

Chapter 3 Efforts to Broaden Opportunity for Victims to Participate in Criminal Procedures

1 Development of the System to Expand Opportunities to Participate in Criminal Procedures, etc. (related to Article 18 of the Basic Act)

○ Major efforts

- Enhancement of the information concerning criminal procedures and related issues provided to crime victims, etc.

[Policy No. 128]

The Ministry of Justice has prepared pamphlets “For Victims of Crime,” which explain the victim participant system, juvenile adjudication hearing system, and other systems for support and protection of crime victims, and distribute them to victims when Prosecutors’ Offices interview them about their situations or various events are carried out. The contents of the pamphlet are on the websites of the Ministry of Justice and the Prosecutors’ Office.

In addition, the Ministry has prepared DVDs “Should you suffer damages from a crime...,” distributed to the Prosecutors’ Offices for the use of explanation to crime victims, and delivers videos via the Ministry’s YouTube channel.

- Ministry of Justice website “For Victims of Crime”: (http://www.moj.go.jp/keiji1/keiji_keiji11.html)
- Ministry of Justice YouTube channel “Should you suffer damages from a crime...”: (<http://www.youtube.com/watch?V=IXmgyAoEM9E>)

Pamphlet for crime victims



Source: Ministry of Justice

The police have been enhancing the contents of the brochures for crime victims.

Brochures for crime victims

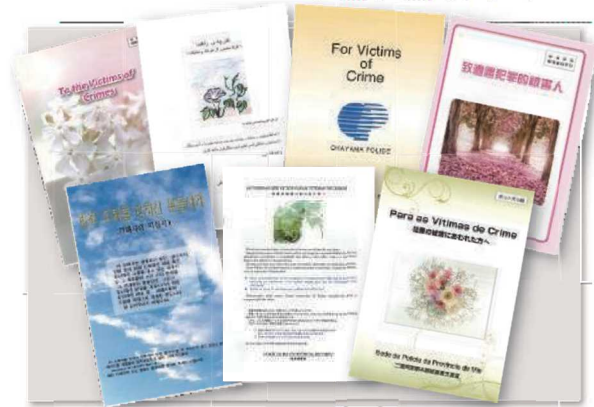


Brochures for traffic accident victims



[Policy No. 129]

The prefectural police take appropriate action such as preparing and distributing the brochures for crime victims in foreign languages such as Chinese depending on the various circumstances.

Brochures for victims (foreign languages)**Column 3****Partial revision of the Penal Code to handle sexual crimes**

In June 2017, the Act for Partial Revision of the Penal Code was established, which took effect in July of the same year. The Penal Code (hereinafter referring to the Penal Code prior to revision as the “former Act” and the Penal Code after revision as the “new Act” in this column) had basically maintained the penal provisions for sexual crimes as they were since they were first established in 1907. In view of the factual circumstances of sexual crimes in recent years, this revision, which was the first major revision of the penal provisions for sexual crimes in 110 years, was implemented in order to handle the case in line with the actual circumstances of the case; an outline for which is given below.

1 Exclusion of the requirement of a complaint for rape charges, etc.

Under the former Act, sexual crimes such as rape charges, forcible indecent assaults, etc., had to be based on a complaint, and could not be indicted without a complaint from the victim. The reason for this is that it was thought that the victim’s right to privacy was susceptible to violation if the offender was prosecuted and the case went to trial, and therefore making it impossible for cases to be prosecuted without a complaint from the victim was thought to respect the intentions of the victim.

However, according to interviews with the victims, etc., victims felt that they were being pressured to choose whether or not to file a complaint, and therefore, there were many cases when this imposed a psychological burden on the victim.

Therefore, in order to alleviate the psychological burden on the victim, the provision that made it mandatory for sexual crimes to be based on a complaint was deleted and revised to be prosecutable without a complaint.

2 Constitutional elements of rape charges and review of the statutory penalties

○ Under the former Act, only “sexual intercourse”, was subject to punishment under rape charges, and the victims were also limited to women.

However, “anal penetration” and “oral penetration” which are not acts of “sexual intercourse” force the victim having sexual intercourse with close physical contact, and are malignant and serious acts equivalent to “sexual intercourse”.

Moreover, it is recognized that the physical and mental pain suffered by the victim does not differ depending on the gender.

Therefore, these acts are to be punished as serious types of crimes equivalent to “sexual intercourse” regardless of the gender of the victim, and along with this, the rape charges was changed to “forced sexual intercourse, etc.”

○ Under the former Act, owing to the fact that the lower limit of the statutory penalty for rape was lower than that for robbery, many people demanded that the statutory penalty for rape be

increased.

Therefore, based on such circumstances and the tendencies of sentences of actual cases, under the new Act, the lower limit of the statutory penalty for crimes such as forced sexual intercourse, etc. was raised from 3 years to 5 years' imprisonment, while the lower limit of the statutory penalty for the crime of death or injury caused by the same crime was raised from 5 years to 6 years.

3 Establishment of the crime of indecency by a custodian and sexual intercourse, etc. by a custodian

Those under the age of 18 are generally mentally vulnerable and depend both financially and mentally on the custodian who supervises and protects them in their everyday lives. Therefore, if a custodian were to engage in a sexual act with a person under the age of 18 by taking advantage of the "influence being wielded as a custodian" caused through such relationship of provider or recipient of dependency and protection, this would be a violation of the sexual liberty and sexual decision-making rights in the same manner as that of forcible indecency and forced sexual intercourse, etc.

Therefore, in order to handle the case properly in line with the actual situation in the case, in this new Act, in addition to such crimes as forced indecency and forced sexual intercourse, etc., new provisions were established as supplementary provisions so that even if there was no case of assault or intimidation, or even if the case could not be said to be one where resistance was impossible, the crime of indecency by a custodian and the crime of sexual intercourse, etc. by a custodian may be punished with the same statutory penalty as for the crime of forcible indecency and forced sexual intercourse, etc.