

**BY ORDER OF THE COMMANDER
HEADQUARTERS, UNITED STATES FORCES, JAPAN**

USFJ INSTRUCTION 51-701

1 JUNE 2001



Law

JAPANESE LAWS AND YOU

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

OPR: USFJ/J06 (Mr. Thomas J. Perham)
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SUMMARY OF REVISIONS

This instruction is substantially revised to provide additional details on the Japanese criminal justice system. It was redrafted to comply with new format guidance.

1. PURPOSE: This instruction provides a general orientation to the Japanese criminal justice system so that active duty members of the United States Forces, Japan (USFJ) headquarters staff and the USFJ components, civilian employees or their respective dependents who become involved with the Japanese criminal justice system will better know what to expect.

2. INTRODUCTION:

2.1. While in Japan, all military members, civilian employees, and their respective dependents are subject to both United States (US) laws and military regulations and Japanese laws and regulations. This instruction is presented for informational purposes only and is not intended to be directive in nature.

2.2. The US – Japan Status of Forces Agreement (SOFA) provides rights, privileges, and special protections to US Forces, Japan (USFJ) members. USFJ military personnel, civilian employees and their respective dependents are obligated to respect the laws of Japan and to abstain from any activity inconsistent with the spirit of the SOFA. The SOFA also requires all USFJ personnel to always have their identification cards with them, and to present their identification cards to appropriate Japanese authorities when requested to do so.

2.3. The benefits conferred by the SOFA include exemption from certain local passport, visa, and immigration regulations; special recognition of US forces driver's licenses (USFJ Form 4EJ); exemption of individual members from certain local taxes and customs duties; and special provisions relating to the exercise of criminal jurisdiction by the Government of Japan (GOJ) over USFJ members. Because the provisions regarding Japanese criminal jurisdiction can have an

extremely significant impact upon USFJ members, each individual should know how these SOFA provisions work and their possible consequences. USFJ members should also be familiar with how local Japanese police and court procedures work as the Japanese authorities investigate a possible violation of Japanese law and determine whether to initiate a criminal proceeding.

2.4. Over the years, some USFJ members have violated, intentionally or unintentionally, Japanese law and thus become involved with the Japanese criminal justice system. This instruction is designed to provide a general orientation to what a person may expect if they become involved with the Japanese criminal justice authorities. It should be stressed that this instruction is not a substitute for competent and timely legal advice. Should any person become involved in an incident that could result in the Japanese criminal justice authorities taking action against you, they are strongly urged to promptly seek legal advice from one of the following legal offices in Japan:

- 2.4.1. Office of the Staff Judge Advocate
Commander, Fleet Activities, Yokosuka
Bldg C-31, Yokosuka Naval Base
243-7335; (0468) 21-1911-37335
- 2.4.2. US Naval Legal Service Office, Pacific
Bldg 1555, Yokosuka Naval Base
243-5142; (0468) 21-1911-35142
- 2.4.3. Office of the Staff Judge Advocate
CDR, Fleet Activities, Sasebo
Bldg 80, Sasebo Naval Base
252-3385; (0956) 24-6111-23385
- 2.4.4. US Naval Legal Service Branch Office, Sasebo
Bldg 502, Sasebo Naval Base
252-3347; (0956) 24-6111-23347
- 2.4.5. Office of the Staff Judge Advocate
CDR, Fleet Activities, Okinawa
Bldg 3554, Kadena Air Base
634-8255; (0989) 38-111-48225
- 2.4.6. US Naval Air Facility, Atsugi
Bldg 66, NAF Atsugi
264-3692; (0468) 21-1950-43692
- 2.4.7. Office of the Staff Judge Advocate
US Marine Corps Base, Camp S D Butler
645-7461; (098) 892-5111-57461

- 2.4.8. Office of the Station Judge Advocate
US Marine Corps Air Station, Iwakuni
Bldg 608, MCAS Iwakuni
253-5591; (0827) 21-4171-35991
- 2.4.9. US Army Japan, Legal Office
Bldg 101, Camp Zama
263-3372; (0462) 51-1520-33372
- 2.4.10. 10th Area Support Group, Legal Office
Bldg 218, Torii Station, Okinawa
644-4332; (098) 892-5111-44332
- 2.4.11. 374th Airlift Wing, Legal Office
Bldg 315, Yokota Air Base
225-8118; (042) 552-2511-58118
- 2.4.12. 18th Wing, Legal Office
Bldg 15, Kadena Air Base
634-3300; (098) 938-1111-43300
- 2.4.13. 35th Fighter Wing, Legal Office
Bldg 656, Misawa Air Base
226-4022; (0176) 53-5181-64022

3. DISCUSSION

3.1. Interrogation by Japanese Authorities: The Japanese police investigate alleged violations of Japanese law and send the results of their investigation to the prosecutor's office. A district prosecutor then decides the disposition of the case. The police, the prosecutor, or both may ask you to appear for an interview. You should cooperate with the Japanese authorities and appear for the requested interviews. You are required to attend when requested and the following is provided for guidance:

3.1.1. Statements: You have an absolute right under Article 38 of the Constitution of Japan to remain silent. This is similar to rights guaranteed under Article 31, Uniform Code of Military Justice and the Fifth Amendment, US Constitution; however, there are some differences that you should discuss with the installation legal office or other representative designated by your installation commander. You and you alone must decide whether you will answer all, some, or no questions. While Japanese authorities are usually favorably influenced by a cooperative attitude, anything you say may be used either for or against you.

