

The 3rd World Congress on Probation

Good Practices and Challenges of Offender Treatment with Non-custodial Measures in Japan and Thailand

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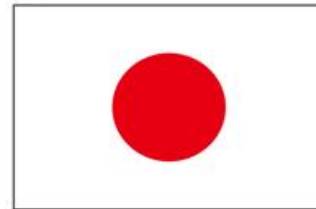
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I. Introduction

UNAFEI and TIJ

United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

- ✓ UNAFEI was established in 1962 by agreement between the United Nations and the Government of Japan with the aim of promoting the sound development of criminal justice systems and mutual cooperation in the Asia-Pacific Region.



- ✓ Our mission is to provide training courses and seminars for personnel in crime prevention and criminal justice administration and to research and study crime prevention and the treatment of offenders.

Thailand Institute of Justice (TIJ)



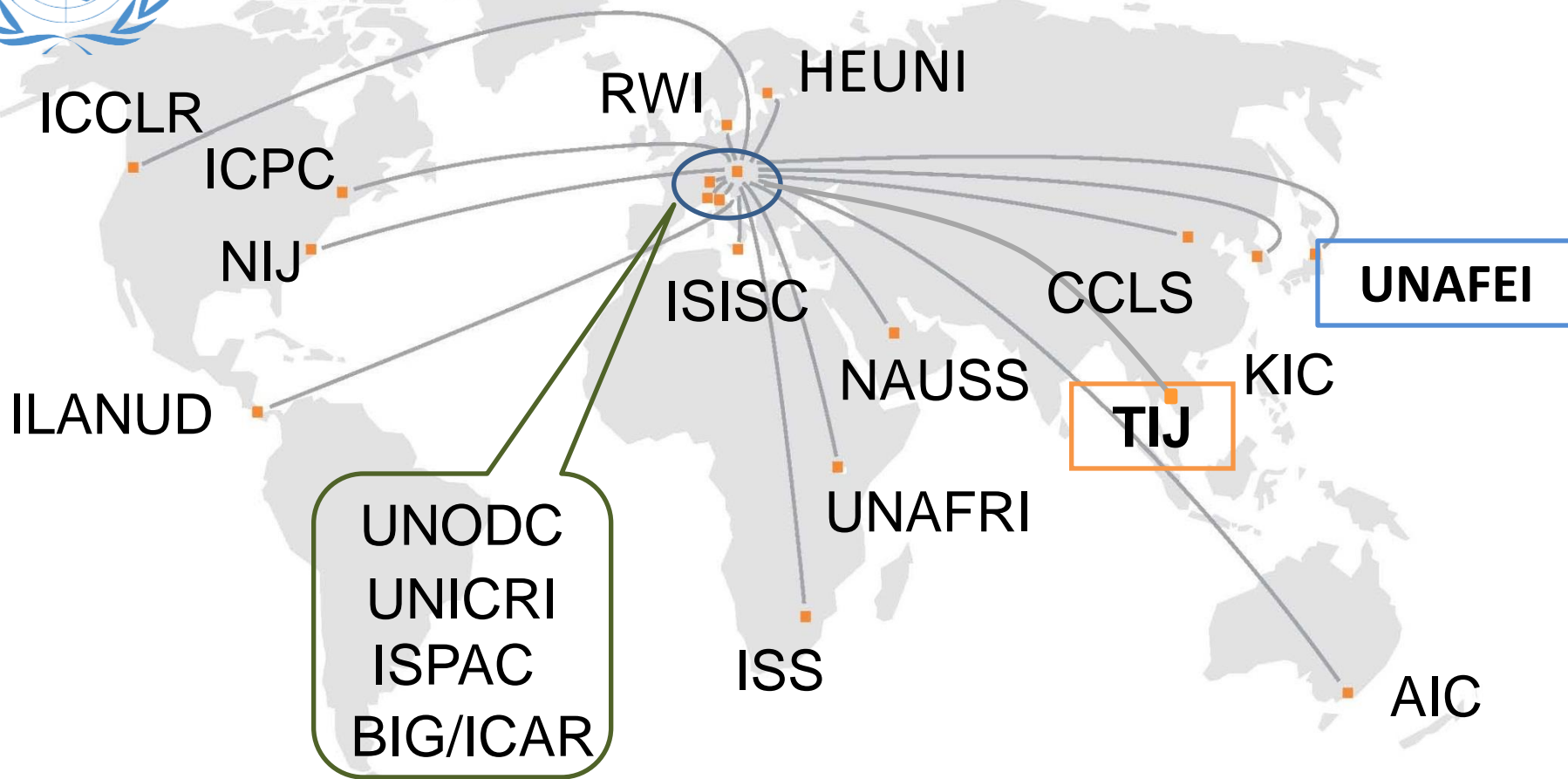
- ✓ TIJ was established by the Royal Thai Government in 2011.
- ✓ It aims to promote excellence in research and capacity - building in crime and justice.
- ✓ TIJ serve as a bridge that transforms global ideas into local practice.



