

디지털 성범죄 등 대응 TF·
전문위원회 활동과 성과

DIGITAL SEX CRIMES TASK FORCE TEAM- EXPERT COMMITTEE

ACTIVITIES AND ACHIEVEMENTS

디지털 성범죄 등 대응 TF·
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**DIGITAL
SEX CRIMES
TASK FORCE TEAM·
EXPERT
COMMITTEE**
ACTIVITIES AND ACHIEVEMENTS



Ministry of Justice of
The Republic of Korea

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(as of April 25, 2022)

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RECOMMENDATIONS

The 1st Recommendation

Establishment of Integrated System to
Support Sexual Offense Victims

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ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 1st Recommendation

– Establishment of Integrated System to Support Sexual Offense Victims –

Key Takeaway

1. Basic Policy

- Currently, sex offense victims are given support by governmental ministries, such as Ministry of Justice (MOJ), the National Police Agency (NPA), and the Ministry of Gender Equality and Family (MOGEF), on a ministry-specific and fragmented basis. We recommend that more integrated and systematic one-stop service be provided to these victims; and to that end, it is necessary to overhaul the support system within each ministry and establish inter-ministerial consultative bodies.

2. Recommendations

It is recommended that:

- a. the Ministry of Justice unify its window receiving applications for victim support and commence working on improving the system and technology so that social media consultations and online applications for support are possible;
- b. the ministries establish a consultative body for victim support that can share information and set up joint policies across ministries, prepare and provide integrated guidelines and application forms for the victims that summarize information on support details and streamline the work manuals so that application forms can be transferred to and received by the one-stop window for each supporting entity; and
- c. a separate independent body be established from a mid-to-long-term perspective to establish a structural system committed to integrated and victim-focused support.

3. Expected effects

- a. Raising awareness of services supporting sex offense victims and ensuring effectiveness of the recovery from the harm
- b. Constructing a systematic and integrated support system for victims of sexual offenses
- c. Solidifying support policies for sexual offense victims substantively and enhancing trust from the general public

1 Background

- It is the state's undeniable responsibility to protect and provide support for sex offense victims in a systematic and effective manner. In Korea, the crime victim's right to seek relief is specified as a constitutional right,¹ and various victim protection and support systems are being implemented by central administrative agencies and the private agencies.

¹ Citizens who have suffered bodily injury or death due to criminal acts of others may receive aid from the State under the conditions as prescribed by Act. In the 9th Amendment Constitution in 1987, the crime victim's right to request aid was first stipulated as a fundamental right.

- Presently, MOJ (the Prosecution), NPA, and MOGEF are providing support for victims of sex offenses, but victims are not well informed of or have difficulty knowing where to start to seek assistance due to lack of a unified support system and public advisory.
 - ※ As a result of the 2019 MOGEF's Study on the Safety Status from Sexual Violence' in 2019, 72% of women answered that ❶ they 'have heard of, but have no idea of the details' about the fact that the state has enacted laws and implemented various institutions to prevent sexual violence. 13.7% of them answered that they did not know it at all. ❷ To the question why they had never asked for help from a sexual victim rescue organization, 36.4% answered 'because the damage was not serious', and 22.0% answered because 'they did not know such organizations do exist'.
- In order to protect victims of sexual offenses thoroughly and provide customized support for victims in a timely fashion from the early stage of the harm, it is necessary to have a more integrated and systematic victim support system so that each ministry and department can quickly share information and work out collaborative measures.

2 Status and Problems of Support for Victims of Sexual Offenses

a. Current Status of Support for Sexual Offense Victims

▶ General Support

- Under the current legal system, the statutory sources for support for victims of sexual crimes can be found in the Crime victims Protection Act, Legal Aid Act, Sexual Violence Punishment Act, and Sexual Violence Prevention Act. The ministries authorized under each legislation, i.e., MOJ (the Prosecution), NPA, and MOGEF, are respectively tasked with supporting and aiding victims.
- Specific details include:
 - ▲ providing legal aid to victims, such as state appointed attorney for victims and testimony assistants,
 - ▲ providing financial support such as crime victim relief grants and living expenses,
 - ▲ providing medical support such as psychological treatment and payment of medical expenses,
 - ▲ providing protection and residence such as personal safety and housing support when possible retaliation is a concern.

| Contents of Victim Support by Ministers |

(As of Sep. 2021)

	MOJ(Prosecution)	NPA	MOGEF
Legal	<ul style="list-style-type: none"> • State appointed attorney for victims • Testimony assistance • Legal aid 		<ul style="list-style-type: none"> • Free legal assistance (Comprehensive counselling and support by Haebaragi Center) (Police on post 24 hours a day)
Economic	<ul style="list-style-type: none"> • Criminal harm relief grant (upon death or serious bodily injury) • Living costs, school expenses, funeral expenses • Employment support grant 	<ul style="list-style-type: none"> • Violent crime scene cleanup expenses 	<ul style="list-style-type: none"> • Care expenses (children of victims, etc.)
Medical	<ul style="list-style-type: none"> • Medical treatment costs • Psychotherapy (Smile Center) 	<ul style="list-style-type: none"> • Police officers dedicated to victims • Victim's mental caregiver 	<ul style="list-style-type: none"> • Medical Expenses • Care expenses • Recuperation program
Protective/ Housing	<ul style="list-style-type: none"> • Safe houses (4 units) Temporary housing (Smile Center) • Housing support, relocation expenses • Provision of site locating device • Support for witnesses such as escorting to court 	<ul style="list-style-type: none"> • Temporary accommodation (449 units) • Residential area patrol, CCTV, number registration • Provision of locating device • Escort service to investigative offices to help with giving statements 	<ul style="list-style-type: none"> • Support for housing

▶ Support for digital sex offense victims with deletion service

- Victims of digital sex crimes such as the distribution of sexual exploitation or deep fakes are entitled to support with deletion of illegal videos and demand reimbursement against the offender for the cost for deletion, in addition to the general support for sex crime victims (Article 7-3 of the Sexual Violence Prevention Act)
- The support with deletion service is provided by the Digital Sexual Crime Victims Support Center², the prosecution, the police, the Korea Communications Standards Commission (KCSC), the Korea Cyber Sexual Violence Response Center, the Sexual Violence Counseling Center, and the Women's Emergency Hot Line.

※ When a victim of a digital sex crime personally requests an online service provider to delete a disseminated illegal videos/photos or requests the Korea Communications Standards Commission for deletion of the same via a support organization, the Korea Communications Standards Commission will review the case and order a deletion or blockage of access.

² Established (April 2018) at the Korean Women's Human Rights Association under the MOGEF, it provides deletion service, victim counseling, legal support for investigation, and medical support connection.

b. Issues with the current support system

► Lack of integrated victim support system

- The police, the prosecution, and MOGEF individually provide support without information sharing or consultation with other entities (see 2-a). This leads to The result is insufficient information on supporting systems and procedures of other ministries, inadequate information advised to the victims and potential gaps or overlapping of support.

► No unified victim aid application form

- Victim support guides and application forms are different for each ministry or agency, and even within each ministry, depending on the contents of the application. Thus, a number of separate application forms are needed to apply for a number of aids.

ex) To file an application for medical expenses, relocation expenses, and financial aid with the MOJ's Crime victim Support Center, the applicant need to fill out three separate applications since the application forms are different for all three purposes.

► Lack of one-stop windows in each ministry

- As there is no one-stop window within each ministry, the victim must contact separately and file application with each agency.

ex) In order to use the system even within the MOJ, a victim must contact the Victim Support Office of the Public Prosecutor's Office for State appointed attorney for victims, the Crime victim Support Center for financial support, the Smile Center for psychological support, and the Korea Legal Aid Corporation for legal advice respectively and then go through a separate application process for each purpose.

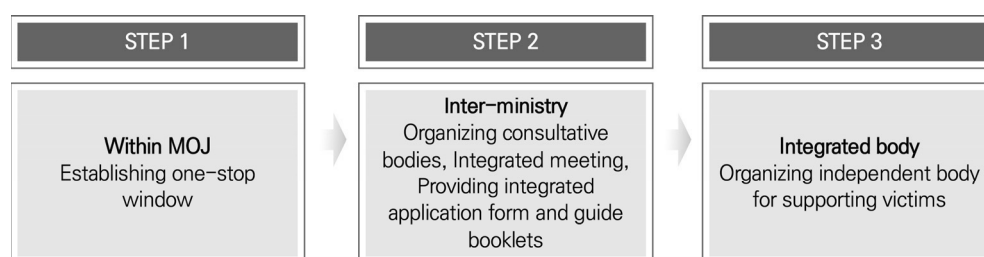
| MOJ Guidelines for Crime Victim Protection and Support System |

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► Difficulty in establishing long-term plans for policy development and reinforcement of specialty and capability

- The dispersed support system carries difficulty providing support to victims in the timely and integrated manner, and places limits to building the capability for victim-centered customized support and accumulating specialties reflecting the nature of injuries of sexual crimes that evolve in new forms and methods in combination with online activities.
- The actual victim support work is mainly provided by private organizations including the Crime Victim Support Center and Smile Center. In the absence of a dedicated and integrated overseeing body, however, it is difficult to provide effective support and develop new policies.

3 Recommendations



a. (Step 1) Establishing one-stop window for applications for victim support within the MOJ

- It is recommended that the current system under which victims of sexual offenses need to apply for support to the Public Prosecutor's Office, Crime Victim Support Center, and the Korea Legal Aid Corporation respectively be replaced into one unified window for application.
- Along with unification of application window, promoting technological development is recommended to enable consultations using SNS and applying online for support.

※ Under the current system, it is appropriate in terms of effectiveness to integrate the application windows centered around the Crime Victim Support Center, since this Center has established an integrated support network for victims by signing more than 1,600 MOUs with the prosecution, the police, Legal Aid Corporation, municipalities, firefighting and educational institutions and other organizations.

| Signed MOUs of the National Crime Victim Support Center Network |

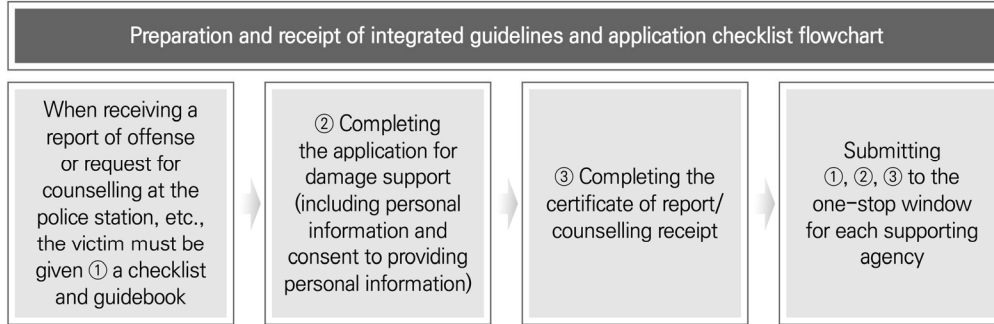
Signed MOUs															
Div	Pro-secu-tion Police	Muni-cipality	Medi-cal	Mul-ticul-tural	Edu-cation	Child/Aged prote-ction	Health	Couns-elling/ Psych-oth-e-rapy	Prote-ction faci-li-ties	Wel-fare	Legal	Fire-figh-ting	Labor	Others	Total
Case	223	164	212	113	78	77	12	334	74	138	73	48	11	63	1,620

b. (Step 2) Establishment of an inter-ministerial consultative body, preparation and provision of an integrated application form, and holding integrated meetings

- **(Establishment of a consultative body)** A consultative body should be formed between the MOJ (Prosecution), NPA, and MOGEF (installing a one-stop window within each department)
- **(Preparing and providing an integrated application form and guidance booklet)** In order to ensure that victims easily understand information on the overall support system for sexual crime victims, it is recommendable that information on support be inter-departmentally combined into one integrated application (See the application form and checklist attached.), which should be kept available to the public together with the integrated guidance booklet and posted on the government website such as Government 24 or on the relevant ministry's website, while providing internet application services).
- **(One-Stop Application for Victim Support)** Procedures should be so established that victims can receive information (guideline booklet) from the initial stage first instance reporting and counseling agencies such as the police and Haebaragi Center and apply for victim support with the integrated application form.
- **(Inter-ministerial Connection)** The work manuals and guidelines should be integrated and overhauled so that, once an application form for victim support is prepared at the initial stage first-instance reporting/counseling agency, that application form can be transferred to the one-stop window for each supporting agency.
- **(Integrated Meeting for Victim Support)** When deemed necessary based on the seriousness of the case, it is recommended to ensure cooperation among ministries to develop measures for supporting victims comprehensively through the integrated victim support meetings.

※ The quicker and fuller information sharing to victims warrants higher probability of witnessing the victims' rights realized in the criminal justice system and their injury recovered faster.

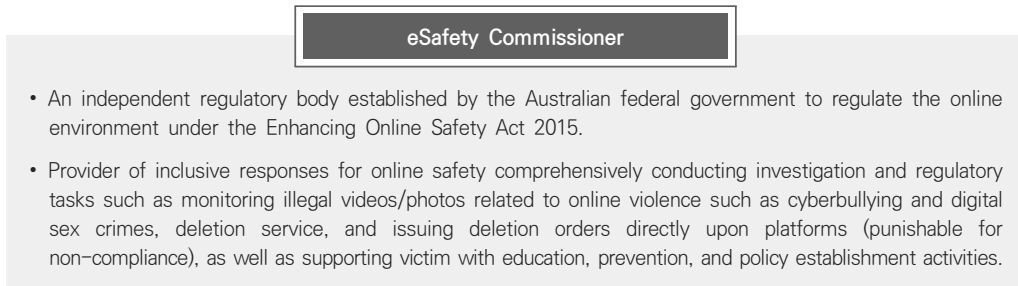
| Attachment: 「Application for Supporting Crime Victim and Application Checklist (Example)」 |



c. (Step 3) Install an integrated organization for victim support

- In the mid-to-long-term perspective, it is recommended to separately establish an independent organization to provide victim-centered integrated One-Stop service, and to this end, establishing a systematic and sustainable support system for sexual crimes victims would be necessary.

※ In Australia, there is 'eSafety Commissioner', an independent organization which functions as a cyber crime response control tower engaged in monitoring, deletion, investigation, victim supporting, and policy-making.



4 Expected effects

a. Enhanced effectiveness of recovery of sexual offense victims from injury

- The victim's right to relief from criminal injury can be substantially materialized as the victim is provided with comprehensive information on the country's support system at the inception of the damage development sustained by the victims

- It is expected to improve the speediness and effectiveness of recovery from injury by raising awareness and efficiency of the support services.

b. Establishment of a systematic and integrated support system for sexual offense victims

- Integration of the reception window will ensure that information is readily shared between the ministries and their functions are interconnected in an organic fashion.
- Construction of a systematic and integrated system imparting supports to victims of sex crimes is expected.

c. Advanced policy effectiveness to support sexual offense victims and reinforced trust of the general public

- Organizations and consultative bodies dedicated to supporting victims of sexual offenses are expected to bring forth development of various support policies, promotion of victim support activities, as well as solid trust on the state's role from the general public.

[Attachment]

Application for Crime Victim Support (Provisional)

Receiving institution			Reception No.	Reception date
Report/ Counselling Received	Report- ing	Reported agency	Date/time of report	Case No.
	Counsel- ing request received	<input type="checkbox"/> Crime victim support center	<input type="checkbox"/> Legal aid corporation	<input type="checkbox"/> NPA
		<input type="checkbox"/> Prosecutors' Office	<input type="checkbox"/> One-stop service center (Haebaragi)	<input type="checkbox"/> Smile Center
		<input type="checkbox"/> Korea Communications Commission	<input type="checkbox"/> Korea Sexual Violence Counseling Center	<input type="checkbox"/> Korea Cyber Sexual Violence Response Center
		<input type="checkbox"/> Women's Human Rights Institute of Korea (Digital Sex Crime Victims Support Center)		<input type="checkbox"/> Others

Applicant	Name		Social Security Number	Age/Sex
	Contact		Address	Relationship to Victim
	Account number (bank)			

Injury from Crime	Incident	Time/Place			
		Incident description			
	Victim's informati- on	Name		Sex/Nationality	
		Date of birth		Occupation	
		Contact		Address (If applying for relocation allowances, state addresses before/after the relocation.)	
		Account No. (Bank)			
		<input type="checkbox"/> Child, juvenile (Below 19)		<input type="checkbox"/> Senior (65 or above)	
		<input type="checkbox"/> Disabled		<input type="checkbox"/> Foreigner	
	<input type="checkbox"/> Death		<input type="checkbox"/> Injury (5 weeks or longer)		
	Perpet- rator Informa- tion	Name		Age/Sex/Nationality	
		Occupation		Relationship with victim	
		<input type="checkbox"/> Claim for damage or settlement (Bond deposit, Perpetrator's insurance benefit, etc.) (Specific details if applicable: _____)			

Family Information (1st priority at the time of the victim's death)	Relationship (From Victim's position)	Name	Age	Occupation and Workplace (school)	Living together?	Others (Foreigners should state nationality in detail)

Wealth and environment	housing type	<input type="checkbox"/> Apartment <input type="checkbox"/> House <input type="checkbox"/> Multi-unit <input type="checkbox"/> Others()		
	housing type	<input type="checkbox"/> Owned(pyeong) <input type="checkbox"/> Jeonse (Deposit won) <input type="checkbox"/> Monthly rent(Deposit won, Rent won/mo) <input type="checkbox"/> Others ()		
	Residential owner	(Relationship)	Monthly income / living expenses	
	Vehicle owned	<input type="checkbox"/> Yes(model year, market value) <input type="checkbox"/> No		
	Insurance benefits	<input type="checkbox"/> National health insurance (medical/medical care) <input type="checkbox"/> Workers' compensation <input type="checkbox"/> Employment insurance (unemployment benefits) <input type="checkbox"/> National pension or civil servant pension <input type="checkbox"/> Other private insurance, etc. ()		
	Receipt of public aid	※ Any support provided by other laws, institutions, or systems/ Eligibility for any crime injury relief grant ※ State information on basic living allowance / national merit / disabled / receipt of any other national and local government's grant in receipt		

Others	If seeking housing support	Reasons for seeking housing support
		Desired Region Choice 1 (), Choice 2 ()

Prayer for relief	★ Attachment: Checklist for Victim Support Application
<p>The applicant hereby applies for victim support.</p> <p>[Documents to be submitted]</p> <p>[Consent to Personal Information Provision and Processing]</p> <p>The applicant hereby consents that: (1) the applicant provides personal information such as the victim's and applicant's gender, address, contact information, and resident registration number, as well as detailed information about the damage sustained by the victim, which may be collected and used by us (See Article 24 of the Personal Information Protection Act.); (2) When we may requests for data such as the victim's personal information and trial records at any time, the applicant will actively cooperate an make these materials available to us so that we may collect and use such information and materials; and (3) we may, for the sake of collaboration for victim support, transmit said information and materials to central administrative agencies (MOJ, MOGEF, Ministry of Health and Welfare, Ministry of Security and Public Administration), municipal governments, and corporations, institutions, facilities, and persons tasked with supporting crime victims. (See Articles 15 to 17 of the Personal Information Protection Act and other relevant regulations.).</p> <p>[Advisory]</p> <p>If the applicant in receipt of the support is found to have created an appearance as if he or she had met the requirements to receive support through his/her willful acts such as false statements, forgery or tampering tempering of relevant substantiating documents, all the support provided will be revoked and reclaimed, with the possibility of criminal punishment for fraud, etc.</p> <p style="text-align: center;">Year Month Day</p> <p style="text-align: center;">Applicant's name (signed/sealed)</p>	

(★ Attachment)

Checklist for Victim Support Application (Provisional)

Category		Support Plan	Details	Apply (Check)
Legal	MOJ	• State appointed attorney for victims	Provide professional legal aid throughout the investigation and trial process	<input type="checkbox"/>
		• Testimony assistant	If communication is difficult for age below 13 or disability	<input type="checkbox"/>
		• Legal aid	Free legal advice, representation in civil lawsuits	<input type="checkbox"/>
	MOGEF	• Free legal assistance	Provides criminal and civil legal support	<input type="checkbox"/>
Financial	MOJ	• Crime victim relief grant	Relief in case of death, disability, or serious injury	<input type="checkbox"/>
		• Living expenses	If difficult to make a living due to crime (at least 500,000 won per month)	<input type="checkbox"/>
		• School expenses	On need basis (elementary/middle/high school/university: 0.3 to 1 million won each)	<input type="checkbox"/>
		• Funeral expenses	Funeral expenses in case of victim's death (up to 4 million won)	<input type="checkbox"/>
		• Job-seeking expenses	Education expenses for employment	<input type="checkbox"/>
	NPA	• Aid to informant of specific crimes	If retaliation or injury to the reporting person (victims) or their close relatives is likely: payment of expenses such as anti-burglar facilities, protection and escort, or solatium, etc.	<input type="checkbox"/>
	MOGEF	• Crime scene cleaning cost	Crime scene cleaning cost (Up to 650,000 won for 6 pyeong or less; and up to 4 million won for 6 pyeong or greater)	<input type="checkbox"/>
		• Care expenses	Caring for victims under age 13, victim's children, the disabled, etc.	<input type="checkbox"/>
Medical	MOJ	• Medical treatment cost	Actual expenses if treatment requires more than 5 weeks (15 million won per year, up to 50 million won)	<input type="checkbox"/>
		• Psychotherapy	Free psychotherapy for crime victims' trauma (Smile Center)	<input type="checkbox"/>
	NPA	• Victim-dedicated police officers	Designate a same-sex police officer as assistant	<input type="checkbox"/>
		• Victim psychologist agent	Psychological support by CARE, crisis intervenor, etc.	<input type="checkbox"/>
	MOGEF	• Medical expenses,	Physical/mental treatment, abortion/childbirth expenses, infection examination, etc.	<input type="checkbox"/>
		• Caregiving Expenses	Expenses for hiring attendants for hospitalized patients	<input type="checkbox"/>
		• Therapeutic recovery program	Group counseling, art therapy, total recovery camp, etc.	<input type="checkbox"/>
Security/ Housing	MOJ	• Safe housing	Domicile in house/studio officetel supported to relocators in case of a possible retaliation	<input type="checkbox"/>
		• Relocation expenses	Actual cost for relocation in case of a possible retaliation	<input type="checkbox"/>
		• Temporary housing	Provided during psychological treatments at Smile Center	<input type="checkbox"/>
	NPA	• Temporary accommodation (449 units)	Provided to relocators in case of a possible retaliation	<input type="checkbox"/>
		• Provision of a locator	Provision of an emergency call device in case of a possible retaliation	<input type="checkbox"/>
		• Personal protection	Customized patrol, residential CCTV, registering victim number to 112, etc.	<input type="checkbox"/>
	MOJ MOGEF	• Housing support	Conjunction with Korea Land and Housing Corporation (LH) for house renting	<input type="checkbox"/>
Deletion	MOGEF KCSC	• Deletion support	Support with the obliteration of digital sex-abused videos (Women's Human Rights Institute of Korea, KCSC)	<input type="checkbox"/>

※ For each item, multiple selections can be checked. Support will be granted subject to approval after a review.