3.1.2. Signing Statements: If you decide to sign a written statement, it is strongly recommended that you sign only those statements written in English with which you wholly agree. If there is an error, bring it to the attention of the investigating authorities and change it prior to signing the statement. For additional guidance on signing written statements for the Japanese authorities, see USFJ Policy Letter 110-7, Signing of Statements Written in Japanese, 2 Dec 85.

3.1.3. Interpreter and Escort: Your unit commander should, in more serious cases, arrange for you to have an escort and interpreter. The escort's responsibility is to insure that you are not improperly detained, and he should call the nearest legal office if it appears that you may not be released.

3.1.4. Japanese Civilian Counsel: You may, if you desire, hire a Japanese attorney at your own expense to advise you before being questioned by the Japanese authorities. See USFJ Instruction 51-101, Counsel Fees and Approved Attorneys List, 1 Jun 01 for list. In Japan, an attorney is not allowed to be present while the police or the prosecutors question the suspect. The legal office has a list of qualified Japanese attorneys, most of whom speak English. Military members, civilian employees, and their accompanying dependents (excluding the indirect hire and contractor employees and their dependents, who are charged with serious offenses may be provided with a qualified Japanese attorney at US government expense. You may consult with military attorneys at the legal office for advice on your rights under Japanese law and the SOFA and how to conduct yourself while being questioned by the Japanese authorities. Military lawyers are not, however, authorized to represent you before Japanese authorities and are not permitted to be present at police investigations or interviews conducted by the district prosecutor.

3.1.5. Military Legal Advisor: Service component regulations may permit a judge advocate to be appointed as a military legal advisor (MLA) by the appropriate staff judge advocate (SJA) if a military member becomes involved with GOJ authorities. If service component regulations permit, the MLA may establish a confidential relationship with the individual involved and may also act as liaison between the individual and his civilian attorney. The MLA may advise the USFJ member regarding her/his rights under the SOFA and possible courses of action in handling involvement with the Japanese authorities. The MLA may also provide advice regarding how the member's involvement with the Japanese criminal justice authorities may impact the member's military career. The MLA should be the principal military legal point of contact for a military member involved with the Japanese criminal justice authorities. The interservice regulation, AR 27-50, SECNAVINST 5020.4G, AFJ 51-706, Status of Forces Policies, Procedures, and Information, 15 Dec 1989, at Paragraph 1-9, provides additional detail regarding MLAs.

3.2. Jurisdiction: Except in cases of offenses under the military laws of the US, against US property or security, official duty cases or crimes against the person or property of another US military member, a member of the civilian component or their dependents, the Japanese authorities have primary jurisdiction, or first choice, to try you for the crime. Trials by Japanese authorities will take place in a Japanese court under the applicable Japanese laws.

3.3. Detention by Japanese Authorities:

3.3.1. Investigative Detention: Japanese police and prosecutors may detain a person upon arrest for 72 hours, and within that time frame a court may order continued detention for ten days, which can be extended an additional ten days.

3.3.2. Indictment: Upon indictment, if initially detained, an accused can continue to be detained until the final court decision. If the accused was not initially detained, after indictment, Japanese authorities can request that the accused be turned over for detention and they could be detained until the final court decision.

3.3.3. Bail: An accused may not be released on bail until after indictment. After indictment, the court may set bail upon application of the accused's attorney. While bail determinations are made based on the facts and circumstances of each case, bail seems to be granted more often in the US than it is in Japan. Under certain circumstances, as specified in AR 27-50/SECNAVINST 5820.4G/AFJI 51-706, the US will post bail.

3.4. International Hold: When your unit receives notification of an alleged violation of Japanese law, you will be placed on international hold and prohibited from leaving Japan on permanent change of station, temporary duty, or on leave. This international hold remains in effect until the GOJ has completed all actions. [Paragraph 3.9, AR 27-50/SECNAVINST 5820.4G/AFJI 51-706]

3.5. Incidents Arising From Official Duties: If you are a military member and were performing your official duties at the time of an incident or offense, or were on your way to or from work by the most direct route, you should immediately contact your commander to ascertain the appropriateness of an "Official Duty Certificate." If appropriate, the certificate will be prepared and signed by your commander. Unless the Japanese authorities decide to contest that the incident actually occurred while you were performing your official duties, Japanese authorities turn cases arising from performance of official duty back to US authorities for action.

