back to juvenile court in certain situations. See id. at 9-10.
177 Id.
178 Id.
179 Brummel, supra note 138, at 541.
and the incarceration of juveniles in adult detention facilities.\textsuperscript{180} Recidivism rates have prompted the use of nontraditional alternatives such as teen courts and parental liability statutes in the battle against juvenile crime.\textsuperscript{181} Although these programs seem promising, they may be too little too late, especially given the existence of transfer statutes that increase the possibility that juveniles will be tried as adults.\textsuperscript{182}

Teen courts offer juvenile offenders the opportunity to be tried by their peers, rather than a judge to whom they cannot relate.\textsuperscript{183} This alternative often causes juveniles to feel more accountable than they might otherwise feel.\textsuperscript{184} The accountability comes from the desire to belong to and be accepted by a peer group.\textsuperscript{185} The effectiveness of this solution is enhanced by the fact that juvenile delinquents often blame peer pressure for their deviant acts.\textsuperscript{186}

Parental liability statutes are gaining attention in many states as a viable alternative in the effort to reduce crime.\textsuperscript{187} These statutes make parents criminally liable for their child’s crimes.\textsuperscript{188} Proponents of such statutes recognize the indirect impact the laws could have in correcting delinquent behavior.\textsuperscript{189} However, many criticize parental liability statutes as too harsh.\textsuperscript{190}

Innovative solutions such as teen courts and parental liability statutes might realize increased success if their use were to become more widespread. These programs incorporate some of the methods of dealing with juvenile crime that have been successful in Japan. However, the laws that are in place in the United States hinder the effectiveness of these programs because juveniles that might be helped by one of these programs are often legally barred from participation, usually due to the nature of the crime committed. Until the United States juvenile justice system shifts its

\textsuperscript{181} Id.
\textsuperscript{182} See supra Part III.A.2 (discussing transfer statutes).
\textsuperscript{183} Johnson & Rosman, supra note 180, at 723. Teen courts have had a significant effect on recidivism rates. For example, in 1993 in Odessa, Texas, the traditional juvenile justice program reported a recidivism rate of 30% to 50%, while the teen court program reported a recidivism rate of less than 5%. Id. at 727 (citation omitted).
\textsuperscript{184} Id.
\textsuperscript{185} Id.
\textsuperscript{186} Id.
\textsuperscript{187} Id. at 730.
\textsuperscript{188} Id. Although all 50 states have laws that can impose civil penalties on parents for the acts of their children, only seven have laws that impose criminal liability. Id. at 731.
\textsuperscript{189} Id.
\textsuperscript{190} Id. at 732.
focus away from the crime committed to the reason it was committed, the challenges faced by rehabilitative programs will likely continue.

B. Informal Controls in the United States

Informal controls are not as pervasive in the United States as they are in Japan. Many core values of American culture make informal controls less effective. Moreover, the United States has increasingly relied on formal controls to combat the problem of juvenile delinquency. The U.S. dependence on the formal system has limited the application of informal controls. It is debatable whether expanded reliance on informal controls in the United States would work, but it is clear they have not been given the chance.

In contrast to Japan, which emphasizes homogeneity, the United States places a high value on its heterogeneity. The core societal values in the United States embrace the importance of the individual—freedom, individualism, equality, and diversity. These values are at odds with the Japanese emphasis on the welfare of the group, which has been a recognized crime deterrent. Additionally, Americans have a pragmatic, utilitarian approach to life. These factors contribute to a reliance on the formal system in the United States.

C. Unintended Consequences of the U.S. Juvenile Justice System

The shift in the United States from a juvenile justice system that originally focused on rehabilitation to one that focuses on punishment has arguably had unintended consequences. The fact that most states have passed laws in an effort to “get tough” on juvenile crime supports the notion that society has little faith in the prospect of rehabilitating juvenile offenders. However, the goals of accountability and public safety must be balanced against detrimental effects, such as increased recidivism rates and an increased number of juveniles who are incarcerated in adult facilities. It

191 WESTERMANN & BURFEIND, supra note 21, at 20.
192 See supra Part III.A (discussing formal controls in the United States).
193 WESTERMANN & BURFEIND, supra note 21, at 20.
194 Id. at 19-20.
195 Id. at 21.
196 Id. at 20.
must be recognized that there are some cases where a juvenile may be beyond the scope of rehabilitation, leaving only the possibility of an extended period of confinement. However, the majority of juveniles housed in detention centers are nonviolent offenders. The current focus on the need to protect society from dangerous juveniles fails to consider the underlying circumstances of the crime. A juvenile who is incarcerated in an adult facility is effectively deprived of a viable opportunity for rehabilitation. That juvenile, housed in a facility that focuses instead on retribution, is more likely to re-offend than a juvenile who is placed in a detention center in which the goal is rehabilitation.

