

**JAPAN'S QUASI-JURY (SAIBAN-IN) LAW: AN ANNOTATED
TRANSLATION OF THE ACT CONCERNING
PARTICIPATION OF LAY ASSESSORS IN CRIMINAL TRIALS**

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- I. INTRODUCTION TO TRANSLATION
- II. TRANSLATION

I. INTRODUCTION TO TRANSLATION

On May 28, 2004, the Japanese Diet enacted an Act Concerning Participation of Lay Assessors in Criminal Trials (“Lay Assessor Act”).¹ This law – translated below – creates a new quasi-jury or mixed-court system in Japan. Japan had a classic jury system briefly in the pre-war period and has a number of other positions for lay participation in the justice system,² but the return to an affirmative role for common citizens in determining the culpability of their peers is a significant departure from how justice has been exercised in Japan over the past sixty years.

The Lay Assessor Act constructs a framework where persons charged with major crimes will have both their guilt and sentence determined by a judicial panel composed of three professional judges and six lay persons in serious contested cases and one judge and four lay persons in lesser uncontested cases (article 2). The matters eligible for resolution by lay assessors with judges include crimes where the

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¹ Saiban'in no sanku suru keiji saiban ni kansuru hōritsu, Law No. 63 of 2004.

² See Kent Anderson & Mark Nolan, *Lay Participation in the Japanese Justice System: A Few Preliminary Thoughts Regarding the Lay Assessor System from Domestic Historical and International Psychological Perspectives*, 38 VANDERBILT J. TRANSNATIONAL L. 935, 961-74 (2004) (reviewing historical and current roles for lay participation in Japanese justice including the former jury system).

maximum penalty is death or indefinite imprisonment with hard labor, and crimes where the victim dies due to an intentional criminal act (article 2(1)). Decisions of the court will be by a modified simply majority that requires at least one judge and one lay person to consent to the conviction or sentence (article 67). Lay assessors will come from the general population selected by lottery off the voter rolls (article 13). Most legal professionals are excluded from service, but otherwise reasons to avoid duty are limited (articles 14-18). The law is to come into force within five years of its enactment, i.e. before June 2009 (Supp. Prov. article 1).

The Lay Assessor Act is obviously important to Japan for all that it seeks to achieve,³ but it is also important outside of Japan as a new global model for lay participation in justice. The system that the Lay Assessor Act creates does not have a readily comparable international counterpart. Its mixture of both professional judges and lay persons deciding matters together is like the mixed-courts of Europe,⁴ but its lay participants are selected at random and sit for only one case like Anglo-American jurors.⁵ Thus, the experience that will develop under the system will provide another model from which other countries will be able to measure and compare both the macro-efficacy and the micro-efficiency of their own systems. This is the primary reason for our translation: So that future international researchers can seriously consider the Japanese model in light of their experience with and goals of their own system.

Before the translation itself, a few notes on our approach are appropriate. First, as the Lay Assessor Act is *sui generis* we have struggled to create English equivalents for many of the new Japanese expressions. In doing so, we have sought to balance colloquial familiarity with technical precision. Undoubtedly, different translators would have used different terms in some places. However, we have consulted with a number of bilingual lawyers familiar with both the lay assessor system and foreign lay participation organs and we hope

³ See *id.* at 941-46 (discussing the drafters' justice and democracy objectives for the new system).

⁴ See, e.g., Walter Perron, *Lay Participation in Germany*, 72 REVUE INTERNATIONALE DE DROIT PENAL 190 (2001) (reviewing German mixed-courts).

⁵ See generally JEFFREY ABRAMSON, WE, THE JURY (1994) (reviewing the Anglo-American jury system).

that for the sake of future clarity others will follow our admittedly imperfect terminology.

Second, as Australian translators with experience in North America and Europe, we paused regularly to ask whether we should use Antipodean, British, or American English. This relates to more than just spellings and turns of certain phrases, and encompasses legal terminology such as whether the person charged with a crime is called a “defendant” or an “accused.” With some notable exceptions, we have largely deferred to the dominance of American terminology. We understand that some colleagues will adamantly disagree with this choice, but we do so for the pragmatic reason that Japan tends to use and is most familiar with American English.

Third, our translation philosophy has been to stay as close as possible to the original text. This makes the language stilted in places, but because this is a formal statute we believed strict accuracy had priority over eloquence. This is not to say that we have done a word-for-word translation; as necessary we have deviated in places where a closer translation would have rendered the meaning confused to native English readers. Given some of the convoluted legalese found in traditional Japanese statutory language, this occurs not infrequently.

Finally, as with all legal translations: user beware. The official version of the law is of course the one in Japanese, and this translation should be read only as an aid and supplement to the Japanese version of the law.

II. TRANSLATION

TABLE OF CONTENTS

CHAPTER 1	General Provisions	(Articles 1 – 7)
CHAPTER 2	Lay Assessors	
Section 1	General Provisions	(Articles 8 – 12)
Section 2	Appointment	(Articles 13 – 40)
Section 3	Dismissal	(Articles 41 – 48)
CHAPTER 3	Trial Procedure for Participation of Lay Assessors	
Section 1	Trial Procedure and Trial	

	Preparation	(Articles 49 – 63)
Section 2	Special Provisions Regarding Application of the Code of Criminal Procedure	(Articles 64 – 65)
CHAPTER 4	Deliberation	(Articles 66 – 70)
CHAPTER 5	Measures for Protection of Lay Assessors	(Articles 71 – 73)
CHAPTER 6	Miscellaneous Provisions	(Articles 74 – 76)
CHAPTER 7	Penal Provisions	(Articles 77 – 84)
	SUPPLEMENTARY PROVISIONS	(Articles 1 – 6)
	REASONS	

CHAPTER 1: GENERAL PROVISIONS

Article 1 [Purpose]⁶

This legislation prescribes special provisions to the Courts Act,⁷ Code of Criminal Procedure,⁸ and other necessary areas for the participation of lay assessors in criminal trials. Through the participation in criminal proceedings of lay assessors, who have been selected from among the people, with judges, this legislation seeks to contribute to the promotion of the public's understanding of the judicial system and thereby raise their confidence in it.

Article 2 [Subject Cases and Composition of a Judicial Panel]

After a judicial panel with participating lay assessors has been empanelled pursuant to this Act, regardless of article 26 of the Courts Act,⁹ the District Court¹⁰ will handle the following

⁶ Section titles are not provided as part of the official text of the law; however, as customary unofficial titles are provided in brackets for convenience.

⁷ Saibansho hō [Courts Act], Law No. 59 of 1947.

⁸ Keiji soshō hō [Code of Criminal Procedure], Law No. 131 of 1948.

⁹ Courts Act art. 26 (“Single Judge Cases and Judicial Panel Cases”).

cases by such judicial panel with participating lay assessors, except for those cases decided by the following article.

- i. Cases involving crimes punishable by death or imprisonment for an indefinite period or by imprisonment with hard labour; and
 - ii. Cases involving crimes in which the victim has died due to an intentional criminal act and those cases noted in Courts Act article 26(2)(ii)¹¹ (excluding things covered by the preceding issue).
2. When there are three judges for the judicial panel of the preceding paragraph, the number of lay assessors shall be six, and the chief judge shall be one from among the judges. However, when pursuant to the following paragraph there is one judge, the number of lay assessors shall be four, and the judge shall be the chief judge.
 3. Within the cases that should be handled by a judicial panel under the preceding paragraph 1 (hereafter "Subject Cases"), if it is recognized that there is no dispute concerning the facts at trial as established by the evidence and the issues identified by pre-trial procedure, the court may decide that it is appropriate considering the contents of the case and other conditions that the trial and hearings be conducted by a judicial panel composed of one judge and four lay assessors.
 4. In making the determination of the preceding paragraph, the court shall confirm during pre-trial procedure that the prosecutor, defendant, and defense counsel do not object.
 5. The decision of paragraph 3 shall be made by the date of the Lay Assessors Selection Proceeding under article 27(1).

¹⁰ The District Courts (*chihō saibansho*) are the courts of first impression and general jurisdiction for most matters in Japan. First appeals are usually taken by the High Courts (*kōtō saibansho*) and final appeals are heard by the Supreme Court (*saikō saibansho*). See HIROSHI ODA, JAPANESE LAW 62-64 (2d ed, 1999).

¹¹ Courts Act art. 26(2)(ii) provides that crimes with a penalty of death or imprisonment over one year will be heard by judicial panel of three judges.

6. When there is a decision under paragraph 3 and regardless of Courts Act article 26(2),¹² the District Court will manage cases with one judge until a judicial panel as prescribed in paragraph 3 can be empanelled.
7. On application of the defendant, the court may revoke a determination under paragraph 3 when it determines that a judicial panel as provided for in paragraph 3 is not suitable for handling the case considering the trial situation and other circumstances.

