

# **CHILD ABUSE, CHILD PROTECTION AND ADOPTION IN JAPAN**

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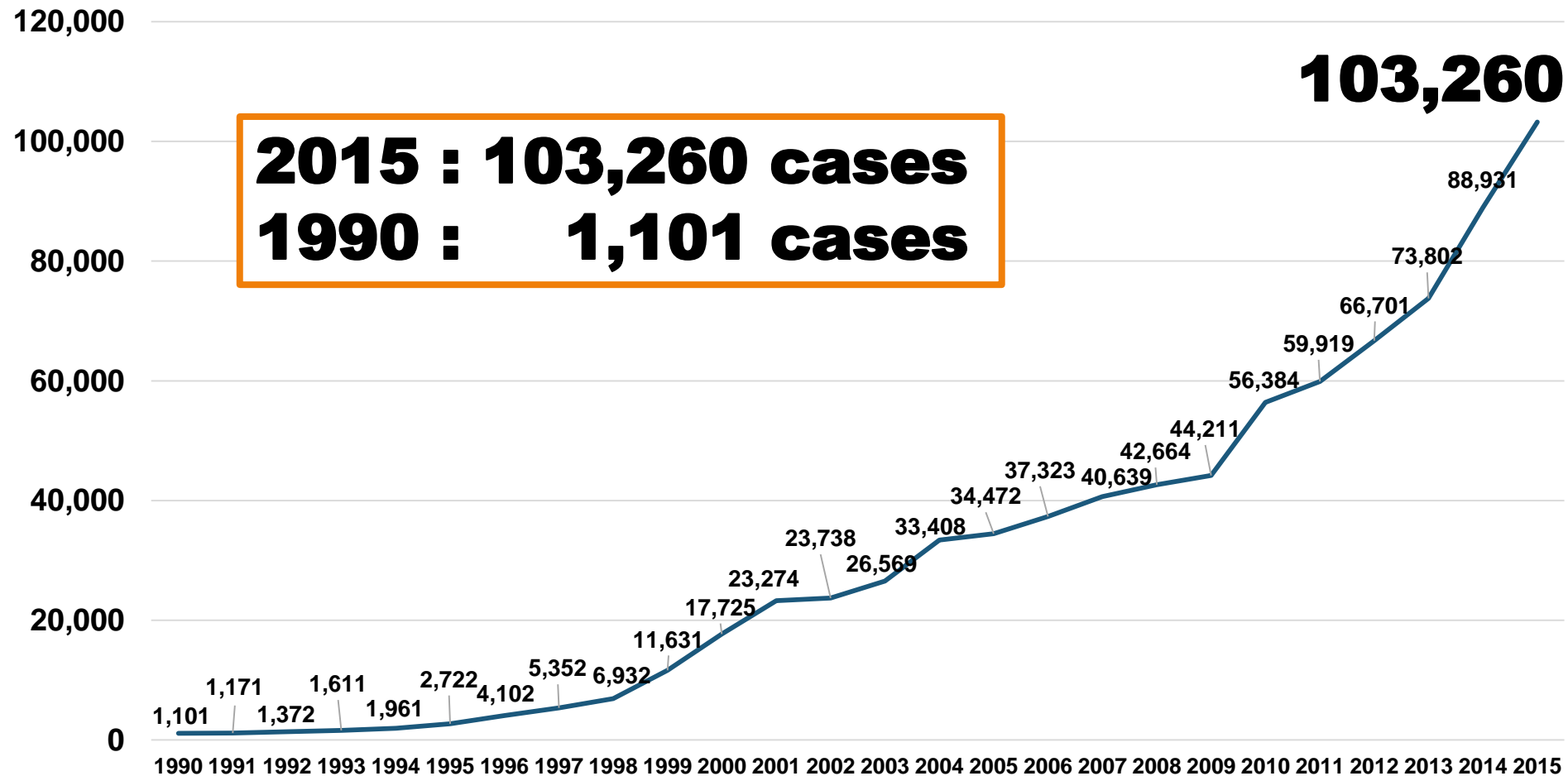
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**Friday 28 July 2017**

