

INTERNATIONAL LAW FOR ARMY IN JAPAN - INFORMATION SERIES

NUMBER 2

JAPANESE CRIMINAL LAW PROCEDURES

The following describes the procedures when a Soldier, Department of the Army Civilian (DAC), U.S. Contractor employee, or Family member is accused of a crime over which the Government of Japan (GOJ) has primary or exclusive jurisdiction. These procedures are found in Article XVII of the SOFA and various AVs including AV 40 and are also outlined in USFJ Instruction 31-203.

a. Custody of the Accused

In cases of military members and civilian component (US citizen employees and US citizen contractors) suspects, the right to custody depends on who initially apprehends the person. GOJ controls custody when they initially apprehend the suspect. In all cases, the US, as required by US Forces Japan policy to maximize custody, will immediately request transfer of custody to the US. These requests are usually denied unless the suspect has confessed and made compensation for any damage caused, and the offense is not one that will be taken to a formal trial.

When the US has custody of a military or civilian component suspect, we may in most cases maintain custody pending allocation of jurisdiction. If the US does not have primary jurisdiction (such as official duty cases), we will maintain custody until the Japanese Prosecutor indicts (charges) the suspect. Exception: The US will give sympathetic consideration to any request for the transfer of pre-indictment custody in specific cases of heinous crimes of murder or rape. Additionally, the US will also take full account of any special views Japan may put forward in the US-GOJ Joint Committee as to other specific cases it believes should be considered.

If the accused is a Family Member and has been arrested by Japanese police, the Japanese can retain custody for the duration of investigation and trial. While the US cannot prevent the GOJ from maintaining custody over Family members, the US can, in appropriate cases, request and accept custody of Family members from local Japanese authorities. If the Family member is in the custody of the US, then the US shall maintain custody until indictment, unless the USARJ CG authorizes transfer of custody before indictment after determining that the US will be unable to meet its international obligations of making sure the Family Member will remain available for investigation and trial (i.e., the Family member is a flight risk).

b. Pre-Indictment Custody Procedures

Within 48 hours of detention by GOJ, the Japanese Police must decide whether to refer the case to the Prosecutor or release the individual. An official criminal incident notice (AV 40) will be issued by the Japanese Police through the PMO to the SJA within 24 hours of arrest.

Within 72 hours of detention, the GOJ Prosecutor must decide whether to indict, release the individual or request an extension from a Judge;

The judge may issue an extension warrant for an additional 10 days of confinement;

At the end of the 10-day extension, the Prosecutor can request and the judge may grant another warrant for another 10-day extension;

By the end of the 23rd day of confinement the Prosecutor must either indict or release the individual.

In summary, GOJ can hold someone in confinement for up to 23 days without charging them with a crime. GOJ uses this detention authority to obtain confessions and to ensure that victims are compensated.

c. Interviews of US suspects and witnesses by GOJ

If the US has custody of a suspect or witness, we must make him or her available for initial questioning by GOJ. All such suspects are escorted to the interview by a command representative to insure the US maintains custody pending indictment. GOJ authorities have the right to question the suspect or witness without the presence of a lawyer or US representative.

d. Notification of Criminal Incident

Within 24 hours of arrest or if no arrest when the Japanese police believe there are sufficient facts to refer the matter to the Prosecutor, they will issue formal notice to PMO representative (AV 40) who in turn will notify the SJA. Upon receipt of the AV 40 the suspect will be placed on international hold (cannot leave Okinawa) by the OSJA (delegated authority from 10th SG Commander) pending disposition of the case.

e. GOJ's Election to Exercise Jurisdiction

Once the case is referred to the Prosecutor (date of the AV 40 notice), the Prosecutor must decide whether to indict or to waive jurisdiction within prescribed time lines. For minor offenses (those punishable by a fine or less than six

months confinement) the Prosecutor has 10 days to accept or decline jurisdiction. For major offenses, the Prosecutor has 20 days to accept or decline jurisdiction. For major offenses, the Prosecutor can extend the time to accept or decline jurisdiction for an additional 10 days. If the Prosecutor waives jurisdiction or fails to act then the US has jurisdiction to take judicial actions against the accused.

f. Official Duty Certificate

If the suspect named in the AV 40 was performing official duties when the crime was committed then the US has primary jurisdiction. The US has 10 days from receipt of the AV 40 to notify the Prosecutor that the suspect was performing official duty. Notification is normally accomplished by the Company Commander completing a Certificate of Official Duties. All certificates must be coordinated with the SJA office. The SJA office will deliver the certificate to the Prosecutor. Approval has to be obtained from the USARJ CG before an official duty can be issued for a civilian employee or contractor.

g. Final Disposition After Indictment

After the Prosecutor decides to accept jurisdiction, the case can be processed in the following ways:

