OUKA
The University of Osaka
Institutional Knowledge Archive

Title	Legal Measures to Prevent Child Abuse in Japan
Author(s)	Aotake, Mika
Citation	Osaka University Law Review. 2020, 67, p. 39-46
Version Type	VoR
URL	https://hdl.handle.net/11094/73750
rights	
Note	

The University of Osaka Institutional Knowledge Archive : OUKA

https://ir.library.osaka-u.ac.jp/

The University of Osaka

OSAKA UNIVERSITY LAW REVIEW No. 67 (February 2020) 39-46

Legal Measures to Prevent Child Abuse in Japan*

Mika AOTAKE**

1. Introduction

An ancient Japanese proverb, '*hô wa katei ni irazu*', stated that the law should not interfere in family affairs[1]. Therefore, in Japan, legal measures to prevent child abuse were quite limited in the past. However, in the 1980s, when serious child abuse cases were reported in the media, the Japanese public demanded greater respect for—and better protection of—their children[2]. The government responded with the Child Abuse Prevention Act, introduced in 2000. This report will outline and analyse the legal measures to prevent child abuse to offer insights that could improve similar laws in the future.

2. The Current State of Child Abuse in Japan

2.1. The consultation number of child abuse at the Child Guidance Center (CGC)

In 2017, the consultation number of child abuse was 133,778. This number

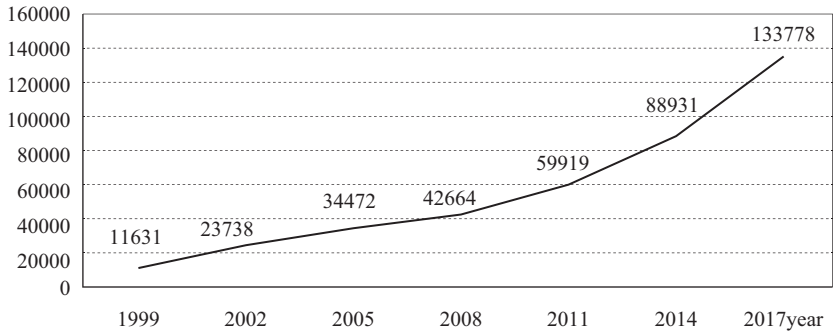

Figure 1. The Consultation number of child abuse cases at the CGC[3].

---

* This essay is based on the manuscript from the '1st International Scientific Conference of Research on Family Service' on 11 March 2019, Nicolaus Copernicus University in Torun, Poland.

**Associate Professor of Civil Law, Osaka University Law School.

1) Shuhei Ninomiya, Family Law, p. 27 (Japan, 2019).

2) Satoshi Minamikata, Family and Succession Law in Japan, p. 43 (the Netherlands, 2015).

3) Ministry of Health, Labour and Welfare, The number of consultation on child abuse in Child Guidance Center 2017, https://www.mhlw.go.jp/content/11901000/000348313.pdf

had increased 11.5 times since 1999, before the enforcement of the Child Abuse Prevention Act.

2.2. Types of Child Abuse

According to the Child Abuse Prevention Act, there are four types of child abuse: physical, emotional, sexual and neglect. In 2017, the most commonly reported case of abuse was emotional at 54.0%; followed by physical abuse (24.8%), neglect (20.0%), and sexual abuse (1.2%).

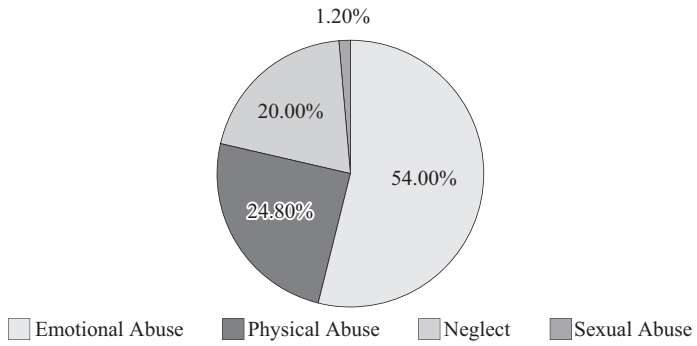

Figure 2. Types of child abuse[4].

2.3. Child Abuse-Related Deaths

The number of reported deaths due to child abuse remains high. There were 49 cases of deaths due to child abuse for a year. (1.4.2016-31.3.2017). The most perpetrators were child's mothers.