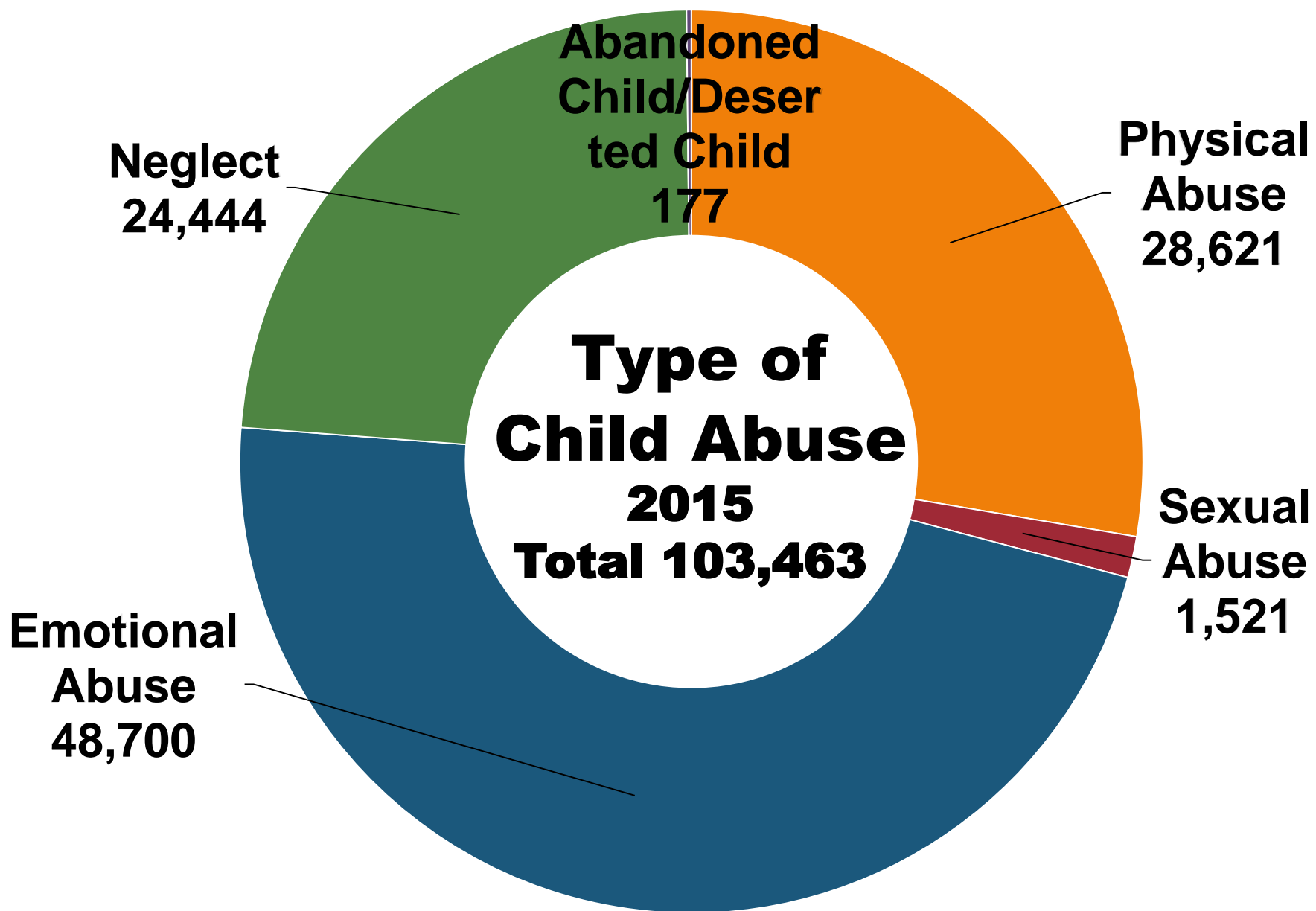
# Current Situation of Child Abuse in Japan

- ◆ The problems of child abuse reflect the nowadays family life, the parents and children relationship
- ◆ Change of family form; nuclear family, stand-alone family, step family (legally or de facto)
- ◆ Child abuse is not caused solely by poverty of family but by a complexity of factors such as fewer children, dissolution of the family tie, the loss of the educational function in the communities, the sense of autonomy of the family, the existence of the right to discipline (Civil Code)
- ◆ The total number of cases of children being abused has increased, e.g. the numbers of consultations concerning child abuse (The Child Guidance Centre)