Article 3 [Exceptions from the Subject Cases]

On application by the prosecutor, defendant, defense counsel, or *sua sponte*, the District Court shall determine that a case within either article 2(1)(i)-(ii) is nonetheless to be handled by a judicial panel of judges when it recognizes that there are conditions that make it difficult to guarantee lay assessor candidates' appearance or it is difficult to appoint lay assessors to substitute for those lay assessor duties that cannot be performed due to the lay assessors' or lay assessor candidates' fear of significant violation to their peaceful existence or their fear of added injury to a lay assessor candidate, lay assessor, past lay assessor, relative, or similar person's assets or life arising from the defendant's statements or statements of a member of an organized group, or at the behest of a member of the defendant's organized group, or where there has been violence, or reports of violence, towards present lay assessor candidates or lay assessors, or other similar circumstances.

2. A determination pursuant to the preceding paragraph or a determination to reject a request under the preceding paragraph must be made by a judicial panel. However, a judge participating in the [initial] hearing regarding any item in article 2(1) cannot participate in the [subsequent] determination.

¹² *Id.*

3. In making the determination pursuant to paragraph 1 or a determination to reject a request under the same paragraph, the opinions of the prosecutor, the defendant, and defense counsel shall be heard beforehand pursuant to the Rules of the Supreme Court.
4. After empanelling a judicial panel pursuant to article 2(1), in making a *sua sponte* determination under paragraph 1, the opinion of the chief judge of the empanelled judicial panel shall be heard.
5. Code of Criminal Procedure articles 43(3)-(4), 44(1)¹³ are applicable in making the determination pursuant to paragraph 1 or a determination to reject a request under the same paragraph.
6. The parties may make an immediate appeal of a determination pursuant to paragraph 1 or a determination to reject a request under the same paragraph. In such event, the provisions of the Code of Criminal Procedure relating to an immediate appeal will apply, *mutatis mutandis*.¹⁴

Article 4 [Handling of Concurrently Pled Cases]

When it is determined that it is appropriate to hear arguments regarding Subject Cases and non-Subject Cases together, the court may handle a non-Subject Case with a judicial panel composed pursuant to article 2(1).

2. In the event of a determination under the preceding paragraph, the court shall hear together the arguments on the Subject Case and the matter recognized under the preceding paragraph pursuant to the Code of Criminal Procedure.

Article 5 [Handling of Cases Following Changes in the Criminal Charges]

¹³ Code of Criminal Procedure arts. 43(3)-(4) ("Judgements, Decisions, and Orders"), 44(1) ("Reasons for Trial").

¹⁴ See Code of Criminal Procedure arts. 419-434 ("Interlocutory Appeals").

The court will handle with a judicial panel composed pursuant to article 2(1) those matters that were wholly or partially Subject Cases pursuant to article 2(1) even if due to a conversion or withdrawal of the charges pursuant to Code of Criminal Procedure article 312,¹⁵ they are no longer Subject Cases. However, when it is deemed appropriate considering the situation of the hearing and other conditions, the court may upon determination pursuant to article 26 of the Courts Act¹⁶ handle such appropriate cases with a judges' judicial panel or with a single judge.

Article 6 [Powers of Judges and Lay Assessors]

For cases handled by a judicial panel under article 2(1), judges empanelled in a judicial panel pursuant to article 2(1) (hereafter "empanelled judges") and lay assessors will make court decisions (hereafter "decisions involving lay assessors' participation") in relation to determinations of sentencing judgments under Code of Criminal Procedure article 333,¹⁷ determinations of sentence exoneration under Code of Criminal Procedure article 334,¹⁸ determinations of innocence under Code of Criminal Procedure article 336,¹⁹ and determinations on transfers to the Family Court under Juvenile Act article 55²⁰ (excluding matters provided for in the following paragraph items (i)-(ii)) concerning the following matters:

- i. recognising facts;

¹⁵ Code of Criminal Procedure art. 312 ("Amendment of Indictment").

¹⁶ Courts Act art. 26 ("Single Judge Cases and Judicial Panel Cases").

¹⁷ Code of Criminal Procedure art. 333 ("Judgment on Sentencing Order, Sentencing Order Suspension").

¹⁸ Code of Criminal Procedure art. 334 ("Judgment to Exempt Sentence").

¹⁹ Code of Criminal Procedure art. 336 ("Judgment of Not Guilty").

²⁰ Shonen hō [Juvenile Act], Law No. 168 of 1948, art. 55 ("Transfers to Family Court").

- ii. applying laws and ordinances; and
 - iii. determining sentence.
2. In cases covered by the preceding paragraph, decisions of the court shall be made by the empanelled judges in the following cases:
- i. decisions concerning the interpretation of laws and ordinances;
 - ii. decisions concerning litigation procedure (excluding decisions of the Juvenile Act article 55²¹); and
 - iii. other decisions except those decisions involving lay assessors' participation.
3. Hearings on decisions involving lay assessors' participation will be conducted with empanelled judges and lay assessors, and other hearings will be conducted with only empanelled judges.

Article 7

Where a determination under article 2(3) has been made, decisions to be made by the empanelled judges' judicial panel will be made by the [single] judge.

CHAPTER 2: LAY ASSESSORS

Section 1: General Provisions

Article 8 [Independence of Lay Assessors' Exercise of Authority]²²

Lay assessors will carry out their authority independently.

Article 9 [Lay Assessors' Obligations]

²¹ *Id.*

²² *Cf.* Kenpō [Constitution], art. 76 (“All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.”).

Lay assessors shall carry out their duties with honesty and fairness in accordance with the law.

2. Lay assessors shall not disclose secrets from deliberation under article 70(1) or other secrets learned in the exercise of their duties.
3. Lay assessors shall not commit acts that may injure the public's trust in the fairness of the trial.
4. Lay assessors shall not commit acts that will harm the dignity of the trial.

Article 10 [Reserve Lay Assessors]

The court may include reserve lay assessors where it is recognized as necessary considering the length of the trial and other circumstances. However, the number of reserve lay assessors cannot exceed the number of lay assessors that compose the judicial panel.

2. Reserve lay assessors will be present at trials relevant to decisions involving lay assessors' participation. In the event that there arises an insufficiency in the number of lay assessors empanelled in a judicial panel under article 2(1), the reserve lay assessors will be appointed to replace the lay assessors in an order determined beforehand.
3. Reserve lay assessors may inspect the evidence and official documents concerning the litigation.
4. The provisions of the preceding article apply to reserve lay assessors.

Article 11 [Travelling, Per Diem, and Hotel Expenses]

Lay assessors and reserve lay assessors' travel, per diem, and hotel expenses will be covered pursuant to the Rules of the Supreme Court.

Article 12 [Inquiry into Public Institutions]

With regards to lay assessor candidates, lay assessors, and reserve lay assessors selected pursuant to article 26(3) (including corresponding application of article 28(2), article 38(2) (its corresponding application of article 46(2)), and article 47(2)), the court may seek reports into necessary matters including inquiry of public institutions or private and public groups when it is deemed necessary for the determination of lay assessors and reserve lay assessors' appointment or dismissal.

2. The District Court may request reports of necessary matters regarding lay assessor candidates from public institutions when it is deemed necessary to contribute to the decision of the court in the preceding paragraph.

Section 2: Appointment

Article 13 [Qualifications for Appointment as Lay Assessor]

Lay assessors will be selected from among those with suffrage rights in the Lower House pursuant to the provisions of this section.

Article 14 [Reasons for Disqualification]

Persons in any of the following items or under the provisions of National Civil Service Act article 38²³ cannot become lay assessors.

- i. Persons who have not completed compulsory education under the Schools Education Act.²⁴ However, this exclusion does not limit people who have attained learning equal to someone who has completed compulsory education, even though they have not completed it themselves.

²³ Kokkakōmuin hō [National Civil Service Act], Law No. 120 of 1947, art. 38 ("Terms for Disqualification").

²⁴ "Compulsory education" (*gimu kyōiku*) under Basic Education Law (Kyōiku kihon hō, Law No. 25 of 1947) article 4 requires general education for nine years.

- ii. Persons who have been subject to imprisonment or greater penalties.
- iii. Persons for whom execution of lay assessor duties would be a significant burden due to physical or mental incapacities.

Article 15 [Reasons Prohibiting Undertaking the Position]

Persons coming under any of the following items cannot take up the duties of lay assessors.

- i. Members of the National Diet;
- ii. Ministers of State;
- iii. Employees of any of the following national administrative institutions:
 - A. Personnel covered by the Designated Salary Table 10 annexed to the Act Regarding the Salary of General Employees²⁵ and who receive a monthly salary above Level 4 in that table (excluding those in item D);
 - B. Personnel covered by the salary table provided in article 7(1) of the Act Regarding Special Rules for Salary and Employment of General Employees on Fixed Terms²⁶ and who receive a monthly salary above Level 7 in that table;
 - C. Personnel covered by Table 1 and Table 2 annexed to the Act Regarding the Salary of Special Employees;²⁷

²⁵ Ippan shoku no shokuin no kyūyo ni kansuru hōritsu, Law No. 95 of 1950.

²⁶ Ippan shoku no ninki tsuki shokuin no saiyō oyobi kyūyō no tokurei ni kansuru hōritsu, Law No. 125 of 2000.

²⁷ Tokubetsushoku no shokuin no kyūyo ni kansuru hōritsu, Law No 252 of 1949.