Family Court. If the suspect is a juvenile (under 20 years of age) the Prosecutor must refer the matter to the Family Court. The Family Court can either adjudicate the matter under Family Court procedures or refer the case back to the Prosecutor for prosecution as an adult. Only juveniles 14 years and over can be tried as an adult. If the Family Court accepts jurisdiction they will investigate and can conduct hearings. The Family Court can place the juvenile in a juvenile detention center during the investigation and hearing. There is no time limit on how long the juvenile can be placed in detention pending disposition by the Family Court. The Family Court is not considered a criminal proceeding for purposes of the SOFA; therefore, the SOFA procedures are not applicable to Family Court proceedings. The Family Court can take the following actions: dismissal of the case before or after a hearing; admonishment of the juvenile, recommendations to the parents to adjust the juvenile's environment, place the juvenile under probationary supervision, or place the juvenile in a juvenile training school. To date, no US juveniles have been placed in a juvenile training school on Okinawa, although a Camp Zama youth was placed in such a facility, and a few have been placed on supervised probation. Family Court hearings are held before a single judge and are not open to the public. Normally the parents of the juvenile will be allowed to attend and the juvenile can be represented by a guardian or an attorney. Although not required by the SOFA, the Family Court normally allows a member of the OSJA to observe the proceedings.

Summary Procedures. Summary procedures (a streamlined court procedure where the accused pleads guilty and is fined without a formal trial, Japanese version of an Article 15)) can handle minor offenses such as DUI, excessive speeding (over 30 K over posted speed limit), simple assaults, and minor cases of injury by professional negligence (traffic accidents). The maximum punishment that can be imposed by summary procedure is a 500,000 yen fine. The Prosecutor determines if the case is appropriate for summary procedures and then offers the summary procedure to the accused. If the accused agrees, the Prosecutor will interview the accused and submit the matter to a judge who reviews the record and adjudicates a fine (the member does not appear before the judge). The OSJA is normally informed of the amount of the fine about a week after the Prosecutor's interview. When the accused pays the fine, it is an admission of their guilt. If the accused disagrees with the fine, the accused can apply for a formal criminal trial by notifying the court within 14 days of the date of the summary order.

District Court or Summary Court: When the charges are more serious, such as rape, inflicting serious bodily injury, or possessing drugs, district or summary court proceedings come into play. These are formal criminal trials presided over by a panel of one to three judges who determines guilt and punishment. Recently, Japan implemented a lay jury system to advise the judges on serious cases. If referred to a formal trial the suspect will be transferred to the Naha Detention Facility next to the District Courthouse in Naha. The suspect will remain in custody at this facility unless bail is granted by the judge. The normal time from indictment until the first trial session is about six weeks. Trials are divided into two, three or more separate sessions that can span several months from first session until last.

h. Protecting the Rights of the Accused

The OSJA provides the accused with a SOFA briefing, which explains their rights under the SOFA and Japanese law, as well as a description of the GOJ criminal justice process. We use a standardized USFJ SOFA brief as our guide. This briefing is generally conducted prior to the first police interview and takes place in the OSJA offices. However, if the accused is apprehended and placed in confinement, this SOFA brief will be given at the place of detention.

If the accused is placed in confinement, the Japanese will normally allow no visitors during the first 72 hours except for a visit by an OSJA representative. Afterwards, the Japanese will normally allow unit representatives and family members to visit during scheduled visiting hours.

The accused will have no right to bail unless the accused is indicted. Then the court will set bail and it must be paid in cash. The US Government (Army O & M funds) will post bail for all military members, DAC's and family

members. Bail is rarely granted unless the accused has pled guilty at his first court session.

An accused has the right to remain silent, but the Japanese have the right to continue questioning the accused. Anything the accused says (even after choosing to remain silent) can, and will, be used against them in court. A Japanese Prosecutor will also use the accused's refusal to speak or cooperate against them in trial. Unlike the US criminal justice system this is allowed under Japanese law.

The accused has the right to be represented by an attorney; however, the attorney is not allowed to be present during questioning by the Japanese law enforcement authorities. If the accused desires legal representation, then a private attorney will have to be obtained. The OSJA cannot act as defense attorney for the accused. The OSJA will provide the accused with a list of local Japanese attorneys approved by USFJ to represent USFJ personnel in Japanese criminal proceedings. In accordance with AR 27-50, after indictment (and in serious cases in pre-indictment) the accused (not applicable for contractors) can request that the Army pay for his attorney. The attorney fees are paid out of O & M account; there is no specific fenced pot of money. Attorney fees can also be paid by the Army for Family Court proceedings.

An attorney from the OSJA, who is certified by the American Ambassador to Japan to act as a Trial Observer, attends all formal criminal trials to insure that the accused is afforded all the rights guaranteed under the SOFA and receives a fair hearing. The trial observer files an official written report within 25 days after the conclusion of all proceedings.

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