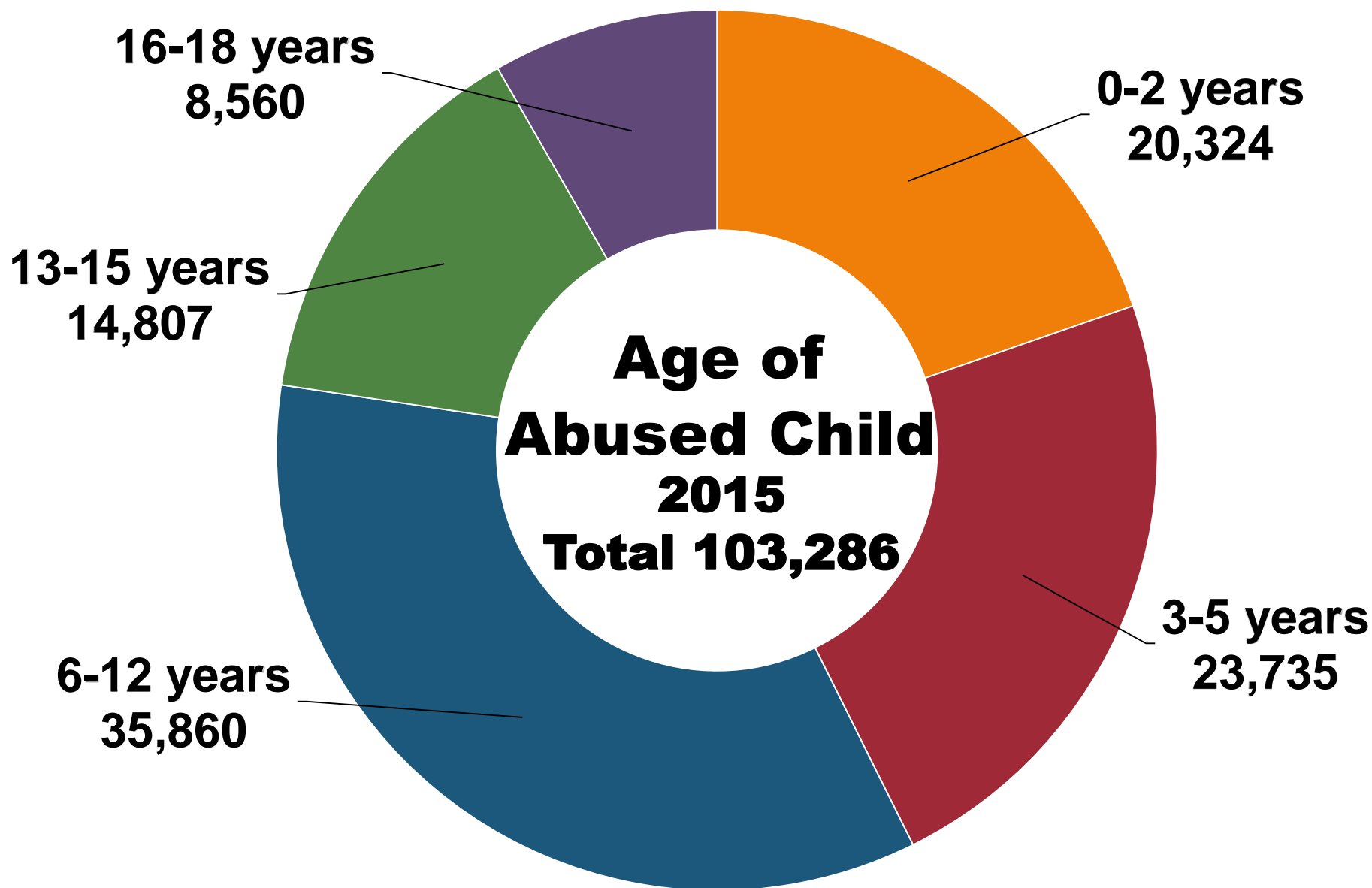
# ◆ The numbers of consultations conducted concerning child abuse, 208 child guidance centers