- D. Personnel covered by the Defense Agency Salary Table 1 annexed to the Act Regarding Salary of Defense Agency Personnel (hereafter “Defense Agency Personnel Salary Act”)²⁸ who receive a monthly salary above the designated Level 4 column in that table; personnel who pursuant to Defense Agency Personnel Salary Act article 4(2) are covered by the Designated Salary Table 10 annexed to the Act Regarding the Salary of General Employees and who receive a monthly salary above Level 4 in that table; and personnel who pursuant to Defense Agency Personnel Salary Act article 4(3) are covered by the salary table provided in article 7(1) of the Act Regarding Special Rules for Salary and Employment of General Employees on Fixed Terms (though limited whose monthly salary is above Level 7 in that table).
- iv. Persons who are or were judges;
 - v. Persons who are or were prosecutors;
 - vi. Persons who are or were lawyers (including foreign registered lawyers);
 - vii. Patent lawyers;
 - viii. Judicial clerks;
 - ix. Notaries public;
 - x. Persons employed as judicial police officers;
 - xi. Court personnel (excluding persons working part-time);
 - xii. Ministry of Justice personnel (excluding persons working part-time);

²⁸ Bōeichō no shokuin no kyōyo nado no kansuru hōritsu, Law No. 266 of 1952.

- xiii. Police personnel and committee members of the National Public Safety Commission or the prefectural Public Safety Commissions (excluding persons working part-time);
 - xiv. Persons qualified to be a judge, assistant judge, prosecutor, or lawyer;
 - xv. Professors or associate professors of law in a graduate school, faculty, or department of a university governed by the Schools Education Act.²⁹
 - xvi. Legal apprentices;
 - xvii. Prefectural governors and mayors (including Special Ward Chiefs); and
 - xviii. Self Defense Force Officers.
2. Persons coming under any of the following are also treated the same as in the preceding paragraph.
- i. Persons under pending charges as a defendant for a crime subject to imprisonment or greater penalties; and
 - ii. Persons under arrest or detention.

Article 16 [Reasons to Decline]

Persons coming under any of the following items may apply to decline to become a lay assessor.

- i. Persons aged 70 years or older;
- ii. Members of local councils (limited to while the council is in session);
- iii. Students of schools covered under articles 1, 82(2), and 83 of the Schools Education Act³⁰ (limited to persons enrolled in current courses at regular class times);

²⁹ Gakkō kyōiku hō, Law No. 26 of 1947.

- iv. Persons who have been a lay assessor or reserve lay assessor within the past 5 years;
- v. Persons who have been called as lay assessor candidates within the past year and who appeared on the day set for the Lay Assessors Selection Proceeding under article 27(1) (excluding persons who were not appointed pursuant to a determination under article 34(7));
- vi. Persons who have been members or reserve members of a Prosecutorial Review Commission under the provisions of the Prosecutorial Review Commission Act³¹ within the past 5 years;
- vii. Persons who for one of the following reasons or for another unavoidable reason covered by a cabinet order finds it difficult to execute the duties of a lay assessor or appear on the day set for the Lay Assessor Selection Proceeding under article 27(1):
 - A. Where it is difficult to appear in court due to a serious illness or injury;
 - B. Where it is necessary to provide childcare or nursing to cohabitating family members who would otherwise be impaired in their daily life;
 - C. Where there is a fear that considerable damage will arise to an enterprise if the individual cannot personally undertake important work in which the business is engaged; and
 - D. Where attendance at a parent's funeral or other important social obligation cannot occur on another day.

Article 17 [Reasons for Disqualification in Related Cases]

³⁰ *Id.* arts. 1 ("Scope of Schools"), 82-2 ("Purpose of Vocational Schools"), 83 ("Other Schools").

³¹ *Kensatsu shinsa kai hō*, Law No. 147 of 1948.

Persons coming under any of the following items cannot become lay assessors in the relevant cases.

- i. The defendant or victim;
- ii. Persons who are or were relatives of the defendant or victim;
- iii. The defendant's or victim's legal representative, supervisory guardian, custodian, supervisory custodian, limited guardian, or supervisory limited guardian;
- iv. Employees of, or persons living with, the defendant or victim;
- v. Persons who made complaints or claims in the case;
- vi. Persons who are witnesses or expert witnesses in the case;
- vii. Persons who are a representative, counsel, or assistant of the defendant in the case;
- viii. Persons employed as prosecutor or judicial police officer in the case;
- ix. Persons employed as members or assistants of a Prosecutorial Review Commission in the case, or persons who heard the case as reserve members of the Prosecutorial Review Commission;
- x. Persons participating in the case for the purposes of a determination under article 266(ii) of the Code of Criminal Procedure,³² a summary order, a remand based determination under articles 398-400, 412, 413 of the Code of Criminal Procedure,³³ the original judgment if the case has been transferred, or the investigation of the

³² Code of Criminal Procedure art. 266(ii) ("Decision to Dismiss Claim and Decision on Supplemental Trial").

³³ *Id.* arts. 398 ("Reversal and Remand"), 399 ("Reversal and Transfer"), 400 ("Reversal and Remand, Transfer, and Judgment"), 412 ("Revocation and Transfer"), 413 ("Revocation and Remand, Transfer, and Judgment").

foundations of the trial. However, this does not limit the case of the participation of a requisitioned judge.

Article 18 [Other Reasons for Disqualification]

In addition to the previous article, persons who the court recognizes might not be able to act fairly in a trial according to the prescribed laws cannot become lay assessors in the relevant case.

Article 19 [Corresponding Applications]

Articles 13-18 (Qualifications for Appointment as Lay Assessor, Reasons for Disqualification, Reasons Prohibiting Undertaking the Position, Reasons to Decline, Reasons for Disqualification in Related Cases, and Other Reasons for Disqualification) apply, *mutatis mutandis*, to reserve lay assessors.

Article 20 [Notice and Allocation of the Number of Lay Assessor Candidates]

The District Courts pursuant to the Rules of the Supreme Court shall by September 1 of each year allocate within the municipal jurisdictional divisions the number of lay assessor candidates required for the subsequent year and shall notify the municipalities' Election Administration Commissions of this number.

2. The number of lay assessor candidates of the preceding paragraph will be calculated pursuant to the Rules of the Supreme Court considering the status of the Subject Cases that the District Court is handling and other matters.

Article 21 [Preparation of the Proposed List of Lay Assessor Candidates]

Upon receiving the notification under article 20(1), the municipal Election Administration Commission shall select by lottery from the electoral rolls, the number of people specified in the notice as proposed lay assessor candidates (excluding those persons who are identified on the electoral rolls under

article 27(1) of the Public Officers Election Act³⁴ as not having suffrage rights pursuant to article 11(1) or article 252 of that Act³⁵ or article 28 of the Political Capital Control Act³⁶).

2. Regarding persons selected pursuant to the preceding paragraph, the municipal Election Administration Commission shall prepare the Proposed List of Lay Assessor Candidates (the record of the Proposed List of Lay Assessors Candidates is to be prepared on magnetic disk according to the following paragraph) noting their names, addresses, and dates of birth as listed on the electoral roles (the record of the electoral role is to be prepared on magnetic disk according to article 19(3) of the Public Officers Election Act³⁷).
3. The Proposed List of Lay Assessor Candidates may be prepared and held on magnetic disk (this includes those specified items that can actually be recorded by this method).

Article 22 [Transfer of the Proposed List of Lay Assessor Candidates]

The municipal Election Administration Commission shall transfer to the District Court that sent the relevant notice the Proposed List of Lay Assessor Candidates by October 15 of the year that notice under article 21(1) was received.

Article 23 [Preparation of the List of Lay Assessor Candidates]

When the District Court receives the Proposed List of Lay Assessor Candidates pursuant to the preceding article, from this and pursuant to the Rules of the Supreme Court, the

³⁴ Kōshoku senkyo hō, Law No. 100 of 1950, art. 27(1) (“Indication and Revision”).

³⁵ *Id.* art. 11(1) (“Persons without Suffrage and Eligibility for Election”), 252 (“Suspension of Suffrage and Eligibility for Election of Persons Imprisoned for Election Crimes”).

³⁶ Seiji shikin kisei hō, Law No. 194 of 1948.

³⁷ Kōshoku senkyo hō, Law No. 100 of 1950, art. 19(3) (“Permanent Qualified Voter Register”).

District Court shall prepare a List of Lay Assessor Candidates which notes the lay assessor candidates' names, addresses, and dates of birth (the record of the List of Lay Assessor Candidates is to be prepared on magnetic disk according to the following paragraph, similarly for articles 25 and 26(3)).

2. The List of Lay Assessor Candidates may be prepared and held on magnetic disk.
3. The District Court shall remove from the List of Lay Assessor Candidates, according to the Rules of the Supreme Court, persons concerning whom a notice of death has been received, persons whom it is recognized are not covered by article 13, persons who cannot become lay assessors pursuant to article 14, and persons it recognizes fall under any item of article 15(1).
4. When it becomes known that a proposed lay assessor candidate selected pursuant to article 21(1) has died or does not have suffrage rights in the Lower House, the municipal Election Administration Commission shall give notice of this to the District Court that sent the Proposed List of Lay Assessor Candidates pursuant to the preceding article. However, this does not extend to the year following the year in which the relevant Proposed List of Lay Assessor Candidates was sent.