PNI United Nations Crime Prevention and Criminal Justice Programme **Network of Institutes**



19 Institutes



Purpose of the research:

Prison populations around the world are increasing. This has led to prison overcrowding, which is a common problem in many countries. While Japan, for the time being, has overcome the problem of prison overcrowding, Thailand still suffers from prison overcrowding and a high prison population rate.

- 1. To identify appropriate practices for offender treatment in community corrections through non-custodial measures by drawing comparisons between Japanese and Thai experience**
- 2. To consider the role of non-custodial measures in terms of effective implementation of the treatment of offenders and the reduction or elimination of prison overcrowding**
- 3. To examine methods for introduction and development of non-custodial measures based on the Tokyo Rules in the criminal justice systems of both Thailand and Japan**
- 4. To consider measures for specific categories of offenders to whom non-custodial measures should be applied**

Research Methods:

Book review, Interviews, Statistical Analysis, etc.

II. Current Situations

Criminal Justice Systems and Non-Custodial Measures
in Japan and Thailand

Comparative Table of Non-custodial Measures in Japan and Thailand

Non-custodial Measures	Japan	Thailand
	Pre-trial Stage	
<i>Pre-trial Dispositions</i> <ul style="list-style-type: none"> Police Discharge / Resolution by the Police 	✓	✓
<ul style="list-style-type: none"> Suspension of Prosecution 	✓	✓
<ul style="list-style-type: none"> Dispute Resolution 	X	✓
<i>Avoidance of Pre-trial Detention</i> <ul style="list-style-type: none"> Provisional Release - Electronic Monitoring 	✓ X	✓ X

Comparative Table of Non-custodial Measures in Japan and Thailand (cont'd)

Non-custodial Measures	Japan	Thailand
	Sentencing Stage	
• Status Penalties	X	X
• Fines	✓	✓
- Day fines	X	X
• Confiscation and Forfeiture	✓	✓
<i>Suspension of Sentence</i>	✓	✓
• Suspension of Execution of Sentence		
• Partial Suspension of Sentence	✓	X
• Deferral of Sentence	X	✓
• Pre-sentence Investigation	X	✓
• Probation	✓	✓
- Electronic Monitoring	X	✓

Comparative Table of Non-custodial Measures in Japan and Thailand (cont'd)

Non-custodial Measures	Japan	Thailand
	Post-Sentencing Stage	
• Day Leave and Furlough	✓	X
• Parole - Electronic Monitoring	✓ X	✓ ✓
• Good Conduct Time Allowance and Public Work Allowance	X	✓
• Pardon	✓	✓
• Halfway Houses	✓	✓