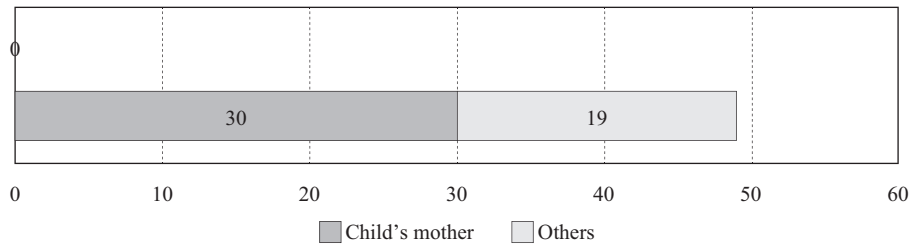

Figure 3. The perpetrators in child abuse-related deaths (excluding double suicides) (1.4.2016 - 31.3.2017)[5].

4) Ministry of Health, Labour and Welfare, The number of consultation on child abuse in Child Guidance Center 2017, https://www.mhlw.go.jp/content/11901000/000348313.pdf

5) Ministry of Health, Labour and Welfare, Outline of examination of death accident by child abuse (14th Report), https://www.mhlw.go.jp/content/11900000/000362706.pdf

2.4. Perpetrators

According to the Ministry of Health, Labour and Welfare, mothers are the most common perpetrators of child abuse. They accounted for 48.5% of all offenders in 2016; followed by fathers at 38.9%. Stepfathers and stepmothers were the other perpetrators.

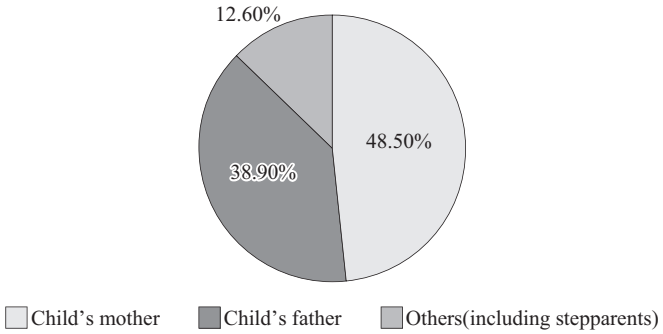

Figure 4. Types of perpetrators of child abuse in 2016[6].

2.5. Informants

At 48%, the police were the most common informants of child abuse in 2017. Neighbours reported 13% of all cases, both families and schools reported 7%, while welfare officials reported 6%.

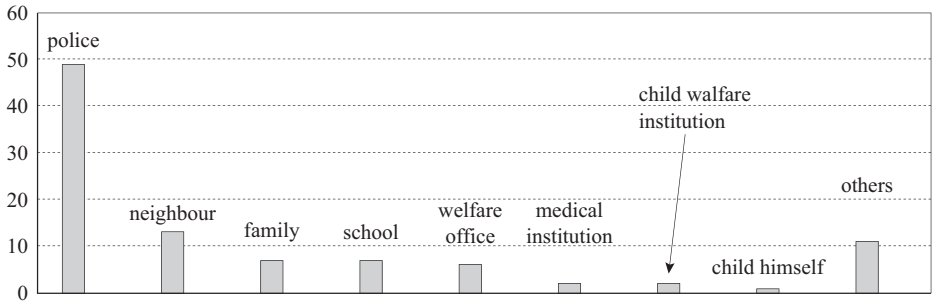

Figure 5. The informants of child abuse cases in 2017[7].

6) Cabinet office, White paper on Children and Junior 2018, p. 134, https://www8.cao.go.jp/youth/whitepaper/h30honpen/pdf/b1_03_03_01.pdf

7) Ministry of Health, Labour and Welfare, The number of consultation on child abuse in Child Guidance Center 2017, https://www.mhlw.go.jp/content/11901000/000348313.pdf

3. Child Abuse Legislation

The body of Japanese legislation governing child abuse (outside of civil law) consists of the Child Welfare Act of 1947 and the Child Abuse Prevention Act of 2000.

Child Guidance Centers (CGC) were established across Japan, as required by the new laws. By 2018, there was a total of 212 CGCs of which 137 offer temporary custody for the abused children. The CGCs play an essential role for affected families, offering: consultations with family members and others regarding the abused, mediation between family and public organisations, safe temporary accommodation for children, and coordination for the children's institution.

The following section will outline details of child abuse legislation in Japan, from both short- and long-term frame of references. New preventative measures of child abuse are also discussed.

3.1. Short-term Measures

i.) Early detection and intervention

Detection of abuse followed by prompt intervention is the most important course of action for child abuse cases. For that reason, school teachers, doctors, health nurses, lawyers and other professionals are obliged to report suspected abuse as soon as possible (Child Abuse Prevention Act, Article 5). In fact, anyone aware of a child's abuse is obliged to report it to the Welfare Office or the CGC (Child Abuse Prevention Act, Article 6-1). Japan introduced a child abuse hotline ('189') to facilitate the reporting process.