Article 24 [Measures in the Event of Reserve Lay Assessor Candidates]

When it is recognized as necessary to supplement the necessary lay assessor candidates in the year following the year in which notice pursuant to article 21(1) was given, the District Court shall, pursuant to the Rules of the Supreme Court, expeditiously allot the number of lay assessor candidates to be supplemented in the jurisdictional area municipalities and notify the municipal Election Administration Commission of this.

2. The three preceding articles apply, *mutatis mutandis*, in the event of the preceding paragraph. In which case, "by October 15 of the year that notice under article 21(1) was received"

within article 22 will be read as “expeditiously”, and “List of Lay Assessor Candidates, which notes” within article 23(1) will be read as “List of Lay Assessor Candidates, which adds”, and “the year following the year in which [it] was sent” within the proviso of article 23(4) will be read “the year in which [it] was sent”.

Article 25 [Notification to Lay Assessor Candidates]

When a List of Lay Assessor Candidates has been prepared pursuant to article 23(1) (including when applicable the appropriate changed readings noted in the second paragraph of the preceding article), the District Court shall notify those persons listed on the relevant List of Lay Assessor Candidates.

Article 26 [Selection of Lay Assessor Candidates to Be Summoned]

When the date for the first public hearing of a Subject Case has been determined, the court shall decide the necessary number of reserve lay assessors to include and reserve lay assessors not to include.

2. When making the decision of the preceding paragraph, the Court shall determine the number of lay assessor candidates to be summoned considering the time it appears the trial will require and other conditions.
3. The District Court shall select by lottery the lay assessor candidates to be summoned in a number determined pursuant to the previous paragraph from among those lay assessor candidates noted on the List of Lay Assessor Candidates. However, lay assessor candidates summoned by the court pursuant to the first paragraph of the following article and who appeared on the day set for the Lay Assessor Selection Proceeding (excluding those determined unselected by article 34(7)) cannot be selected again in that year.
4. The District Court shall allow the prosecutor and defense counsel the chance to be present at the lottery of the preceding paragraph.

Article 27 [Summoning Lay Assessor Candidates]

The court shall determine the date of the proceeding to select lay assessors and reserve lay assessors (hereafter “Lay Assessor Selection Proceeding”) and shall summon the lay assessor candidates who have been selected pursuant to paragraph 3 of the preceding article. However, this does not extend to those lay assessor candidates for whom it is recognized that one of the reasons of the following items applies during the period from the day set for the Lay Assessor Selection Proceeding to the day on which it appears the lay assessor’s employment will end (hereafter “Planned Period of Employment”)

- i. Persons who do not come under article 13;
 - ii. Persons who cannot become lay assessors pursuant to article 14;
 - iii. Persons who come under any item in article 15(1)-(2) or article 17; or
 - iv. Persons who are lay assessor candidates applying to decline service pursuant to any item in article 16.
2. The summons of the preceding paragraph will be done by means of serving a writ of summons.
 3. The writ of summons shall note those matters prescribed by the Rules of the Supreme Court including the date, time, and place for appearance and the fine assessed for failure to respond to the summons.
 4. The court shall allow sufficient time pursuant to the Rules of the Supreme Court between the service of the writ of summons on the lay assessor candidates and the date of the Lay Assessor Selection Proceeding.
 5. The court shall cancel immediately a summons to a lay assessor candidate where it is recognized during the period following the summons pursuant to paragraph 1 and before the date of appearance that a reason under any of the items in paragraph 1 will arise during the Planned Period of Employment.

6. The court shall notify expeditiously the lay assessor candidates when a summons has been cancelled pursuant to the preceding paragraph.

Article 28 [Additional Summons of Lay Assessor Candidates]

The court can summon the necessary additional number of lay assessor candidates when it is recognized as necessary for the appointment of lay assessors or a necessary number of reserve lay assessors at the Lay Assessor Selection Proceeding.

2. The preceding paragraph applies, *mutatis mutandis*, to articles 26(3)-(4) and 27(1 proviso)-(6). In which case, “a number determined pursuant to the preceding paragraph” within article 26(3) will be read as “the number the court recognizes as necessary”.

Article 29 [Lay Assessor Candidates’ Duty to Appear and Travel Expenses]

Lay assessor candidates who have been summoned shall appear at the time set for the Lay Assessor Selection Proceeding.

2. Summoned lay assessor candidates who appear at the time set for the Lay Assessor Selection Proceeding will receive, pursuant to the Rules of the Supreme Court, travel, per diem, and accommodation expenses.
3. The District Court, pursuant to the Rules of the Supreme Court, shall remove from the List of Lay Assessor Candidates those summoned lay assessor candidates who appear at the time set for the Lay Assessor Selection Proceeding. However, this does not extend to those lay assessor candidates that it decides not to select pursuant to article 34(7).

Article 30 [Questionnaires]

The court may use a questionnaire before the Lay Assessor Selection Proceeding to ask the lay assessor candidates selected pursuant to article 26(3) (including by application of article 28(2)) those questions necessary to determine whether

during the Planned Period of Employment the person is someone to whom article 13 will apply, whether the person cannot become a lay assessor pursuant to article 14, whether the person is someone to whom any item of articles 15(1)-(2) or 17 do not apply, or whether the person is someone to whom any item of article 16 applies, and whether the person is someone for whom there is any fear that they will conduct the trial unfairly.

2. When a lay assessor candidate receives a questionnaire by the day before the day set for the Lay Assessor Selection Proceeding, the lay assessor candidate shall return or bring with them the relevant questionnaire in accordance with court orders.
3. The lay assessor candidates shall not provide false information on the questionnaire.
4. The items noted on the questionnaire as provided in the three preceding paragraphs and in paragraph 2 of the next article or as otherwise necessary will be determined by the Rules of the Supreme Court.

Article 31 [Disclosure of Information Concerning Lay Assessor Candidates]

The chief judge (in the case of a decision under article 2(3), the judge; hereafter this is given the same meaning except for in article 39) shall send to the prosecutor and defense counsel a list of the names of the summoned lay assessor candidates at least two days before the date set for the Lay Assessor Selection Proceeding.

2. The chief judge shall allow the prosecutor and defense counsel to view copies of the questionnaires submitted by the lay assessor candidates before the date set for the Lay Assessor Selection Proceeding.

Article 32 [Persons Present for the Lay Assessor Selection Proceeding]

The Lay Assessor Selection Proceeding will be conducted with the attendance of the judges and court clerks, and moreover, in the presence of the prosecutor and defense counsel.

2. The court may allow the defendant to attend the Lay Assessor Selection Proceeding when it is recognized as necessary.

Article 33 [Means of the Lay Assessor Selection Proceeding]

The Lay Assessor Selection Proceeding will not be open to the public.

2. The chief judge will direct the Lay Assessor Selection Proceeding.
3. The Lay Assessor Selection Proceeding shall be conducted with sufficient consideration for the feelings of the lay assessor candidates and so that requests for determinations of non-appointment pursuant to paragraph 4 of the following article or article 36(1) do not occur in the presence of the lay assessor candidates.
4. The court can determine a new date to continue a Lay Assessor Selection Proceeding. In which case, when notice is given of the relevant new day set for the lay assessor candidates who appeared on the date set for the Lay Assessor Selection Proceeding, this has the same effect as service of a writ of summons.

Article 34 [Questions for Lay Assessor Candidates]

At the Lay Assessor Selection Proceeding, the chief judge may ask the lay assessor candidates those questions necessary to determine whether during the Planned Period of Employment article 13 will apply to the candidate, whether the candidate cannot become a lay assessor pursuant to article 14, whether any of the items in articles 15(1)-(2) or 17 do not apply to the candidate, or whether any item of article 16 applies to the candidate and an application for discharge from becoming a lay assessor has been made pursuant to article 16,

and whether there is any fear that the candidate will conduct the trial unfairly.

2. The attending judges, prosecutor, defendant, or defense counsel may request the chief judge to question the lay assessor candidates carefully considering the necessity of making the determination of the preceding paragraph. In this event, when it is found appropriate, the chief judge will do the requested questioning of the lay assessor candidate.
3. In answering the questions of the two preceding paragraphs, the lay assessor candidates shall not make false statements or refuse to answer without an appropriate reason.
4. The court shall determine, on application by the prosecutor, defendant, defense counsel, or *sua sponte*, to not appoint a lay assessor candidate where the lay assessor candidate in the Planned Period of Employment is recognized to be a person to whom article 13 will not apply, or is recognized to be a person who cannot become a lay assessor pursuant to article 14, or is recognized to be a person to whom any item of articles 15(1)-(2) or 17 applies. The same applies where it is recognized that there is a fear that the lay assessor candidate would act unfairly in the trial.
5. Defense counsel cannot act contrary to the defendant's stated intent by making a request under the preceding paragraph.
6. The court shall give reasons for a decision denying a request under paragraph 4.
7. The court shall determine not to appoint a lay assessor candidate where it is recognized that any item of article 16 applies to that person during the Planned Period of Employment and the lay assessor candidate has applied for discharge from becoming a lay assessor pursuant to article 16.