Application for Other Victim Protections Checklist (Provisional)

Classification		Support Plan	Details	Apply (Check)
Advising of criminal proceedings		• Confirmation of rights advised	Provision of information on rights and support of crime victims	<input type="checkbox"/>
		• KICS information service	Information provision service Information provided through the Korea Information system of Criminal-justice Services (KICS) portal	<input type="checkbox"/>
		• Disclosure and copying of litigation records	Disclosure and copying of records of ongoing litigation	<input type="checkbox"/>
		• Notice of proceedings	<input type="checkbox"/> Notice of disposition <input type="checkbox"/> Notice of commencement of hearing <input type="checkbox"/> Notice of trial result <input type="checkbox"/> Notice of detention status <input type="checkbox"/> Notice of release from prison	<input type="checkbox"/>
Participation in criminal proceedings		• Statement of Opinion on crime victim's injury	Participation of victims in the investigation process and opinion statement	<input type="checkbox"/>
		• Participation in the pre-detention suspect interrogation	Victim's participation in the suspect's pre-detention interrogation process and making comments	<input type="checkbox"/>
		• Victim's statement in the trial	Victim's participation in the trial and giving statements	<input type="checkbox"/>
		• Presence of person in trust	Presence of a person in trust when victim is giving statement during investigation and trial	<input type="checkbox"/>
		• Assigning same-sex investigators	Female investigators are assigned when investigating a female victim of sex violence	<input type="checkbox"/>
Personal protection	Identity protection	• Protocol under pseudonym	All or part of the victim's personal information is omitted in investigation protocols and documents	<input type="checkbox"/>
		• Investigation in a secret location	When investigating a victim of sexual violence, investigation is processed in a secret location	<input type="checkbox"/>
		• Non-disclosure of statements	Confidentiality treatment of victim's court statement	<input type="checkbox"/>
		• Undisclosed testimony	In camera examination of victim's court testimony Conducting private interrogation when testifying in court for victims	<input type="checkbox"/>
	Personal security	• Escort to investigative agencies (NPA/MOGEF)	Support with escorting to appear in investigative agencies	<input type="checkbox"/>
		• Escort to court (MOJ)	Support with escorting to appear in court	<input type="checkbox"/>
		• Witness assistant officer (court)	Provides information and counselling on trial procedures, and (if necessary) personal security service when the victim must appear as witness	<input type="checkbox"/>
Welfare		• Emergency Welfare	Links the victim to local government's emergency welfare system when the victim has difficulty maintaining a livelihood due to crime effect - Living expenses, medical, housing, education, and admission to welfare facilities, etc.	<input type="checkbox"/>
		• Designation as recipient of basic livelihood	Links the victim to local government's regime to designate as recipient of basic livelihood when the victim has difficulty maintaining a livelihood due to crime effect	<input type="checkbox"/>

RECOMMENDATIONS

The 2nd Recommendation

Introduction of First-step Actions to Delete and
Block Illegal Videos



DIGITAL SEXUAL CRIMES
TASK FORCE TEAM •
EXPERT COMMITTEE
ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 2nd Recommendation

– Introduction of First-step Actions to Delete and Block Illegal Videos –

Key Takeaway

1. Basic Policy

- To address the need to quickly prevent the dissemination of injury in the early stages of digital sex crimes, it is recommended to add a provision on first-step action for deletion and blocking of abusive videos in the Sexual Crime Punishment Act (SCPA).

2. Details

- a. We recommend introducing in the SCPA first-step actions, equivalent to what is provided for in the Act on Domestic Violence, which authorizes investigative agencies having received a digital sex offense information or discovered a crime scene to actively intervene and take instant measures to prevent the abusive video from dissemination such as by imposing an order upon the communication service provider to obliterate and block the access to illegal video, or issuing warning to stop abusive act subject to criminal punishment.
- b. It is also recommended to check and develop technical measures to ensure that warning to stop criminal act and advising of possible punishment can be displayed on such closed platforms as the dark web, and build a system that can increase the effectiveness of first-step actions, such as deploying experts and developing specific manuals.

3. Expected effects

- a. Activation of substantial victim protection system that reflects the characteristics of digital sex crimes
- b. Realization of therapeutic jurisprudence by promptly initiating the process of removing the abusive video
- c. Reduction of social cost of addressing digital sex crimes by circumscribing the spread of secondary injuries

1 Background

- Combined with technological development, digital sex crimes pose its harmful potential of unlimited reproduction and possession of sexually abusive videos, placing the victim in a state of permanent anxiety due to the existence of the video.
- Due to the nature of digital sex crimes that are instantly reproduced with the same quality as the original through various channels, ready for online distributed, it is critical to block and obliterate the victim's video in the early stage.

- In order to warrant quick prevention of the spread of injury as early as possible, a legislative reinforcement is needed to allow investigative agencies to take actions toward blocking and deleting abusive videos immediately after the report or discovery.

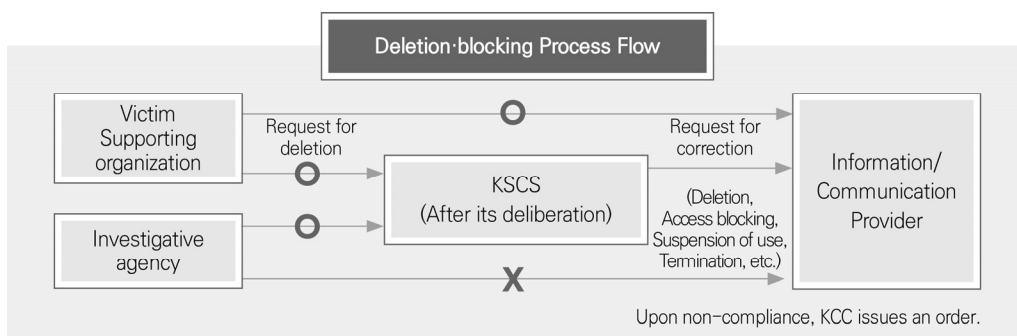
2 Issues with the Current System of Deleting/Blocking Digital Sex Offense Videos

a. Lack of investigative agencies' authority to delete or block abusive videos

- Under the current legal system, the authorized player of deleting and blocking the abusive video is the information-communication service provider that operates the platform where the video in question is distributed.

※ According to the current Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. and Act on the Establishment and Operation of Korea Communications Commission, it is the information and communications service provider that may delete or temporarily block an abusive video at its discretion or at the request of the victim, or it is required to delete or block it when requested by the KCSC.

- The KCSC requests information and communications service providers to take self-regulatory measures. Alternatively, it conducts its own deliberation and demands corrections, upon failure of which Korea Communications Commission (KCC) orders deletion.



* According to the law, within seven days from the date of deletion request from the head of a central administrative agency, the KCSC conducts a deliberation and makes a request for correction to the service provider, etc. In case of failure to correct, KCC issues a corrective order to that effect.

** With the KCC's introduction of Electronic Review Support System* (September 2019), a '24-hour review system for digital sex crime information has been established. However, it takes a considerable period until the video in question is actually removed since the corrective order must be granted only upon failure to cooperate as well as after granting an opportunity to state opinion.

- Although the investigative agency receiving the crime report recognizes the injury relatively in early stage, it has no statutory authority to request the information-communication provider to delete or block the illegal video. Thus, the agency requests KCSC for such deletion or blocking rather than do it by itself or have it done by the information-communication provider.
- This compromises the promptness of responding, which exposes the victim to the risk of the abusive video continuously spreading with the victim remaining unaware, while the investigation or other judicial processes are on progress.

| KCSC Deliberation on Digital Sex Offense Information |

Year	Deliberation cases	Correction request (cases)			
		Access blocking	Termination of use	Deletion	Total
2018	17,486	17,248	–	123	17,371
2019	25,992	25,896	–	4	25,900
2020	35,603	35,526	2	22	35,550

b. Difficulty in Obtaining Basic Data

- In cases of digital sex crimes, the rapidity of dissemination and the underground nature of video distribution platforms, victims are often unaware of the damage itself, not to speak of the extent thereof. Even when the victim reports to the law enforcement or request for deletion of the damaging video by way of the platform operator or an supporting organization, it is the responsibility of the victim to find out the abusive video personally to produce the basic materials as evidence.

⇒ That process not only aggravates mental suffering of the victim but also burdens the victim financially* with the cost of hiring a private business for monitoring and deletion service.

* Depending on the difficulty of deletion, the cost of private vigilance service is known to be somewhere between 500,000 won and 3,000,000 won per month.

c. Absence of Instant First-step Actions in Response to Digital Sex Crimes

▶ Current statutory first-step actions

- In case of a crime such as domestic violence, child abuse, or stalking, first-step actions are prescribed as on-site instant responsive actions taken by judicial police officers or dedicated government officers

※ Essentially, these are measures to achieve instant protection of victims at the crime scene, such as quelling down criminal acts, separation of offenders from the victim, taking the victim to protection facilities, and warning the perpetrator of possible punishment.

| Current Statutory First-step Actions |

	Domestic Violence Punishment Act (Article 5)	Child Abuse Punishment Act (Article 12)	Stalking Punishment Act (Article 3)	Juvenile Protection from Sex Abuse Act (Article 36)
Actions	Immediately upon arriving at the scene where the crime reported is under way.	Immediately upon arriving at the crime scene as reported or discovered, or upon confirmation of abuse taking place off the scene and an imminent risk of such abuse being repeated.	Immediately upon arriving at the scene where the crime reported is under way.	Immediately upon arriving at the scene of ongoing crime as reported, where the perpetrator and the victim are the same family members.
	Judicial police officer	Judicial police officer/ Government officer dedicated to child abuse cases	Judicial police officer	Judicial police officer
Enforcer	<ul style="list-style-type: none"> • Stopping the criminal act • Separation of perpetrator from victim • Investigation, including arresting offender on the spot • Sending victim to counseling office or protective facilities • Placing victim in a medical institution • Notification of possible temporary measures in case of repetition • Issuance of a victim protection order and notification of personal security action 	<ul style="list-style-type: none"> • Stopping the criminal act • Separation of perpetrator • Sending victim to protective facilities • Placing victim in a medical institution 	<ul style="list-style-type: none"> • Stopping the criminal act • Notification to stop the act henceforth • Warning of punishment • Separation of perpetrator from victim • Investigation • Advising how to request for first-step actions and temporary measures • Sending victim to counseling office or protective facilities 	(Same as domestic violence first-step actions)

► Lack of established first-step action in relation to digital sex crimes

- While digital sex crimes must be responded to in the initial stage through forced deterrence, there is no statutory provision for such measures currently.
- It is necessary to apply first-step actions, such as stopping the criminal act and warning the perpetrator of punishment possibility, that have been practiced in off-line offenses to the

online counterparts, so that the problems described in a. and b. above can be solved and the proliferation of the abusive video is prevented at the early stage for protection of the victim. To that end, it is highly urgent to introduce first-step actions in relation to the deletion and blocking of the offensive videos created for digital sex crimes.

3 Recommendations

a. Proposition of Introducing First-step Actions to Protect Victims of Digital Sex Crimes

- We recommend creating a statutory source in the Sexual Crime Punishment Act (SCPA) to introduce first-step actions, which authorizes investigative agencies having received a report of instant crime or having discovered a crime scene or a suspicion of offense being committed to actively intervene and take measures to deter proliferation of the abusive video in question.
- Details

① Enforcer

- A judicial police officer who has discovered a digital sex crime or a suspected case or received a report of an injury from an offense

② Types of first-step actions

- ① Collection of the abusive video as evidence and making a request directly to the information and communication service provider for deletion/blocking of the video

: When a reported or discovered video is confirmed or reasonably suspected to be an object of a sexual crime, a judicial police officer who is an expert in criminal investigation should be enabled to crop the video as evidence and directly request the information and communication service provider to remove or block the video; i.e., the officer will no longer need to request the KCSC to conduct a review as an intermediary step.

* The purpose of establishing the KCSC is to 'guarantee the public value and fairness of broadcast contents, promote a sound culture of information and communications, and create an environment for the correct use of information and communications' (Article 18 of the Act on the Establishment and Operation of the Korea Communications Commission), which has no direct bearing on investigation and deterrence of criminal acts. In this connection, it is difficult to say that a judicial police officer has less professionalism, objectivity, and the sense of fairness than the KCSC in identifying the objects of sex crimes.

* Notwithstanding its purpose of establishment, the KCSC has been tasked with examining whether or not to accommodate a corrective request such as deletion of an object of sexual crime. This is because the object of sexual crime has long been treated identical with an obscene material, a subject within the purview of KCSC as an examiner of obscenities. From now on, it is desirable to distinguish the object of sex offenses from obscene materials.

* Furthermore, given that victims can directly request deletion of the crime object to the information and communications service provider, who is required to take necessary measures such as deletion or any ad hoc actions (Article 44-2 of the Act on Promotion of Information and Communications Network Utilization and

Information Protection, etc.), a judicial police officer who has received a report should be reasonably allowed to directly request for such deletion on the same basis.

② Stopping criminal acts and warning of possible punishment

: To implement 'stopping criminal acts'* for offline offenses to online counterparts, it is recommended to require the platform channel where the video is actually or suspectedly spread to display a warning message (including notice of punishment of illegal act, request for stoppage, etc.) to ensure that the channel used for dissemination of the video is inactivated.

* The Domestic Violence Punishment Act, the Child Abuse Punishment Act, the Stalking Punishment Act, and the Juvenile Protection from Sex Abuse Act commonly stipulate 'stopping the criminal act' as a first-step action.

③ Advising the victim of procedures to seek protection and assistance for deletion

* Article 7-3 of the Sexual Violence Prevention and Victim Protection Act stipulates the state's obligation to render assistance for deletion of filmed clip, etc.

④ Placing the victim in protection facilities, etc. (with the victim's consent)

* If it is deemed necessary, the victim is sent to protection facilities, etc., the same way as victims of a general sexual offense are.

③ Legal Examination

- First-step actions are not criminal measures purported to impose disadvantages on the offender. Rather, they are protective measures to ensure the safety of the victims (legal nature), not involving any substantive disadvantage to be sustained by service providers or users such as restriction of fundamental rights. Therefore, no separate judicial control is required, as is the case with other statutory first-step actions.

※ As with other first-step actions, it is necessary to instantly prepare a report on the results of first-step actions after having taken the action (when the case is disposed of) or write a letter of case handover to pass the case to the relevant authority (when the case is not disposed of).

④ Statutory provisions (Proposition)

- The following provisions are to be inserted in the Act on Special Cases concerning the Punishment of Sexual Crimes.

【 Act on Special Cases concerning the Punishment of Sexual Crimes 】

Article 14-4 (First-step Actions) A judicial police officer who receives a report or discovers a crimes specified in Articles 13 through 14-3 or an actual or suspected violation thereof shall immediately take the following actions:

1. collection of the abusive video in question and making a request for deletion or blocking of the video to the information and communication service provider or administrator of the bulletin board, etc.;
2. issuance of warning of stoppage of the criminal act and possibility of punishment;
3. advising of relevant processes such as how to report damages and request for deletion; and
4. placing the victim to a counseling office or a protection facility (only with the consent of the victim).

※ It is necessary to insert a new provision designed to the same purport in the Act on the Protection of Children and Youth Against Sex Offenses

- A punitive provision should be newly inserted to address the case where the judicial police officer's request for deletion is not honored.

: In the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (within Article 73) and the Telecommunications Business Act (within Article 95-2 of the Act and Article 30-5 of the Enforcement Decree of the Act), it is proposed to insert punitive provisions that may be imposed against any information and communications service provider who fails to comply with a judicial police officer's request for deletion or blocking of the abusive video.

b. Establishment of A System That Can Enhance the Effectiveness of First-Step Actions

- Examine and develop technical measures to ensure that punitive warnings are displayed on various underground platforms such as the dark web.
- We recommend creating a system that can increase the effectiveness of first-step actions. Specifically, such system must warrant deployment of professional personnel for expansion of platforms that are pervious to the online first-step actions as well as development of detailed manuals capable of substantially deterring commission of further crimes.

4 Expected effect

- Reinforcing the effectiveness of victim support
 - A substantial victim protection mechanism is expected to operate in a way to reflect the nature of injuries from digital sex crime, the aftermath of which is unlikely to be recovered without obliterating or disabling the access to illegal videos.
- Realizing the therapeutic jurisprudence by promptly activating deletion procedures
 - Breaking away from the passive support approach activated only at the request of victims, support will be given to initiate an active and timely deletion procedure from the inception of investigation process
 - By providing victims with psychological stability and satisfying procedures, they will be able to accelerate their recovery from the criminal victimization to their normal life.
- Reducing social costs by preventing the secondary injury
 - It will put a bridle on the incurrence of secondary damage that would have otherwise been caused by the distribution of illegal video clip while going through the judicial process.
 - It is expected that the society will save the cost required to respond to digital sex crimes, in terms of time and human resources put in tracking and deleting the video being circulated.

RECOMMENDATIONS

The 3rd Recommendation

Development of Digital Sex Crimes Public Advisory Guidelines
and Establishment of Dedicated Task Force

DIGITAL SEX CRIMES
TASK FORCE TEAM •
EXPERT COMMITTEE
ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 3rd Recommendation

– Development of Digital Sex Crime Public Advisory Guidelines and Establishment of Dedicated Task Force –

Key Takeaway

1. Basic Policy

- In relation to the media contents that are directly or indirectly and internally or externally published to the public, we recommend that the Ministry of Justice, as the ministry responsible for protecting human rights, prepare and put into practice standardized guidelines for reference, based on the clear standards such as human rights and gender sensitivity.

2. Details

- a. When including sexual offense-related contents in publications, it is recommended to use and indicate the correct concept and terminology.
- b. In providing and publishing information internally and externally through publications in particular, it is recommended that rules specifying specific standards to be observed throughout the entire process of planning, creating, and publishing so as to develop correct public awareness of sexual crimes and prevent secondary harm to the victim.
- c. It is recommended to develop a plan to implement rules regarding press release and public relations, by creating and managing a checklist so that key contents are not overlooked at each stage of planning, creating and publishing the Publications, etc.
- d. We also recommend that systematic pre-inspections be conducted in relation to the Ministry of Justice (MOJ) publications, and a dedicated window be established to proactively respond to internal and external issues.

3. Expected effects

- a. Preventing incurrence and dissemination of secondary damages to victims of sexual offenses caused by the use of incorrect terminology and inappropriate contents in the media, broadcasting, and publications from the public sector.
- b. Improving the quality of contents related to sexual violence and harassment released in the MOJ publications and in the media/broadcasting which cites and references such publications.
- c. Enhancing human rights and gender sensitivities in the media, broadcasting, and public sectors, and increasing sympathy and understanding of the nature of sexual violence and harassment throughout the whole society

1 Background

- It has been pointed out that problems are pervading such that sex offenses including digital sex crimes are hilariously portrayed or the sufferings of the victim is exploited as a provocative subject in the news and other media, which has caused secondary damage and prevented the fundamental cause behind the sex crimes from being clearly seen.

- The media and media-related authorities do have their own rules on reporting sexual crimes*, but they are not mandatory and as such are overlooked in many occasions.

Media Rules on Reporting Sexual Crimes

- ▶ Rules on Reporting Human Rights¹
- ▶ Detailed Recommendation Standards for Reporting on Sexual Offenses²
- ▶ Newspaper Ethics Practice Guidelines³
- ▶ Regulations on Reviewing Internet Newspaper Articles⁴
- ▶ Standards for Sympathy and Practice Guidelines for Reporting on Sexual Offense and Harassment Cases⁵
- ▶ Internet Newspaper Code of Ethics, etc.⁶

※ In the case of outsourced content, it is more difficult to apply the reporting rules in reality.

※ Recently, it was pointed out from the audit of state affairs that the EBS animation 'PotenDog', which became famous for the inserted song 'Stepping on Shit', contains violent scenes (illegal filming, threats of distribution, etc.)

- Since state institutions have a very large influence on society and the media,⁷ the MOJ, as the ministry mainly responsible for human rights protection, is expected to develop reporting standards relevant to sex offenses when preparing and distributing internal promotional materials and external press releases, and open a dedicated window that carries out a preliminary inspection.

2 Reports on sex crimes and cases

a. Reporting practice of the press and media

- According to the Press Arbitration Commission's recommendations for correction for the past five years, 93 cases are disclosure of the identity of sexual violence victims and 383 cases are describing sexual violence victims' injured status and methods to commit the crime, which altogether accounted for 39.1% of the total recommendations for correction.

1 Joint establishment of Journalists Association of Korea (JAK) and Human Rights Commission of Korea (HRCK) (2011)

2 Joint establishment of JAK and HRCK (2012)

3 Joint establishment of Korean Association of Newspapers, Korea News Editors' Association and JAK (1957). Amended in 2016.

