



Expectations for Probation in Lay Judge Trials

The 3rd World Congress on Probation, Tokyo, Japan

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Two Important Changes in Criminal Trials in Japan

A Copernican change happened late 1990's

Victims Inputs (combining with the general public's fear for crime)

→ More Victims Support in the Criminal Justice System

: since late 1990'

→ More Support for Victims when they testify

→ Victim Impact Statement (Victims started to play more active role at trials

: since November 2001

→ **Victims Participation System**

: since December 2008

Lay People Participations in the Criminal Justice System

→ Prosecution Review Committee (検察審査会)

→ Lay Judge System

: since May 2009

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The Lay Judge System (since May 2009)

- 6 lay people and 3 professional judges hear a case together.
- They decide not only fact-finding but also sentencing.

Crime Tried by Lay Judge Trial

- Only 2.5-3% of all criminal trials are tried by the lay judge trials.
- The Lay Judge System deal with crimes which carry death penalty sentence or indefinite imprisonment.
- And if a perpetrator intentionally commit a crime which result in death of a victim, that is also tried by lay judges.

May21, 2009 – March 31, 2017

Total	11,768
Robbery Causing Injury	2,736
Homicide	2,542
Arson of Inhabited Building	1,160
Injury Causing Death	1,020
Methamphetamines (Import for Profit)	908
Rape Causing Death or Injury	892
Indecent Assault Causing Death or Injury	861
Robbery in the scene of Rape	455
Robbery causing Death	294
Uttering Counterfeited Currencies	202
Dangerous Driving causing Death	185
Counterfeiting of Currencies	108
Gang Rape causing Injury or Death	73
Violation of Firearms and Swords Control Act	70
Abandonment by a person who is responsible for Protection causing Death	60
Illegal Arrest /Imprisonment resulting in Death	54
Violation of Act on Punishment of Organized Crimes and Control of Crime Proceeds	47
Violation of Special Act on Narcotics	29
Violation of Explosives Control Act	16
Abduction for Ransoms	9
Violation of the Concerning Special Provisions for the Narcotics and Psychotropic Control Act	9
Others	38

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- Increased use of probation (保護觀察), when sentence are suspended.

Suspended Sentence (執行猶予)

- **Article 25** (1) When any one of the following persons has been sentenced to imprisonment with or without work for not more **than 3 years or a fine of not more than 500,000 yen,** execution of the sentence may, in light of circumstances, be suspended for a period of not less than **1 year but not more than 5 years** from the day on which the sentence becomes final and binding:
 - (i) A person not previously sentenced to imprisonment without work or a greater punishment;
 - (ii) A person who, although previously sentenced to imprisonment without work or a greater punishment, has not subsequently been sentenced to imprisonment without work or a greater punishment within five years from the day on which execution of the former punishment was completed or remitted.
- (2) When a person, who has been sentenced to imprisonment without work or a greater punishment and has been granted suspension of execution of the sentence, is sentenced subsequently to imprisonment with or without work for not more than 1 year and there are circumstances especially favorable to the person, the person may be granted suspension of execution of the sentence as with the persons prescribed for in the preceding paragraph; provided, however, that the same shall not apply to a person who has been placed under probation in accordance with the provisions of paragraph (1) of Article 25-2 and commits a crime again within the period of such probation.

Probation (保護觀察)

- Article 25 — 2 (Probation)
- Article 25-2 (1) In a case prescribed for in paragraph (1) of Article 25, the subject person may be placed under probation through the period of suspended execution of the sentence; and in a case prescribed for in paragraph (2) of Article 25, the subject person shall be placed under probation through the period of suspended execution of the sentence.
- (2) Probation may be provisionally cancelled by a disposition of a government agency.
- (3) When probation is provisionally cancelled, the person shall, for the purpose of the provisions of paragraph (2) of Article 25 and of item (ii) of Article 26-2, be deemed not to be under probation until the provisional cancellation is revoked.
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⇒ The courts **MAY** place probations to the defendants who were not previously sentenced to the imprisonment or who are not sentenced to the imprisonment in past 5 years.