Article 35 [Filing Objections]

An objection to a decision to deny a request under paragraph 4 of the preceding article may be filed in the District Court where the Subject Case is lodged.

2. The objection application under the preceding paragraph shall clearly provide in the original court proceeding the general idea and reasons for the objections in the filed application and those made orally at the Lay Assessor Selection Proceeding before the selection of the lay assessors and reserve lay assessors from the lay assessor candidates is made pursuant to article 37(1)-(2).
3. The District Court receiving the objection application of paragraph 1 shall decide the matter by judicial panel.
4. The immediate appeal provisions of the Code of Criminal Procedure³⁸ apply, *mutatis mutandis*, to an objection application of paragraph 1. In which case, “three days from the date it was received” within Code of Criminal Procedure article 423(2)³⁹ will be read as “twenty-four hours from the time the application was received or made orally”.

Article 36 [Requests for Non-Appointment that Do Not Indicate the Reasons]

The prosecutor and defendant may each request the non-appointment of up to four (three in the case of a determination under article 2(3)) lay assessor candidates without providing any reasons (hereafter “Requests for No Reason Non-Appointments”).

2. Regardless of the decision in the preceding paragraph, when empanelling reserve lay assessors, the number of Requests for No Reason Non-Appointments that the prosecutor and defendant can each make are: one person when the number of reserve lay assessors to be appointed is one or two; two persons when there are to be three or four to be added; and three persons when there are five or six to be added.
3. When a request is received the court will decide the non-appointment of a lay assessor candidate who is subject to a Request for No Reason Non-Appointment.

³⁸ See Code of Criminal Procedure arts. 419-434 (“Interlocutory Appeals”).

³⁹ *Id.* art. 423(2) (“Procedure for Appeal”).

4. Article 21(2) of the Code of Criminal Procedure⁴⁰ will apply, *mutatis mutandis*, to Requests for No Reason Non-Appointments.

Article 37 [Decisions on Appointment]

By lottery or by other means prescribed by the Rules of the Supreme Court that cannot be manipulated, the court shall determine the selection of lay assessors in a number consistent with article 2(2) (when the number of lay assessor candidates is insufficient, then for that number) from among those lay assessor candidates who appear on the date set for the Lay Assessor Selection Proceeding and are not found to be non-appointable.

2. By the means of the preceding paragraph and after selection of the lay assessors under that paragraph, the court shall determine the selection of reserve lay assessors and the order in which they will be appointed as lay assessors in a number consistent with article 26(1) (when the number of lay assessor candidates is insufficient, then for that number) from among the remaining lay assessor candidates who are found to be appointable.
3. The court will declare to be not appointed those lay assessor candidates who have been found appointable but pursuant to the two preceding paragraphs have not been selected as lay assessors or reserve lay assessors.

Article 38 [Procedures in the Event of Insufficient Lay Assessors]

When the number of lay assessors appointed pursuant to paragraph 1 of the preceding article is insufficient to meet the number of lay assessors required to be appointed, the court shall appoint lay assessors in the amount of the deficiency. In which case, the court may appoint and add to this the number of reserve lay assessors recognized as necessary.

⁴⁰ *Id.* art. 21(2) (“Causes for Challenge, Persons who May Make a Challenge”).

2. Articles 26 (excluding paragraph 1) to 37 will apply, *mutatis mutandis*, to the selection of lay assessors and reserve lay assessors pursuant to the preceding paragraph. In which case, “four (three in the case of a determination under article 2(3))” within paragraph 36(1) will be read as “one person when the number of lay assessors to be appointed is one or two; two persons when the number to be appointed is three or four; and three persons when the number to be appointed is five or six” and “a number consistent with article 2(2) within paragraph 37(1) will be read as “the number of lay assessors appointable”.

Article 39 [Oath]

The chief judge, pursuant to the Rules of the Supreme Court, will explain to the lay assessors and reserve lay assessors their rights, obligations, and other necessary conditions.

2. The lay assessors and reserve lay assessors, pursuant to the Rules of the Supreme Court, shall pledge to do their duty truthfully and fairly according to the law.

Article 40 [Delegated to the Rules of the Supreme Court]

Those matters prescribed by articles 32-39 and other necessary items for the Lay Assessor Selection Proceeding will be prescribed by the Rules of the Supreme Court.

Section 3: Dismissal

Article 41 [Dismissal of Lay Assessors upon Request]

The prosecutor, defendant, or defense counsel can request the court to dismiss a lay assessor or reserve lay assessor for any reasons coming under one of the following items. However, requests based on item (vii) are limited to reasons where the causes have already arisen or are learned after the appointment of the relevant lay assessor or reserve lay assessor.

- i. Where lay assessors or reserve lay assessors do not take the oath under article 39(2);

- ii. Where it is not appropriate for lay assessors to continue to perform their duty due to violation of their obligation to attend the deliberation prescribed by article 66(2) or their obligation to appear prescribed by articles 52, 63(1);
- iii. Where it is not appropriate for reserve lay assessors to continue to perform their duty due to violation of their obligation to appear prescribed by article 52;
- iv. Where it is not appropriate for lay assessors to continue to perform their duty due to violations of their obligation to state an opinion as prescribed by article 66(2) or their obligations prescribed by articles 9, 66(4), 70(1);
- v. Where it is not appropriate for reserve lay assessors to continue to perform their duty due to violation of their obligation prescribed by article 70(1) or their obligation prescribed by article 9 applied pursuant to article 10(4);
- vi. Where lay assessors or reserve lay assessors are persons who do not come under article 13 (including its application through article 19), or are persons who cannot become lay assessors or reserve lay assessors pursuant to article 14 (including its application through article 19), or are persons who come under any item of articles 15(1)-(2), 17 (including their application through article 19);
- vii. Where there is fear that any lay assessors or reserve lay assessors would conduct a trial unfairly;
- viii. Where it is not appropriate for lay assessors or reserve lay assessors to continue to perform their duty, due to it becoming clear that while lay assessor candidates they made a false entry on their questionnaire, refused to answer questioning during the Lay Assessor Selection Proceeding without an appropriate reason, or otherwise made a false statement;
- ix. Where lay assessors or reserve lay assessors prevent the continuation of public proceedings due to their abusive language or other inappropriate speech in the public court and without heeding the orders of the chief judge.

2. When a request under the preceding paragraph is received, the court will classify it into the items below and make a decision on it based on that classification. In the all other cases, the court shall notify the chief empanelled judge in the District Court about the request in the case.
 - i. Decision to reject the request where it is clear that there is no reason for the request or it violates the proviso of the preceding paragraph.
 - ii. Decision to remove the lay assessor or reserve lay assessor where the request is recognized within items (i)-(iii), (vi), (ix) of the preceding paragraph.
3. The District Court that receives the case pursuant to the provisions of the preceding paragraph will remove the relevant lay assessor or reserve lay assessor when it finds that any of the items under paragraph 1 apply.
4. The determination in the preceding paragraph by the District Court regarding a request under paragraph 1 shall be made by a judicial panel. However, the chief empanelled judge of the court that received the request of paragraph 1 cannot participate in that decision.
5. The court, before making the determination concerning a request under paragraph 1, shall hear submissions by the prosecutor, defendant, and defense counsel in accordance with the Rules of the Supreme Court.
6. The court shall provide the opportunity for the relevant lay assessor or reserve lay assessor to make a statement before the court decides to remove a lay assessor or reserve lay assessor pursuant to paragraph 2(ii) or paragraph 3. However, this does not extend to decisions for removal based on the reasons of paragraph 1(i)-(iii), (ix).
7. The court shall attach reasons for its decision to reject a request under paragraph 1.

Article 42 [Filing Objections]

When there is a determination rejecting a request under paragraph 1 of the preceding article, an objection may be filed with the District Court to which the chief judge that participated in that decision is attached.

2. The District Court in which the objection of the preceding paragraph is filed shall determine the matter by judicial panel. However, the chief empanelled judge of the court that received the request of paragraph 1 of the preceding article cannot participate in that decision even if he did not participate in the determination on which the objection is being filed.
3. The provisions of the Code of Criminal Procedure concerning immediate appeals⁴¹ apply, *mutatis mutandis*, to objections filed under paragraph 1. In which case, “three days” within Code of Criminal Procedure articles 422, 423(2)⁴² will be read as “one day”.

Article 43 [Dismissal of Lay Assessors by Right]

The court will *sua sponte* dismiss a lay assessor or reserve lay assessor when it finds articles 41(1)(i)-(iii), (vi), or (ix) applicable.

2. When the court considers there is sufficient reason to suspect application of articles 41(1)(iv)-(v), (vii), or (viii), the chief judge will notify its District Court of this with attached reasons.
3. The District Court that receives the notice of the preceding paragraph will dismiss the lay assessor or reserve lay assessor when it finds article 41(1)(iv), (v), (vii), or (viii) applicable.
4. The decision of the preceding paragraph shall be by judicial panel. However, the chief empanelled judge of the court in paragraph 2 cannot participate in this decision.

⁴¹ See Code of Criminal Procedure arts. 419-434 (“Interlocutory Appeals”).

⁴² *Id.* arts. 422 (“Period for Filing a Claim of Immediate Appeal”), 423(2) (“Immediate Appeal Procedure”).