4 Established by Internet Journalists' Association (2014). Wholly amended in 2019.

5 Jointly announced by JAK and MOGEF (2018)

6 Internet Newspaper Committee's Autonomous Review Standards

7 Recently, in the so-called 'leggings shooting incidence (photographing the body of a woman wearing leggings on a bus without consent)', a Constitutional Court decision (2016 HunBa153) was cited using the term 'hidden camera' in relation to the legislative purpose of the Sexual Abuse Punishment Act punishing an act of filming using a camera, etc. Then, the major presses used the term 'hidden cam' in most articles reporting that decision.

| Recommendations for Correction by Type of Infringement for Past 5 Years |

Infringement Type		Infringement of Personal Interest										Infringement of Social Interest												
		Privacy infringement	Defamation	Suspect/Defendant identity disclosure	Victim/Witness identity disclosure	Reporting accusation	Sex Crime Victim identity disclosure	Sex Crime Victim status reporting	Mental patient identity disclosure	N Korea refugee identity disclosure	Describing sexual offender's crime method	Protecting child, juvenile	Journalism ethics	Describing obscene, vicious, cruel crime	Describing crime method in detail	Sex related report	Suicide related report	Reporting drug and narcotics	Describing violence	Shock, repugnancy	News article type ad.	No discrimination	Reporting on public poll	Title of article
Year	Total (%)	912 (100)	134 (14.7)	43 (4.7)	4 (0.4)	262 (28.7)	20 (2.2)		4 (0.4)	75 (8.2)			4 (0.4)	22 (2.4)	5 (0.5)	124 (13.6)	28 (3.1)		14 (1.5)	173 (19.0)				
2016		1,034 (100)	217 (21)	4 (0.4)	280 (27.1)	70 (6.8)		27 (2.6)	5 (0.5)	2 (0.20)			3 (0.3)	57 (5.50)	2 (0.2)	1 (0.1)	84 (8.1)	13 (1.3)	1 (0.1)	70 (6.8)	198 (19.1)			
2017		1,275 (100)	230 (18)		108 (8.5)	1 (0.1)		54 (4.2)		4 (0.3)	2 (0.2)	285 (22.4)	7 (0.5)	21 (1.6)	31 (2.4)	13 (1.0)	287 (22.5)		23 (1.8)	73 (5.7)		136 (10.7)		
2018		1,288 (100)	458 (35.6)	25 (1.9)	101 (7.8)			19 (1.5)		12 (0.9)	47 (3.6)	1 (0.1)	1 (0.1)	21 (1.6)	68 (5.3)	27 (2.1)	77 (6.0)	42 (3.3)	12 (0.9)	105 (8.2)	132 (10.2)	9 (0.7)	123 (9.5)	8 (0.6)
2019		935 (100)	188 (20.1)		28 (3.0)						24 (2.6)		17 (1.8)		2 (0.2)	43 (4.6)	112 (12.0)	30 (3.2)	37 (4.0)	66 (7.1)	157 (16.8)	110 (11.8)	102 (10.9)	19 (2.0)
2020																								

Source: Media Arbitration Committee

b. Cases

① Articles that travesty or compromise the seriousness of the crime and draw public attention to the victim

- Articles using terminology that dilutes the culpability of crimes, or weaken the sense of offensiveness such as by abbreviating the crimes using cameras prescribed in the Sexual Abuse Punishment Act into 'hidden cam', a term which carries hilarious meaning or by expressing sexual crime or perpetrator as 'messy job', 'wolf', 'animal', etc.
- Articles describing the victimizing sex abuse video 'revenge porn', which has a connotation of obscenity, or using terminology loaded with the perpetrator's perspective or otherwise provocative expression that draws attention to the victim, such as by referring to the victim by adding 'OO lady' or 'woman OO' before the word indicating the victim.

※ Statistics of media articles (number of cases) using terms such as hidden cam in the title 2018-2021

(source: S2W)

Year \ Term	Hidden cam	Messy job	Revenge porno
2018	682	14	31
2019	4,857	47	45
2020	1,886	57	20
2021	1,177	70	18
Total	8,602	188	114

② Provocative illustrations spotlighting victim-like attitude

- Illustrations attached to reports on sex crimes emphatically portraying the victim-like attitude or the offender's winner-like image.

ex) An image of being surrounded by men pointing fingers at the victim; an image of a monster-like man in contrast to a woman crouching; and an image of the perpetrator standing imposingly against the crying victim, etc.

- Visual depiction may have a great influence on the public awareness, and images like aforesaid may instill a distorted perception in the viewer's mind that the cause of digital sex crimes lies in the victim's fault or demeanor.

※ The Detailed Recommendation Standards for Reporting on Sexual Offenses published by joint efforts of Journalists Association of Korea (JAK) and Human Rights Commission of Korea (HRCK) recommends that "the media and press should exercise due care in featuring or reproducing illustration, graphics or cartographs not to cause the victim, etc. to sustain secondary damage in the photos and video reports they present.

③ Some contents appearing in the article that may track the victim's identity

- There are cases in which a video aired to the public contained keywords that can identify the victim or exposed the surroundings of the victim's residence, which in itself is a secondary offense. As the press reporting can pave the road for the damaging video lurking under the shadow to come out above the surface in some cases, a close attention should be paid so that the identity of the victim is not identified even to the slightest extent.

④ Reports that attributes too much narrative to the offender

- If the media focuses too much attention on certain offenders, and as a result either excessive efforts are made to demonize the perpetrators or attribute some sympathy to them, not only will the rest of the perpetrators entertain the 'effect of being forgotten', but it will lend itself to a stumbling block in the process of analyzing the fundamental cause of the sexual crime and exploring for responsive countermeasures.

※ In regard to the report on digital sexual exploitation, the Korean Women Link recommended a set of guidelines which include, "The media does not function as a speaker to hear and write down the unilateral claims of the offenders", "The media does not cast light on sexual offense as a crime separate from our daily life, but pays attention to its socio-cultural and structural aspects. (e.g., the perpetrator should not be summarily treated as an insanity, savage, or beast, or portrayed as a deviant personality)".

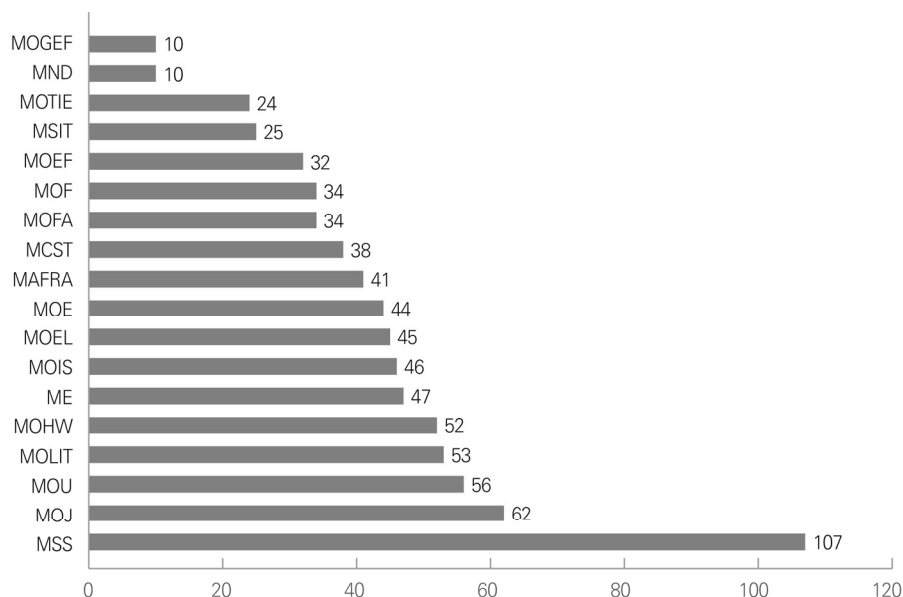
3 The necessity for standards for MOJ reporting and public relation with regard to sexual crimes

- As the government ministries, agencies, and public organizations are diversifying information provision channels in the public sector as part of communicative administration, there are increasing number of publications or videos (hereinafter referred to as 'Publications, etc.')
- published and transmitted internally and externally for the purposes of reporting, public relations, and education.
- Made available to the public through portals, these Publications, etc. are practically serving the functions of media, earning a high level of trust from the general public and exerting significant influence on all sectors of society, including the media and broadcasting.
- Under the current law, however, these Publications, etc. are subject only to limited inspections mainly on gender equality items, to the extent they are related to 'plans or projects that may have a significant impact on gender equality' and as such are subject matter of gender impact assessment*.

* An department to analyze the impact of a project concerned on gender and reflect them in policy improvement to eliminate gender discriminative elements in the process of establishing and implementing major government policies, such as legislations and projects (Article 15 of the Framework Act on Gender Equality)

- For regular publications, there is no organized system such as a dedicated window serving for self-inspection of the contents based on human rights or gender sensitivities or any standardized guidelines that can be employed as criteria in the process of planning, production, and distribution. As a result, there is a risk that publications containing inappropriate contents are unintentionally published and distributed.

※ According to the report of the National Human Rights Commission of Korea titled, 'Application of Gender Impact Assessment and Monitoring of Discriminatory Expression in Gender-Related Public Relations Materials' (July 2021), a monitoring of gender discriminative expression from government ministry's public posting and other public relations materials identified a total of 760 cases of sexist expressions. Of these, the MOJ account for 62 cases (8.25%), ranked at the second highest place in terms of rate of using the gender discriminative expressions.



Source: National Human Rights Commission

- As the primary authority for protection of human rights, the MOJ is recommended to develop and implement a set of standardized guidelines that can be referred to as a clear standard not only for internal publications on public relations and education, but also for media contents directly or externally distributed through the press and broadcasting, throughout the entire course of their existence from planning to distribution to the public.

※ These endeavors of the MOJ as the ministry primarily responsible for protecting human rights are expected to serve as a standard for other ministries and media companies when creating their guidelines, and to play an exemplary role in protecting the human rights of victims by enhancing consciousness of human rights that is related to sexual crimes.

- Meanwhile, some broadcasting and media outlets have established a gender dedicated department* devoted to screening the contents for the appropriateness related to sexual violence and gender equality. It is desirable that MOJ also install a gender dedicated window playing a similar role so that the ministry may systemize the self-inspection of the Publications, etc.

* ex) 'Gender Desk' of the Hankyoreh, 'Gender Research Center' of the Seoul Newspaper, 'Gender Equality Center', etc. of KBS

4 Recommendations

a. Accurate use and Notation of Concepts

- Expressions used in publications in the public field are frequently cited or reflected in the media and other fields as they are, and thus using the right concept, notation, and correct terminology in the phrase or expression of sexual offense-related content is strongly advised.

【Attachment 1】Correct Expression and Usage Examples of Frequently Appearing Terms

B. Establishment of Rules for Reporting and Public Relations concerning Sexual Violence

- When providing and announcing information internally and externally through Publications, etc., it is recommended to prepare a set of protocol that sets forth specific standards to be observed throughout the entire course from planning to production and publication, with the aim to induce a correct awareness of the overall sexual crimes including digital sex crimes as well as to prevent secondary harm to victims.

【Attachment 2】Guidelines for Producing and Distributing Publications, etc. to Enhance Human Rights Awareness and Gender Sensitivity (provisional)

c. Develop Plans to Comply with Protocols on Reporting and Public Relations

- To ensure that the key contents of each item in each stage of planning, production, and distribution of Publications, etc. is not overlooked, it is recommended to: ① create and manage a checklist; ② indicate whether or not the rules are complied with in final Publications, etc.; ③ provide the protocol and checklist together to the media outlets when handing over the materials and request* them for strict compliance therewith; and ④ provide continuous and periodic education to the responsible personnel to familiarize them with the contents of the protocol; as part of developing the plans to procure compliance with the protocol on reporting and public relations.

【Attachment 3】Checklist before Publication/Distribution of MOJ Publications (provisional)

【Attachment 4】Checklist before Reporting/Public Relation of Digital Sex Crimes (provisional)

* In the checklist distributed to the media outlets, etc., the 'information on the ministry to which reporting should be made and how to receive support for the victim (ex: Digital Sexual Violence Victim Support Center, etc.)' should be described in parallel so that reporting of the crime is facilitated and greater protection is given to the victims.

d. Establishing a Dedicated department within MOJ

- in relation to MOJ publications, it is recommended to conduct a systematic prior review under clear standards based on human rights and gender sensitivities, and to set up a dedicated department (ex: gender desk) that can proactively respond to internal and external issues concerned.

5 Expected effects

- It is expected that secondary victimization of sexual crimes attributable to inappropriate contents of media, broadcasting, and Publications, etc. can be avoided.
- The MOJ publications and contents of media and broadcasting report on sexual crimes which cites the MOJ publications are expected to have quality improvement.
- It is expected that the MOJ, the competent department in charge of human rights protection, proposes concrete standards to calibrate the value of human rights and gender sensitivity which the media contents are required to pursue. By doing so, the MOJ will play an exemplary role in reinforcing the sympathy and understanding of the nature of sexual violence and harassment, across the governmental departments and overall society.

[Attachment 1]

Correct Expression and Usage Examples of Frequently Appearing Terms

Incorrect Expression and Usage		Correct Expression and Usage
hidden cam hidden camera	Delivering playful connotations of events or pranks, weakening the sense of criminality	illegal filming
obscene materials	It is incorrect to refer to the subject video of the sex crime as 'obscene materials'	★ This term cannot be used to refer to the victimizing video.
revenge porn	'Revenge' means retribution or retaliation, and as such represents the perpetrator's point of view, resulting in the responsibility passed on to the victim.	Illegal filming (if no consent is given to such filming) Illegal distribution (if no consent is given to such distribution)
deepfake	'Deepfake' refers to an AI-based image-synthesis technology, but is widely used incorrectly as general term referring to crimes of creating and distributing fake videos	illegal fake video/photo
sexy video	It is a slang or vulgarism referring to adult material or obscene material.	adult material or obscene material ★ This term cannot be used to refer to the victimizing video.
demon, animal, wolf	These terms otherize offenders and portray them as abnormal beings so that sexual offenses are perceived as incidents exceptionally caused by an abnormal specific person.	<div>×</div> (Usage is discouraged.)
'00 lady' or 'woman 00'	These expressions draw attention to the victim's identity, obscuring the essence of the incidence and create a negative bias against the victim.	
messy job, off-the-track	These terms diminish the seriousness of the victimizing behavior and promote a view to downplay crimes in the society.	
gold digger	a misogynic expression	
slave, human toilet bowl	These terms are expressions of hatred from the perspectives of the perpetrators towards the victim. Citing them as they are may reproduce a false notion toward the victims.	

[Attachment 2]

Guidelines for Producing and Distributing Publications, etc. to Enhance Human Rights Awareness and Gender Sensitivity (provisional)

Article 1 (Purpose) The purpose of this Recommendation is to establish and implement standards to be considered in order to prevent unfair infringement of human rights that may be involved in the course of providing information on sexual violence and harassment and enhance human rights awareness and gender sensitivity when producing and distributing publications, posting on the Internet or social network, video, audio, broadcasting and other materials (hereinafter referred to as 'Publications, etc.') that are published internally and externally by the Ministry of Justice (MOJ) for the purpose of press reporting, public relation, and providing education.

Article 2 (Basic Policy) In acknowledgement that sexual violence and sexual harassment are serious infringement of legal interests including the victim's sexual self-determination and personality rights guaranteed by the Constitution, due care shall be exercised so that distorted common misconceptions and general myths about sexual violence, sexual harassment, and sexual crime victims are not produced or spread through Publications, etc.

Article 3 (Accuracy) ① Publications, etc. shall be produced and distributed in accurate and fair manner based on the objective facts.

② To ensure the accuracy and credibility of the contents of Publications, etc., all the relevant information in various types shall be verified in terms of the accuracy and credibility.

③ When Publications, etc. needs to cite news reports or use materials from other media, the source shall be specified.

Article 4 (Human Rights Protection) Publications, etc. shall not unjustifiably infringe human rights, etc. and shall ensure that it does not contain any content that disadvantages a certain group or its members distinguished by region, race, disability, country of origin, gender, gender identity, age, religion, occupation, etc., or portrays them as negative or inferior.

Article 5 (Gender Equality) Publications, etc. shall not use any gender-discriminative expression that reinforces negative bias against gender and gender roles, unnecessarily emphasizes gender, or fixes gender roles in a dichotomized sense.

Article 6 (Protection of Victims of Sexual Violence) ① At the time mentioning information about a sexual violence incidence in Publications, etc., due care must be exercised to respect the human rights of victims and their family members so that any secondary victimization can be avoided.

② In no case may personal information of the victim be disclosed, and due care shall be taken to ensure that any information that can identify the victim is not disclosed. In particular, attention shall be paid meticulously in relation to illustrations, graphics, and video.

③ It shall be discouraged to describe the method of committing a sexual assault in excessively great detail.

④ Any term loaded with the perpetrator's view of sexuality or provocative expression that sexually objectifies the victim shall not be used.

⑤ Even if a certain piece of information has been disclosed to the media or provided by an investigative agency, the propriety of disclosing such information shall be separately considered to determine whether it may be included in the press release or other materials.

Article 7 (Protection of Digital Sex Crime Victims) ① As sexual exploitation material is a concept distinct from 'obscene material', both expressions shall not be used interchangeably.

② When describing the type or formal aspect of a crime, use accurate concepts primarily using terms as defined in statutory sources.

③ Publications, etc. shall not indicate any information that can identify a victimizing digital sex crime video or

the online platform such as the Internet site where such video was disseminated.

It shall be considered that victims of digital sex crimes feel permanent anxiety about the possible distribution and dissemination of the victimizing video.

Article 8 (Reporting Criminal Incidents, etc.) ① Publications, etc. shall not make assertive expressions regarding the criminal defendant or suspect until the court's final judgment is rendered.

② The personal information such as the names of the defendant, the suspect, the victim, the criminal plaintiff or accuser shall not be disclosed, in principle.

③ When dealing with the criminal defendant, the criminally accused, or the criminal suspect, due care shall be exercised to ensure that the story of crime is not dramatized or justified.

Article 9 (Prior Inspection) ① Prior to its distribution, the Publications, etc. shall go through a self-review conducted by the issuer department, and, via gender-dedicated window, take human rights awareness and gender sensitivity review, subject to additional review by external experts, if necessary.

② The Publications, etc. shall indicate whether or not the review has been carried out as well as the review results.

[Attachment 3]

Checklist before Publication/Distribution of MOJ Publications (provisional)

Item		Check
1	Were the Publications, etc. prepared accurately based on objective facts?	
2	When citing reports or using materials from other media, is the source accurately indicated?	
3	3 Any inappropriate words used such as 'hidden cam (camera)', 'sexy video', 'obscene materials', 'revenge porn', 'messy job', 'demon', '00 lady', 'gold digger', etc.? ex) hidden cam (hidden camera) → illegal filming / obscene material → ★ Not used in the victimizing video, sexy video → adult materials (★ Not used in the victimizing video), revenge porn → illegal filming/illegal distribution / messy job → sex crime, etc.	
4	Does it not portray a specific group or its members distinguished by region, race, disability, country of origin, gender, gender identity, age, religion, occupation, etc. as negative or inferior beings?	
5	Does it not use any gender-discriminative expression that reinforces negative bias against gender and gender roles, unnecessarily emphasizes gender, or fixes gender roles in a dichotomized sense?	
6	Does it not include any content or information that could uncover the victim's identity (age, region, occupation, etc.)?	
7	Is there any content that emphasizes lookism, discrimination for appearance, hilarious portrayal, or sexual objectification by highlighting the body?	
8	Does it not assume that sexual violence or sexual harassment between close persons such as husband and wives, couples, and friends is simply personal or trivial matter?	
9	Does it not contain any contents passing the cause of the sexual offense on to the victim?	
10	When the Publication, etc. is dealing with sexual violence cases, is there any probability for secondary damage to the human rights of victims and their family members?	
11	Given that the victim's personal information may not be disclosed, have measures been taken to prevent the disclosure of any information that can identify the victim?	
12	Is the decision of whether or not to include certain information in the data made based on a separate determination on propriety of disclosure, even if such information has already been disclosed to media or provided by an investigative agency?	
13	Does it not use an assertive expression referring to a criminal defendant or suspect pending trial or any expression that could dramatize or justify a criminal act before a final court judgment was rendered?	

[Attachment 4]**Checklist before Reporting/Public Relation of Digital Sex Crimes(provisional)**

Item		Check
Matters to confirm when dealing with 'digital sex crimes'		
1	Is the article worth reporting given its social significance?	
2	Are the report receiving ministry and victim support information specified When digital sexual offenses are discovered?	
3	Is the title not composed in a sensational way?	
Accurate reporting of facts by using correct words		
4	Are any inappropriate words used such as 'hidden camera', 'obscene material', 'revenge porn', and 'messy job' ex) hidden cam (hidden camera) → illegal filming / obscene material → ★ Not used in the victimizing video, sexy video → adult materials (★ Not used in the victimizing video), revenge porn → illegal filming/illegal distribution / messy job → sex crime, etc.	
Protection of victims		
5	Does it not contain any content or information that could uncover the victim's identity (age, region, occupation, etc.)?	
6	When citing the victim's statement, was the victim's consent obtained in advance or did it go through the verification process?	
Blaming victims and prevention of secondary harm		
7	Does it not contain any content or context to assert or insinuate that the victim provided the cause of the crime?	
8	Does it not contain any content that emphasizes victim-like attributes (helplessness, frailty, etc.)	
9	Do visual materials such as photos and images used in Publications, etc. not cause secondary damage?	
Controlling exposure of victim/sexual exploitation materials and preventing further crimes		
10	Is information on the site and platform where the victimizing video is distributed not exposed?	
Prevention of idolatration of perpetrators and copycat crimes		
11	Did it not arouse public sympathy by providing any information empathetic to the perpetrator?	
12	Did it not give the perpetrator an opportunity to defend himself such as by citing the perpetrator's words verbatim to compose a title?	
13	Did it not describe the crime process and methods in excessive detail?	