⇒ The courts **HAVE TO** place probation to the defendants who has been sentenced to imprisonment without work or a greater punishment and has been granted suspension of execution of the sentence,

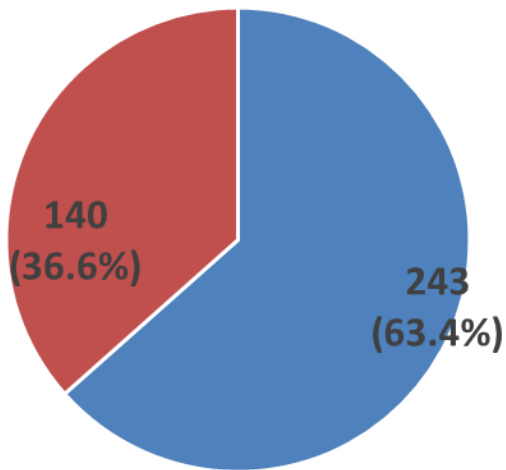
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Suspended Sentence w/ or w/o Probation

Bench Trial

April 1, 2008 – March 31, 2010

383 Defendants



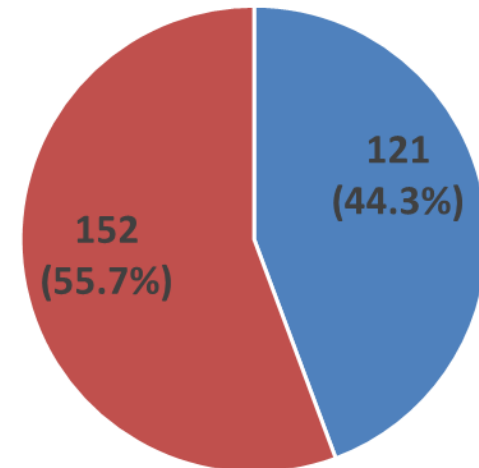
■ Suspended Sentence w/o Probation

■ Suspended Sentence w/ Probation

Lay Judge Trials

May 21, 2009- December 31, 2010

273 Defendants



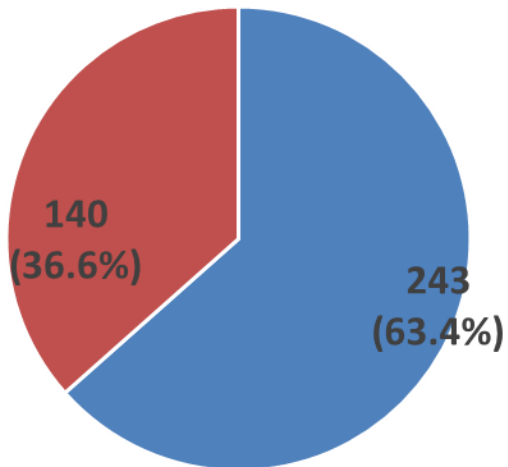
Source: 裁判員の参加する公判手続の実施状況について
第7回裁判員制度の運用等に関する有識者懇談会配布資料

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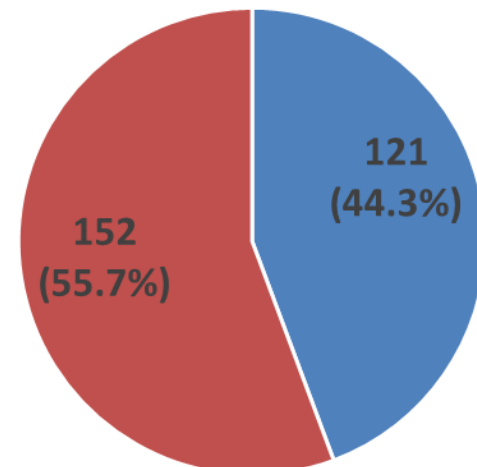
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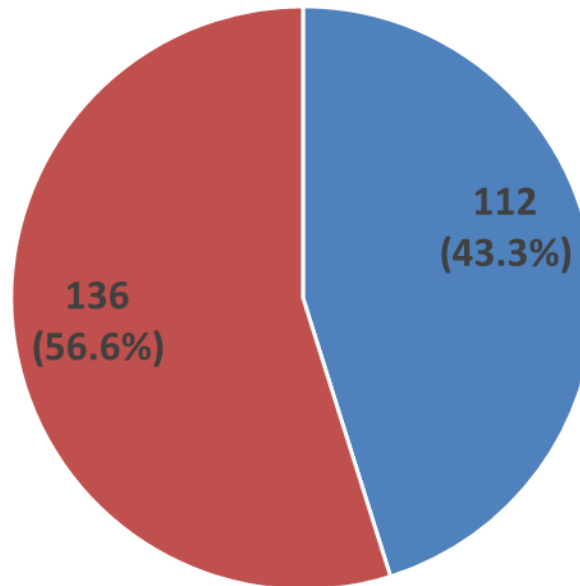
273 Defendants



36.6% ⇒ 55.7%

This Trend Continues?