5. Article 41(5)-(6) will apply, *mutatis mutandis*, to a decision under paragraph 1 or 3.

Article 44 [Dismissal of Lay Assessor by Application]

Lay assessors or reserve lay assessors may apply to the court to resign their employment as a lay assessor or reserve lay assessor for reasons of hardship under article 16(vii) that arise after the decision of their appointment.

2. The court shall dismiss the lay assessor or reserve lay assessor when it finds such reasons in an application of the preceding paragraph.

Article 45 [Dismissal of Reserve Lay Assessors]

The court may dismiss the relevant reserve lay assessors when it finds it is not necessary for reserve lay assessors to continue their duties.

Article 46 [Additional Appointment of Lay Assessors]

In the case of an insufficient number of lay assessors to form a judicial panel under article 2(1) and where there are reserve lay assessors, the court will appoint the reserve lay assessors as lay assessors in the order determined and prescribed at the appointment of those reserve lay assessors.

2. Where there are no reserve lay assessors to appoint as lay assessors in the case of the preceding paragraph, the court shall appoint lay assessors in the amount of the deficiency. In which case, article 38 applies, *mutatis mutandis*.

Article 47 [Additional Appointment of Reserve Lay Assessors]

The court may appoint reserve lay assessors in an amount recognized as necessary where it finds it necessary to add and newly empanel reserve lay assessors.

2. For decisions on appointment of lay assessors, articles 26 (excluding paragraph 1) to 35, 36 (excluding paragraph 2), 37(2)-(3) apply, *mutatis mutandis*, to appointment of reserve lay assessors pursuant to the preceding paragraph. In which

case, “four people (three persons in the case of a determination under article 2(3))” within article 36(1) will be read as “one person when the number of reserve lay assessors to be appointed is one or two; two persons when the number to be appointed is three or four; and three persons when the number to be appointed is five or six”.

Article 48 [Termination of Lay Assessors' Duty]

A lay assessor or reserve lay assessor's duty terminates when either of the following apply.

- i. Where there is notice of the completion of the trial; or
- ii. Where pursuant to a determination under article 3(1) or the proviso of article 5 it is determined that the whole case that was being handled by an article 2(1) judicial panel is to be handled by a single judge or a panel of judges.

CHAPTER 3: TRIAL PROCEDURE FOR PARTICIPATION OF LAY ASSESSORS

Section 1: Trial Procedure and Trial Preparation

Article 49 [Pre-Trial Arrangement Proceedings]

Before the date set for the first public hearing, the court shall refer Subject Cases to pre-trial arrangement proceedings.

Article 50 [Expert Testimony before the Date Set for the First Hearing]

In cases to be handled by a judicial panel under article 2(1), in the event it is decided that expert testimony will be heard within the pre-trial arrangement proceedings, the court may, on application by the prosecutor, the defendant, defense counsel, or *sua sponte*, decide to hold an expert testimony procedure (excluding the announcement of the results and details of the expert testimony) within the pre-trial arrangement proceedings when it recognizes the need for sufficient time to announce the results of the expert testimony (hereafter “decision to have an expert testimony procedure”).

2. The court, in deciding to conduct an expert testimony proceeding or to deny a request for one under the preceding paragraph, shall hear beforehand the submissions by the prosecutor, defendant, and defense counsel pursuant to the Rules of the Supreme Court.
3. In the case of an expert testimony proceeding, matters in addition to the particulars of the expert testimony and its results may be heard during the expert testimony hearing within the pre-trial arrangement proceedings.

Article 51 [Consideration of Lay Assessors' Responsibilities]

Judges, prosecutors, and defense counsel shall endeavour to make trials quick and easy to understand so that lay assessors are able to perform sufficiently their duties without their responsibility becoming onerous.

Article 52 [Obligation to Appear]

The lay assessors and reserve lay assessors shall appear at the time and place for questioning and inspection of witnesses and other persons that is done by the court in trial preparation or on the trial date on matters in which the lay assessors participate in the decision.

Article 53 [Notification of the Trial Date]

Lay assessors and reserve lay assessors shall be notified beforehand of the time and place for questioning and inspection of witnesses and other persons that is to be done by the court during pre-trial proceedings or trial hearings at which lay assessors and reserve lay assessors must appear pursuant to the previous article.

Article 54 [Court Session Requirements]

On the trial date in which lay assessors will participate in the determination of matters heard, the trial will commence with the attendance of the judges, lay assessors, and court clerks, and with the appearance of the prosecutor in the courtroom.

2. Excluding cases covered by the preceding paragraph, the trial will commence with the attendance of the judges and court clerks, and with the appearance of the prosecutor.

Article 55 [Obligations to Present an Opening Statement]

The prosecutor, pursuant to Code of Criminal Procedure article 296,⁴³ shall clarify the facts to be proven by the evidence and indicate tangibly their relationship with the evidence based on the results of the refining of points-at-issue and [admissible] evidence during pre-trial arrangement proceedings. The defendant or defense counsel, pursuant to Code of Criminal Procedure article 316-30,⁴⁴ will do the same in the case of clarifying the facts to be proven by the evidence.

Article 56 [Questioning of Witnesses]

In the event the court questions a witness or other person, a lay assessor may, upon informing the chief judge, question that person concerning those matters that are required to be decided with the lay assessors' participation.

Article 57 [Witness Questioning Outside the Court]

In the event that witnesses or other persons are to be questioned outside the court on matters that are required to be decided with the lay assessors' participation, the lay assessors and reserve lay assessors may attend the questioning with the permission of the chief empanelled judge. The lay assessors who attend this questioning may question the witness or other persons upon informing the chief empanelled judge.

2. In the event of an investigation outside an open court on matters that are required to be decided with the lay assessors' participation, this will be treated in the same manner as the first part of the preceding paragraph even when the chief empanelled judge is to do the investigation.

⁴³ *Id.* art. 296 ("Prosecutor's Opening Statement").

⁴⁴ *Id.* book II, chapter III, parts 1-2 (Pretrial Procedure and Evidence).

Article 58 [Questioning of Victims]

When victims or their legal representatives (in the event the victim has died this includes a spouse, direct relative, or sibling) state their opinion pursuant to article 292-2(1) of the Code of Criminal Procedure,⁴⁵ lay assessors may, after that statement, question the victims or their legal representatives to clarify the meaning of their testimony.

Article 59 [Questioning of the Defendant]

In the event the defendant makes a voluntary statement pursuant to article 311 of the Code of Criminal Procedure,⁴⁶ lay assessors may, at anytime upon informing the chief judge, request a statement from the defendant concerning those matters that are required to be decided with the lay assessors' participation.

Article 60 [Attendance at Hearings by Lay Assessors]

The court may allow the attendance of lay assessors and reserve lay assessors at hearings in addition to those at which the lay assessors participate in the decision.

Article 61 [Renewal of Trial Proceedings]

Trial proceedings shall be renewed when a lay assessor is newly added to a judicial panel constituted under article 2(1) after the trial proceedings have commenced.

2. The renewed proceedings in the preceding paragraph may explain the discovered evidence and points-at-issue, and shall not place an excessive burden on the newly added lay assessor.

Article 62 [Principle of Free Conviction]

⁴⁵ Code of Criminal Procedure article 292-2(1) provides a means by which victims and their relatives may voice an opinion in the trial of defendants.

⁴⁶ *Id.* art. 311 ("Defendant's Right to Silence, Right to Object to Testimony, and Option to Make Statement").

Regarding decisions in which the lay assessors' participate, judges and lay assessors are both entrusted to decide freely based on the strength of the evidence.

Article 63 [Judicial Verdict]

Lay assessors shall appear on the day of the trial when the court hands down its decision of a sentence pursuant to article 333 of the Code of Criminal Procedure, an exonerated sentence pursuant to article 334 of the Code of Criminal Procedure, a not guilty verdict pursuant to article 336 of the Code of Criminal Procedure, or a decision to transfer the matter to the Family Court pursuant to article 55 of the Juvenile Act. However, a lay assessor's failure to appear will not invalidate the relevant judgment or the pronouncement of the verdict.

2. Lay assessors shall be given notice of the trial date beforehand in situations covered by the preceding paragraph.

Section 2: Special Provisions Regarding Application of the Code of Criminal Procedure

Article 64 [Special Provisions Applying the Code of Criminal Procedure]

For cases handled by a judicial panel of article 2(1), the Code of Criminal Procedure will apply according to the following chart. The wording provided in the middle column, found in the provisions listed in the first column, will be replaced with the wording in the last column.