RECOMMENDATIONS

The 4th Recommendation

Revision of Sentencing Determinants for
Reasonable Imposition of Punishment; and Reinforcement of
Sexual Crime Victims' Right to State



DIGITAL SEX CRIMES
TASK FORCE TEAM •
EXPERT COMMITTEE
ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 4th Recommendation

– Revision of Sentencing Determinants for Reasonable Imposition of Punishment: and Reinforcement of Sexual Crime Victims' Right to State –

Key Takeaway

1. Basic Policy

- In order to procure objective and rational sentencing for digital and other sexual crimes, we recommend that the Criminal Act and Criminal Procedure Act, etc. actively reflect the elements for protection of victims and their effective recovery from damage in the sentencing determinants, as well as in the investigation and hearing processes. We also recommend establishment of legal ground by which the victim's right of statement is substantially guaranteed.

2. Details

It is recommended that:

- a. the set of determinants of sentencing prescribed in Article 51 of the Criminal Act be so revised that it reflects the restorative justice and includes elements from the perspective of the victim, such as the age of the victim, the result and extent of damage, the status of damage recovery, victim's willingness not to have the offender punished;
- b. Article 17 of the Sexual Abuse Punishment Act providing for 'Pre-judgment Investigation', etc. be revised to increase the weight of victim-related matters in the process of reviewing sexual crime sentencing and to conduct objective and balanced verification of basic materials for sentencing elements so that the sentencing standards can be applied adequately, and investigation practices be overhauled to prevent further spread of damage from digital sex crimes; and
- c. the Criminal Procedure Act have new provision to guarantee the victim's right to state without going through witness examination, in order to ensure that the victim's Constitutional right of statement is substantially and effectively guaranteed.

3. Expected effects

- a. The existing set of sentencing determinants as prescribed under the Criminal Act is centered on the sentencing elements from the perpetrator's perspective. If it embraces the victim's perspective and the concept of restorative justice and therefore more reliable sentencing investigation trial process as well as proper application of sentencing determinants are put into practice, the objectivity and fairness of sentencing will be procured, enhancing credibility of our judicial system.
- b. Realization of victim protection and restorative justice through faithful implementation of the constitutionally guaranteed right of victim to make a statement in the sentencing trial held under the Criminal Procedure Act
- c. Prevention of additional damage from digital sex crimes through the concretization and materialization of measures to circumscribe the spread of damage
- d. Enhance crime deterrence against digital and other sexual crimes by executing strict punishment, in tune with the legal sentiment of the public

1 Background

- As demonstrated in the recently reported court giving a suspended sentence* for a sexual offense case in a department store, criticism has continued that the punishment for sexual crimes overall is so called 'candy bludgeon'. In particular, such factors as 'heartful remorse or 'settlement' serves as major ground for mitigation of punishment, which have been critically received as being expedient or perpetrator-centered jurisprudence.

* "Sexual assault of a girl shopping in broad daylight... perpetrator in his 20's was sentenced with probation after writing Letter of Remorse 75 times," as reported in Seoul Newspaper and other media on Dec. 29, 2021.

- In the case of digital sex crimes, despite the recent increase in the number of incidences, the increasing severity of the damage, and continuity and expandability of the damage, the sentencing for these crimes continues being centered around fine and other compassionate punishment. Some critics went further to say that the low punishment sentencing contributes to undetected criminalization.

※ Seoul Metropolitan City's "Survey on the Status and Awareness of Damage to Female Victims of Digital Sexual Crime in Seoul" in 2019 reported that 353 out of 530 victims (66%) said they did not take action to respond at all, citing the uncertainty of punishment as the reason. Regarding the policies most necessary to prevent digital sex crimes, they selected in the order of 'Reorganization of judicial system for heavier punishment of perpetrators (78.5%)', 'Public education on digital sex crimes and online activities (57.3%)', 'Surveillance for damage monitoring and crackdown (50.2%)', 'Regulating distribution platform operator (35.2%)' and 'Establishing permanent instrumentalities to support victims (34.2%)'

- After what is called 'Nth Room Case', the Supreme Court Sentencing Committee adopted new sentencing standards for digital sex crimes on December 7, 2020. Although the new sentencing standards are being implemented effective January 1, 2021, critics say fundamental measures are yet to be prepared.
- In this connection, we find it necessary to canvass the current status and problems of sentencing, focusing on digital sex crimes, and seek and recommend fundamental measures for meaningful improvement.

2 Current Status of Digital Sex Crimes and Sentencing Issues

a. Status of digital sex crimes¹

(Unit: cases (%))

Year	Rape	Indecent Act	Rape, etc.	Rape, etc., Murder/Concomitant included	Rape, etc., Injury infliction Concomitant included	Special robbery/rape, etc.	Illegal filming with camera, etc.	Trespassing for sexual purpose	Indecent Act at a crowded place	Obscene act using com. media	Making and spreading fake videos	Threatening/coercion using filmed materials	Total
2011	4,425 (20.0)	8,535 (38.5)	3,206 (14.5)	8 (0.0)	1,483 (6.7)	285 (1.3)	1,565 (7.1)	–	1,750 (7.9)	911 (4.1)	–	–	20,168
2012	4,349 (18.6)	10,949 (46.9)	1,937 (8.2)	13 (0.1)	1,208 (5.2)	209 (0.9)	2,462 (10.5)	–	1,332 (5.7)	917 (4.0)	–	–	22,376
2013	5,359 (18.4)	13,236 (45.5)	1,186 (4.0)	22 (0.1)	1,094 (3.8)	150 (0.5)	4,903 (16.9)	214 (0.7)	1,517 (5.2)	1,416 (4.9)	–	–	29,097
2014	5,092 (16.7)	12,849 (42.2)	624 (2.0)	8 (0.0)	872 (2.9)	123 (0.4)	6,735 (24.1)	470 (1.5)	1,838 (6.1)	1,254 (4.1)	–	–	29,863
2015	5,274 (17.0)	13,266 (42.7)	283 (0.9)	6 (0.0)	849 (2.7)	72 (0.2)	7,730 (24.9)	543 (1.7)	1,901 (6.1)	1,139 (3.7)	–	–	31,063
2016	5,412 (18.4)	14,339 (48.8)	192 (0.7)	8 (0.0)	736 (2.5)	56 (0.2)	5,249 (17.9)	477 (1.6)	1,773 (6.0)	1,115 (3.8)	–	–	29,357
2017	5,555 (16.9)	15,981 (48.7)	144 (0.4)	7 (0.0)	716 (2.2)	34 (0.1)	6,615 (20.2)	422 (1.3)	2,085 (6.4)	1,265 (3.9)	–	–	32,824
2018	5,826 (18.1)	15,672 (48.8)	182 (0.6)	8 (0.0)	655 (2.0)	43 (0.1)	6,085 (19.0)	646 (2.0)	1,609 (5.0)	1,378 (4.3)	–	–	32,104
2019	5,845 (18.2)	15,766 (49.2)	157 (0.5)	2 (0.0)	653 (2.0)	42 (0.1)	5,893 (18.4)	685 (2.1)	1,532 (4.8)	1,454 (4.5)	–	–	32,029
2020	5,825 (19.3)	14,486 (48.1)	102 (0.3)	9 (0.0)	574 (1.9)	274 (0.9)	5,005 (16.6)	697 (2.3)	906 (3.0)	2,070 (6.9)	32 (0.1)	125 (0.4)	30,086

1 Supreme Prosecutors' Office "Crime Analysis" 2021

b. Amendment of Law for More Stringent Punishment for Digital Sex Crimes (2020, 2021)

► Introduction of New Punishment Provisions

Statute	Amended(Inserted) Provisions	Key Contents
Criminal Act	Article 305②	Raised the age of statutory rape from under 13 to under 16.
Sexual Abuse Punishment Act	Article 14④, Article 14-2, Article 14-3	Punishment regulations newly established (Possession of illegal sexually recorded material, etc., distribution of false video material, etc., intimidation and coercion using recorded material, etc.).
	Article 14②	Includes 'taking a picture of one's own body' as an incriminatory conduct.
	Article 14⑤, Article 15-2	New provision inserted for aggravated punishment for habitual offenders, punishment for preparation and conspiracy.
Juvenile Protection from Sex Abuse Act	Article 11⑦ Article 7-2	
	Article 2-6 Subpara. 2	Deletes a provision describing children and adolescents who were victims of sex trading as 'subjects'; and changed obscene materials to 'sexual exploitation video'.
	Article 13③	Imposes aggravated punishment for buying sex from children and adolescents under the age of 16.
	Article 15-2	New provisions inserted punishing for conversations with children and adolescents made for the purpose of sexual exploitation (so called 'online grooming').
IC Network Act	Article 44-9	
Electronic Communication Act	Article 22-5①, ②	New provisions inserted imposing obligations on service providers, etc. to prevent distribution of sex exploitation materials.

► Upward Adjustment of Statutory Sentencing

Amended Provision	Before Amendment (Upward Adjustment)	After Amendment (Upward Adjustment)
SAPA Article 14(1) – Illegal filming with camera, etc. / Article 14(2) – Distribution filmed materials, etc.	Imprisonment for up to 5 years, or Fine of up to 30 million won	Imprisonment for up to 7 years, or Fine of up to 50 million won
SAPA Article 14(3) – Distribution filmed materials, etc. for profit	Imprisonment for up to 7 years	Term imprisonment for not less than 3 years
JPSA Article 11(2) – Sale of child or youth sexual exploitation materials for profit	Imprisonment for up to 10 years	Imprisonment for not less than 5 years
JPSA Article 11(3) – Distribution of child or youth sexual exploitation materials for profit	Imprisonment for up to 7 years, or Fine of up to 50 million won	Imprisonment for not less than 3 years (Fine imposition deleted)
JPSA Article 11(5) – Possession of child or youth sexual exploitation materials for profit	Imprisonment for up to 1 year, or Fine of up to 20 million won	Imprisonment for not less than 1 years (Fine imposition deleted)
JPSA Article 13(2) – Enticement of child or youth	Imprisonment for up to 1 year, or Fine of up to 10 million won	Imprisonment for up to 3 years, or Fine of up to 30 million won

※ SAPA = Sexual Abuse Punishment Act (Act on Special Cases Concerning the Punishment of Sexual Crimes) /
JPSA = Juvenile Protection from Sex Abuse Act (Act on the Protection of Children and Youth against Sex Offenses)

c. Supreme Court Standards for Sentencing Digital Sexual Crime (Effective January 1, 2021)

▶ Sentencing Range

① Child and Youth Sexual Exploitation Materials (Type 1)

Type	Classification	Mitigated	Regular	Aggravated
1	Production etc.	2 years 6 months ~ 6 years	5 years ~ 9 years	7 years ~ 13 years
2	Sales for profit, etc.	2 years 6 months ~ 5 years	4 years ~ 8 years	6 years ~ 12 years
3	Distribution etc.	1 year 6 months ~ 4 years	2 years 6 months ~ 6 years	4 years ~ 8 years
4	Arrangement of Child/Youth	1 year 6 months ~ 4 years	2 years 6 months ~ 6 years	4 years ~ 8 years
5	Purchase, etc.	6 months ~ 1 year 4 months	10 months ~ 2 years	1 year 6 months ~ 3 years

※ For habitual offense, the minimum and maximum are adjusted upward by multiplying 1.5 (Type 1)

② Illegal filming with a camera, etc. (Type 2)

Type	Classification	Mitigated	Regular	Aggravated
1	Illegal filming	4 months ~ 10 months	8 months ~ 2 years	1 year ~ 3 years
2	Distribution etc.	4 months ~ 1 year 4 months	1 year ~ 2 years 6 months	1 year 6 months ~ 4 years
3	Distribution etc. for profit	1 year 6 months ~ 4 years	2 years 6 months ~ 6 years	4 years ~ 8 years
4	Possession	~ 8 months	6 months ~ 1 year	10 months ~ 2 years

※ For habitual offense, the minimum and maximum are adjusted upward by multiplying 1.5 (except for Type 4)

③ Distribution of fake videos, etc. (Type 3)

Type	Classification	Mitigated	Regular	Aggravated
1	Editing, etc.	~ 8 months	6 months ~ 1 year 6 months	10 months ~ 2 years 6 months
2	Distribution etc.	~ 8 months	6 months ~ 1 year 6 months	10 months ~ 2 years 6 months
3	Distribution etc. for profit	4 month ~ 1 year 4 month	1 year ~ 2 years 6 months	1 year 6 months ~ 4 years

※ For habitual offense, the minimum and maximum are adjusted upward by multiplying 1.5

④ Threatening and coercion using filmed materials, etc. (Type 4)

Type	Classification	Mitigated	Regular	Aggravated
1	Threatening	9 months ~ 1 year 6 months	1 year ~ 3 year	2 year ~ 4 year
2	Coercion	1 year 6 months ~ 4 years	3 year ~ 6 year	5 year ~ 8 year

※ For habitual offense, the minimum and maximum are adjusted upward by multiplying 1.5

⑤ Obscenity using communication media (Type 5)

Type	Classification	Mitigated	Regular	Aggravated
1	Obscenity using communication media	~ 6 months	4 month ~ 10 month	8 month ~ 1 year 6 months

▶ Major Special Sentencing Elements (aggravating/mitigating factors)^{2,3}

① Special aggravation factors

- If the method of crime is utterly heinous (exploiting highly intelligent method or creating a new type of sophisticated method that has not been known to date)
- Culpable motive
- If distributing sexual exploitation materials using highly viral means
- Victim's vulnerability to crime
- Serious harm sustained by the victim, etc.

2 A criminal defendant's remorse and clear criminal history free of past punishment, which are frequently cited as mitigation factors, are general sentencing elements, whereas victims' unwillingness to punish the perpetrator is a special sentencing element. According to the Sentencing Committee, 'A factor to be considered for establishing the recommended range, the special sentencing element has a great weight in determining the punishment for each crime type. On the contrary, the general sentencing element is a factor less determinant than is the special sentencing element. It cannot be used in establishing the recommended range, but only considered for sentencing within the recommended sentence range that is already established.

As only the special sentencing element plays a role in determining the recommended range, which element to be selected as the special sentencing element is an extremely important issue. Based on statistical analysis of sentencing practice, the Supreme Court Sentencing Committee deliberated in great scrutiny on the legislator's intention, general public's view, and policy considerations of sentencing, and finally determined the special sentencing elements. However, inasmuch as individual sentencing standards are established for each group of crime, such distinction between special sentencing elements and general sentencing elements cannot be absolute across all the groups of crime, and there may be cases where a sentencing factor considered as a special sentencing element in one group of crime is treated as a general sentencing element in another. Given that the distinction between special sentencing elements and general sentencing elements is not always clear, the associated problems are addressed by overlapping sentence ranges across recommended ranges as described above. (https://sc.scourt.go.kr/sc/krsc/criterion/explan/stand/standard_03.jsp).

3 Summarizes the factors which vary across crime types, but are nevertheless common and important.

② Special mitigation factors

- Practical measures to prevent the spread of damage (e.g., in case of immediately and voluntarily deleting or obliterating a produced or imported sexual exploitation material before it is disseminated at the perpetrator's own considerable cost and effort)
- If contents of the filmed, edited, synthesized materials cannot be easily understood or in a case equivalent thereto
- When the actual damage is minor (if the degree to which words, sounds, texts, pictures, photos or videos, or objects provoke sexual shame or repugnance is only nominal)
- Victim's unwillingness to punish the perpetrator

d. Status of Sentencing for Digital Sex Crimes

🕒 Various Ratios of Court Sentences by Category

- Despite the rapid increase in digital sex crime cases recently, the proportion of executed imprisonment sentence remains low, while fine (although at a decreasing rate) represents more than half (53.64%) of all the sentences on average. Overall, the penal disposition in this filed is overly lenient.

| Category of Punishment Sentenced in the First Instance Trial for Digital Sex Crime |

Yr.	Cases/%	Imprisonment	Suspended execution of sentence	Fine	Suspended imposition of sentence	Acquittal	Others	Subtotal
2016	Case	208	606	1,252	89	22	28	2,205
	%	9.4	27.48	56.78	4.03	1.0	1.26	100
2017	Case	193	648	1,738	77	22	420	3,098
	%	6.22	20.91	56.10	2.48	0.71	13.55	100
2018	Case	228	737	1,890	55	29	388	3,327
	%	6.8	22.15	56.80	1.65	0.87	11.66	100
2019	Case	368	919	1,704	28	30	257	3,306
	%	11.13	27.80	51.54	0.84	0.90	7.77	100
2020	Case	486	1,103	1,698	25	22	280	3,614
	%	13.44	30.52	46.98	0.68	0.60	7.74	100
Average	%	9.37	25.77	53.64	1.93	0.82	8.43	100
			81.34					

Source: Ministry of Justice, "Disposition of Prosecuted Cases – Statistical Analysis"

- The sentencing tendency toward fines is still prevalent (illegal filming with a camera, etc.: 60.8% on average for 5 years; obscenity using communication media: 74.9% on average for 5 years),

and the ratio of executed imprisonment sentence is increasing gradually, but it is still low (illegal filming with a camera, etc.: 8% in 2018; and obscenity using communication media: 6.3% in 2018). Of the total executed imprisonment sentence, 81.7% is concentrated on imprisonment up to 10 months.⁴

① Illegal filming with a camera, etc.

Category		Imprisonment		Fine	Suspended imposition of sentence	Total
		Real execution	Suspended execution of sentence			
2014	No. of persons	28	169	738	74	1,009
	Ratio (%)	2.8	16.7	73.1	7.3	100
2015	No. of persons	49	248	721	98	1,116
	Ratio (%)	4.4	22.2	64.6	8.8	100
2016	No. of persons	64	345	773	64	1,246
	Ratio (%)	5.1	27.7	62.0	5.1	100
2017	No. of persons	69	411	693	44	1,217
	Ratio (%)	5.7	33.8	56.9	3.6	100
2018	No. of persons	89	457	539	26	1,111
	Ratio (%)	8.0	41.1	48.5	2.3	100
Total	No. of persons	299	1630	3464	306	5,699
	Ratio (%)	5.2	28.6	60.8	5.4	100
		94.8				

4 Sentencing Committee, Explanations on Sentencing Standards as Proposed Sep. 15, 2020, p. 20

② Obscenity using communication media

Category		Imprisonment		Fine	Suspended imposition of sentence	Total
		Real execution	Suspended execution of sentence			
2014	No. of persons	15	38	225	16	294
	Ratio (%)	5.1	12.9	76.5	5.4	100
2015	No. of persons	8	48	216	19	291
	Ratio (%)	2.7	16.5	74.2	6.5	100
2016	No. of persons	15	34	188	12	249
	Ratio (%)	6.0	13.7	75.5	4.8	100
2017	No. of persons	11	34	144	5	194
	Ratio (%)	5.7	17.5	74.2	2.6	100
2018	No. of persons	13	37	150	5	205
	Ratio (%)	6.3	18.0	73.2	2.4	100
Total	No. of persons	62	191	923	57	1,233
	Ratio (%)	5.0	15.5	74.9	4.6	100
95						

► Sentencing Distribution

- The executed sentences of five-year imprisonment for production and distribution of child and youth sexual exploitation accounted for only 26%,⁵ most of which are concentrated in two years and six month, a term reduced by discretionary mitigation applied to the minimum term of five years.⁶
- Research on the first-instance judgment of guilty from Jan. 1, 2021 to Aug. 31, 2021 for possession of child or youth sexual exploitation materials showed the distribution of

5 The Court's Modern Society and Sexual Crimes Research Fellows, the 2021 public debate script, page 187. According to the sources submitted by the Supreme Court to lawmaker Lee Tan-hee, a total of 1,675 perpetrators were convicted (including stay of sentencing) in the first instance trial on the charge of violation of Act on the Protection of Children and Youth against Sex Offenses from 2016 to June 2021. Year-to-year, it decreased slightly from 111 in 2016 to 104 in 2017, but showed an increasing trend – 118 in 2018, 182 in 2019, 440 in 2020, and 720 by June 2021. During the same period, however, the number of cases where the criminal defendant involved in child sexual exploitation materials was sentenced to imprisonment (real execution) was only 26.0% in average.

6 Sentencing Committee, Explanations on Sentencing Standards as Proposed, 2021, p.13

sentencing: stay of execution in 4 cases, fine in 159 cases, suspended execution of imprisonment in 239 cases and real executed imprisonment in 0 case. According to a research conducted considering the time for enforcement of amended law, the first-instance judgments of guilty from May 1, 2021 to Aug. 31, 2021 were 8 cases of stay of sentencing, 69 cases of stay of execution of imprisonment and 0 case of imprisonment.⁷

⇒ It is difficult to say that courts are sentencing in conformity with the purpose of the amendment to the law.

- A close examination of the related judgment to the detail reveals that 'victim's unwillingness to punish the offender', 'genuine remorse', 'absence of past criminal punishment', and 'sound ties to the community' are mostly reflected in the judgment.