Suspended Sentence in Lay Judge Trials in 2011
240 Defendants

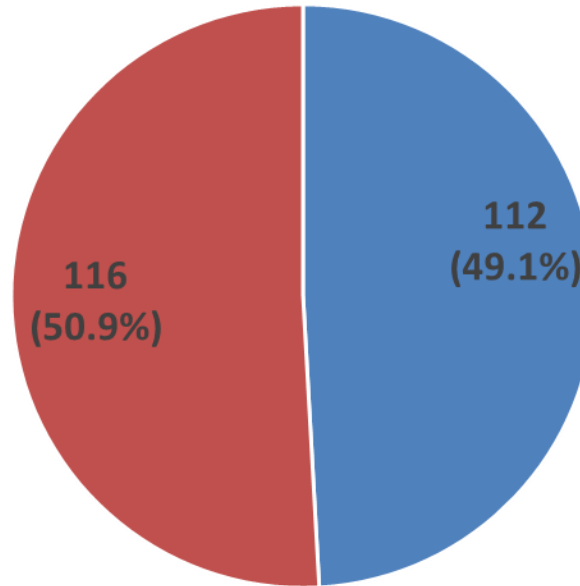


■ Suspended Sentence w/o Probation

■ Suspended Sentence w/ Probation

This Trend Continues?

Suspended Sentence in Lay Judge Trials in 2012
228 Defendants

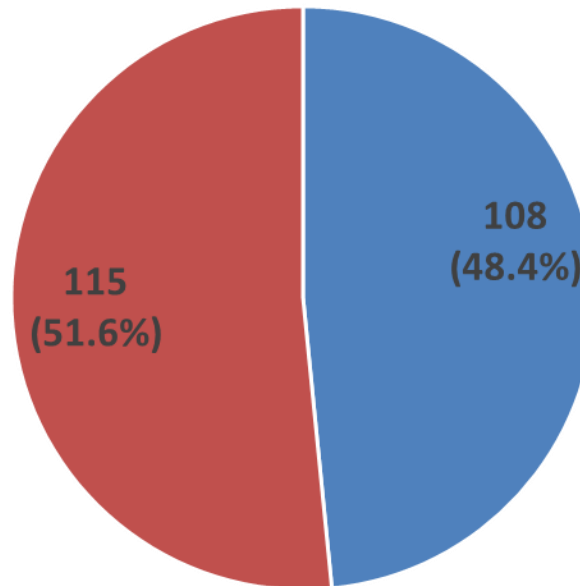


■ Suspended Sentence w/o Probation

■ Suspended Sentence w/ Probations

This Trend Continues?

Suspended Sentence in Lay Judge Trials in 2013
223 Defendants

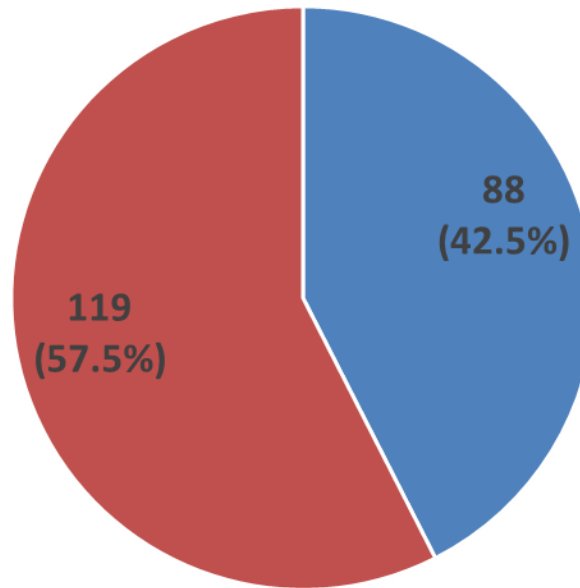


■ Suspended Sentence w/o Probations

■ Suspended Sentence w/ Probations

This Trend Continues?