[Code of Crim Procedure]	[Existing Language]	[Replacement Language]
Articles 43(4), 69, 76(2), 85, 108(3), 125(1), 163(1), 169, 278-2(2), 297(2), 316-11	Empanelled officers of a judicial panel	Judges who are empanelled officers of a judicial panel

Article 81	An appropriate reason such as sufficient suspicion of flight or destruction of criminal evidence	An appropriate reason such as sufficient suspicion of flight or destruction of criminal evidence, or an appropriate reason such as suspicion of contacting a lay assessor or reserve lay assessor by means such as interview or sending of documents
Article 89(v)	When there is an appropriate reason such as sufficient suspicion of an act that causes or threatens bodily or financial harm to a person or relative of a person recognized as having information about the victim or other events necessary to the trial	When there is an appropriate reason such as suspicion of an act that causes or threatens bodily or financial harm a person or relative of a person recognized as having information about the victim or other events necessary to the trial, or when there is an appropriate reason such as sufficient suspicion of contacting a lay assessor or reserve lay assessor by means such as interview or sending of documents

Article 96(1)(iv)	When there is an act that tries to cause or threatens bodily or financial harm to a person or relative of a person recognized as having information about the victim or other events necessary to the trial	When there is an act that tries to cause or threatens bodily or financial harm to a person or relative of a person recognized as having information about the victim or other events necessary to the trial, or when a lay assessor or reserve lay assessor is contacted by means such as interview or sending of documents
Articles 157-2, 157-4(1), 435(vii, proviso)	Judges	Judges, lay assessors
Article 256(6)	Judges	Judges and lay assessors
Article 304(1)	Chief judge and sitting judges	Chief judge, sitting judges, and lay assessors
Article 316-15(1)(ii)	Court and judges	Court, judges, and judges and lay assessors
Article 321(2)	Court or judges	Court, judges, or judges and lay assessors
Article 377(i)	The court giving the judgment was not formed pursuant to law	The court giving the judgment was not formed pursuant to law. However, this

		does not extend to where only the empanelment of the lay assessors was illegal, where the judgment did not include a decision in which the lay assessors participated pursuant to article 6(1) of the Act Concerning Participation of Lay Assessors in Criminal Trials (Law No 63 of 2004), or where the illegality was that the lay assessor was a person covered by any item of articles 15(1)-(2)
Article 435(vii, main)	Judge participating in the original decision	Judge or lay assessor participating in the original decision

Article 65 [Special Provisions Applying the Act Concerning Regulating Criminal Profits and Punishing Organizational Crimes]

In cases handled by judicial panels of article 2(1), article 22(4) of the Act Concerning Regulating Criminal Profits and Punishing Organizational Crimes ⁴⁷ will apply, and “empanelled officers of a judicial panel” within this paragraph will be “judges who are empanelled officers of a judicial panel”.

⁴⁷ Soshikitekina hanzai no shobatsu oyobi hanzai shūeki no kisei tō ni kan suru hōritsu, Law No. 136 of 1999.

CHAPTER 4: DELIBERATION

Article 66 [Deliberations]

Deliberations on decisions that involve lay assessors' participation in judicial panels under article 2(1) will be conducted with empanelled judges and lay assessors.

2. The lay assessors shall attend the deliberations of the preceding paragraph and express an opinion.
3. During the deliberations under paragraph 1, the chief judge shall inform the lay assessors of any rulings on the interpretation of the laws and ordinances, or concerning trial procedure made by the empanelled judges panel.
4. The lay assessors shall perform their duties consistent with determinations made pursuant to the preceding paragraph.
5. In deliberations under paragraph 1, the chief judge shall consider matters such as conscientiously explaining the necessary laws or ordinances to the lay assessors, making arrangements so that deliberations are easily understandable for the lay assessors, providing sufficient opportunity for the lay assessors to voice their opinions, and so forth, so that lay assessors are sufficiently able to execute their duties.

Article 67 [Verdict]

A decision involving lay assessors' participation in a deliberation under paragraph 1 of the preceding article, regardless of article 77 of the Courts Act,⁴⁸ will be by majority opinion of the members of the judicial panel, which shall include both an empanelled judge and a lay assessor holding that opinion.⁴⁹

⁴⁸ Courts Act art. 77 ("The trial . . . will be by majority opinion").

⁴⁹ It is not obviously apparent from the language of this section, but it is asserted that a five or six lay person majority to acquit without a judge consenting would result in a not guilty verdict, but a five or six lay person majority to convict without a judge consenting would not result in a conviction.

2. Where there is a division of opinion regarding the quantum of the sentence and there is no majority opinion of the members of the judicial panel that includes both an empanelled judge and a lay assessor of that opinion, then by a determination of the judicial panel, the number of opinions for the option most unfavorable to the defendant will be added to the number of opinions for the next favorable option, until a majority opinion of the members of the judicial panel which includes both an empanelled judge and a lay assessor holding that opinion is achieved.

Article 68 [Deliberations by the Empanelled Judges]

Deliberations on decisions by a judicial panel of empanelled judges will be conducted with only the empanelled judges.

2. The deliberations of the preceding paragraph will follow articles 75(1)-(2, first portion), 76, and 77 of the Courts Act.⁵⁰
3. The empanelled judges, by judicial panel, may allow lay assessors to hear the deliberations of paragraph 1 and they may ask lay assessors' opinions regarding determinations on any of the items of article 6(2).

Article 69 [Attendance by Reserve Lay Assessors]

Reserve lay assessors may listen to matters that lay assessors are allowed to hear at deliberations conducted only with empanelled judges and at deliberations conducted with empanelled judges and lay assessors.

2. The empanelled judges, by judicial panel, may listen to the opinions of the reserve lay assessors.

Article 70 [Deliberation Secrecy]

Information from the deliberations conducted only with empanelled judges or the deliberations conducted with empanelled judges and lay assessors such as the particulars

⁵⁰ Courts Act art. 75 ("Deliberation Secrecy"), 76 ("Obligation to State Opinion"), 77 ("Verdict").

that lay assessors are allowed to hear, the opinions and the number of both judges or lay assessors who held these opinions (hereafter “deliberation secrets”) shall not be revealed.

2. For deliberations conducted only with empanelled judges, excluding those in the preceding paragraph, the latter portion of article 75(2) of the Courts Act⁵¹ will be followed.

CHAPTER 5: MEASURES FOR PROTECTION OF LAY ASSESSORS

Article 71 [Prohibition of Adverse Treatment]

Employees who are or were lay assessors, reserve lay assessors, or lay assessor candidates shall not be treated adversely in their employment or otherwise due to taking days off from work to perform their lay assessor duties.

Article 72 [Treatment of Information that is Sufficient to Identify Lay Assessors]

Information sufficient to identify to all a lay assessor, reserve lay assessor, lay assessor candidate or other proposed person's name, address or other personal particulars shall not be made public. Excluding cases where persons themselves agree to make it public, this also applies to information sufficient to identify the names, addresses, or other personal particulars of others.

Article 73 [Regulating Contact with Lay Assessors]

No one shall contact the lay assessors or reserve lay assessors regarding a defendant's case.

2. No one shall contact a person who was employed as a lay assessor or reserve lay assessor for the purpose of learning secrets gained in that employment as a lay assessor or reserve lay assessor.

⁵¹ *Id.*

CHAPTER 6: MISCELLANEOUS PROVISIONS

Article 74 [Official Announcements on Status of Performance]

The Supreme Court will publish annually data concerning the status of handling Subject Cases, the status of appointment of lay assessors and reserve lay assessors, and the status of other matters in the execution of this law.

Article 75 [Application of this Legislation to Designated City Wards]

In the designated cities of article 252-19(1) of the Local Self-Governance Act,⁵² the regulations of designated inner-cities in articles 20(1), 21(1)-(2), 22, 23(4) (including application of this regulation under article 24(2)), and 24(1) will apply to wards.

Article 76 [Business Division]

Business that is processed by municipalities according to the provisions of articles 21(1)-(2), 22, 23(4) (including application of this regulation by article 24(2)) will be by the Designated Trust Office of the Local Self-Government Act article 2(9)(i).⁵³

CHAPTER 7: PENAL PROVISIONS

Article 77 [Crime of Soliciting Lay Assessors]

Persons who solicit lay assessors or reserve lay assessors concerning their employment as such are subject to a fine of up to ¥200,000 and/or imprisonment for up to 2 years, except in cases where conducted in a procedure pursuant to law.

2. Persons who, for the purpose of influencing a decision in a defendant's case, note the opinion of or offer information

⁵² Chihō jichi hō, Law No 67 of 1947, arts. 252-19(1) ("Authority of Designated Cities").

⁵³ *Id.* art. 2(9)(i) ("Legal Personality of Local Public Bodies, Business, General Principles of Local Governmental Administration").

regarding lay assessors' or reserve lay assessors' decisions concerning the factual matters or quantum of sentence will be treated the same as in the preceding paragraph, except for cases where conducted in a procedure pursuant to law.

Article 78 (Crimes of Threatening Lay Assessors)

Irrespective of the means by which it is done (whether by interview, letter, telephone, or otherwise), persons who threaten lay assessors, reserve lay assessors, persons who did these jobs, or any of their relatives in a defendant's case, are subject to a fine of up to ¥200,000 and/or imprisonment for up to 2 years.

2. Irrespective of the means by which it was done (whether by interview, letter, telephone, or otherwise), persons who threaten lay assessor candidates or any of their relatives in a defendant's case, will be treated the same as in the preceding paragraph.

Article 79 [Crimes of Lay Assessors Leaking Secrets]

When persons employed as lay assessors or reserve lay assessors leak deliberation secrets or other secrets learned in their employment, they are subject to a fine of up to ¥500,000 and/or imprisonment for up to 6 months.