3.6. Disposition of Cases: In all cases where GOJ has primary jurisdiction and where "official duty" is not an issue, the Japanese district prosecutor decides whether Japan will exercise jurisdiction, and, if so, what type of judicial proceeding will be followed. If you and your commander consider that there are special reasons (official or personal) why Japan should not exercise jurisdiction, your commander should contact the legal office immediately.

3.6.1. Family Court: If an individual is under 20 years of age, the family court will review the case. This family court will either dispose of the case as a juvenile matter or refer it back to the prosecutor along with a recommendation that the prosecutor handle the case as if it involved an adult.

3.6.2. Summary Procedures: An individual may be offered an opportunity to submit to summary proceedings. The decision by the court will be based upon agreed facts, with no formal hearings; the maximum punishment is a fine not to exceed ¥500,000. You have a right to demand a formal

trial on any summary court decision within 14 days. The prosecutor will notify you as to the amount of the fine. After paying the fine, you will be given a receipt and a copy of the summary order. You must take these documents to the legal office on the next working day.

3.6.3. District Court Procedures: Serious cases are tried before the district court and are initiated by formal indictment. This indictment will, in most cases, be sent to the legal office for delivery to you, at which time you will be informed of the contents. The district court may impose any punishment permitted by law. An official US Trial Observer and US-provided interpreter will be present at each session of the trial to insure that it is conducted fairly and in compliance with the provisions of the SOFA.

3.7. Reporting of Accidents: You should immediately report any vehicular accident you are involved in to your insurance company. You should also report accidents resulting in serious property damage or personal injury to Japanese nationals and any accidents in which you were injured through the negligence of a Japanese national to the Claims Division of the nearest legal office. If you are involved in an accident in Japan, it is not advisable to argue at the scene of the accident over who was at fault. Drivers in Japan who are involved in accidents customarily show concern for the welfare of others who were involved in the accident, without regard to who is at fault.

3.8. Professional Negligence: Under Japanese law, every licensed motor vehicle operator is a professional driver. Therefore, drivers must exercise an extremely high degree of care. Drivers must, in effect prove that there was no way they could have avoided the accident or injury. If you are found guilty of professional negligence, the maximum punishment is five years in prison or a fine of not more than ¥500,000.

3.9. Private Settlements and Releases: Japanese law enforcement authorities may recommend in certain cases that a private settlement be made. A private settlement in a case involving a minor offense may result in Japan returning the matter to US authorities for disposition; however, the district prosecutor or Japanese police will make the decision in each case. Even if the Japanese authorities retain jurisdiction of the case, making a compensatory payment to the victim is viewed favorably by the Japanese authorities and is viewed as a mitigating factor when determining an appropriate punishment. General release forms for accomplishing such settlements may be obtained through the nearest legal office or from the Provost Marshal's Office or Security Police.

3.10. Solatium Payments and Condolence Procedures: Where an incident results in serious injury or death to a Japanese national, you should make a solatium payment of up to ¥50,000 for serious injuries or ¥100,000 for fatalities. Under certain circumstances, your service commander may make such payments if you are financially unable to do so. Japanese custom dictates that a

condolence visit be made to the injured party or to the surviving family and that appropriate fruit, candy or floral gifts be presented. Care should be exercised in expressing sympathy so that your

remarks cannot be construed as an admission of liability or responsibility for the accident. If the surviving family gives its permission, you should attend the funeral, accompanied by your unit commander or his/her representative. These customs are not only good manners, but may be considered by Japanese authorities in determining the disposition of any possible negligence charges against you. Additional guidance concerning these procedures may be obtained from the legal office. For additional information on this matter, see USFJ Policy Letter 30-2, Condolence Procedures, 20 Mar 95.

3.11. Weapons: Japanese laws on weapons are both very detailed and generally more restrictive than US weapons laws. Japanese laws on the use and possession of guns are much more restrictive than gun control laws encountered in the US. In the past, the most common offense involving USFJ personnel has been carrying a pocketknife with a blade six centimeters (approximately three inches) or longer. The Japanese law on weapons is described in detail in USFJ Instruction 31-7, Registration, Carrying, Retention, Possession, & Use of Weapons and Dangerous Instruments, 15 Jan 98. If you have a question regarding use and possession of a weapon in Japan, contact your nearest legal office.

3.12. Drug Offenses: The Japanese authorities vigorously enforce their drug laws. Possession of even a minor amount of marijuana is likely to result in prosecution. The Japanese authorities have the primary right to criminally try USFJ personnel for drug offenses. In fact, they have prosecuted a majority of these cases and the offender has been sentenced to a term of imprisonment in a Japanese jail.

4. CONCLUSION: Japanese law is extremely complicated and advice on dealing with it should be sought at the earliest possible time.

// Signed //

GARY H. HUGHEY

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Deputy Commander