Suspended Sentence in Lay Judge Trials in 2014
207 Defendants

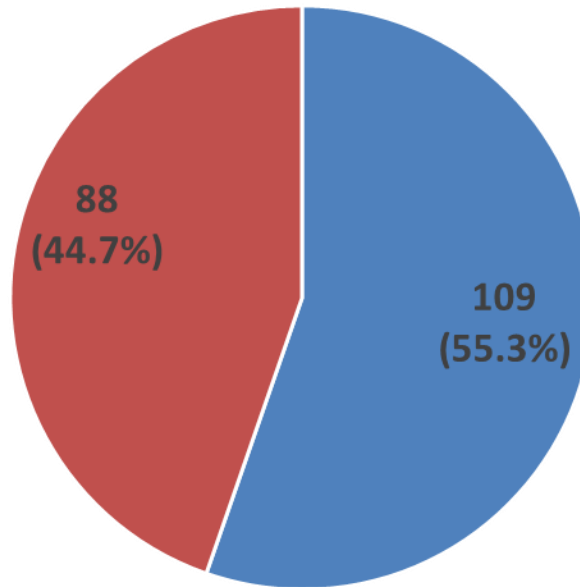


■ Suspended Sentence w/o Probations

■ Suspended Sentence w/ Probations

This Trend Continues?

Suspended Sentence in Lay Judge Trials in 2015
197 Defendants

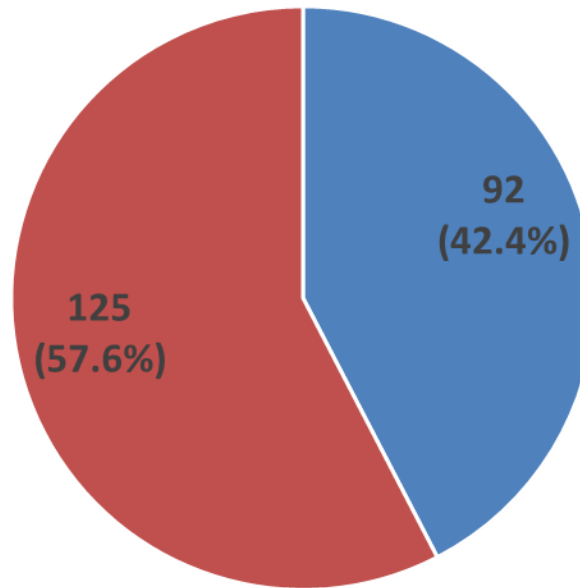


■ Suspended Sentence w/o Probation

■ Suspended Sentence w/ Probation

This Trend Continues?

Suspended Sentence in Lay Judge Trials in 2016
217 Defendants



■ Suspended Sentence w/o Probations

■ Suspended Sentence w/ Probations

Why More Probations?

- What are they interested in the most, through the experience of lay judge trials?

A Survey for 140 ex Lay Judges by the Asahi Shimbun in May 2010

- After your serving lay judges, which of the following interest has increased?

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The Structure and Procedure of Trials: 52 (37.1%)

The media coverage of criminal trials: 37 (26.4%)

Crime Prevention Methods and Programs: 31 (22.1%)

Defendants' Life in Prisons

and Rehabilitation Programs: 24 (17.1%)

Amount of Punishment in Penal Code: 17 (12.1%)

Care and Support for Crime Victims: 6 (4.2%)

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- Paying attentions to admonition (説諭) by a presiding judge when s/he order a sentence.
- Listening to comments by lay judges at the press conference, right after their giving out sentencing.

September 7, 2009, Kobe District Court Attempted Murder Case

3 years imprisonment (suspended for 4 years w/probations) / 5 years asked by prosecution.

One Lay judge suddenly ask to the defendant (41) “Why you already have gray hairs?”

At the sentencing, the presiding judge talked to the defendant “We value the opportunity for you to rehabilitate in society”

September 7, 2009, Kobe District Court Attempted Murder Case

3 years imprisonment (suspended for 4 years w/probations) / 5 years asked by prosecution.

At the press conference,

One lay judge commented “I believe what we deliberated was well sent to the defendant. I saw his positive attitude”

Other lay judge commented “We wanted to respect the victim (father of D), however, we also fear that we may spoil D”

(Nishi Nihon Shimbun, 9/11/2009)

December 9, 2009, Yamaguchi District Court

Arson with Inhabited Building

2.5 years imprisonment (suspended for 3 years w/probations) / 3 years asked by prosecution.

At the admonition, the presiding judge talked to the defendant “Don’t ever reoffend. We have a great concern for your personal circumstances behind your this case. This suspension is significant time period for you. You need to take care of your wife, family and to build happy family.

At the press conference, one lay judge commented “I had never heard of imprisonment or probation. Sentence is a big deal to life of the defendant. I think my message was well sent to him”

Another lay judge commented “I hope the defendant would spend good time with his family”

December 17, 2009, Kumamoto District Court Counterfeiting of Currencies Case

2.5 years imprisonment (suspended for 3 years
w/probations) / 3 years asked by prosecution.