After the report is submitted, the CGC staff members must confirm the safety of the child within 48 hours[8]. Before the Child Abuse Prevention Act was amended in 2007, staff members were not permitted to enter the child's residence to confirm their safety if the guardian so refused. After the amendment, permission issued by a judge grants the staff members access to inspect the residence and ensure the child's safety. The prefectural governor must first determine the possibility of ongoing child abuse, and whether the child's guardian has rejected the request for entry (Child Abuse Prevention Act, Article 9-3).

ii.) Child protection

The director of the CGC evaluates the legitimacy of the case as well as the extent of the abuse. They provide the appropriate guidance to the child and parent,

8) Ministry of Health, Labour and Welfare, The management policies of child guidance center, https://www.mhlw.go.jp/bunya/kodomo/dv11/02.html

then file a report to the prefectural governor (Child Welfare Act, Article 26). Directors then have the authority to take the child into temporary custody against the parent's will, if they deem it necessary (Child Welfare Act, Article 33). The child(ren) remain(s) in a short-term care facility attached to the CGC for up to 2 months. Their stay can be prolonged at the director's or the prefectural governor's discretion (Child Welfare Act, Article 33-4).

In the extreme case that a child requires residential care or temporary custody, the director also has the authority to restrict the guardian's visitations and communication with the child (Child Abuse Prevention Act, Article 12). The prefectural governor may even demand a restraining order against the guardian, refraining them from approaching the child at the domicile or residence, the school or any other place the child may frequent, for up to six months. Guardians are also advised to refrain from loitering around these places. Again, this may be prolonged if deemed necessary to protect the child from further abuse (Child Abuse Prevention Act, Article 12-4).

3.2. Long-term Measures

In addition to the short-term measures outlined, there are also long-term measures in place to ensure the child's continued protection.

i.) Foster care and childcare

If separating the child from the family is necessary, the prefectural governor shall appoint the child to a foster parent/family or admit the child into a childcare facility, such as an infant home, foster home, or a children's self-reliance support facility, with the consent of the child's legal guardian (Child Welfare Act, Article 27-1 (3), 4). Even if the guardian of the child does not provide consent, the prefectural governor can override their authority and entrust the child to a foster parent or facility with approval from the Family Court, in cases where the guardian proves to be a sufficient threat to the child's welfare (Child Welfare Act, Article 28-1). In this case, the child may remain in foster care for up to 2 years unless the prefectural governor prolongs the period with approval from the Family Court (Child Welfare Act, Art 28-2).

ii.) Removal or suspension of parental rights and duties

The Japanese Civil Code will protect an abused child by either suspending or removing the rights and duties of the child's parent/guardian. The Family Court decides this based on evidence of child abuse by the parent/guardian (Civil Code Article 834). However, the parental rights and duties may only be suspended by the Family Court for up to 2 years, if there is a possibility that the abusive conduct of

the parent will cease within that timeframe. The Family Court can also decide to suspend parental rights and duties for up to 2 years if the parent/guardian is deemed unfit to execute them, and if they do not have the child's interests at heart (Civil Code Article 834-2).

iii.) Adoption

Adoption is one of the most effective long-term solutions in protecting abused children. If there is little possibility that the child can live safely with their abusive guardian, the child is assigned to a new family who can raise him/her in a stable environment. There are two types of adoption: ordinary adoption and special adoption. Under an ordinary adoption, the legal child-parent relationship between the adopting parents and the adopted child is established by contract. If the child is a minor, permission by the Family Court is required. The legal relationship between the adopted child (ren) and the biological parents continue after the adoption. Under a special adoption, the Family Court must determine if the parents are appropriate guardians for the child, and allow adoption only under special conditions. For example, the child must be under the age of six or under the age of eight if the child has already been under the applicants' care since before his/her sixth birthday (Civil Code, Article 817-5). After a special adoption has been approved by the courts, the legal relationship between the adopted child (ren) and the biological parents dissolves. Special adoption is generally considered the more suitable option in providing optimal parental care to the abused child (ren). However, despite being a more suitable option, problems still exist with the special adoption process. If the abused child was already six years old (or, under the condition mentioned above, over eight years old), a special adoption may not take place. In 2017, there were 616 cases of special adoptions, compared to the 36,000 children assigned to foster care over the last few years.