III. Analysis and Challenges

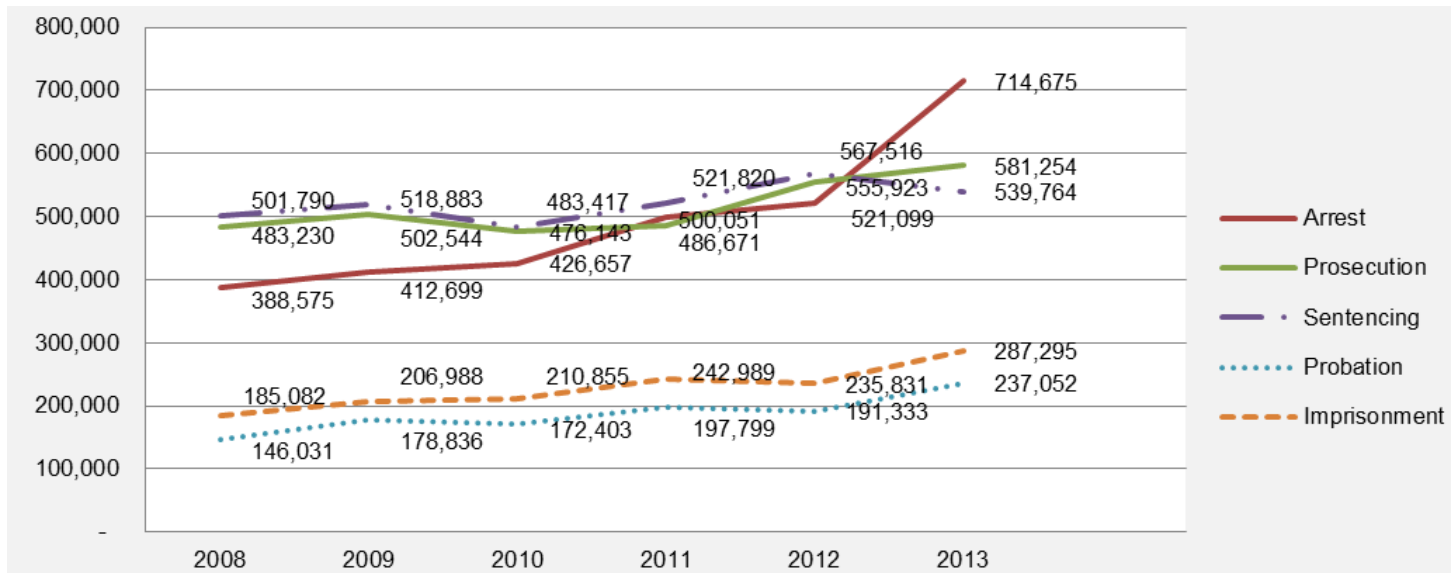
A) Net-Widening Effect and Implementation of Non-Custodial Measures

"Despite the obvious advantage of non-custodial measures, reforms intended to promote the use of such measures contain potential dangers and may lead to unintended consequences. For example, the use of non-custodial measures may be increased, not at the expense of imprisonment but at the expense of other less onerous penalties. This may lead to an increase in the total use of penal measures in society, an increase that cannot be justified by a reference to a worsened crime situation. At the same time, there may be no reduction in the use of imprisonment. This has been termed the net-widening effect."

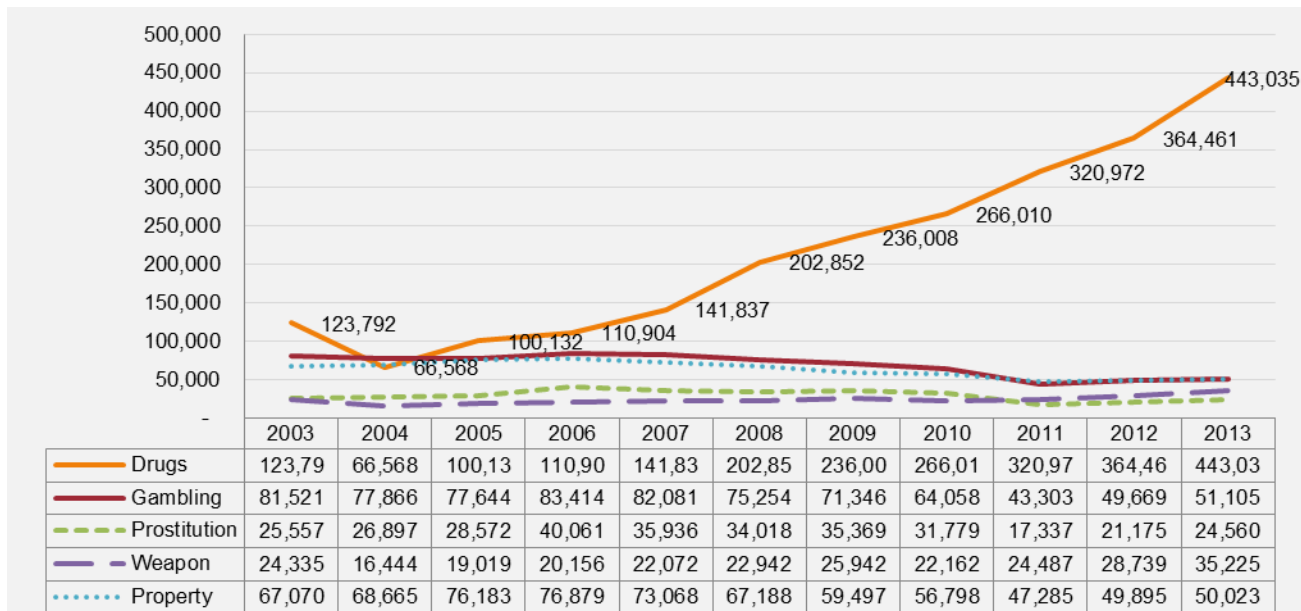
"Another possible danger is that new non-custodial measures may be introduced that impose more intensive forms of control. Instead of replacing imprisonment, they may replace non-custodial penalties that involve less control. More intrusive control than the circumstances warrant may thus be introduced. Ways of identifying and avoiding these disadvantages can be found in the Tokyo Rules."