Court Rulings

1. Daegu District Court West Branch 2017 GoHap 1** (Illegal filming with camera, etc.): The perpetrator threatened the victim (age 15) to use a chat app to make sex trade 50 times for 18 days, illegally filmed the nude of the victim and shared it in a group chat room
→ Sentenced to: Long term 3 years and 6 months, short term 3 years, imprisonment for 3 years with stay of execution for 5 years
2. Daegu District Court Gimcheon Branch 2019 GoHap** (Production and distribution of child and youth sexual exploitation materials, etc.): The perpetrator made the victim (age 15) film a scene of sexual intercourse, and transmitted the video to live broadcasting and group chat rooms on a real time basis.
→ Sentenced to: imprisonment for 3 years (exemption from order to restrain employment)
3. Uijeongbu District Court Goyang Branch, 2021 GoDan 1** (Illegal filming with camera, etc.): The perpetrator secretly took photos of the lower body of a number of victims 248 times.
→ Sentenced to: imprisonment for 1 year with stay of execution for 2 years
4. Busan District Court West Branch 2019 GoHap 2** (Act of buying sex from a child or youth): The perpetrator had a sexual intercourse with the victim (age 16) by giving her money and cigarette and later attempted to rape the victim who then refused to have sex with the perpetrator.
→ Sentenced to: imprisonment for 2 years and 6 months with stay of execution for 3 years
5. Daegu District Court Gimcheon Branch 2020 GoHap** (Act of buying sex from a child or youth): The perpetrator approached the victim (age 14) through the Kakao Talk open chat room and had sex with her twice by giving her money.
→ Sentenced to: imprisonment for 10 months with stay of execution for 2 years

※ In light of the fact that, yet in the inchoate stage of the implementing the sentencing standard, practice of sentencing according to the newly changed statutory penal disposition has not yet been accumulated, and the overall statutory penal disposition has increased due to the enactment of amended laws, the future trend of sentencing still remains to be seen. That being said, the trend of sentencing in the sexual offense for the past five years, which have been centered around such disposition as fine and stay of execution, makes it difficult to expect a significant change in the future sentencing for digital sex crimes.

7 The Court's Modern Society and Sexual Crimes Research Fellows, the 2021 public debate script, page 196.

※ For reference

| Statistics: Sentencing for Sexual Offenses |

Source: Judicial Yearbook, computerized data. Jan. 12, 2021.

① Rape and Indecent Act under Criminal Act (1st Instance Judgment)

Cate- gory	Cases completed (Number of persons)															
	Total	Liberty deprivation								Stay of execu- tion	Proper- ty depri- vation	suspe- nded execu- tion (Prope- rty depri- vation)	Stay of senten- cing	Acquit- tal	Dismi- ssal of indict- ment	Transfer decision, etc.
		Total	Indeter- minate sente- nce	Less than 1 year	Less than 3 years	Less than 5 years	Less than 10 years	10 years or longer	Life sente- nce							
Year																
2016	5,566	1,269 (22.8)	4 (0.07)	440 (7.9)	500 (9.0)	251 (4.5)	67 (1.2)	7 (0.13)	-	2,077 (37.3)	1,663 (29.9)	-	111 (2.0)	192 (3.4)	8 (0.14)	246 (4.4)
2017	5,818	1,198 (20.5)	3 (0.05)	366 (6.3)	510 (8.8)	241 (4.1)	67 (1.2)	10 (0.17)	1 (0.02)	2,238 (38.5)	1,769 (30.4)	-	142 (2.4)	203 (3.5)	3 (0.05)	265 (4.6)
2018	6,210	1,365 (21.9)	5 (0.08)	377 (6.1)	592 (9.5)	300 (4.8)	80 (1.3)	9 (0.14)	2 (0.03)	2,185 (35.2)	1,930 (31.1)	14 (0.2)	103 (1.7)	228 (3.7)	1 (0.02)	384 (6.2)
2019	6,048	1,535 (25.3)	2 (0.03)	434 (7.2)	670 (11.1)	320 (5.3)	103 (1.7)	6 (0.10)	-	2,165 (35.8)	1,640 (27.1)	22 (0.4)	58 (1.0)	255 (4.2)	2 (0.03)	371 (6.1)
2020	6,134	1,541 (25.1)	2 (0.03)	410 (6.7)	720 (11.7)	300 (4.9)	96 (1.6)	10 (0.16)	3 (0.05)	2,242(3 6.6)	1,676 (27.3)	28 (0.5)	68 (1.1)	224 (3.7)	2 (0.03)	353 (5.8)
				18.4%		3 years or longer: 6.71%				65.5%						

② Violation of Act on Special Cases Concerning the Punishment of Sexual Crimes (1st instance judgment)

Cate- gory	Cases completed (Number of persons)															
	Total	Liberty deprivation								Stay of execu- tion	Proper- ty depri- vation	suspe- nded execu- tion (Prope- rty depri- vation)	Stay of senten- cing	Acquit- tal	Dismi- ssal of indict- ment	Transfer decision, etc.
		Total	Indeter- minate sente- nce	Less than 1 year	Less than 3 years	Less than 5 years	Less than 10 years	10 years or longer	Life sente- nce							
Year																
2016	5,218	1,252 (24.0)	55 (1.1)	256 (4.9)	262 (5.0)	257 (4.9)	339 (6.5)	78 (1.5)	5 (0.1)	1,581 (30.3)	1,861 (35.7)	-	144 (2.8)	108 (2.1)	1 (0.02)	271 (5.2)
2017	5,093	1,259 (24.7)	59 (1.2)	242 (4.8)	313 (6.1)	263 (5.2)	311 (6.1)	69 (1.4)	2 (0.04)	1,661 (32.6)	1,636 (32.1)	-	134 (2.6)	128 (2.5)	1 (0.02)	274 (5.4)
2018	5,022	1,356 (27.0)	50 (1.0)	267 (5.3)	331 (6.6)	297 (5.9)	336 (6.7)	73 (1.5)	2 (0.04)	1,636 (32.6)	1,567 (31.2)	7 (0.1)	84 (1.7)	139 (2.8)	1 (0.02)	232 (4.6)
2019	4,995	1,419 (28.4)	51 (1.0)	281 (5.6)	412 (8.2)	295 (5.9)	293 (5.9)	86 (1.7)	1 (0.02)	1,735 (34.7)	1,348 (27.0)	14 (0.3)	45 (0.9)	150 (3.0)	-	284 (5.7)
2020	4,807	1,437 (29.9)	42 (0.9)	272 (5.7)	496 (10.3)	294 (6.1)	284 (5.9)	48 (1.0)	1 (0.02)	1,778 (37.0)	1,123 (23.4)	17 (0.4)	42 (0.9)	94 (2.0)	1 (0.02)	317 (6.6)
				16%		3 years or longer: 13.02%				61.7%						

③ Violation of Act on the Protection of Children and Youth against Sex Offenses (1st Instance Judgment)

Year	Category	Cases completed (Number of persons)																
		Total	Life Deprivation	Liberty deprivation							Stay of execution	Property deprivation	suspended execution (Property deprivation)	suspended sentencing	Acquittal	Dismissal of indictment	Transfer decision etc.	
				Total	Indeterminate sentence	Less than 1 year	Less than 3 years	Less than 5 years	Less than 10 years	10 years or longer								Life sentence
2016		1,823	–	597 (32.7)	66 (3.6)	20 (1.1)	212 (11.6)	170 (9.3)	120 (6.6)	9 (0.5)	–	771 (42.3)	196 (10.8)	–	11 (0.6)	31 (1.7)	2 (0.11)	215 (11.8)
2017		1,933	–	634 (32.8)	71 (3.7)	25 (1.3)	215 (11.1)	203 (10.5)	105 (5.4)	15 (0.8)	–	795 (41.1)	273 (14.1)	–	18 (0.9)	38 (2.0)	2 (0.10)	173 (8.9)
2018		1,742	1 (0.06)	574 (33.0)	66 (3.8)	29 (1.7)	193 (11.1)	141 (8.1)	135 (7.7)	10 (0.6)	–	663 (38.1)	247 (14.2)	–	10 (0.6)	65 (3.7)	1 (0.06)	181 (10.4)
2019		1,597	–	589 (36.9)	68 (4.3)	18 (1.1)	216 (13.5)	153 (9.6)	121 (7.6)	13 (0.8)	–	621 (38.9)	164 (10.3)	2 (0.1)	6 (0.4)	52 (3.3)	–	163 (10.2)
2020		1,779	–	716 (40.2)	107 (6.0)	18 (1.0)	228 (12.8)	188 (10.6)	150 (8.4)	25 (1.4)	–	667 (37.5)	176 (9.9)	2 (0.1)	1 (0.1)	32 (1.8)	2 (0.11)	183 (10.3)
						13.8%		3 years or longer: 20.4%			47.6%							

3 Problems

a. Criminal Deterrence Undermined due to Lenient Sentencing

- Downgraded sentencing causes victims to be reluctant to report the crime due to the perception that they are not protected by the state and fear of retaliation that may come from uncertainty of punishment, which may result in hidden criminalization of sex crimes and compromise the general deterrent effect of penal disposition, leading to increasing number of criminal commissions.

※ The result of the aforesaid Seoul Metropolitan City's survey revealed that 66% of digital sex crime victims did not take any action at all, citing 'uncertainty of punishment' as the reason why they remained passive. For the policy they think is necessary to prevent digital sex crimes, 'reorganization of laws in a direction to strengthen punishment of perpetrators' (78.5%) was ranked at the top.

b. Upward Adjustment of Statutory Punishment Not Actually Reflected

- As revealed by above-cited sentencing statistics for sexual crimes, the rate of suspended execution for sex offenses is high at about 37%, and digital sex crimes have a clear tendency toward fines, as discussed earlier (P.6).

- In response to the growing public antipathy to the too lenient sentencing practice, the National Assembly raised the statutory punishment prescribed in penal provisions for heavier punishment. In consideration of existing sentencing practice as well as discretionary mitigation, however, the lowest end of basic range of Sentencing Committee's sentencing standard is more often than not set lower than statutory minimum. As a result, adherence to the conventional sentencing practice persists.
- A concern has arisen that this may be an infringement on the legislative authority of the National Assembly, and the general public's distrust and sentiment of insecurity are steadily growing.
- ※ With respect to the sentencing standard setting, the recommended sentencing range should be set in the mid area of the conventional (5-year) sentencing range in principle, so that such designated range may represent a high density of 70 to 80% based on statistical analysis, subject to appropriate normative adjustments with respect to crimes for which certain national consensus has been formed.⁸ In this circumstances, even if new sentencing standards come into being, conventional sentencing will merely continue as long as the existing range of the sentencing continues to serve as the standard, and therefore development of a new sentencing practice is quite unlikely.

c. A Lapse in Relief of Damage and Realization of Justice by Alienating Victims

- It is not only in a few major cases serious enough to cast a social issue (e.g., imprisonment for 42 years finally imposed on Jo Joo-bin, the mastermind of the 'baksa' room case), but also in the majority of general cases that the culprits are not properly punished for the reason that the damage is simply minor.
- The main reason for the gap in perception of sentencing and the jurisprudential reality can be attributed to the disparity between the legal sentiment of the majority of people and media in general, who would feel sympathy for victimization of the innocent and the current sentencing system, which mainly considers the circumstances of the criminal defendant in keeping with the current judicial practice.
- Although the victim's right of statement one of the rights proclaimed by the Constitution*, the trial procedure under the Criminal Act and the Criminal Procedure Act is stipulated to focus on the perpetrator in effect. In this context, Victims are not recognized as substantial parties to the case but tend to be marginalized, such as appearing as a witness only when the defendant denies his commission of the crime.

⁸ Sentencing Committee, Explanations on Sentencing Standards as Proposed, 2021, p.10

*** Article 27, Paragraph 5 of the Constitution**

"A victim of a crime shall be entitled to make a statement during the proceedings of the trial of the case involved as under the conditions prescribed by Act."

- ※ In particular, in the absence of a separate procedure of sentencing hearing, it is difficult for judges to strictly distinguish between substantive consideration and sentencing consideration, and even with respect to the latter, they are likely to approach with a mindset toward the principle of strict proof or presumption of innocence, as they do with respect to substantive consideration → For aggravation elements in sentencing, they demand strict proof, but they would recognize mitigation elements merely with the defendant's explanation or the like. (out of the total of 4,824 sexual offenses in 2019 to which the Supreme Court's sentencing standards were applied, cases where sentences were rendered within the mitigation area and within the aggravation area were 2016 cases (41.8%) and 207 cases (4.3%), respectively, and the remaining 2601 cases (53.9%) were in the basic area⁹⁾)
 - As a result, even a mitigation consulting market emerged for those who seek to receive abatement in sentences using specious or fabricated mitigation factors without their genuine apology or victim's substantial recovery from the aftermath of the offense.¹⁰⁾
 - For this reason, there are criticisms that the judges give too much weight on the defendant's remorse (confession) and acceptance of settlement to reduce the punishment, which creates loopholes in the judicial system in ensuring that the victim is compensated and justice is realized. Accordingly, the distrust and anxiety on the part of the victims as well as the general public continue to persist.
- To address, it is essential to procure the restorative justice, the standard of sentencing formulated from the perspective of the victim and guarantee of the victim's right to state.

d. Judicial Distrust Caused by Ambiguous Standards for Sentencing Hearing

- In digital sex crime cases, it is often the case that the defendant makes a so-called 'donation for mitigation of punishment' to a support group for victims of sexual violence and submit the proof of receipt to court as reference material for sentencing to the purport that the defendant is 'seriously in remorse'
- ※ 3,420 cases (70.9%) of sexual crime judgments in 2019 accepted serious remorse as a reason for mitigation. However, the victim as well as the general public has no idea under what standard and through what processes defendant's serious remorse was accepted as mitigation factor.

⁹ Korea Women Policy Research Institute, Sentencing Committee, Gender Violent Crime and Sentencing Symposium

¹⁰ <https://www.hani.co.kr/arti/society/women/1018662.html>

- The victim's 'not genuine unwillingness to punish the perpetrator' because of the defendant's enticement and intimidation in the course of the trial has been an issue, which is more prominent in cases where the victim is a child and the intention of the child, not of his/her parents, not to punish the perpetrator cannot be directly confirmed. This illustrates unclear standards for sentencing reason or the process of sentencing hearing.
 - Even if sentencing standards do exist, as long as the standards for considering aggravated and mitigated elements, contents, and hearing procedures are not specifically prescribed the law, and the sentencing is decided by individual court's ad hoc decision in the absence of social discussion, the court's burden of sentencing consideration is growing heavier and it will remain difficult to address public outcry.
- It is necessary to stipulate in the law more concrete sentencing determinants in the law and to establish a hearing procedure for considering the sentencing.

4 Recommendations

a. Amending the Provisions for Sentencing Determinants under the Criminal Act.

- Article 51 of the current Criminal Act pertaining to the sentencing determinants provides for the reasons to be considered for sentencing which are wholly centered on the perpetrator's position (see P.16). This provision has not been amended even once in 67 years since the initial enforcement of the Criminal Act (October 3, 1953).
- When account is taken of frequent social controversies over sentencing, the seriousness of the resulting loss of trust in the judicial system, the need to ensure predictability of sentencing reason and its practical balance with actual sentencing, the general public's fundamental right to know, and the burden of court to consider sentencing in the actual trial scene, it is highly recommended that the main elements and criteria for consideration of sentencing be discussed and prescribed by law in the National Assembly as the representative body for the general public, reflecting the social discussion on the new trend, so the legal system may specify the sentencing elements and procure the predictability and balance of sentencing.
- Article 51 of the Criminal Act should be so amended that, the set of sentencing determinants reflects elements that embrace the restorative justice and the perspective of the victim, such as the age of the victim, the result and extent of damage incurred by the victim, the status of damage recovery, victim's opinion on the punishment and sentencing of the offender.

- ※ The mitigation elements (the criminal defendant's genuine remorse, the victim's unwillingness to punish the perpetrator, etc.) and aggravation elements (the victim's vulnerability to a crime, serious damage incurred by the victim, etc.), both of which greatly impact on the sentencing, are relevant to restricting fundamental rights of the people. As such, it needs clear statutory basis.
- ※ The current Criminal Act and Criminal Procedure Act, etc. were developed in the past with their perspective set to the protection of the human rights of the defendants who are contemplated to be those persecuted with torture or abuse, resulting in relatively less attention to victim protection. As times have changed, it is now necessary for the present jurisprudence to restructure the Criminal Act and Criminal Procedure Act embracing the victim's viewpoint.
- ※ Although the element of the victim protection is partially incorporated into some elements such as the relationship with the victim and the consequence of the crime in Article 51 of the Criminal Act to be considered as a major special sentencing factor, it would be more meaningful to integrate the victim's point of view into statutory sources by expressly stipulating in in the Criminal Act.

Current Criminal Act	Proposed Amendment
<p>Article 51 (General Principles for Determination of Punishment) In determining punishment, the following shall be taken into consideration:</p> <ol style="list-style-type: none"> 1. The age, character and conduct, intelligence and environment of the offender; 2. Offender's relation to the victim; 3. The motive for the commission of the crime, the means and the result; and 4. Circumstances after the commission of the crime. 	<p>Article 51 (General Principles for Determination of Punishment) In determining punishment, the following shall be taken into consideration:</p> <ol style="list-style-type: none"> 1~4. Same as the left 5. the age of the victim, the result and extent of damage incurred by the victim, the status of damage recovery, victim's opinion on the punishment and sentencing of the offender

b. Substantial Guarantee of Victim's Right of Statement under the Criminal Procedure Act

- The current Criminal Procedure Act stipulates that Upon receiving a petition from a victim of a crime, etc., the court shall examine a victim as witness and, while doing so, give the victim an opportunity to make a statement on his opinion concerning punishment of the defendant. (Article 294-2)
 - However, the witness examination carries an aspect that it is inherently difficult for victims to actively make their statements at their own initiative in such setting. In order to reinforce the victim's right of statement, it is appropriate to provide for giving opinion statement outside the witness examination process and giving a statement in writing to impart statutory protection to these rights in tandem with the right to state in witness examination.
- ※ The current Criminal Procedure Rules provide for a procedure for stating opinions that is not conducted as part of a witness examination (Article 134-10, 134-11) on 'matters that do not fall under the admission of commission of crime'. However, stipulating the concrete materialization of the constitutionally guaranteed rights in administrative rules, not in legislation, is potentially contradictory to the principle of statutory

reservation and gives impression of mere manifestation rather than a binding force. As this would not conform to the purpose of introducing the victim's right of statement, the aforesaid rights must be prescribed in the Criminal Procedure Act as the superior statutory authority.

- Accordingly, it is recommended that by the Criminal Procedure Act be amended to provide legal ground so that the victims are allowed to give his or her opinion on sentencing by mere appearance to the courtroom or submission of writing, without being called to the witness examination.
 - ※ The 'opinion on sentencing' should contain major sentencing elements such as the victim's willingness regarding punishment, substantial measure for preventing spread of damage and substantial damage recovery. It is intended to ensure that the application of the mitigation factors will not be made solely based on the defendant's unilateral position.
 - ※ The proposed recommendation has made it mandatory to guarantee the victim's right to state his or her opinions and reflect it in the sentencing. To this, the court's objection is anticipated in the process of legislation. However, it is essential to give practical protection to the victim, whose party status has been precluded although he or she is actually main party to the case. Furthermore, the need to recover the damage effectively and the victim's unwillingness to punish the perpetrator are also essential elements for determining punishment, and then requiring essential elements to be reflected in sentencing can hardly be deemed trespassing the independence of court in conducting a lawsuit.
- In addition, efforts should made to effectuate the requirement of investigative agency to advise the victim of his or her right of statement, before trial, as well as the requirement of the court to provide information to the victim, after the commencement of the trial.

Current statute (Criminal Procedure Act Article 294-2)	Proposed Amendment
<p>Article 294-2 (Right of Victim to Make Statements) ① The court shall, upon receiving a petition from a victim of a crime or his legal representative (including his spouse, lineal relative, sibling, if the victim is dead; hereafter referred to as "victim" in this Article), admit such victim as witness for examination: Provided, That the foregoing shall not apply to any of the following cases:</p> <ol style="list-style-type: none"> 1. Deleted; <by Act No. 8496, Jun. 1, 2007> 2. In cases where it is recognized that the victim has already made sufficient statements relating to a case concerned in trial proceedings and therefore, there is no necessity of restatement; and 3. In cases where there is apprehension that the procedure of public trial may be delayed markedly on account of the statement of the victim. <p>② The court shall, whenever it examine a victim pursuant to paragraph ①, give the victim an opportunity to make a statement on the degree and result of damage, his opinion concerning punishment of the defendant and other matters relating to the case at bar.</p>	<p>Article 294-2 (Right of Victim to Make Statements)</p> <p>①~② Same as the left.</p>

Current statute (Criminal Procedure Act Article 294-2)	Proposed Amendment
<p>③ In cases where there are a number of applicants under paragraph ① concerning identical facts constituting the crime, the court may limit the number of persons to make a statement.</p> <p>④ In cases where the applicant pursuant to paragraph ① has not appeared before the court after receiving a subpoena without a reasonable cause, the application is deemed to be withdrawn.</p>	<p>③ The court may ex officio or upon receiving a petition from a victim etc., call the victims, etc. to the court hearing and give the victim, etc. an opportunity to state their opinion outside the process of witness examination regarding the degree and result of damage, the status of damage recovery, their view concerning punishment and sentencing of the defendant, and matters not falling under admission of the commission of the crime.</p> <p>④ Taking into consideration the progress of the trial and other circumstances, the court may permit the victims, etc. to submit a written document stating their opinion in lieu of the statement of opinion prescribed in paragraph ① and ③.</p> <p>⑥ ~ ⑦ <The same as ③ ~ ④ before amendment></p> <p>※ It is worth a consideration to place this procedure to give statements after Examination of the Defendant (Article 296).</p>

c. Improvement of the Investigation for Sentencing

► Amendment of Article 17 of the Sexual Abuse Punishment Act, 'Investigations before Ruling, etc.'