At the admonition, the presiding judge talked to the defendant
“We professional judges and lay judges think probation is
necessary for your rehabilitation. Spend your life according to
their supervision”

At the press conference, one lay judge commented “We put value on the
rehabilitation of the defendant”

(Asahi Shimbun, 12/18/2009, at 35)

March 25, 2010, Tokyo District Court(Tachikawa Branch)
Uttering Counterfeited Currencies Case

3 years imprisonment (suspended for 5 years w/probation) / 5 years asked by prosecution.

One lay judge asked the defendant “You have worked more than 10 years at your company. But you have no co-workers to consulted with your problems?”

Yomiuri Shimbun, 6/09/2010, at 29

June 9 , 2010, Tokyo District Court(Tachikawa Branch)

Not guilty in Robbery Causing Injury,

but guilty in Theft Case

3 years imprisonment (suspended for 4 years w/probation) / 7 years asked by prosecution.

One lay commented for the newspaper (with her face photo!)“The defendant said he wanted to study at evening classes of the high school. I want to believe his words. I hope probation can give him the opportunity for rehabilitation. The probation may be harder than incarceration, but I hope you can make it”

Asahi Shimbun , 7/09/2010, at 37

April 15, 2010, Shizuoka District Court Attempted Murder Case

3 years imprisonment (suspended for 4 years w/probation) / 5 years asked by prosecution.

*Defense attorneys did not ask the probation though.

In reasoning for the sentence (量刑の理由), it was emphasized that the defendant was young (20). It seems they (professional judges and lay judges) had great concern for D's communication skill deficit, however, they value the importance of being rehabilitated in society.

At the press conference, one of lay judges commented "We hope the defendant's human nature will be rich by communicating with many people"

January 29, 2010, Gifu District Court Attempted Murder Case

3 years imprisonment (suspended for 4 years w/probation) / 5 years asked by prosecution.

At the press conference, one of lay judges commented “We are not sure which- incarceration or suspended sentence- works better for D’s rehabilitation. Among various choices, we selected suspended sentence with probation as the best choice “

(Asahi Shimbun, 2/25/2010, at 17)

January 15, 2010, Osaka District Court Robbery Causing Injury Case

3 years imprisonment (suspended for 5 years w/probation) / 5 years asked by prosecution.

At the admonition, the presiding judge told the defendant “You got your sentence suspended because of your parents. You work well, and take care of your parents. This is consensus by the lay judges” (Defendant replied “Yes” with tears in his eyes)

*His parents tried so hard to save and pay 300 thousand yen for compensation for victims.

At the press conference, a female lay judge “We believe there is no lie in his tears”

(Asahi Shimbun, 1/16/2010, at 24)

February 2, 2010, Nagoya District Court Injury Causing Death

3 years imprisonment (suspended for 5 years
w/probation) / 7 years asked by prosecution.

At the admonition, the presiding judge told the defendant
“During probation, you need to stay away from drinking, and to
continue your job”

The presiding tried to convey the message from lay judges.

(Asahi Shimbun, 2/25/2010, at 17)

September 7, 2012, Kofu District Court
Indecent Assault Causing Injury Case

3 years imprisonment (suspended for 4 years
w/probation) / 4 years asked by prosecution.

At the press conference, one lay judge commented “I think some body, other than the defendant’s family members, should also support him”