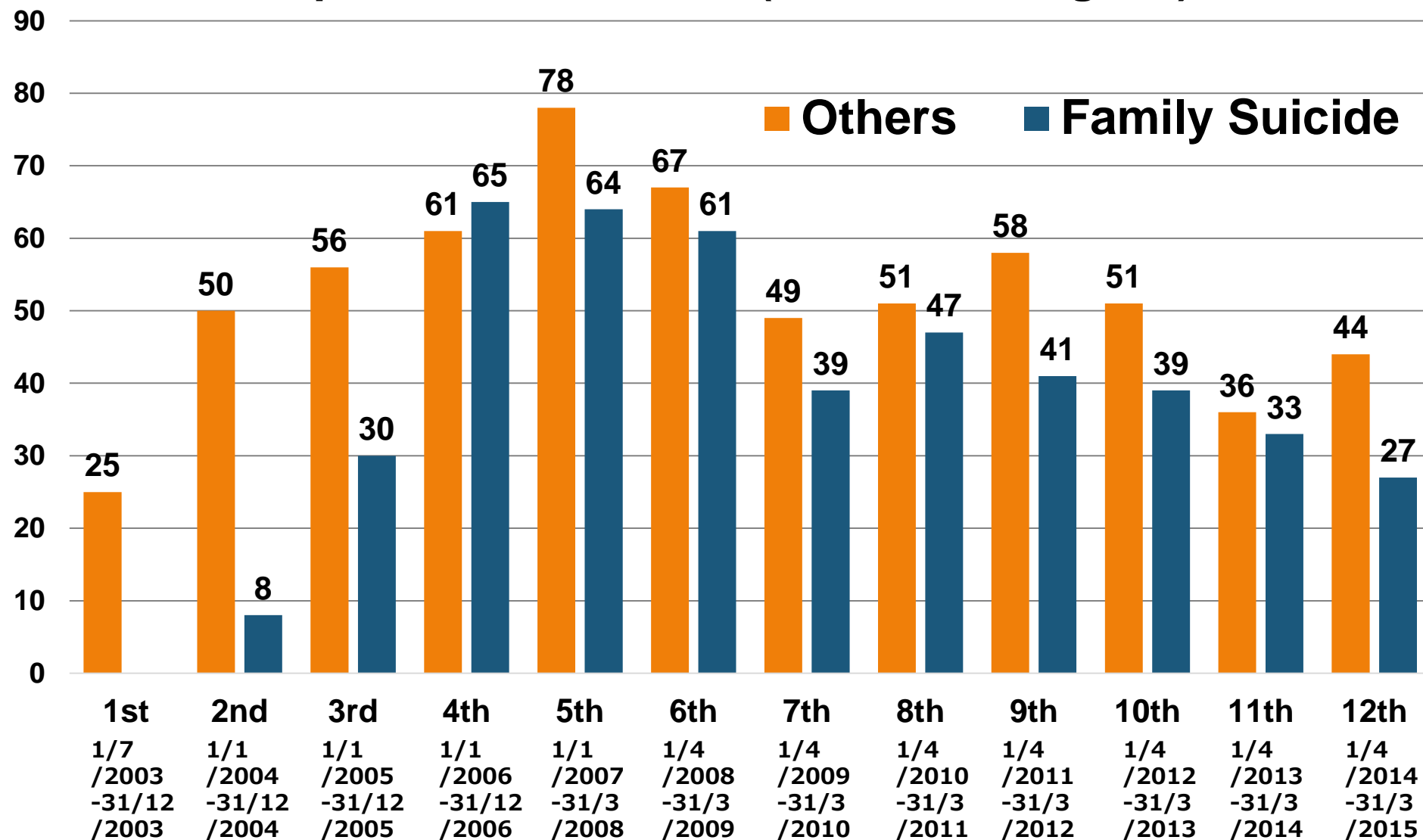
【出典】厚生労働省「平成27年度児童虐待対応件数（速報値）」1頁に基づき作成 <http://www.mhlw.go.jp/file/04-Houdouhappyou-11901000-Koyoukintoujidoukateikyoku-Soumuka/0000132366.pdf>



【出典】厚生労働省 社会福祉行政業務報告「22児童相談所における児童虐待相談の対応件数，被虐待者の年齢×相談種別別」に基づき作成<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001165626>



## The report of child deaths (abuse and neglect)



【出典】厚生労働省「子ども虐待による死亡事例等の検証結果等について(第12次報告)」1頁に基づき作成  
<http://www.mhlw.go.jp/file/06-Seisakujouhou-11900000-Koyoukintoujidoukateikyoku/0000137017.pdf>

# Handling of the Child Abuse

- ◆ The Child Welfare Act (1947, revised at last in 2017)
- ◆ Act on the Prevention, etc. of Child Abuse (2000, 2017)
- ◆ Civil Code (1898, 1947, 2011)
- ◆ Penal Code (1907, revised at last in 2017)

# The Child Welfare Act

- ◆ Originated from the old Child Abuse Prevention Act in 1947
- ◆ Mainly administrative measures to prevent child abuse
  - Temporary protection (within 2 months, if necessary exceed 2 months with the approval of the family court, *new revised in 2017*)
  - Guidance at home (children shall not be separated from their parents as far as possible, CRC)
  - Admission to the child welfare institutions or
  - Entrusting to foster parents or family group home (with consent of parent or with approval of the family court)
  - Family court makes recommendation to the prefectural governor
- **Petition for removal or suspension of parental authority**