(Commentary on the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), United Nations, 1993)

Trend of Offender Treatment in Thailand

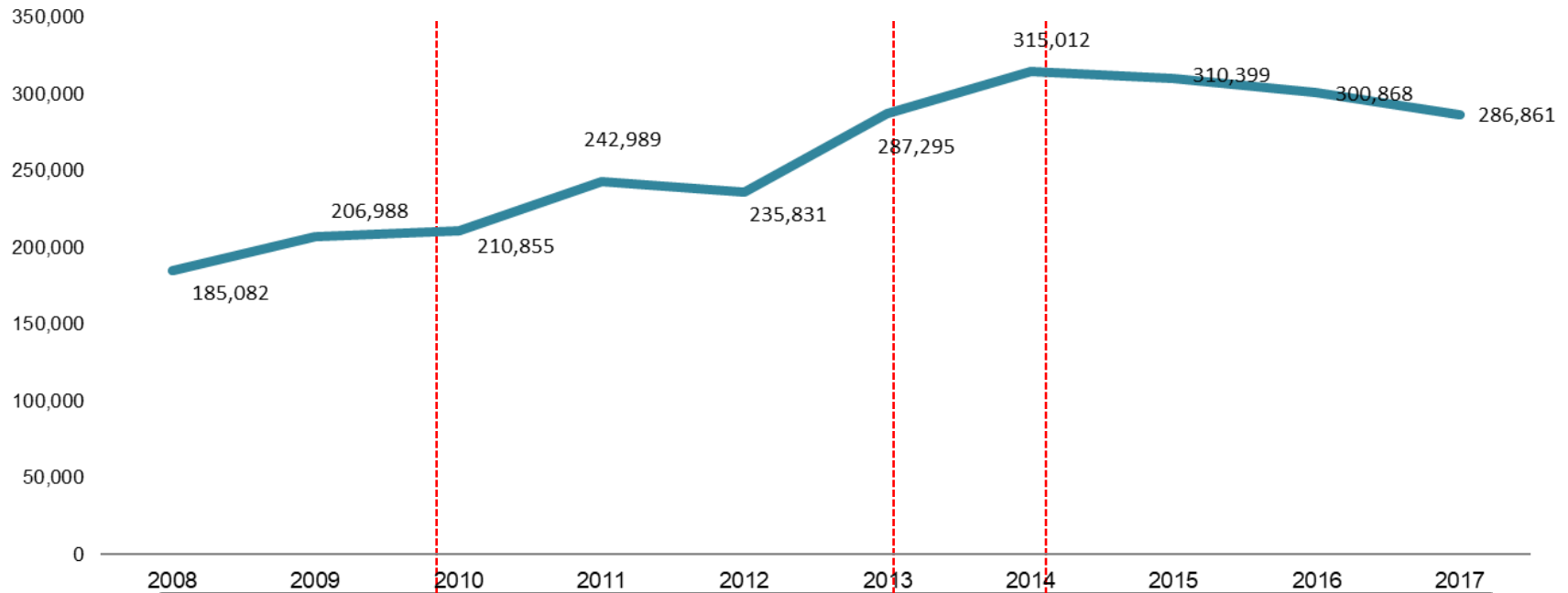


Number of cases in Thai criminal justice, 2008 - 2013. Source: Office of Justice Affairs (2015)