- In order to realize 'punishment commensurate with the crime', the phase of disposition of the prosecution case as well as the phase of court ruling must be supported by investigation and examination of materials sufficient to warrant an accurate and fair sentencing.
- The current system of investigation for sentencing consists of investigations before judgment and before decision, investigation for sentencing by prosecution's sentencing investigation officers, and investigation for sentencing by the court's sentencing officers.
- As the investigation for sentencing plays a useful role in supporting reasonable sentencing in that it provides basic data for sentencing before disposition of a case or rendition of court judgment, the items subject to investigation should encompass and give weight to matters related to victim. Furthermore, it is desirable to provide the victim with an opportunity to state in detail about his or her injury and suffering, current status, his or her position on the sentencing.

ex) The current form for sentencing investigation by probation officers is made in such configuration that:

▲ in the case of the Investigation before Prosecutor or Court Decision, matters regarding the suspect or defendant are divided into several subcategories, and it contains questions that are likely to induce positive response such as 'experience in growing period' and 'future life plan', whereas matters regarding the victim

has no separate space for response; ▲ in the case of investigation before court ruling, matters related to the victim is contained in the form, but pertains to only part of the bigger category, ‘matters related to commission of the crime’, carrying just nominal weight.

- It is recommended that Article 17 of the Sexual Abuse Punishment Act be amended so that it expressly specifies victim’s matters such as the age, status of recovery from damage, and his or her opinion on punishment and sentencing of the defendant, etc. Also, the practice system should be overhauled so that victim-relevant matters are investigated faithfully, with more weight assigned to them.

Article 17 of the Sexual Abuse Punishment Act before amendment	Proposed Amendment
<p>Article 17 (Investigations before Ruling)</p> <p>① If deemed necessary to impose on an accused sex offender a term of probation, community service, an order to attend a course, or an order to complete a program under Article 16, a court <u>may require</u> the director of the probation office having jurisdiction over the seat of the court or the place of residence of the accused <u>to investigate the accused's</u> physical and mental traits and state, psychosexual development, childhood and family background, occupation, living conditions, associates, motive for the crime, medical history, relationship with the victim, danger of repetition of the crime, and other relevant matters.</p> <p>② The director of a probation office who has been requested to carry out an investigation under paragraph ① shall, without delay, carry out the investigation and give written notice of the results to the competent court. In such cases, if deemed necessary, the director may summon and interrogate the accused or other relevant persons or direct a probation officer under his/her control to investigate necessary matters.</p> <p>③ The court may require the director of a probation office who has been requested to carry out an investigation under paragraph ① to report the progress of the investigation.</p>	<p>Article 17 (Investigations before Ruling)</p> <p>① <Same as the left></p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>--- may require ... to investigate matters related to the victim such as the victim’s age, the result and degree of the damage of the crime, the status of damage recovery, the victim’s willingness not to punish the offender, etc.</p> <p>② ~ ③ <Same as the left></p>

※ Article 22 of the Juvenile Protection from Sex Abuse Act (Investigations before Ruling) and Article 19 of the Probation Act (Investigations before Ruling) must be amended to the same purport.

► Development of a Plan for Substantial Inspection of Basic Information for sentencing Elements

- Matters deemed to be sentencing elements according to the sentencing standards should go through objective and balanced verification regarding the basic information by probation officers, etc. to correctly determine facts about sentencing elements during the stage of investigation for sentencing and prevent sentencing hearings from causing unnecessary procedural delays.

- In particular, the implementation status of 'substantial measures to prevent the spread of damage', a special mitigation element under the sentencing standards for digital sex crimes, has great significance as an essential factor for preventing further damage and ensuring recovery from digital sex crimes. In the stage of investigation for sentencing, in addition to deleting illegally filmed materials from the statement of the defendant or the already confiscated information storage media, it is imperative to personally check whether the same video clip or a copy thereof still exists to ensure that the substantial measures to prevent additional damage spread have been put into practice.

※ If the victim is a juvenile, it is necessary to confirm the genuine intention of the victim not to punish the offender.

- In order to procure the effectiveness and adequacy of the sentencing standards, it is recommended to establish a system which, enables an objective verification of basic facts related to sentencing elements in the process of each sentencing investigation conducted by the probation office, the prosecution's sentencing investigation officer, and the court's sentencing investigator, according to a fair procedure, as well as to reorganize the work manual, as part of reinforcing the professionalism of the investigation.

5 Expected Effects

- By integrating the victim's perspective into the set of sentencing determinants prescribed in the Criminal Act, which has been centered on the sentencing factors for the offender's perspective, it is possible to secure a faithful sentencing hearing and the proper application of the sentencing standards, and thereby objectivity and equitability of sentencing and enhanced the credibility of judicial system.
- Realization of victim protection and the restorative justice through the effective implementation of the constitutionally guaranteed victim's right to state in sentencing proceedings conducted under the Criminal Procedure Act.
- Prevent further damage from digital sex crimes through the materialization and effective application of measures to prevent the spread of damage.
- Enhancement of deterrence against digital and other sexual crimes by introducing more rigorous punishment that conforms to the general public's sentiment of jurisprudence.

RECOMMENDATIONS

The 5th Recommendation

Introducing Infringement of 'Sexual Personality Right'
to Address the Issue of Sexual Crimes Occurring in the
Metaverse (Virtual Reality)



DIGITAL SEX CRIMES
TASK FORCE TEAM •
EXPERT COMMITTEE
ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 5th Recommendation

– Introducing Infringement of ‘Sexual Personality Right’ to Address the Issue of Sexual Crimes Occurring in the Metaverse (Virtual Reality) –

Key Takeaway

1. Basic Policy

- We recommend a reformative legislation stipulating a violation of the “sexual personality right” in the Sexual Abuse Punishment Act as an independent crime, and amendment of the Probation Act to improve the special requirements for probation imposed on sex offenders.

2. Recommendations

It is recommended that:

- provision to punish infringement of the ‘sexual personality right’ be added in the Sexual Abuse Punishment Act so that the act of sexually objectifying others in real or digital space through the expression of distorted sexual prejudice can be regulated as a sexual crime;

- ▶ ‘Sexual personality right’ refers to the right of an individual as a person not to be sexually objectified against their will, and is one of the fundamental human rights included in Article 10 of the Constitution.
- ▶ The act of violating ‘sexual personality rights’ is defined as ‘sexual language and behaviors’ that deliver unwanted sexual expression to the victim, and whether or not it causes sexual humiliation or repugnance can serve as a test for constitution of the crime.
- ▶ Taking into consideration the reality that the modes of sexual objectification are becoming atypical and widespread owing to technological development, ‘Sexual language and behaviors’ is defined as a concept that encompasses not only cases where they are actually and directly inflicted to the victim, but also cases where such infliction is indirectly made to things or information representing the victim’s personality such as characters and IDs existing in the online space.

- the Probation Act be so amended that probationees adjudged guilty of sex offenses be subject to the following additional special requirements; and

- ▶ Prohibition of possession, storage, and viewing of illegally filmed materials.
- ▶ Prohibition of access to a person who is likely to be victimized by the same offense recommitted using the information and communication network or access to any information or things representing such person or such person’s personality.

- certain policies be devised to establish concrete and systematic duties of cooperation and management that are borne by business operators in accordance with their social roles and responsibilities, in relation to infringement of sexual personality rights occurring in digital space including virtual reality.

3. Expected effects

- Criminal law approaches tailored to the nature of the infringement and the characteristics of sexual offenses will be taken to sexual assault or verbal sexual abuse in the online space, which has emerged following changes in society and technology.

- b. By regulating non-bodily sexual assaults, such as 'semen-terrorism', as a sexual offense, the lapse in punishment and control of perpetrators and protection of victims will be addressed.
- c. By defining the infringement of the 'sexual personality right', which is a concept distinct from the right to sexual self-determination, as an independent crime, the constitutional values will be attained through effective guarantee of personal rights and realization of criminal justice
- d. Effective control of risk factors for recidivism of sex offenders in a changed criminal environment, effective prevention of repetition of the same offense through platform operators' responsible cooperation and administration, and prevention of sexual offenses in online spaces including new platforms.

1 Background

- As a newly emerging social problem, new types of sexual crimes such as verbal sexual violence online, sexual assaults in cyberspace such as metaverse, and non-contact sexual crimes such as so-called 'semen terrorism' are increasing, primarily victimizing teenagers, who are heavy users of the Internet.

*A number of media including the Sunday Newspaper dated December 30, 2021 reported, ["Take off items and do XX' Sexual Crime against Teenagers Spreading into metaverse"]"

- Under the current legal system, these new forms of sexual abuse committed in cyberspace can be addressed by incriminating the offenders for the such offenses as filming with camera, etc. or obscenity using communication media under the Sexual Abuse Punishment Act or offenses of insulting or defamation under the Criminal Act, but only with a limited coverage.
- This type of online sexual harassment does not employ direct physical power as with offline sex crimes, but it explicitly expresses sexual objectification and sexist mentalities, and continuously and repeatedly casts discriminatory and hateful expressions to victims, creating anxiety and fear in the victim's mind.
- To address sexual harassment that does not involve physical contact in the real world or that occurs in a digital environment, it is necessary to consider the need for regulate it from the point of victim's personal rights infringed, and explore effective measures to deter offensive behaviors in order to protect victims and stop further damage.

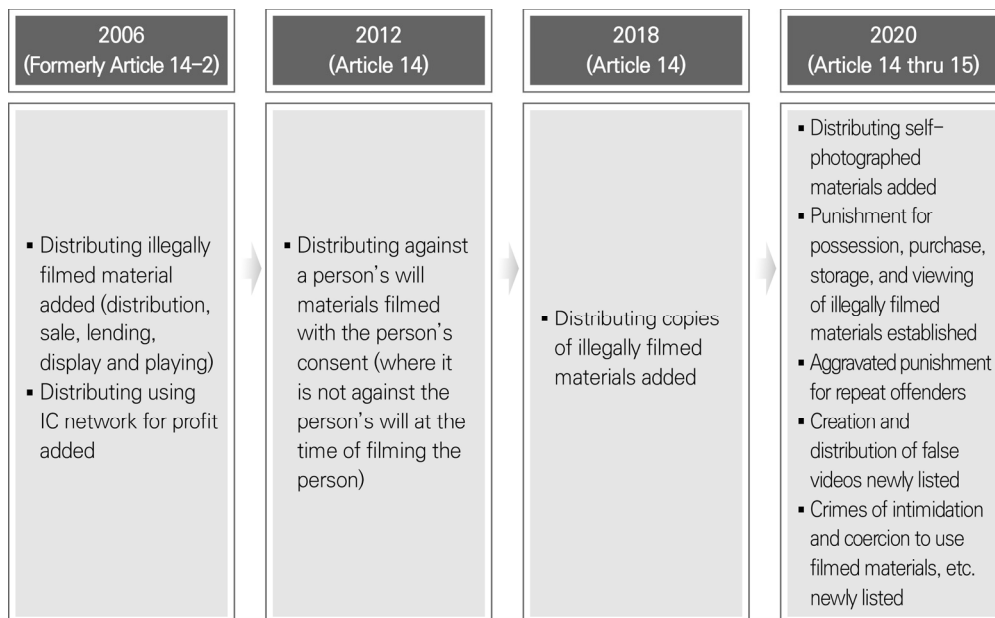
2 Limits of Penal Disposition under the Current Judicial System and Creation of New Protectable Interests

a. Limits of Penal Disposition for Verbal and Non-physical Sexual Violence

- As social interest in digital sex crimes rises as triggered by the Nth Room sexual exploitation case, the criminal approach to digital sex crimes is recently focusing on punishing sex crimes that are committed using the victim's 'sexual image'.

※ The amendment of the Sexual Abuse Punishment Act since the beginning of 2000's is made in a way that supplements the loopholes in punishing the crime of filming with a camera, etc. under Article 14

| History of Amendment to Article 14 of the Sexual Abuse Punishment Act |



- However, unlike digital sex crimes using sexual images, sexual violence and harassment using the medium of 'language' are only treated as non-sexual crimes such as insults or defamation under the Criminal Act, as well as the crime of obscenity using communication media (Article 13 of the Sexual Abuse Punishment Act). As such, they are not addressed giving full consideration of the sentiment of victimization or the characteristics of sexual offenses.
- According to the real aspect survey, online sexual violence and harassment through language, rather than through sexual images, is the sexual offense most frequently experienced by victims.

* According to the results of a real aspect survey of 2,000 victims of online sexual violence across the country by the Korea Women's Policy Research Institute in 2018, 1,648 out of 2,000 victims (82.4%) experienced only online sexual harassment without sustaining damage from filming, dissemination, threats to distribute, distribution or re-distribution, and 352 (17.2%) were victimized by sexual offenses using sexual images such as filming and dissemination.

- Such types of offense include not only the method employing only verbal forms such as unwanted sexual approach and verbal harassment in the online space, but also objectification and/or stalking of the victim such as disparagement and insults while disclosing the victim's daily life photos and personal information, or continuously demanding for the victim's sexual images using the victim's publicly disclosed personal information. As a result, victims experience restriction in their social network and other online activities or suffer injuries such as loss of trust in people around them or safety perceived in their daily lives.

* At the time of the so-called 'Nth Room case', Jo Joo-bin, the mastermind operating the 'baksa' room, used personal information of the victim available on the Internet to approach the victim, demanding sexual images, making sexually derogatory remarks, and stealing personal information from the victims.

※ In 2018, the Korean Criminal and Legal Policy Institute analyzed various types of online sexual harassment by collecting online sexual abuses appearing in internet comments and social network postings from January 2017 to October 2018. According to the analysis, the types are classified into: ① sexual disparagement/insulting, ② sexual jokes /inducement of unwanted sexual dialogue, ③ expressing sexism-based misogynic ideas, ④ disclosing personal information, ⑤ transmission of obscene materials without consent

- In recent years, online sexual violence and harassment adds a variety of new types, as demonstrated by commission of sexual acts targeted to female characters on game sites, metaverse, etc., inducement of sexual conversations after confirming that the user at the other end is female, casting sexual insults or misogynistic invectives or profanity, which often develops to stalking.
- However, the current crime of obscenity using communication media requires that the act concerned must be more than mere vulgar expressions and reach the level of 'obscene material'¹ and offenses of insulting or defamation require 'publicness'. These requirements make it impossible to punish any acts committed covertly for sexual purpose, producing a loophole for these offenders to escape from condign punishment properly reflecting the nature of the sexual offense.

1 A number of court rulings, such as the Supreme Court Decision 2016Do21389 and the Constitutional Court Decision 2016HeonBa153, held that " ... must be more than mere vulgar expression and reach the degree of causing sexual humiliation or repugnance," providing the same test as that applicable to obscene materials.

b. Efforts to Legislate the Punishment of Non-physical Sexual Violence

► The need to regulate online non-physical sexual violence

- Traditionally, sexual offenses have been criminally regulated focused on physical sexual violence (genital insertions or physical contact). However, in line with the development of network technology and the expansion of communication using social media, the criminal regulation of certain acts without physical contact that infringe the sexual personality rights of others using online networks was strongly called for.
- In this connection, some sexually violent acts without physical engagement were statutorily listed as crimes in the name of filming with cameras and obscenity using communication media, etc. However, as discussed earlier, there is still a loophole in penal disposition due to the parameters of existing criminal law, hence regulating through legislation those sexual violences using language as the instrumentality for commission as well as non-physical sexual violences targeted to victim identities such as game characters is highly needed.

► Efforts to Legislate Punishment for Verbal Sexual Violence

- Under the current legal system, punishment for verbal sexual violence, or what they call “sexual harassment,” is stipulated to cover only sexual harassment to the elderly, children, and the disabled, and as for sexual harassment in the workplace, the employer is to receive recommendations or sanctions, rather than the perpetrator is criminally punished, according to the current law.

Sexual Harassment Punishment Regulations

[Child Welfare Act]

Article 17 (Prohibited Acts) No person shall engage in any of the following conduct:

2. Having a child engage in lewd acts or arranging such acts, or committing sexual harassment or sexual abuse against a child that may make him or her feel sexually ashamed

Article 71 (Penalty Provisions) ① Any person who violates Article 17 shall be punished as follows:

- 1-2. A person who commits an act falling under subparagraph 2 shall be punished by imprisonment with labor for not more than 10 years or by a fine not exceeding 100 million won.

[Welfare of Senior Citizens Act]

Article 39-9 (Prohibited Acts) No one shall commit any of the following acts against any person aged 65 years or older (hereafter referred to as "senior citizen" in this Article):

2. Acts including sexual violence or harassment, etc. that give a sense of sexual shame to senior citizens

Article 55-3 (Penalty Provisions) ① Any of the following persons shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won:

2. A person who commits any act specified in subparagraphs 1 (limited to violence only) through 4 of Article 39-9 or subparagraph 6 of the same Act;

[Act on the Prohibition of Discrimination against Persons with Disabilities and Remedy against Infringement of their Rights]

Article 3 (Definitions) The terms used in this Act are defined as follows:

21. The term "harassment, etc." means physical, mental, emotional or verbal acts committed against a person with a disability in the form of organized exclusion, neglect, abandonment, aggravation, harassment, abuse, monetary extortion, and infringement on the right to sexual self-determination.

Article 32 (Prevention of Harassment) ⑤ No person shall infringe on the right to sexual self-determination of persons with disabilities or engage in verbal expressions to cause a sense of shame, molestation, or assault or rape taking advantage of disability.

Article 49 (Discriminatory Acts) ① If any person commits discriminatory acts prohibited under this Act and such act is deemed to be malicious, the court may sentence the discriminator to an imprisonment with labor for not more than three years or a fine not exceeding 30 million won.

② Whether the act referred to in paragraph ① is malicious shall be determined based on the following:

1. Willfulness of discrimination;
2. Continuation and repetition of discrimination;
3. Retaliation against the victim of discrimination;
4. Substance and scope of loss suffered from discrimination

Regulations related to sexual harassment in the workplace

[National Human Rights Commission of Korea Act]

Article 2 (Definition) 3. The term "discriminatory act violating the equal right" means any of the following acts, without reasonable grounds, on the grounds of sex, religion, disability, age, social status, region of origin (referring to a place of birth, place of registration, principal area of residence before coming of age, etc.), state of origin, ethnic origin, physical condition such as features, marital status such as single, separated, divorced, widowed, remarried, married de facto, or pregnancy or childbirth, types or forms of family, race, skin color, ideology or political opinion, record of crime whose effect of punishment has been extinguished, sexual orientation, academic career, medical history, etc.:

- d. An act of sexual harassment (referring to making people feel sexually humiliated or loathsome in business,

employment or other settings or giving disadvantage in employment on the pretext of disobedience to sexual comments or other demands by a working person, an employer or an employee of a public agency (referring to State agencies, local governments, various levels of schools established under Article 2 of the Elementary and Secondary Education Act, Article 2 of the Higher Education Act and other Acts, and agencies affiliated with public services pursuant to Article 3-2 (1) of the Public Service Ethics Act) who takes advantage of their superior position or sexual comments, etc. with regard to their duties, etc.)

Article 45 (Accusation and Recommendation of Disciplinary Action) ② If it is deemed that there occurred any violation of human rights as a result of the investigation of any petition, the Commission may recommend a disciplinary action against the respondent or any other person responsible for the same violation to the head of the competent institution, etc.

[Framework Act on Gender Equality]

Article 3 (Definition)

2. The term "sexual harassment" means a case in which any employee, employer, or worker of a State agency, local government, or public organization prescribed by Presidential Decree (hereinafter referred to as "State agency, etc.") commits any of the following offenses in terms of duties, employment, and other relations:
- (a) Making the other party feel sexual humiliation or aversion with verbal or physical behavior of a sexual nature, sexual demand, etc., utilizing his or her position or in relation with his or her duties, etc.
 - (b) Expressing one's intention to put the other party at a disadvantage on grounds of not complying with any verbal or physical behavior of a sexual nature or other demands or to grant him or her any benefit on condition of complying therewith.

Article 31-2 (Measures upon Occurrence of Sexual Harassment) ① When the head of a State agency, etc. becomes aware of the fact that a sexual harassment incident has occurred in that agency (including the case where the head of the State agency, etc. is the perpetrator of the sexual harassment concerned), he or she shall immediately notify thereof to the Minister of Gender Equality and Family and shall, within three months from the date on which the fact is known to him or her, submit to the Minister of Gender Equality and Family a recurrence prevention plan under Article 31(1), unless the victim explicitly objects thereto.

② The Minister of Gender Equality and Family may conduct an on-site inspection of the agency concerned if he or she finds that the case notified pursuant to paragraph (1) is serious or deems it necessary for reviewing the recurrence prevention plan and, upon finding that correction or supplementation is necessary as a result of having reviewed the plan, may request the head of State agency, etc. for correction or supplementation.

Article 31-3 (Examination of Organizational Culture to Prevent Sexual Harassment and Recommendation for Improvement) ① The Minister of Gender Equality and Family may examine the organizational culture of State agency, etc. and recommend improvement, if necessary to prevent sexual harassment.

[Equal Employment Opportunity and Work-family Balance Assistance Act]

Article 2 (Definition)

2. The term "sexual harassment on the job" means that an employer, a superior or an employee causes another employee to feel sexual humiliation or repulsion by sexual words or actions by utilizing a position in the workplace or in relation with duties, or providing any disadvantages in working conditions and employment on account of disregard for sexual words or actions or any other demands, etc.

Article 12 (Prohibition of Sexual Harassment on Job) No employer, superior, or employee shall commit any sexual harassment on the job against another employee.

Article 37 (Penalty Provisions) ② Where an employer commits any of the following violations, he or she shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 30 million won.

2. Where the employer gives disadvantageous treatment to a person who reports the occurrence of sexual harassment on the job, a harassed person, etc., in violation of Article 14 (6);

Article 39 (Administrative Fines) ① Where an employer commits sexual harassment on the job in violation of Article 12, he or she shall be punished by an administrative fine not exceeding 10 million won.

- Other than the above-cited regulations, however, there are no punishment regulations for sexual harassment² committed in everyday life → It is difficult to punish as an existing framework of sexual crime. Although punishing it as part of non-sex crimes such as offense of insulting is not impossible, whether it may satisfy all the constitutional elements is unclear (due to the unnoticeable nature of most sexual crimes) or even if such elements are met, punishment would not be effectively heavy. Thus, it can be said that there is a loophole or unreasonableness inherent in the system of punishing perpetrators and protecting victims.