IV. PROPOSED REVISIONS TO THE JUVENILE LAW—THE FUTURE OF JUVENILE JUSTICE IN JAPAN

A. General Description of the Proposed Revisions

In 1998, for the first time in twenty-two years, Japan’s Juvenile Law Committee was convened to study the current Juvenile Law and how it should be revised. A marked increase in the juvenile crime rate motivated the committee to propose revisions to the procedural framework for juvenile court proceedings in Japan. The revisions proposed by the committee were submitted to the current session of the Japanese Diet but were ultimately carried over and will resurface in the next regular Diet session. The procedural reforms will likely be passed in early 2000, while the most controversial bill, which would lower the age that juveniles could be tried as adults, will be postponed to ensure passage of the other bills.

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198 Michael A. Jones & Barry Krisberg Ph.D., Images and Reality: Juvenile Crime, Youth Violence and Public Policy 5 (Joe Hudson et al. eds., 1996). An analysis of juvenile correction institutions in 28 states showed that less than 14% of the beds were occupied by juveniles committed for violent crimes. Id.


200 Reform Initiatives, supra note 145, at 46.

201 Panel Debates Juvenile Law Reform, Japan Times, July 29, 1998, available in LEXIS, News, Non-U.S. File. The committee was comprised of five scholars, three lawyers, two judges, two prosecutors, a newspaper editor, and a singer, as well as six government bureau representatives. Id.

202 Gov’t Approves Bill to Revise Juvenile Law, Japan Econ. Newswire, Mar. 8, 1999, available in WESTLAW, Japanews Database. The number of teenagers in Japan arrested for felonies rose 43% from 1988 to 1998. French, supra note 4. Additionally, in 1998 the number of teenagers arrested for violent crimes such as murder, rape, and robbery rose above 1,000 for the third consecutive year. Id. See also Juvenile Arrests, Detentions Top 140,000, supra note 2.

203 Gov’t [sic], LDP Delay Revisions to Juvenile Law, supra note 12.

204 Id. See also supra note 13 and accompanying text.
One of the less-controversial provisions is contained in a bill proposed by the Liberal Democratic Party and would permit prosecutors to be present at family court proceedings. Under the terms of the bill, public prosecutors would be allowed to participate in family court trials involving crimes for which juveniles could face the death penalty, life imprisonment, or a sentence of more than three years. The bill would also institute a three-judge panel for such proceedings, whereas currently one judge presides. These revisions would help to increase the uniformity of decisions in family court proceedings.

Another proposed revision that has received intense criticism is one that would lower the age at which juveniles could be tried as adults from sixteen to fourteen. Currently, juveniles between the ages of fourteen and sixteen may be held criminally liable for their acts, but they cannot be tried in an adult criminal court. The Juvenile Law gives the family court judge discretion to transfer a juvenile to adult court only if the youth is sixteen or older. The political impetus for the change was likely a recent spate of juvenile crimes, including the beheading of an eleven-year-old boy in Kobe by a fourteen-year-old. The juvenile offender could not legally be tried in adult court and was sent to a juvenile reformatory instead. The victim's parents spoke out for justice to be done and filed a civil suit seeking damages from the offender's family.

B. Likely Effects of the Proposed Revisions to the Juvenile Law

The proposed revisions to the Japanese Juvenile Law have the potential to shift the goal of juvenile justice in Japan from rehabilitation to punishment. The unique characteristics of the Japanese juvenile justice system, such as the use of juvenile training schools that focus on education and rehabilitation, would be lost if the proposed changes were instituted.

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205 Gov't Approves Bill to Revise Juvenile Law, supra note 202.
206 Id.
207 Id.
208 Lower Criminal-Punishment Age to 14, LDP Panel Says, supra note 11.
209 Juvenile Arrests, Detentions Top 140,000, supra note 2.
210 Id.
212 Id.
213 Id. The attorney for the offender's parents said the suit was unfortunate because the parents had hoped to meet with the victim's parents to apologize and arrange compensation. See supra Part II.B.2 (discussing the role of apology).
Although the proposed revisions may seem benign at first glance, they parallel changes made to the U.S. juvenile justice system that have had unintended, negative consequences. For example, the absence of reverse transfer statutes in some states has allowed youths to be prosecuted and incarcerated as adults for crimes they would only have received probation for as juveniles.

The growing problem of juvenile crime in Japan requires action, but a reactive solution is not the answer. The proposed revisions fail to consider the reasons why a growing number of Japanese youths are committing acts of delinquency. For example, the Japanese economy has remained stagnant in recent years and the nation is experiencing record unemployment. Youths who strive to succeed in the competitive educational system may find themselves without jobs. The recent increase in the juvenile crime rate, the probable catalyst for the proposed revisions, is actually minimal when compared to increases in the juvenile crime rate in the United States. Moreover, juvenile crime in Japan has increased in waves, with increases being followed by returns to tolerable levels.