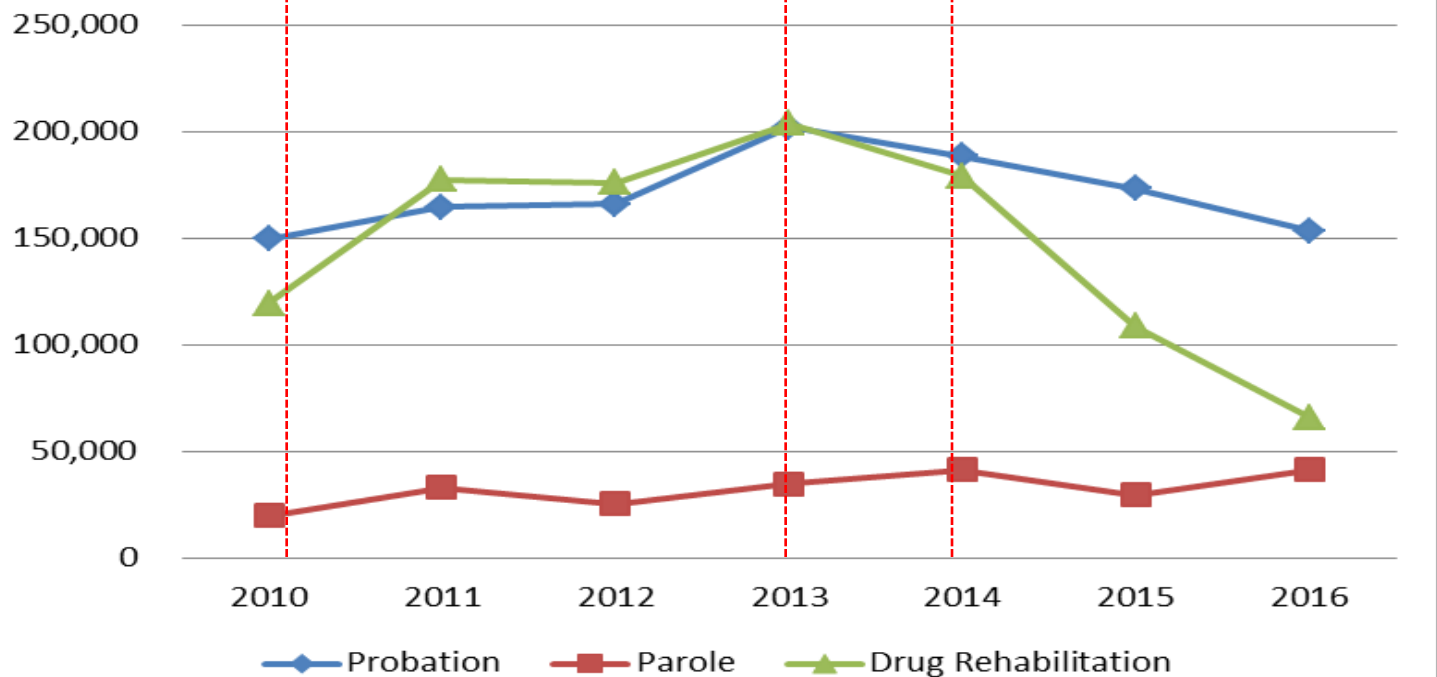


Top five crimes in Thailand, 2003 – 2013. Source: Office of Justice Affairs (2015)

Trends in prison population, 2008-2017 (as of 1 March 2017) Source: Department of Corrections (2017)