* "A taxi driver proposing sex trade to a female passenger remained unpunished because there is no statutory ground for punishing him", reported by Kookmin Ilbo and other media on May 9, 2021.

- 'Sexual Harassment' does not involve direct sexual acts, but it is an indirect sexual act that interferes with someone else's right to sexual self-determination. As the essence of it is infringement of legally protectable interest, it should be handled as a subcategory of sexual crime.
- In particular, the so-called 'cyber sexual harassment' committed in the online space in recent years oftentimes find its place in the real world, escalating to preparation or conspiring for serious sexual crimes or abetting and aiding for them, in a way detrimental to the society. That being said, such cyber sexual harassment should not be regarded as a 'minor infraction', and it is appropriate to develop an independent ground to punish sexual harassment as a generally punishable offense.
- Some countries, France included, have provisions on sexual harassment in their criminal statutes, which stipulate criminal punishment for sexual or sexist language and conducts. Sexual harassment includes verbally inflicted offense.

The Criminal Code of France(Articles 222-33)

I. Sexual harassment is repeatedly imposing on a person remarks or behavior with a sexual or sexist connotation which either undermines the person's dignity because of their degrading or humiliating nature, or creates against him an intimidating, hostile or offensive situation.

The offense is committed:

1. when these remarks or behaviors are imposed on the same victim by several people, even though each of these people has not acted repeatedly;
2. when these remarks or behaviors are imposed on the same victim by several people who, even in the absence of complicity, know that these remarks or behaviors characterize a repetition.

II. Sexual harassment is, even if not repeated, any form of serious pressure for the real or apparent purpose of a sexual nature, whether this is intended for the benefit of the perpetrator or for the benefit of a third party.

² Desirably, the term 'Sexual harassment' should be replaced with 'Sexual molestation', as the former may relegate a sexual offense to a prank and water down its criminal nature.

III. Perpetrators of I or II shall be punished for imprisonment and a fine of €30,000.

This punishment shall be adjusted upward to imprisonment for three years and a fine of €45,000 in any of the following cases:

1. in case abusing the authority conferred on a person or on a position of a person;
2. if the victim is a minor with the age of 15 or less;
3. if the victim's vulnerability due to age, illness, infirmity, physical or mental defect or a state of pregnancy is apparent or known to the perpetrator;
4. if the victim's vulnerability due to his or her economic/social situation is apparent or known to the perpetrator;
5. if the offense is committed by several persons acting either as the primary perpetrator or as accomplice;
6. if the offense is committed by using an online public communication service or through a digital or electronic medium;
7. if a minor was present at the scene;
8. if the offense is committed by a person who has a lineal kinship with the victim or who has de jure or de facto authority over the victim.

- As the issue arises about a loophole in punishment for verbal sexual violence, a proposition of amending relevant statutes was submitted to the 21st National Assembly, with the contents that: ① proposal to establish a crime of sexual insulting, which requires use of materials featuring sexual conducts or engagement of sexual language or behavior for the purpose of expressing hatred against a specific gender, as an additional constitutional element which must be met in addition to constitutional elements for the crime of insulting under the Criminal Act; ② proposal to introduce in the Sexual Abuse Punishment Act a statutory ground to punish sexual harassment by inserting Article 13-2 in parallel with the crime of obscenity using communication media; ③ proposal to include verbal act of sexual violence to constitute a crime of indecent act in crowded public place in the Sexual Abuse Punishment Act.

Statute	Key Point	Contents of Proposition
Criminal Act (Lee Soo-jin and 13 others)	Make non-consensual indecent act a basic constitutional element for forced indecent act, and punish non-consensual indecent act using substances, etc. as a separate type of conduct (1 year ↓ or 10 million won ↓)	Article 298 (Forced Indecent Act) ① A person who commits an indecent act on another without consent of that other person shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding ten million won. ② A person who commits an indecent act on another without the consent of that other person by using an object or substance for sexual purposes shall be punished in the same way as prescribed in the preceding paragraph. ③ A person who commits an indecent act on another by battery, threatening, deception or force shall be punished by imprisonment with labor for not more than 10 years or by a fine not exceeding 100 million won. ④ A person who commits an indecent act on another by taking advantage of that other person's condition of unconsciousness or inability to resist shall be punished in the same way as prescribed in the preceding paragraph.

Statute	Key Point	Contents of Proposition
Sexual Abuse Punishment Act (Baek Hye-ryeon and 9 others)	New provision on punishment for obscene act using sexually humiliating objects (2 years ↓ or 20 million won ↓)	Article 13-2 (Indecent Act Using Objects) A person who, for the purpose of provoking sexual desire of his/her own or someone else, places an object that causes sexual humiliation or repugnance in another person's residence, workplace, school, or any place of for his/her daily living, which reached that other person, shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won.
Sexual Abuse Punishment Act (Kim Min-ki and 9 others)	Punishment as an obscene act for placing an object sexually humiliating object that reaches another person (2 years ↓ or 20 million won ↓)	Article 13 (Obscene Act by Using Medium of Communication) A person who commits any of the following acts with intent to arouse or satisfy his/her own or someone else's sexual appetite shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won: 1. an act of sending another person any words, sounds, writings, pictures, images or other things, which may cause a sense of sexual shame or aversion, through telephone, mail, computer or other means of communication; or 2. an act of placing an object that causes sexual shame or aversion in the other person's residence, workplace, or school, etc., either directly or through courier service, quick service, or other means of delivery, which reached that other person.
Sexual Abuse Punishment Act (Lee Sung-man and 9 others)	Punishment as an obscene act for placing an object sexually humiliating object that reaches another person (2 years ↓ or 20 million won ↓)	Article 13 (Obscene Act by Using Medium of Communication) A person who sends another person any words, sounds, writings, pictures, images or other things, which may cause a sense of sexual shame or aversion, through telephone, mail, computer or other means of communication, or places the same in another person's residence, workplace, or school, or any place of daily living, which reaches that other person, shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won.

► Efforts to Legislate the Punishment of Non-Contact Sexual Violence Using Substances, etc.

- Recently, so-called 'semen terrorism', that is, dubbing or sprinkling semen on either an unacquainted or a specific woman, has occurred growingly in public places.

* "Sexual crime to the body, property damage to clothes - semen terror mocked by foreign media", reported by JoongAng Ilbo and other media on August 20, 2021.

* According to legislator Baek Hye-ryun's office, a total of 44 cases of semen terrorism were received and indicted for indecent act or property damage '19~'20.7.

- The offense using substances, etc. as described above is an external expression of perpetrator's morbid sexual prejudice which entails victimization by creating sexual humiliation or feeling of disgust in the victim's mind. Although in many of such cases the perpetrator or the characteristic of the offense foretells serious sexual crime of violence case, this type of offense has not been fully addressed by proper criminal and judicial response or a full-scale discussion on countermeasures.

- In current criminal practice, ① if a perpetrator has dubbed semen on the victim's belongings, furniture, clothing, or any goods or putting it in drinking water or otherwise placed it in the victim's space, such conduct is charged for a crime of infliction of property damage or a violation of the Punishment of Minor Offenses Act, and ② if the perpetrator has dubbed or sprinkled semen on the victim's body (or clothing worn by the victim), the charge is for a crime of forced indecent act.

※ Although there are cases where the type ② offenses were charged as battery or public obscenity, the current trend is that they are punished as sexual offenses including indecent act after the court recognized it as 'indecent act by surprise',³ meaning an exercise of force against the will of the victim.

- However, if the perpetrator is a first-time offender or there are no concurrent offenses, he or she is in most cases are sentenced to a fine suspended execution of sentence, and even when commission of indecent act is confirmed by the court judgment, the punishment usually does not go beyond disclosure of personal information or order to restrain employment.
- A proposition to amend the law was submitted to the 21st National Assembly to fill the gap in legal provision to punish sexual violence crimes using objects foreign to human body, including so-called 'semen-terrorism', with the following contents:

- ① A proposal to lower the statutory punishment by making non-consented indecent act a basic constitutional element of the crime of forced indecent act under the Criminal Act, and to establish a new provision punishing non-consented indecent act using substances for sexual purposes the same way as forced indecent act is punished; ② A proposal to include an act of causing objects that arouse sexual shame or disgust to reach another person's living space directly.

Statute	Key Point	Contents of Proposition
Criminal Act (Legislator Kang Sang-won and 9 others)	Inadequacy of punishment for sexual disparagement and misogyny → Criminalizing the use of specific parts of the body or materials featuring sexual conducts or making sexual remarks or actions for the purpose of expressing hatred against specific gender.	The body of Article 311 other than the title shall be prescribed under Paragraph ①, and Paragraph ② shall be newly inserted in the same article as follows: ② A person who commits the crime of the preceding paragraph by using codes, documents, sound, images, or videos whose main subject is specific parts of the body or sexual conducts or makes sexual remarks or actions for the purpose of expressing hatred against specific shall be punished by imprisonment with labor for not more than three years or a fine not more than five million won:

³ In a case where the perpetrator approached the victim and ejaculated at her body, the court ruled that "it is an act of exercise of force by surprise against the victim's will and as such constitutes a violence during the commission of indecent act by surprise regardless of the magnitude of the force or actual contact to the victim's body (2015Do6980).

Statute	Key Point	Contents of Proposition
Sexual Abuse Punishment Act (Legislator Lee Myung-soo and 9 others)	Inadequacy of punishment for verbal sexual harassment that does not constitute an insult or defamation. As verbal sexual harassment committed outside the workplace or online is punished as an insult or defamation, it is not well perceived as a sexual offense by the general public.	Article 13-2 (Obscene Acts by Language or Behavior) A person who continuously makes sexual remarks or behaviors causing another person feel sexual shame or repugnance shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding 20 million won.
Sexual Abuse Punishment Act (Legislator Lee Won-wook and 11 others)		Article 13-2 (Obscene Acts by Sexual Remark or Conduct) A person who continuously makes sexual remarks or conducts causing another person feel sexual humiliation or repugnance shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding three million won.
Sexual Abuse Punishment Act (Legislator Kim Soo-min and 9 others)		Article 13-2 (Obscene Acts by Sexual Remark or Conduct) A person who continuously makes sexual remarks or conducts or makes sexual demands [Hereinafter it is referred to as "sexual harassment". It includes the cases where the sexual harassment is committed using the information and communications network (hereinafter referred to as "IC network") mentioned in Article 2(1)1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.], causing another person to feel sexual humiliation or repugnance shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding three million won.
Sexual Abuse Punishment Act (Legislator Park In-sook and 9 others)	Inadequacy of punishment for complicity in verbal sexual harassment or indecent act in crowded public places.	In Article 11, "a person who commits an indecent act shall be punished by imprisonment for not more than one year or three million won", shall be amended to "a person who commits an indecent act (including remarks or behaviors that give a sexual shame) and a person who conspires with it shall be punished by imprisonment for not more than two years or five million won".

c. Conceptualization of 'Sexual Personality Right' as A Legally Protectable Interest of Non-Physical Sexual Violence

- As the scope of an individual identity to which personhood can be attributed is expanded to online virtual space or private images and objects to keep abreast of social change, the scope of infringement that an individual can experience is not limited to the physical human body but takes on various forms.
- In response, the judicial system has supplemented the inadequacy in punishing new forms of sexual assault by adding some constitutional elements to the legislations related to sexual violence. However, this approach has intrinsic limitations in protecting individual personality and ensuring safety of the society.
- Rather than focusing on some behaviors that draw attention of the public and covering the loopholes in punishment on an ad hoc basis, efforts must be made to define crimes based on

legally protectable interests that are infringed by sexual acts committed with a non-physical action, and ensure that the criminal jurisprudence operates effectively in conformity with the characteristics of the newly defined crime.

- With respect to the legally protectable interest of the obscenity by using communication media and filming with camera, etc. both being sexual violence offenses committed in a non-physical way under the current law, the court has defined it to be “the right to sexual self-determination, the general personality right, and the establishment of a sound sexual customs in society”, manifesting a different view to rape and forced indecent act, for which the court cited only sexual self-determination as a legally protectable interest.

Recently, the Supreme Court specifically declared the legally protectable interest of it to be “the sexual freedom of the victim as a personality, and the freedom not to be filmed without permission,” and further ruled that sexual freedom is “the freedom not to be sexually objectified passively against one’s own will.”

- The ‘obscenity using communication media’ prescribed in Article 13 of the Sexual Abuse Punishment Act is to guarantee ‘the right not to encounter pictures that cause sexual shame in contravention of the right to sexual self-determination against the individual’s will’. Its legally protectable interest is protection of the right to sexual self-determination and the establishment of sound sexual customs of the society (Supreme Court Decision Sep. 13, 2018 decided, 2018Do 9775).
- The crime of ‘filming using a camera, etc.’ stipulated in Article 14(1) of the Sexual Abuse Punishment Act is a new provision inserted to punish acts such as filming and dissemination against the will of the person being filmed, as the harmful effects of so-called ‘hidden cameras’ are emerging as a social problem. Its legally protectable interest is protection of the right to sexual self-determination and the establishment of sound sexual customs of the society (See the Constitutional Court Decision 2016HeonBa153 decided en banc December 29, 2016.), which is to protect sexual freedom and freedom not to be filmed arbitrarily (see Supreme Court Decision 2008Do7007 decided September 25, 2008). In this context, ‘sexual freedom’ means the freedom not to be sexually objectified passively against one’s will (Supreme Court Decision 2019Do16528 decided December 24, 2020).

- The legally protectable right of physical sexual violence such as rape is the right to sexual self-determination, which refers to the freedom to passively remain unengaged in unwanted ‘sexual act. Non-physical sexual violence is not a direct sexual act, but involves an ‘act of using the victim as a sexual object’.
- Therefore, when the court ruled that the legally protectable interest of the crime of illegal filming with a camera, etc., is the “freedom not to be sexually objectified against one’s own will,” it defined the legally protectable interest by reflecting the nature of non-physical sexual violence and characteristics of the injury, different from the case with rape, etc. It is reasonable

and proper to define legally protectable interests in the same context for other non-physical sexual violence such as verbal sexual violence or objectification of things using substances, etc.

- Unwanted sexual objectification causes a serious infringement of the 'right to personality', which is the right to formulation, maintenance, and protection of one's personality in the social community according to one's own values. In particular, it is an act that undermines the essence of 'sexual personality right', which is the right to decide and maintain one's own sexual identity and self-presence.
- The verbal sexual offense, sexual abuse committed in cyber space such as metaverse, and non-contact sex crimes including 'semen terrorism' are sexual wrongdoings which are recognized to be serious offense as the social change and technological development progress but are not punished as sexual crime due to inadequacy of legal provision. Therefore, it is imperative to establish penal provisions regarding 'violations of sexual personality rights' that can comprehensively cover new types of sexual crimes such as those enumerated above.

3 Security Measures to Prevent Sexual Crimes in the New Platform Space

- With the development of technology, the place of sexual crimes against sexual personality right is expanding and evolving into new Internet spaces such as metaverse. Given that the main users of such spaces are teenagers and minors, a minimum safety device to prevent and stop sexual offenses that can be committed on web using new type of platform.
- Currently, various security measures are being implemented as community-based treatment such as registration of perpetrator's personal information, probation, order to take class, and attachment of electronic devices as a means to prevent and stop sex crimes. Yet, the rate of recurrence for the same sexual crime has not decreased and the rate of recurrence for digital sexual crime is very high. (The recurrence rate for filming using camera, etc. is 75%, the highest rate of all types of sexual crimes, based on personal information registration cases)

| * Re-registration cases (2008-2018 personal information registration cases, cumulative)⁴ |

※ Unit: Cases (%)

Re-reg	Year	Total	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Total		2,901	–	1	5	15	23	56	197	349	550	738	967
		(%)	0.0	0.1	0.2	0.5	0.8	1.9	6.8	12.0	19.0	25.4	33.3

| ** Crimes Committed by re-registration subjects (2008-2018 personal information registration cases, cumulative)⁵ |

※ Unit: Cases (%)

Re-registration 1st registration	Total	Rape, etc.	Indecent act	Indecent act in crowded public place	Illegal filming with a camera, etc.	Obscenity using communicati on media	Production and distribution of obscene material
Total	2,901	422	1,361	372	508	49	12
	(%)	(14.5)	(46.9)	(12.8)	(17.5)	(1.7)	(0.4)
Rape, etc.	815	263	408	32	52	6	1
	(%)	(32.3)	(50.1)	(3.9)	(6.4)	(0.7)	(0.1)
Indecent act	1,106	116	777	100	75	11	–
	(%)	(10.5)	(70.3)	(9.0)	(6.8)	(1.0)	–
Indecent act in crowded public place	332	96	96	204	22	1	–
	(%)	(28.9)	(28.9)	(61.4)	(6.6)	(0.3)	–
Illegal filming with a camera, etc.	4285	36	36	26	321	2	–
	(%)	(8.4)	(8.4)	(6.1)	(75.0)	(0.5)	–
Obscenity using communication media	56	11	11	2	8	27	–
	(%)	(19.6)	(19.6)	(3.6)	(14.3)	(48.2)	–
Production and distribution of obscene material	16	5	5	–	–	2	6
	(%)	(31.3)	(31.3)	–	–	(12.5)	(37.5)

- Among them, probation is a regime that is meant to prevent repetition of the same crime through guidance and supervision of the subject for compliance, which is commonly implemented for all sexual crimes including digital sex crimes. For the past six years, however, the recurrence rate of the sexual offenders who received probation increased from 4.8% to 6.2%, compared to the observation that the recurrence rate of all the probation subjects

⁴ Ministry of Justice, 2020 Sexual Crime White Book

⁵ Ministry of Justice, 2020 Sexual Crime White Book

decreased slightly from 7.6% to 7.2% during the same period. Hence, efforts should be made to ensure that the effectiveness of probation in sex crimes needs to be reinforced.

| Rate of Crime Repetition by Sexual Crime Probation Subjects⁶ |

Category	2015	2016	2017	2018	2019	2020
Cases (persons)	9,010	9,069	9,004	9,340	8,855	8,627
Repeater (persons)	432	554	604	579	611	533
Crime repetition rate (%)	4.8	6.1	6.7	6.2	6.9	6.2

- As far as the sexual crime is concerned, it is difficult to expect the removal or evisceration of recidivism factors only with the conventional requirements that are premised on the parameters of real world time and space (e.g., 'restriction of outing at night', 'prohibition of entry into certain venues'). Also, there are increasing numbers of cases where access to those who are likely to repeat the same crime is made easy in the new online spaces, which should be prohibited, and it is necessary to reflect such prohibition in the requirements to be observed.

| * Current Requirements to be Observed by Probation Subjects(Act on Probation, Article 32) |

General Requirements (Para. 2)	Special Requirements (Para. 3) ⁷
<ul style="list-style-type: none"> • Living in a residential area and having an occupation. • Quitting bad habits and not socializing with persons likely to commit a crime. • Observing the guidance and surveillance of probation officer and meet and talk with the visiting officer. • Report to the officer in advance when relocating or having a domestic or overseas trip for more than one month. 	<ul style="list-style-type: none"> • Observing curfew including nighttime. • No entry into certain regions or places. • No contact with victims or specific potential targets of crimes. • Endeavoring to recover damage from crimes. • Limited place for residence. • No engagement in speculative activities. • No consumption of alcoholic beverages (beyond certain level) • Not using addictive substances, such as narcotics. • Other matters necessary to prevent repetition of crimes⁸

⁶ Ministry of Justice, 2020 Sexual Crime White Book.

⁷ Imposed individually by the Court, Probation Review Committee taking the subject's characteristics into consideration.

⁸ The Enforcement Decree of the Act on Probation Article 19 (Special Requirements) ① That they shall not drive a vehicle (including a motor cycle) until they obtain a driver's license; ② That they shall comply with a probation officer's instructions concerning education to enhance learning or to improve personality and behavior, such as vocational training, school graduation equivalency examinations, etc. and concerning medical treatment and treatment programs; ③ That they shall not engage in specific matters related to crime; ④ That they shall attend school lessons conscientiously; ⑤ That they shall regularly submit documents to a probation officer, which prove that they make a living with legal sources of income; ⑥ That they shall not possess, keep or use lethal weapons or other dangerous articles; ⑦ That they shall conscientiously fulfill family responsibilities, such as support family, etc.; ⑧ Other detailed matters deemed helpful for improvement and self-reliance of persons subject to probation in view of their living conditions, physical or mental status, motive of committing crime or misdeed, living environment, etc. to the extent that they can comply with and to the extent that does not impede their freedom unjustifiably.

- Depending on the type of sex crime or the characteristics of each individual probation subject, blocking online access to videos that are prohibited by law from possessing or to a potential target of re-commission of the crime may be considered as a means to exterminate the fundamental criminal factors. In such cases, the grounds for imposing the matters to be observed should be explicitly prescribed in relevant statutes so that it can be referred to as a criteria for the probation officer's guidance and supervision.

✎ In the United States, the sentencing court imposes the requirements specified in federal laws or sentencing guidelines for those who participate in community-based treatment such as probation, parole, and supervised release. Subjects who have been convicted of sex offenses may be ▲ ordered to attend a sex offender treatment and surveillance program approved by the probation office as a special requirement in accordance with the sentencing guidelines, ▲ restricted on use of computer or interactive computer services related to sex offenses, ▲ have his or her body, belongings, house, computer, other electronic communication device, data storage device, or media searched by the probation officer without a warrant if there is a reasonable suspicion of an illegal conduct, such as a violation of the requirements.

* New York State enacted the Electronic Security Act (e-STOP⁹) and have implemented the 'Operation: Gave Over' policy¹⁰ since 2012, which prohibits the convicted sex offenders who are on parole from using online games and community activities. (※ Beginning with 3,500 persons in 2012, a cumulative total of 18,000 registered sex offenders as of 2016 have been blocked from over 40 web sites and technology services, including Microsoft, Apple, and Facebook.)