# Act on the Prevention , etc. of Child Abuse

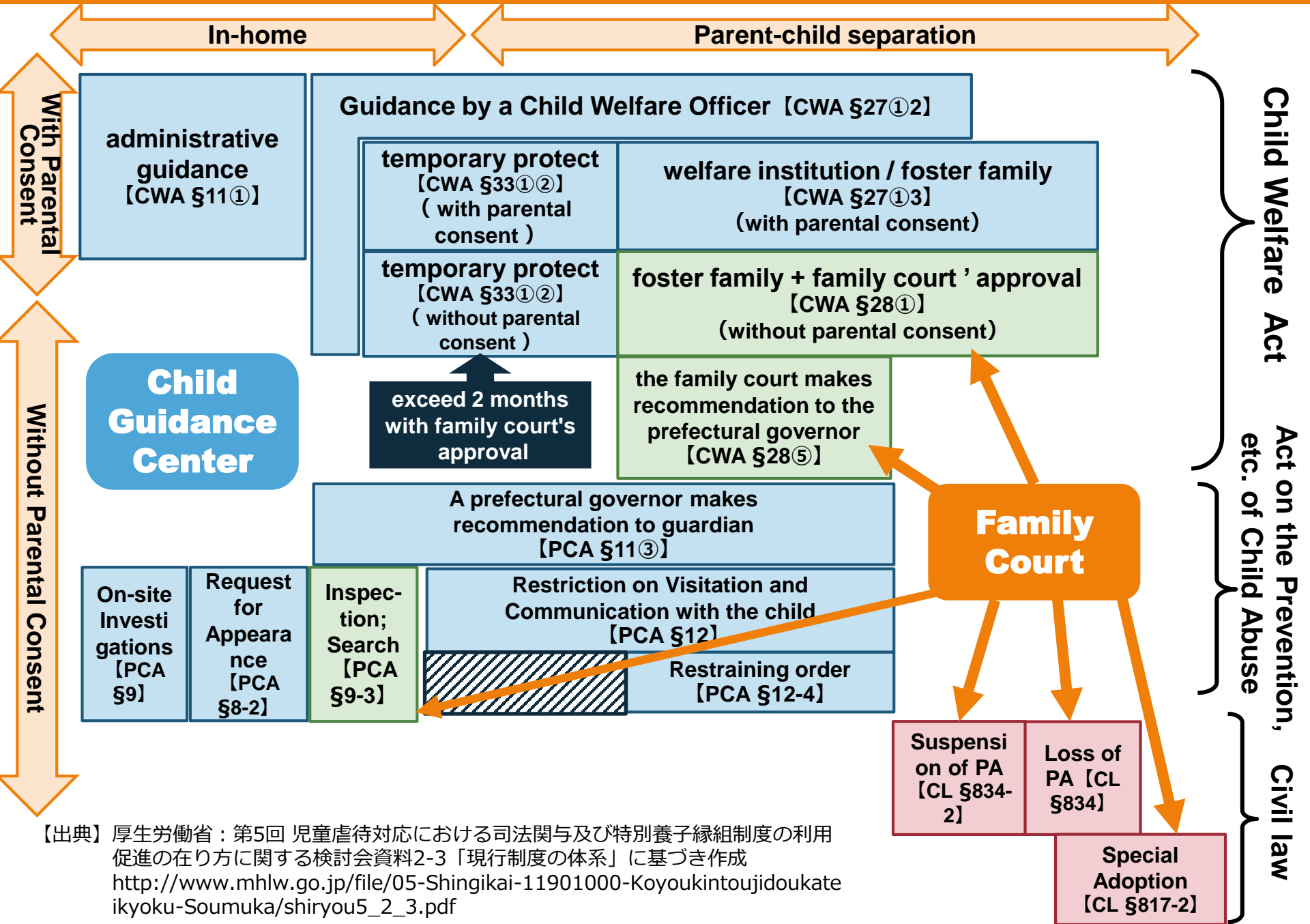
- ◆ On-site Investigations
- ◆ Request for Appearance
- ◆ Inspection and search (with approval of the family court)
- ◆ A prefectural governor makes recommendation to parents, guardian
- ◆ Restriction on visitation and communication with the child
- ◆ Restraining order

# Civil Code

- ◆ Legal measures against child abuse
- ◆ Removal of the parental authority (in some cases)
- ◆ Suspension of the parental authority within 2 years, introduced by a revision of the civil code in 2011, increasing e.g. in case of medical neglect
- ◆ Termination of child-parent relationship by special adoption (introduced in 1988)

# Penal Code

- ◆ Physical abuse=Assault, Injury, Homicide
- ◆ Sexual abuse=Forcible indecency, rape, and such crimes by custodian are especially prescribed (revised in 2017)
- ◆ Negligence or refusal of care=Abandonment by a person responsible for protection
- ◆ Psychological or emotional abuse=Injury, confinement