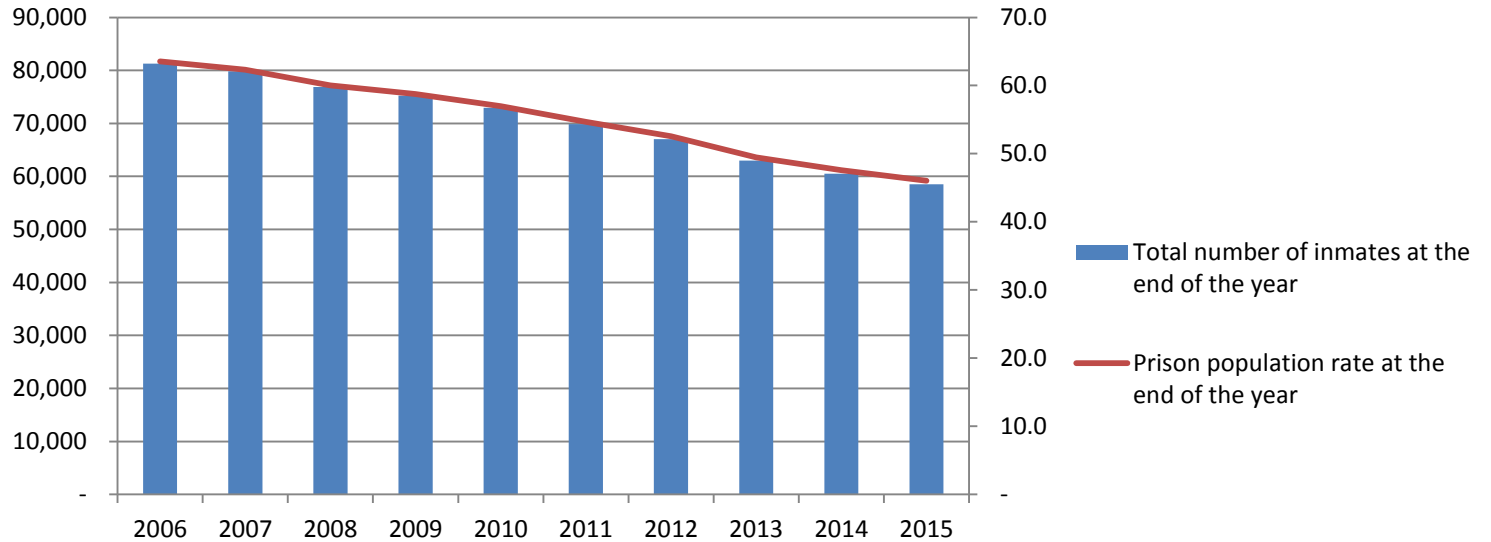


Number by types of non-custodial measures Source: Department of Probation (2017)

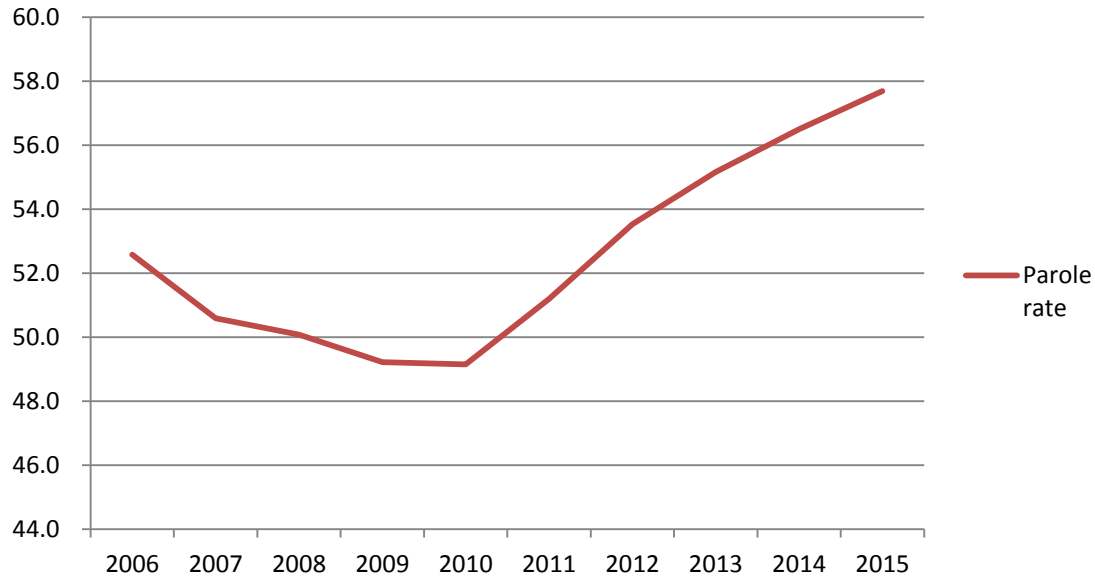


Trend of Offender Treatment in Japan

Year-end inmate population of penal institutions and rate per 100,000 population
Source: White Paper on Crime (2015)



Parole rate
Source: White Paper on Crime (2015)