2. Persons who were employed as lay assessors or reserve lay assessors will be treated the same as in the preceding paragraph when covered by any of the following items:
 - i. Where a secret learned in their employment (excluding deliberation secrets) is leaked;
 - ii. Where a deliberation secret of either the lay assessors' or empanelled judges' opinions or the number of those who held these opinions, which the lay assessors were allowed to hear at deliberations conducted with empanelled judges and lay assessors, or deliberations conducted with only empanelled judges, is leaked; or

- iii. Where a deliberation secret is leaked for the purpose of obtaining a financial profit or other profit (excluding those regulated by the preceding items).
3. Excluding item iii of the preceding paragraph, persons who were employed as lay assessors or reserve lay assessors are subject to a fine of up to ¥500,000 when they leak a deliberation secret (excluding things governed by item ii of the preceding paragraph).
4. Lay assessors or reserve lay assessors will be treated the same as in paragraph 1 when they reveal what they thought the weight of sentence should have been or the facts they thought should have been found in the defendant's case with persons other than the empanelled judges, other lay assessors, or other reserve lay assessors; or when they reveal what they thought the weight of sentence should have been or the facts they thought should have been found by the court in the defendant's case to persons other than the empanelled judges, other lay assessors, or other reserve lay assessors.
5. Persons who were employed as lay assessors or reserve lay assessors will be treated the same as in paragraph 1 when they reveal that they agreed or disagreed with the weight of sentence or the facts found by the court in the defendant's case to persons other than the empanelled judges, other lay assessors, or other reserve lay assessors.

Article 80 [Crimes of Leaking Lay Assessors' Identity]

Where prosecutors, defense counsel, persons who were employed as such, defendants, or persons who were defendants reveal the name of a lay assessor candidate in the defendant's case, reveal the answers of a lay assessor candidate on a questionnaire regulated by article 30, or the answers given by a lay assessor candidate in the Lay Assessor Selection Proceedings, without an appropriate reason, they are subject to a fine of up to ¥500,000 and/or imprisonment for up to 1 year.

Article 81 [Crimes of False Entry According to Lay Assessor Candidates]

Where lay assessor candidates submit to the court false statements on a questionnaire regulated by article 30 or false answers to questions in the Lay Assessor Selection Proceeding, they are subject to a fine of up to ¥500,000.

Article 82 [Penalties for Fraudulent Statements by Lay Assessor Candidates]

The court will determine a penalty of up to ¥300,000 to lay assessor candidates when they submit false statements, refuse to make a statement without an appropriate reason during questioning at the Lay Assessor Selection Proceeding, or submit false notations on a questionnaire in violation of article 30(3) or article 34(3) (including cases where these rules apply under articles 47(2) or 38(2) (including cases where this applies under article 46(2))).

Article 83 [Penalties for Non-Appearance by Lay Assessor Candidates]

The court will determine a penalty of up to ¥100,000 in the event one of the following items applies:

- i. Where a summoned lay assessor candidate fails to appear without an appropriate reason violating article 29(1) (including cases where this applies under articles 47(2) or 38(2) (including cases where this applies by article 46(2)));
- ii. Where a lay assessor or reserve lay assessor refuses to give the oath under article 39(2) without an appropriate reason;
- iii. Where a lay assessor or reserve lay assessor does not appear at the time and place for questioning and inspection of witnesses and other persons conducted by the court during trial preparation or during the trial without an appropriate reason violating article 52; or
- iv. Where a lay assessor does not appear on the trial date without an appropriate reason violating article 63(1).

Article 84 [Immediate Appeals]

Determinations under the preceding two articles may be appealed immediately.

SUPPLEMENTARY PROVISIONS⁵⁴

Article 1 [Enforcement Date]

This law will be enforced from a date prescribed by Cabinet Order within a period not to exceed five years calculated from the date of promulgation.⁵⁵ However, each of the following items is effective from the date provided in that item.

- i. The following article and Supplementary Provisions article 3, from the date of promulgation;
- ii. Articles 20-23, 25, 71, 72, 75, 76 and Supplementary Provisions article 5, from a date prescribed by Cabinet Order within a period not to exceed four years and six months from the date of promulgation;⁵⁶ and
- iii. Article 17(ix) (limited to the portion concerning assistants of the Prosecutorial Review Commission), from a date as prescribed by an Act to Revise a Portion of the Code of Civil Procedure, Supplementary Provisions article 1(ii)⁵⁷ or the enforcement date of this law whichever is later.

Article 2 [Pre-Enforcement Measures]

With the cooperation of the people in the judicial system based on their personal convictions, the system of lay assessor participation in criminal trials will enable the people to adequately fulfil their role as the foundation of the country's judicial system for the first time. Thus, to encourage citizens

⁵⁴ Supplementary Provisions are attached to legislation to clarify the effective date and implementation measures of a new law.

⁵⁵ The date of promulgation was May 28, 2004; therefore, by May 29, 2009.

⁵⁶ That is, by November 29, 2008

⁵⁷ Keiji soshō hōtō no ichibu o kaiseisuru hōritsu, Law No. 62 of 2004.

to participate in criminal trials substantively based on personal conviction and to deepen citizens' understanding and interest in the system for lay assessors' participation in criminal trials, the Government and Supreme Court shall by the enforcement date implement measures to explain, so that they are clearly and easily understood, things such as the lay assessors' duties in deliberations and the hearing of cases, the procedure to select lay assessors, and the significance of citizen participation as lay assessors in trials.

2. The conditions allowing lay assessor participation in criminal trials to be put into effect smoothly and appropriately shall be considered at the time of making the Cabinet Order of the preceding article and considering the results of the measures of the preceding paragraph.

Article 3 [Environmental Adjustments]

The nation shall endeavour to adjust the environment as necessary to allow the smooth operation of the system to involve lay assessors' participation in criminal trials according to a belief in the indispensability of having citizens able to participate easily in trials as lay assessors.

Article 4 [Transitional Measures]

Articles 2(1) and 4 will not apply to cases that are pending when this law comes into effect. The same shall apply to a case where the decision was confirmed before the law went into effect, but where a decision has been made to reopen a case after the law has gone into effect.

2. Despite the previous paragraph, the court may decide to handle cases with a judicial panel of article 2(1) when it finds it appropriate to consolidate the hearing of Subject Cases and cases pending when the law went into effect.
3. In the event of a decision under the preceding paragraph, the court shall consolidate the hearing of Subject Cases and the cases of the relevant decision pursuant to the Code of Criminal Procedure.

Article 5 [Revision of a Portion of the Local Self-Governance Act]

A portion of the Local Self-Governance Act will be revised and the following added to Table 1 annexed to the act.⁵⁸

Act Concerning Participation of Lay Assessors in Criminal Trials, Law No. 63 of 2004	Business handled by the municipalities pursuant to articles 21(1)-(2), 22, 23(4) (including cases where applicable by article 24(2)).
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Article 6 [Revision of a Portion of Confirmed Criminal Litigation Records Act]

A portion of the Confirmed Criminal Litigation Records Act⁵⁹ will be revised as follows. The following item will be added to article 4(2).

- iv. Where it is feared that viewing of custodial records will identify an individual lay assessor, reserve lay assessor, or lay assessor candidate.

Article 7 [Revision of a Portion of the Act Concerning Regulating Criminal Profits and Punishing Organizational Crimes]

A portion of the Act Concerning Regulating Criminal Profits and Punishing Organizational Crimes⁶⁰ will be revised as follows. The following two items will be added to article 7(1).

- iv. Persons who in regards to a defendant's case are charged with a crime threaten lay assessors, reserve lay assessors, persons who were employed as such, or any of their

⁵⁸ Chihou jichi hō, Law No. 67 of 1947, Annexed Table 1.

⁵⁹ Keiji kakutei soshō kiroku hō, Law No. 64 of 1987, art. 4(2) ("Inspection of Custody Records").

⁶⁰ Soshikitekina hanzai no shobatsu oyobi hanzai shūeki no kisei tō ni kan suru hōritsu, Law No. 136 of 1999, art. 7(1) ("Harboring an Organization Crime Offender").

relatives, irrespective of the means by which this was done (whether by interview, letter, telephone, or otherwise);

- v. Person who in regards to a defendant's case are charged with a crime threaten lay assessor candidates or their relatives, irrespective of the means by which this was done (whether by interview, letter, telephone, or otherwise).

Article 8 [Investigation]

Where additional investigation into the status of the law's implementation is recognized as necessary three years after the law comes into effect, based on these results the Government will create the necessary measures so that the system of lay assessor participation in criminal trials can facilitate the people's participation in justice to realize adequately its role as the foundation of our country's judicial system.

REASONS⁶¹

In light of the fact that having lay assessors selected from among the people participating along with judges in the criminal litigation process will contribute to raising the public's trust in and increasing their understanding of the judicial system, it is necessary to prescribe special provisions in the Courts Act, Code of Criminal Procedure, and other necessary areas to achieve lay assessors' participation in criminal trials. Thus, this draft act is introduced for these reasons.

⁶¹ Legislative Reasons (*rippō riyū*) are not part of the law, but provided as rationale for the introduction of the legislation. As such, they are non-binding indications of legislative intent.