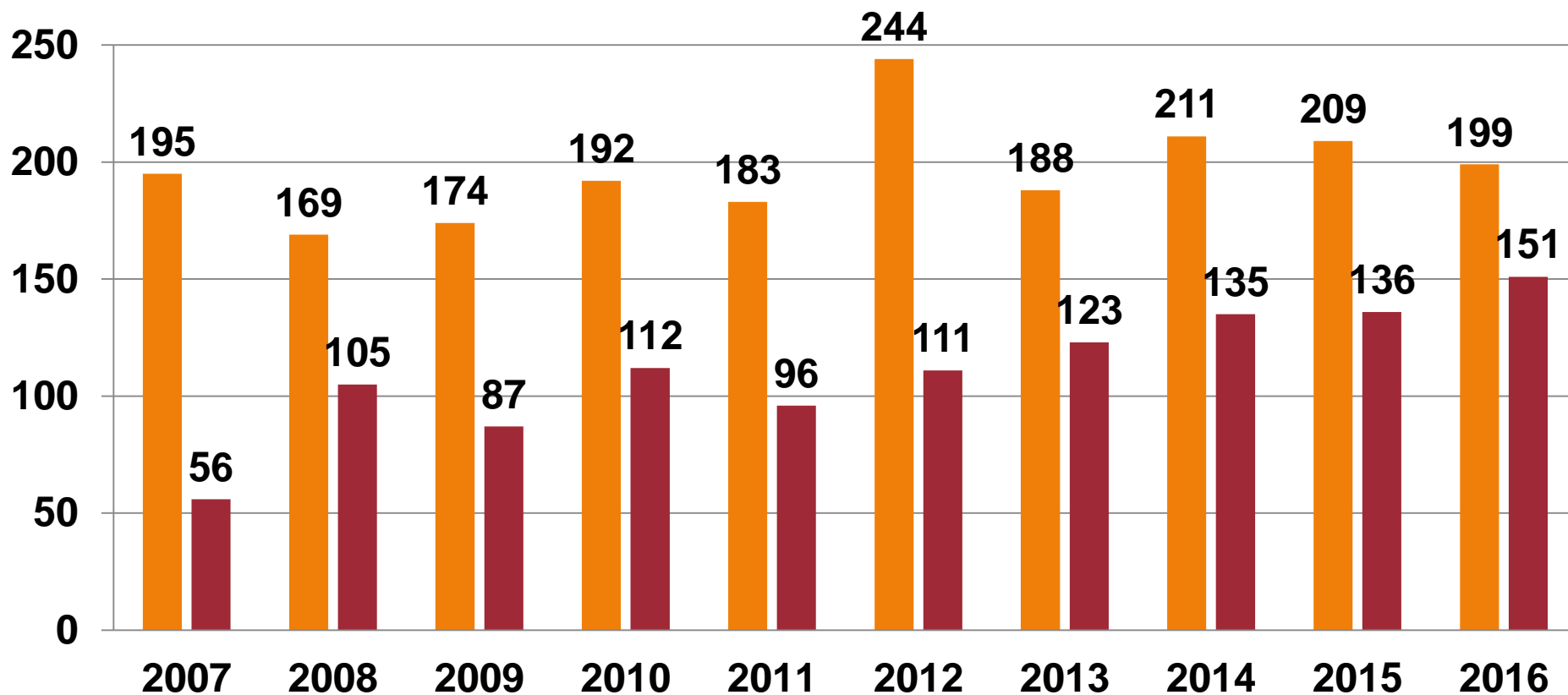


【出典】厚生労働省：第5回 児童虐待対応における司法関与及び特別養子縁組制度の利用促進の在り方に関する検討会資料2-3「現行制度の体系」に基づき作成  
[http://www.mhlw.go.jp/file/05-Shingikai-11901000-Koyoukintoujidoukateikyoku-Soumuka/shiryoushu5\\_2\\_3.pdf](http://www.mhlw.go.jp/file/05-Shingikai-11901000-Koyoukintoujidoukateikyoku-Soumuka/shiryoushu5_2_3.pdf)