B) Pre-Sentence Investigation

■ Good Practices

- Overall, judges in Thailand are satisfied with the quality of social inquiry reports.
- Criminal Code - New amendment in 2016 increased the number of eligible cases
- Restorative justice process – in parallel with the investigation process
- Gender-sensitive investigation tool for women offenders

B) Pre-Sentence Investigation (cont'd)

■ Challenges for Thailand

- **Limited time frame -- for probation officer to produce social inquiry report**
 - **Quality of the report**
 - **Restorative justice process**
- **Case overload**
 - **Increasing eligible cases**
 - **Lack of probation officers**
 - **Lack of budget**

B) Pre-Sentence Investigation (cont'd)

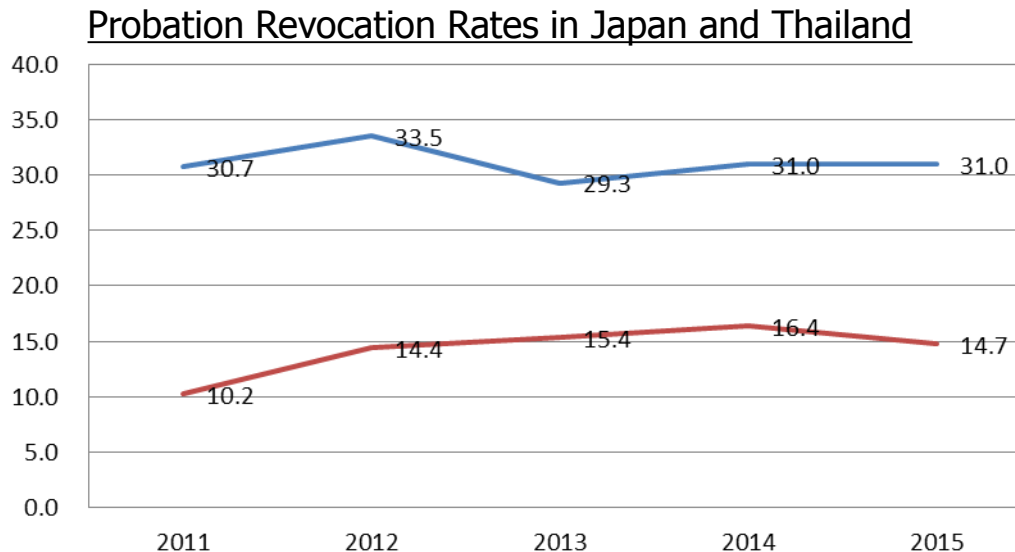
■ Legal arguments against PSI in Japan

- Japanese criminal procedure does not bifurcate the criminal liability and sentencing phases
- Punishment should be strictly based on criminal liability in terms of retributive justice
- Unnecessary to introduce pre-sentence investigation by a third body
- Identifying the appropriate agency for conducting pre-sentence investigation

B) Pre-Sentence Investigation (cont'd)

■ Advantages

- **Assumption 1: More appropriate sentencing for offender rehabilitation;** More suitable persons can be put on probation as the result of accurate pre-sentence investigation.
- **Assumption 2: More efficient information collection;** Information collected by probation officers can be applied during probation supervision.



Source: White Paper on Crime (Japan, 2016) and Department of Probation (Thailand, 2017)

IV. Conclusion

Conclusion

- The concept of punishment is shifting to offender rehabilitation and away from sanctions while the criminal justice system, during the trial phase, primarily aims to find criminal liability and imposes appropriate sanctions corresponding to criminal responsibility rather than being based on perspectives of offender rehabilitation.
- Non-custodial measures function as one of the effective tools to reduce recidivism if they are appropriately implemented. For example, in Thailand, pre-sentence investigations have contributed to reducing the revocation of probation supervision.
- Non-custodial measures are not always a tool for offender rehabilitation. Although some advantages of non-custodial measures have been discussed in terms of the avoidance of stigmatization of incarceration, the prevention of economic burden in the criminal justice system etc., non-custodial measures often lead to net-widening effect by governments as seen from the crime control policy in Thailand since 2003.
- Public understanding is important, and accurate understanding how non-custodial measures can prevent recidivism should be explained for those who supervise and accept ex-offenders in the community.

**Thank you very much
for your attention!**