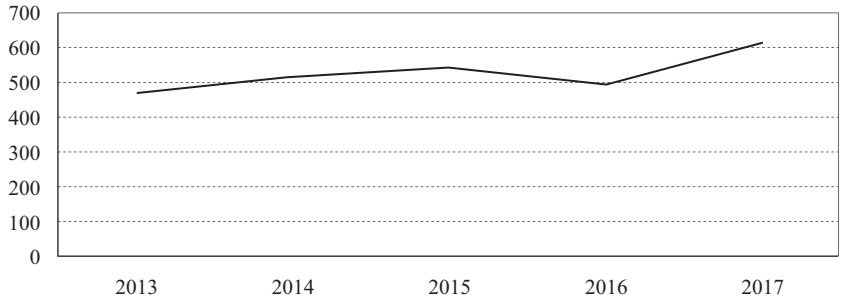

Figure 6. The number of special adoptions from 2013-2017[9].

9) Annual Report of Judicial Statistics, http://www.courts.go.jp/app/sihotokei_jp/search

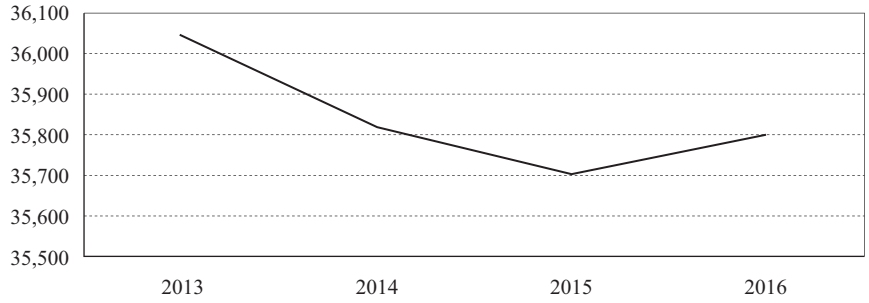

Figure 7. The number of children entrusted to foster parent or facilities[10].

The problem has not gone unnoticed, however, and in June 2018, discussions on the amendment of the special adoption system began at the first conference held at the Ministry of Justice[11]. In February 2019, a draft of the amendment was made public, in which the age condition was raised from six to fifteen[12]. On June 7, 2019, the draft was enacted, and the new law is expected to be implemented by June 2020.

3.3. Child Abuse Prevention

Child abuse prevention was addressed in the 2008 amendment of the Child Welfare Act. The changes require local governments to provide child welfare services within their communities (Child Welfare Act, Article 3-3). Specifically, government personnel are required to visit all families with new babies within the first four months of the child's birth, and offer parent counselling services to those in need of assistance. During their visit, government personnel assess the family situation of the baby and parents, and give advice on child-rearing[13].

4. Conclusion

Ho wa katei ni irazu is an antiquated notion when it comes to protecting the health and safety of our children.

Protecting children in the short term requires early detection followed by immediate intervention. Even today, there are some extreme cases where child abuse has led to death. Not all newly introduced systems work as well as expected,

10) Children young white pater 2018, https://www8.cao.go.jp/youth/whitepaper/h30honpen/pdf/b1_03_03_02.pdf

11) The website of Ministry of Justice, http://www.moj.go.jp/shingi1/housei02_00299.html

12) http://www.moj.go.jp/content/001283389.pdf

13) Chiharu Makino, 'The Current Status and Problems of Child Abuse', ISSUE BRIEF No.1012 (2018), p. 5.

like the child abuse reporting system. As mentioned earlier (see Figure 5) most cases of child abuse are reported by the police, but other sources (like neighbours or family members) are less likely to follow through with a report.

The special adoption system is a more hopeful long-term option for abused children. However, the present system has not proven useful to many children, as a result of the narrow adoption age-range. Only a small number of special adoptions are approved, despite the staggering number of children living with foster parents or in CGC facilities (Figures 6 and 7). These numbers are expected to improve in 2020 when the amendment expands the adoptee's eligible age from six to fifteen.

With regard to the prevention of child abuse, the service provided by local governments to visit all families with new babies to offer their advice and support in child-rearing, could be highly effective. As discussed above, a child's mother is the most common offender in abuse cases (Figure 4), and it is assumed that the overwhelming burden of the mother could be one of the major causes of this abuse[14]. Therefore, child-rearing support and ensuring a healthy family dynamic through repeated observations can make valuable contributions in improving the lives of more Japanese children.

14) The time spent on housework per day by married men and women with children under six years old in Japan is 7.34 hours for women and 1.23 hours for men, 2018 white paper on the countermeasures against declining birth rates, http: //www8. cao. go. jp/ shoushi/ shoushika/ whitepaper/measures/w-2018/30pdfgaiyoh/30gaiyoh.html