The presence of prosecutors in juvenile court proceedings will transform the nature of family court proceedings and make them more like criminal court proceedings. Arguably, the family court owes its success to the fact that it has remained a completely separate entity, able to operate in a "mild, but dignified atmosphere." It ought to remain that way so that it can act in the best interests of the juvenile. If prosecutors are allowed to participate, then the juvenile will require a defense lawyer. This shift to an

215 See supra Part III.C (discussing the negative consequences of the shift to punishment in the U.S. juvenile justice system).
216 Brummel, supra note 138, at 541.
217 As I See It: Juvenile Delinquents Need Nurturing, Not Jails, supra note 214.
218 French, supra note 4.
219 Id.
221 See supra note 1 and accompanying text.
222 Juvenile Bill Opposed, JAPAN TIMES, Mar. 10, 1999, available in LEXIS, News, Non-U.S. File. An opponent of the bill stated that the current Juvenile Law, which supports the rehabilitation of juveniles, comports with the direction taken internationally. He said, "What is questioned here is society's attitude toward the children of the 21st century, and I think the reform (bill) goes in the wrong direction." Id.
223 Supreme Court of Japan, supra note 15, at 35. Susumu Oda disagrees with the continued utility of such a protective approach, stating, "We are sending the wrong message—that they [juveniles] can get away with anything. We need to change the law." Japan Rethinks Protection of Juveniles—Laws That Shield Delinquent Kids Come Under Review, SEATTLE TIMES, May 10, 1998, at A15.
adversarial proceeding would constitute an unfortunate departure from the central purpose of rehabilitation.\(^{224}\)

The decision to lower the age at which juveniles could be tried in adult court from sixteen to fourteen directly conflicts with the spirit of the Juvenile Law itself.\(^{225}\) Although proponents argue that the change is needed to protect society, the few incidents where the trial of juveniles under sixteen in adult courts is actually necessary do not warrant a blanket reduction of the age at which all juveniles may be criminally liable.\(^{226}\) Japanese lawmakers should look closely at the United States to ascertain whether such a statute would reduce juvenile crime rates. As experience in the United States demonstrates,\(^{227}\) focusing on punishment is not a solution to increasing juvenile crime rates. In fact, such a focus creates new problems, such as increased recidivism rates and a lower possibility that youths will be educated and rehabilitated.\(^{228}\)

The flexibility in case disposition that contributes to the success of the Japanese family court system would be diminished if strict procedural requirements were instituted. Family court judges rely on the expert advice of probation officers who investigate the circumstances surrounding a juvenile’s offense.\(^{229}\) This advice allows the judge to decide on an outcome that is in the best interest of the juvenile, usually probation or possibly a sentence in a juvenile training school.\(^{230}\) If a judge is constrained by a prosecutor aiming for a conviction and a law that allows fourteen-year-old juveniles to be sentenced to life in prison, the chance of an outcome favoring rehabilitation seems less likely.

Juvenile crime rates in Japan are increasing and the age of offenders is getting progressively younger,\(^{231}\) but prosecuting younger juveniles as adults is not the answer.\(^{232}\) When juveniles are criminally prosecuted and incarcerated in adult facilities, their recidivism rates are the same or higher

\(^{224}\) Bar Ass’n May Endorse Revision of Trial Procedures for Minors, YOMIURI SHIMBUN, May 2, 1998, at 2, available in LEXIS, News, Non-U.S. File. An internal report of the Japan Federation of Bar Associations stated, “If a prosecutor is allowed to take part under the current system, in which the judge is given official authority to direct the trial, the power of the prosecution would only increase, putting the [juvenile] suspect in a more disadvantageous position.” Id.

\(^{225}\) See Juvenile Law, supra note 16.


\(^{227}\) See supra Part III.C (discussing the negative consequences of the shift to punishment in the U.S. juvenile justice system).

\(^{228}\) As I See It: Juvenile Delinquents Need Nurturing, Not Jails, supra note 214.

\(^{229}\) See supra Part II.A.1.a.

\(^{230}\) TRENDS, supra note 42, at 3.

\(^{231}\) French, supra note 4.

\(^{232}\) REFORM INITIATIVES, supra note 145, at 46.
There is evidence that the punishment of juvenile offenders contributes to rates of recidivism\textsuperscript{234} and, more importantly, that a lenient punishment makes someone less likely to re-offend.\textsuperscript{235} An overemphasis on punishment conflicts with the goal of rehabilitation that is central to the Japanese juvenile justice system. Thus, the proposed revisions to the Juvenile Law should be rejected.

V. CONCLUSION

The juvenile justice system in Japan has successfully dealt with crime by focusing on the rehabilitation, not the punishment, of juveniles. The problem of juvenile crime in Japan did not arise overnight, nor can it be solved quickly. Rather than change the formal system in ways that disregard rehabilitation, the Japanese Diet needs to focus on the roots of the problem. The lawmakers should recognize that the breakdown of the traditional family unit and other cultural changes could be contributing to the increase in juvenile crime rates. Simply imposing harsher punishments on juveniles does not address these underlying problems. The United States juvenile justice system resorted to this reactive strategy, and the resulting increase in recidivism rates has shown that such hard-line tactics are not the answer. Japanese legislators should realize that the current system can continue to be effective and that the original spirit of the Juvenile Law should be preserved.

\textsuperscript{233} Id.
\textsuperscript{234} Haley, supra note 14, at 854.
\textsuperscript{235} Id.