# Child Welfare Act

## §28 cases (2007-2016)

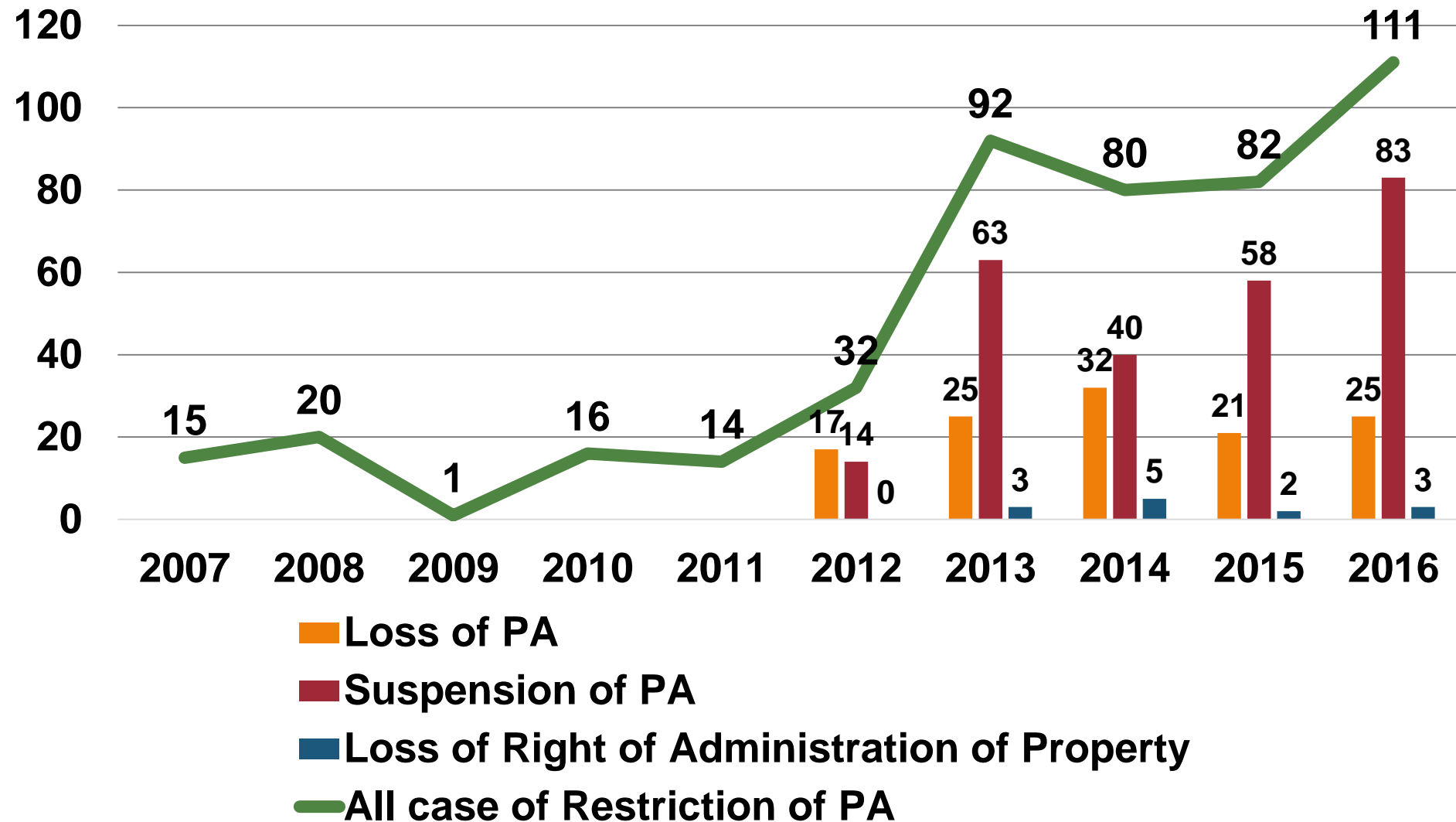
■ CWA§28 ①      ■ CWA§28 ② (over 2 years)



※ 司法統計による。2016年の数値は速報値である。

※ 終局区分のその他は、移送、当然終了等である。

## Restriction of PA cases (2007-2016)



# **Last resort: Special Adoption to protect the abused children**

- ◆ If parents can not bring up their child appropriately with help and guidance of the Child Guidance Center, the child should be removed to institutions, foster family or family group home without consent of parents, instead of it, with the approval of the family court under arr.28 of the Child Welfare Act.
- ◆ The petition for the removal of parental authority by the Child Guidance Center is still rare, 28 petitions in 2014
- ◆ Promoting of the special adoption of abused child

## ◆ Special Adoption with effort of the Child Guidance Center (209) and other private agency (20)

### • Number of Special Adoption

	2014	2015	total
A child guidance center	304	306	610
Adoption agency	195	186	381
total	499	492	991

【出典】厚生労働省：第 14回 児童虐待対応における司法関与及び特別養子縁組制度の利用促進の在り方に関する検討会資料2-2  
 「2. 特別養子縁組に関する調査結果について」2頁（全体45頁）に基づき作成 <http://www.mhlw.go.jp/file/05-Shingikai-11901000-Koyoukintoujidoukateikyoku-Soumuka/0000155264.pdf>



# Number of Special Adoption

17

	Age 0	Age 1	Age 2	Age 3	Age 4	Age 5	Age 6	Age 7	Age 8	Age 9	Total	Average
<b>Child guidance center</b>	124	172	94	66	44	45	33	22	10	0	610	2 years 9 months old
<b>Adoption agency</b>	265	70	10	6	9	5	7	4	3	2	381	1 years 4 months old
<b>Total</b>	<b>389</b> (39.3%)	<b>242</b> (24.4%)	<b>104</b> (10.5%)	<b>72</b> (7.3%)	<b>53</b> (5.3%)	<b>50</b> (5.0%)	<b>40</b> (4.0%)	<b>26</b> (2.6%)	<b>13</b> (1.3%)	<b>2</b> (0.2%)	<b>991</b> (100%)	<b>2 years 3 months old</b>