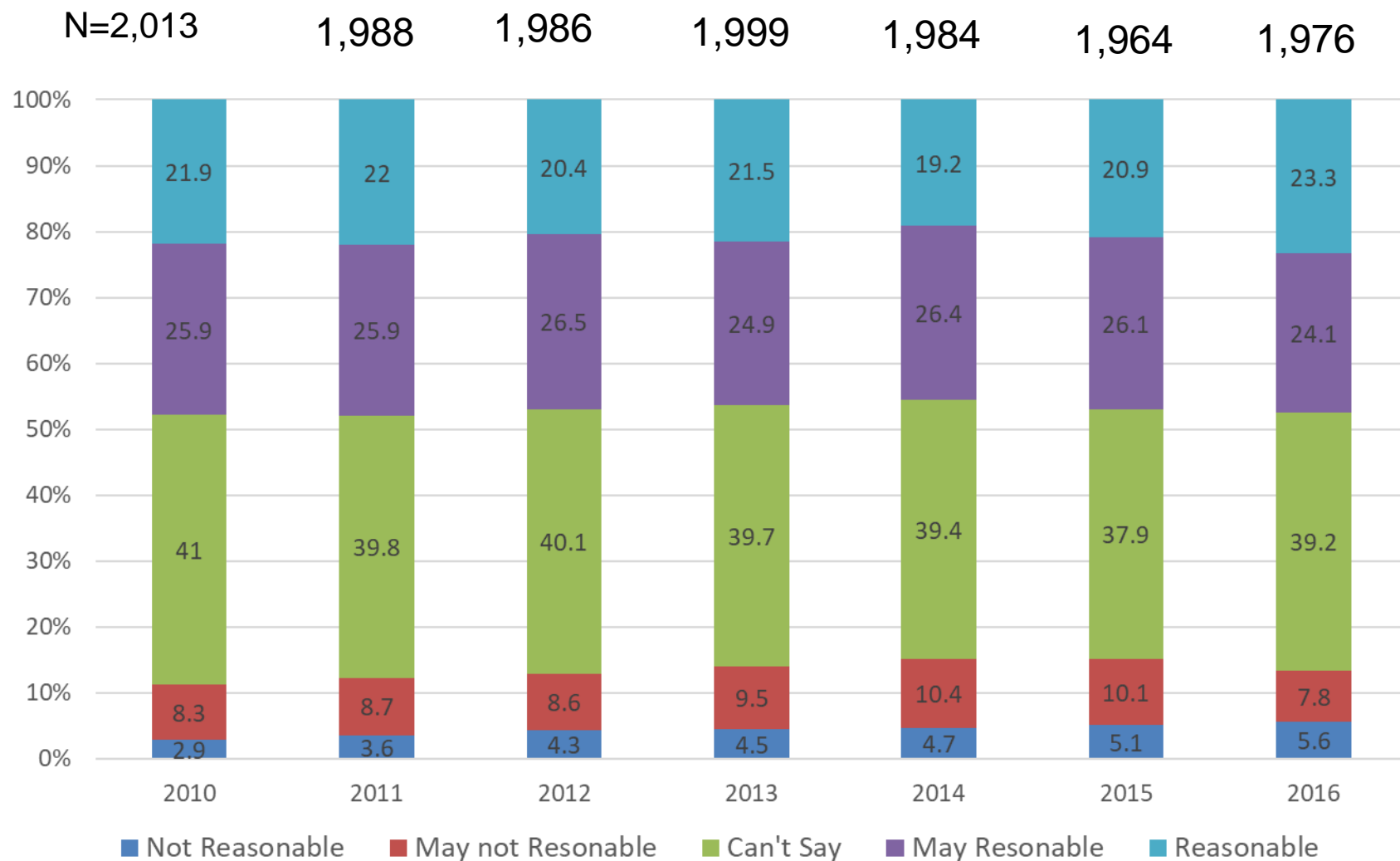
Other lay judge commented “We expect much that he will be rehabilitated”

(Asahi Shimbun, 2/25/2010, at 17)

What Defense Attorneys Can Do to Convince the Professional & Lay Judges?

- How to show “repentance” of defendants to the court?
- How to explain clearly probation is better than incarceration in that particular case.
- How to show “networks” of defendants to the court? (how many resources lawyers have?)
- How to show “the practical (and reasonable) “rehabilitation plan to the court?

How the Public See this Trend?(more probation)



Source: 最高裁判所「裁判員制度の運用に関する意識調査」(2017年3月)

10. 裁判員裁判の傾向について http://www.saibanin.courts.go.jp/vcms_lf/28-i-4.pdf

Discussion for Further Research

- Lay Judges seem to have great interest in “Rehabilitation”(更生) of Defendants.

↑ What does “Rehabilitation” mean to them? Re-integrative, or Exclusive? Or They just want to see bad people’s “Repentance”?

- Will the Lay Judge Trials be **the Enlightenment Setting** for learning about rehabilitation of offenders?

↑ Most people do not know about probation, but now they know.

* One ex lay judge (male, 60) suggested “Now we have more probation, however, we do not have enough volunteer probation officers. More budget should be spent there” (Asahi Shimbun Survey 2010)!

Discussion for Further Research

- **How to expand and share experiences of ex lay judges among community?** Gag order for them may be too strict?
- **Interviewing Defendants:** How did they take the message from their peers? Good or Bad? How will they impact on their rehabilitation after being released?

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Thank You Very Much
for your Attentions

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