【出典】厚生労働省：第 14回 児童虐待対応における司法関与及び特別養子縁組制度の利用促進の在り方に関する検討会資料2-2 「2. 特別養子縁組に関する調査結果について」2頁（全体45頁）に基づき作成 <http://www.mhlw.go.jp/file/05-Shingikai-11901000-Koyoukintoujidoukateikyoku-Soumuka/0000155264.pdf>

# **DISCUSSION POINTS**

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- 1. Age of child to be adopted**
- 2. Who can make an application  
of a special adoption**
- 3. Parental Consent (who, when, how)  
and its effect**
- 4. Right to know its origin**

# 1. Age of the child

## ◆ Now

**In principle : under 6 years old, exception : under 8 years old, when the child has been under care of adoptive parent from the time under 6 years old)**

### 【Why】

- intimate relationship with adoptive parent, attachment and early settlement of new parent-child relationship and certainty of legal status

### 【Problem】

- exceeds age limit, but in need of better care in a family-like environment

## Proposal A: In principle child under 6, exceptionally under 15 years old is adoptable

### 【Merit】

- intimate relationship with adoptive parent, attachment and early settlement of new parent-child relationship and certainty of legal status
- legal permanency for the child of relatively higher age as it is

### 【Problem】

- child who has not been under custody of the prospective adoptive parents has no chance to be adopted even if the adoption is the best measure to protect the child and the biological parents consent
- consent of the child
- unstable status of the child, prospective adoptive parents and biological parents

## Proposal B: Under 18 or under 15

### 【Merit】

- chance for legal permanency for high age child

### 【Problem】

- unstable status of the child, prospective adoptive parents and biological parents; to cut the relationship with the biological parents is the best interests of the child? Simple adoption (another type of adoption; normal adoption in Japan) is better for them?
- consent of the child attained at or over 12 is to be required: children shall not be separated from their parents against their will

## 2. Application of the adoption of the child

### ◆ Now

Only the prospective adoptive parents apply the special adoption,

**【Problem】** Risk concerning adoption privacy

- **We discussed:** Separation of the procedure of adoption
- Adoption agency caseworker or lawyer are of the opinion that the procedure of the adoption should be separated into two stages, and
- The Head of the Child Guidance Center could be applicant at the first stage, then adoptive parents at the second stage after the matching with the child is result in success

## 2. Procedure of the special adoption

**First step: the consent of the parent is given or to be decided it is not necessary (child in special need)**

**Second step: adoptive parents apply (family court)**

### **【Merit】**

- Without withdrawal of the parental consent, stable relationship between the adoptive parents and the child
- the adoptive parents must not have a fear of the biological parents

【出典】厚生労働省：第 13 回 児童虐待対応における司法関与及び特別養子縁組制度の利用促進の在り方に関する検討会資料2  
「特別養子縁組の利用促進に関する個別論点に係る議論用資料」 3頁に基づき作成  
<http://www.mhlw.go.jp/file/05-Shingikai-11901000-Koyoukintoujidoukateikyoku-Soumuka/0000153399.pdf>

## 2. Procedure of the special adoption

**First step: the consent of the parent is given or to be decided it is not necessary (child in special need)**

**Second step: adoptive parents apply (family court)**

### **【Problem】**

- the biological parents have no chance to get back the child, even if they are now in good condition to nurture the child, it could be in conflict with the CRC: children have the right to be cared by parents as far as possible
- unstable status of the child, possible separation from the biological parents without a guarantee of the new adoptive parents



## 3. Consent of the parents

### 【Proposal】

- When parents consent to the adoption of the child, they can not withdraw the consent after 3 months
- Parental consent should be authorized by a notary
- If the parents have no parental authority (removed of the parental authority), they have no right to consent to adoption of the child

【出典】厚生労働省：第13回 児童虐待対応における司法関与及び特別養子縁組制度の利用促進の在り方に関する検討会資料4  
「床谷構成員 提出資料」11頁に基づき作成  
<http://www.mhlw.go.jp/file/05-Shingikai-11901000-Koyoukintoujidoukateikyoku-Soumuka/0000153401.pdf>

## 4. Right to know its origin

- ◆ Act on the regulation of the private adoption agency(2016)
- ◆ Not sufficient
- ◆ Personal (family oriented) register system in Japan should be revised
- ◆ Many points to discuss

# Promoting Adoption of the child

- ◆ Child abuse
- ◆ Baby box (only one facility in Japan ten years ago, Kumamoto city)
- ◆ Child in special need of protection (the ART including surrogacy is not regulated in Japan )
- ◆ After ca. 30 years we have at last a chance to revise the adoption law in the Code Civil
- ◆ I expect, two years later we have a revised, bland-new adoption law in Japan, it would be not at all new one for the people in western countries

**Thank you for your  
kind attention!**

ご清聴ありがとうございました

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