4 Recommendations

a. Criminalizing Infringement of Sexual Personality Rights

It is recommended that infringement of sexual personality right committed in a non-physical manner be defined as a separate crime and the provisions to ground punishment of this offense be established in the Sexual Abuse Punishment Act.

- Infringement of the sexual personality right, which means 'freedom not to be a subject of unwanted sexual objectification', encompasses all unwanted sexual expressions targeting victims and the victim's online character, ID and other digital data and objects that represent the victims' personality. It may be defined as 'sexual language and behavior' in the statutory texts.

9 The Electronic Security and Targeting of Online Predators Act

10 ① Those convicted of sexual offenses are required to submit all information necessary to access a specific network, such as their e-mail address, online ID, and nickname, to the state judicial authorities. (Report must also be made when joining a new Internet site or changing the user name) ⇨ ② State judicial authorities provide the above information to online game companies pursuant to agreements made with online game companies ('Operation: Game Over', which controls sex offenders' access to game platforms). ⇨ ③ Game companies utilize the information to take actions to prohibit access, such as deletion of account or blocking access (The registration information must be updated every week).

- 'Sexual language and behavior' is a concept used in the definition of 'sexual harassment'* in the Equal Employment Opportunity Act (Article 2) and the National Human Rights Commission Act (Article 2). This concept is not contradictory to the principle of clarity inasmuch as "act which arouses sexual humiliation or repugnance**" is a concept established by a number of court rulings and is explicitly stipulated as judgment criteria in the statutory text.¹¹

* To be noted, Desirably, the term 'Sexual harassment' should be replaced with 'Sexual molestation', as the former may relegate a sexual offense to a prank and water down its criminal nature.

** On the other hand, there are criticism that the use of terms such as 'sexual shame' and 'sexual humiliation or repugnance' is too perpetrator-centered or unable to sufficiently relating the various experiences of the victim, and as such the use of these terms is discouraged.

- Compared to the court rulings that propose "acts that arouse sexual shame" as a test for judging whether the right to sexual self-determination is violated, acts that cause sexual humiliation or repugnance in 'sexual languages and behaviors' embrace a broader category in which a wide range of behavior type for sexual objectification such as language expression or visual act are contained. In that sense, it should be defined as a type of criminal act of infringing sexual personality right that considers not only right to sexual self-determination but also non-physical personality.
- Furthermore, considering the need to provide basis for activating specific national penal power against sexual molestation, it is reasonable to add a purpose requirement such as '(his or her own or someone else's) sexual desire or satisfaction' in its constitutional elements.

11 Argument against criminal punishment of sexual molestation reasons that ① sexual molestation should not be criminalized because it is a minor infraction, ② sexual molestation can be punished through the interpretation of the current law, and civil and administrative sanctions are also available, and ③ given that sexual harassment against the elderly, children, and the disabled is punished when such sexual harassment can be recognized as sexual abuse or it is at the level the can be considered in parallel with sexual violence or it escalated to indecent act or rape (i.e., it has reached the criminal misconduct under the current law, sexual harassment based on special relationship such as that occurring within the workplace can hardly be deemed a subject matter of criminal law governance. However, the affirmative view argues that: ① If a sexual offense is a crime that violates the right to sexual self-determination, unwanted sexual harassment also falls under this category. Multifarious forms of sexual harassment are prevalent in our society as a whole, cyber molestation or sexual harassment online is increasing, a trend indicative of the severity thereof. Even if the degree of insult or assault is minor, it is punishable in principle, so one cannot say it needs to be decriminalized merely because the degree of infringement is minor (Admittedly, the substance of the sexual harassment that is criminally punishable should be more limited than in the case of labor law.), ② We need measures to address the problems from areas out of application of the current law. Furthermore, the sexual harassment committed in the area of daily lives is worth criminal punishment just as the sexual harassment committed in the labor law area is. And there is no legislative purpose or practical necessity to stipulate the concept of sexual harassment differently in different legal areas, and ③ as there are currently no specific details regarding the concept and scope of application of the sexual harassment, a unified concept of the sexual harassment is all the more necessary to eliminate difficulties that may arise in legal application by clarifying whether or not a case can be deemed a sexual harassment. (Refer to Korean Comparative Criminal Law Institute, "Comparative Criminal Law Study" Vol. 22, No. 4 of the, No. 4 Ahn Gyeong-ok, Kim Hee-Jeong, "Comparative Legal Study on the Criminal Punishability of Sexual Harassment")

※ As positive and negative opinions exist regarding the 'sustainability' requirement, we propose the recommendations as Proposition 1 and 2.

- Specific statutory texts (proposition)

Legally protectable interests

- Sexual personality right

Specific statutory text (proposition)

The following provisions are proposed to be inserted in the Act on Special Cases Concerning the Punishment of Sexual Crimes.

(Proposition 1)

【 Act on Special Cases Concerning the Punishment of Sexual Crimes 】

Article 13-2 (Sexual Molestation)

A person who continuously commits sexual remarks or behaviors on another person with intent to arouse or satisfy his/her own or someone else's sexual appetite shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding five million won.

(Proposition 2)

【 Act on Special Cases Concerning the Punishment of Sexual Crimes 】

Article 13-2 (Sexual Harassment)

① A person who commits sexual remarks or behaviors on another person with intent to arouse or satisfy his/her own or someone else's sexual appetite shall be punished by imprisonment with labor for not more than one year or by a fine not exceeding five million won.

② A person who continuously commits the acts mentioned in Paragraph ① shall be punished by imprisonment with labor for not more than two years or by a fine not exceeding ten million won.

※ Considering that it is a comprehensive type of infringement of sexual personality rights, the statutory punishment was set lower than that of obscenity using communication media under the Sexual Abuse Punishment Act, which stipulates infringement of the right to sexual self-determination.

b. Improvement of Matters to Observe by Probation Subjects for Sex Crimes

- In conducting probation for sex offenders as a community-based treatment, taking into consideration the changed criminal environment and various types of crimes according to technological development, it is recommended that the legal ground be established so that matters to be complied with can be imposed in a way to effectively control the risk of repetition of the same crime according to the characteristics of individual crimes.
- It is recommended that ① special requirements that can be imposed upon probation subjects according to the order of the court include duties to follow probation officer's instruction to check the status of possession, storage, and abstention from viewing of illegally filmed materials, etc. (illegal filmed materials under Sexual Abuse Punishment Act, and Juvenile Protection from Sex Abuse Act illegal synthesized materials, materials on exploitation of

children and youth) and copies thereof (e.g., installation of illegal materials inspection program on internet devices such as mobile phones and computers) ② the Act on Probation be amended so that, in relation to 'prohibition of access to persons likely to be a target of repeated crime', the method to approach online characters and IDs and other digital data and things that represent such person's personality using information and communications networks is also prohibited.

Current Act on Probation	Proposed Amendment ¹²
<p>Article 32 (Matters to Be Observed by Persons on Probation)</p> <p>③ The court and/or Review Commission may order persons on probation to especially observe the following matters by determining a period within the period of probation, when necessary, in light of the details and types of crimes and their characteristics, other than matters to be observed under paragraph (2), when it declares a ruling or notifies decisions:</p> <ol style="list-style-type: none"> 1. They shall abide to a curfew, including at night, likely to create an opportunity or impulse to repeat violations; 2. They shall not access specific regions or places, likely to create an opportunity or impulse to repeat violations; 3. They shall refrain from contact with specific potential victims of crimes; 4. They shall endeavor to recover damage from crimes; 5. They shall live at a directed place; 6. They shall refrain from engaging in speculative activities; 7. They shall not consume alcoholic beverages in excess of a specific amount; 8. They shall not use addictive substances, such as narcotics; 9. They shall undergo tests on whether they have injected, smoked or taken narcotics specified in the Narcotics Control Act; 10. Other matters prescribed by Presidential Decree as deemed necessary to prevent persons on probation from repeating violations. 	<p>Article 32 (Matters to Be Observed by Persons on Probation)</p> <p>① Same as the left.</p> <p>1. ~ 2. Same as the left.</p> <p>3. Same as the left. (It includes methods to approach online characters and IDs and other digital data and things that represent such person's personality using information and communications networks.)</p> <p>4. ~ 9. Same as the left.</p> <p>10. They shall not possess, store and view illegally filmed materials, etc. (illegal filmed materials under Article 14 of the Sexual Abuse Punishment Act) or copies thereof, and compilations under Article 14-2 of the same Act, materials on exploitation of children or youth under Juvenile Protection from Sex Abuse Act, and copies thereof.</p> <p>11. They shall follow and not obstruct probation officer's instruction to check the status of possession, etc. of illegally filmed materials, etc. (e.g., installation of illegal materials blocker program on internet devices such as mobile phones, etc.).</p> <p>12. Same as the left: Subpara. 10</p>

- In addition, it is recommended to devise a mechanism* that can realize in the digital space the 'prohibition of entry to specific areas or places that may impart opportunity or impulsion to repeat the same offense', with the aim to stop recidivism in online settings.

* Ex) Building a system to delete and block the accounts of sex offenders by collaborative efforts of the Ministry of Justice and platform operators, mainly on metaverse and game sites as well as other platforms that are vulnerable to sexual crimes.

c. Platform Operators' Duty of Cooperation and Management

- For a certain range of illegal information, IC service providers, etc. are required to refuse, suspend, or limit the processing of the information in accordance with the deliberation of the Korea Communications Commission (Article 44-7 of the IC Network Act). In this connection, it is recommended to amend the IC Network Act so that information infringing sexual personality rights is included in the definition of illegal information the distribution of which is prohibited by law to prevent sexual personality rights from being infringed in the online space.

Current IC Network Act	Proposed Amendment
<p>Article 44-7 (Prohibition on Circulation of Unlawful Information) ① No one may circulate any of the following information through an information and communications network:</p> <ol style="list-style-type: none"> 1. Information with obscene content distributed, sold, rented, or displayed openly in the form of code, words, sound, images, or motion picture; 2. Information with content that defames other persons by divulging a fact or false information, openly and with intent to disparage the person's reputation; 3. Information with content that arouses fear or apprehension by reaching other persons repeatedly in the form of code, words, sound, image, or motion picture; 4. Information with content that compromises, destroys, alters, or forges an information and communications system, data, a program, or similar or that interferes with the operation of such system, data, program, or similar without good cause; 5. Information with content that amounts to a media product harmful to youths under the Youth Protection Act and that is provided for profit without fulfilling the duties and obligations under the relevant statutes 	<p>Article 44-7 (Prohibition on Circulation of Unlawful Information)</p> <p>① Same as the left.</p> <ol style="list-style-type: none"> 1. Same as the left. 1-2. Information with content about committing sexual remarks or behaviors on the another person for the purpose of sexual desire or satisfaction (including the method to access digital data representing the person's personality such as characters and accounts) 2.-9. Same as the left.

12 Legislator Baek Hye-ryeon and 16 others proposed amendment to the Act on Probation in February 2021 (containing a requirement to accept requests for submitting mobile phones, etc. to inspect on possession of illegally filmed materials, and prohibition of obstructing the program blocking illegally filmed materials). Yet, the proposal did not contain a provision to forbid possession, storage or viewing of illegally filmed materials, an essential part of the requirements.

Current IC Network Act	Proposed Amendment
<p>and regulations, including the duty to verify the subject's age and the duty of labeling;</p> <p>6. Information with content that amounts to speculative activities prohibited by statutes and regulations;</p> <p>6-2. Information with content of transactions of personal information in violation of this Act or any other statute or regulation regarding the protection of personal information;</p> <p>6-3. Information regarding methods, drawings, etc. for manufacturing guns or explosives (including things with a yield that may expose people to risk of life or bodily injury);</p> <p>7. Information with content that divulges a secret classified under statutes and regulations or any other State secret;</p> <p>8. Information with content that violates the National Security Act;</p> <p>9. Other information with content that attempts to commit, aids, or abets a crime.</p>	

※ To secure the effectiveness, it is necessary to add this in the penal provisions of Article 74 of the same Act.

- Furthermore, there will be a plan to systematically assign businesses operators of newly emerging platforms such as virtual reality with specific obligations to provide a certain range of cooperation and management in accordance with their roles and responsibilities in relation to acts of infringement on legally protectable interests that occur in the space under their management.
- In particular, designing the legislation based on the perception that business operators are not potential aiders or abettors for sexual offenses committed within their platforms, but collaborators to support investigation and evidence preservation can be a much more effective alternative to strengthening crime deterrence.
- Therefore, a plan should be developed to legislate following obligations for cooperation and management altogether: ▲ the duty of reporting to immediately notify the investigation agency when the business operator discovers a circumstantial sign of criminal commission in the course of fulfilling the duty to prevent distribution or by his or her own observation. (proposed by legislator Kang Sun-woo office); and ▲ the duty to take measures to preserve basic information about illegal video materials (such as dialogues for sexual exploitation) and their users (perpetrators, victims).

4 Expected Effects

- Sexual violence and verbal sexual abuses committed in the metaverse any other online space, which emerged newly in keeping with changes in society and technology, but are not fully covered by application of existing crimes of insults or defamation, can be addressed with criminal responses designed to reflect the characteristics of sexual crimes.
- Infringement of sexual personality rights in non-physical ways, such as 'semen-terrorism', will be regulated from the perspective of sexual offenses, thereby redressing the irrationality or inadequacy inherent in punishing and controlling offenders and protecting victims.
- The sexual personality right, as distinguished from the right to sexual self-determination, will be recognized as a legally protectable interest, and its infringement will be criminalized by statutes, thereby ensuring that the personality right is effectively guaranteed and the constitutional value is realized through the criminal justice system.
- Recidivism will be substantially circumscribed and sexual offenses in online spaces including new platforms will be deterred through the community-based treatment that effectively controls the risk of repetition of the same crime, aided by the platform business operators' responsible cooperation and management.

RECOMMENDATIONS

The 6th Recommendation

Measures to Protect Victims of
Sexual Violence in the Trial Procedure

DIGITAL SEX CRIMES
TASK FORCE TEAM •
EXPERT COMMITTEE
ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 6th Recommendation

– Measures to Protect Victims of Sexual Violence in the Trial Procedure –

Key Takeaway

1. Basic policy

- In order to protect the victims of sexual violence, prevent the secondary damage, and guarantee the right to make statements in the court proceedings, it is recommended to improve the hearing procedures and methods of sex crime cases such as digital sex crimes, and ensure the victims' litigation records access.

2. Recommendations

- A. Ensuring the right to choose the method of testimony
 - In procedures such as investigation, prosecution, and witness attendance, it is recommended to provide sex crime victims with information on various methods of testimony, such as interrogation by repeater devices such as videos, and to ensure opportunities to choose.
- B. Improving the procedure for examination of witnesses and the method of examining evidence
 - It is recommended that the presiding judge exercises the right to command litigation in order to prevent the inappropriate interrogation related to personal information such as the sexual history and reputation of victims unrelated to the case at the time of witness examination on the sexual crime victim, and the provisions which limit the ability of evidence for questions that violate it should be newly established into the Criminal Procedure Act
 - It is recommended that when investigating evidence for photos and videos of the victim's body, etc., it should be conducted privately, and special provisions should Sexual Abuse Punishment Act for the evidence to be played by individual video and voice devices, not the current large-screen screening method.
- C. Prohibition of leakage, etc. of personal information of victims acquired during the trial
 - It is recommended that the leakage or disclosure of the victim's private information acquired during the trial should be prohibited, and that the secondary infliction by the accused should be specified as a weighted sentencing element in the sentencing standard.
- D. Ensuring access to victims' litigation records
 - It is recommended to revise the relevant laws to allow the victim to in principle read and copy the victim's own statements and submitted documents and mediums which photographed and recorded the victim's body, and to notify the reason if they are not allowed.

3. Expected effect

- A. Protection of the human rights of victims in court proceedings and substantial guarantee of the right to state in court proceedings.
- B. Establish specific and objective standards for exercising the right to command litigation based on law, and prevent the secondary damage in the trial process by prohibiting the attack on the privacy of victims unrelated to the case and the leakage of private information.
- C. Establishment of advanced trial procedures to respond to new crimes such as digital sex crimes
- D. Finding substantive truth and improving confidence in the judicial proceedings by reducing the possibility of error in substantive judgment due to secondary harm.

1 Background

- The secondary harm suffered by victims in the trial of sexual violence cases has been a continuous problem.¹ Various systems have been established to protect the victims of sexual violence during the trial process, such as non-disclosure of hearings and prescribing the participation of statement assistants in trials under the Sexual Violence Punishment Act.²

Witness support system for victims of sexual violence under the current law

- Non-disclosure of the hearing (Article 31 of the Sexual Violence Punishment Act)
 - Establishment and operation of witness support facilities (Article 32 of the Sexual Violence Punishment Act)
 - Attendance of a trust relationship person (Article 34 of the Sexual Violence Punishment Act)
 - Participation of the statement assistant in the trial (Article 38 of the Sexual Violence Punishment Act)
 - Examination of witnesses by a relay device such as a video (Article 40 of the Sexual Violence Punishment Act)
 - Examination of witnesses by installation of shielding facilities, etc. (Article 165-2 of the Criminal Procedure Act), etc.
- However, there are various problems that make it difficult for victims to attend court and testify, such as indiscriminate disclosure of statements and attacks on privacy unrelated to cases.³ In the case of digital sex crimes, the secondary harm* by playing the victim videos in court has been pointed out as a problem.
- * Including Pressian article dated November 25, 19, [Gu OO, who drove her to death? "The judiciary is also an accomplice." There was a criticism on this matter.], many articles criticized that despite the opposition of the lawyer, the victim video was played in court.
- In particular, according to the unconstitutional decision (2018Hunba524) on the special provision of videos evidence ability of a minor victim under the Sexual Abuse Punishment Act, more careful protection is required for vulnerable sexual violence victims, such as children, in the future trial process.
 - Thus, recommendations are made on (1) giving the victim the right to choose the method of testimony, (2) improving the procedure for the limit of examination of witnesses inappropriate, (3) improving the evidence examination method of digital evidence, (4) prohibiting the second

1 MBC News on June 11, 2011 "The Judge Insults" Sexual Assault Victims Woman Suicide... 『Revealing suicide note.

2 Article 29 (1) of the Sexual Violence Punishment Act, Article 2, etc. of the Rules on the Deliberation, Trial, and Protection of Victims of Sexual Violence Crimes, etc.

3 When victims of sexual violence find out that they have to testify at a trial after receiving a letter of summons, they have a huge psychological burden due to 1) concerns that their sexual violence could be known by attending the trial, 2) fear of facing the accused again, and 3) the fact that they are not familiar with the criminal procedure. [Court Administration, "A Study on the Witness Protection of Victims of Sexual Violence against Women, Children, and Disabled Persons and its Realization Plan." (2012), p.78

harm due to leakage of private information by the accused, and (5) improving the reading and copy system of litigation record.

2 Problems in the Protection of Victims of Sexual Offences in the Current Court Proceedings

a. Lack of guarantee of the right to choose the method of testimony

- The method of requiring the victim to testify with only shielding facilities installed in the same place with the accused often fails to function as a practical testimony support system, such as not being able to block the impact of testimony by the accused.

※ Procedurally, victims prefer to testify by relay devices such as video, but in many cases, victims testify in the same space with the accused with only shielding facilities installed, regardless of the victim's intentions in the trial practice.⁴
- As examination by relay devices such as video not only faithfully guarantee the accused's right to cross-examine, but also allow the victim to testify in a less intimidating space (testimony room) separated from the accused, judge, and court staff, it is more effective in protecting the victim. Thus, it is necessary to come up with an active use plan.
- The law stipulates various witness examination methods, such as testimony by relay devices such as video. The court guides the witness examination method through the <Application for Witness Support Procedure>*. But as the victim was not given the right to select and apply for a specific method of testimony, it was insufficient to guarantee the actual right to choose a method of testimony.⁵

4 "In Ahn 0-jung case, Lee 0-taek case, the sound of coughing, breathing, or talking to a lawyer next to him is heard by the victim. The victims said that I am very frozen." (April 20, 2020. MBC News, "The guy who glanced over the shield..." Victim 'goose bump').

5 Cho Hyun-joo, a court-appointed lawyer for victims, on January 10, 2022 『In relation to statements and court testimony of minor sexual violence victims, 'Existence of a court that permits only the installation of a shield and does not allow testimony by a relay device' (page 17)』

* Application for witness support procedure

(Omit)

I would like to apply for the following procedure.

- Below -

Accompanying and protecting before and after witness examination	----- ()
Non-disclosure hearing (Audience's expulsion)	----- ()
Blocking contact with the accused during testimony	----- ()
Presence of a trustworthy person	----- ()



※ Personal information of a trustworthy person to be present

① Name: Kim Cheonji

② Relationship with witnesses: ☐ spouse, ☐ immediate relatives, ☐ siblings, ☐ family,
☐ cohabitation ☐ Employer, ☐ Lawyer, ☐ Others ()

Notice of trial result

※ You can apply for the following two items in duplicate.



1. Brief notification of whether he is guilty or not and of the sentence upon conviction --- ()

☐ Use mobile phone text message (phone number: 010-)

☐ Use email (email:)

2. Sending a copy of the written judgment ----- ()

(Address to be served:)

However, victims, etc. who wish to apply for the transmission of a copy of the judgment must submit an application for the transmission of a copy of the judgment and pay a fee according to the rules for reading and copying the trial records.

→ The victim needs to be faithfully provided with information on the method of testimony and given practical options.⁶

b. Improper examination of witnesses

▶ Problems

- Sexual crime victims experience threatening or insulting questions during witness interrogation, such as detailed description and reenactment of sexual intercourse, accusations based on false common notion on victims, repeated questions, and questions unrelated to the

6 On January 10, 2022, Cho Hyun-joo, a court-appointed lawyer. 『Regarding statements and court testimony in the investigation procedure of minor sexual violence victims,』 『There is no item concerning the use of a relay device in the current application for witness support, so it needs to be improved.』 (Page 19)

case (especially privacy information such as sexual history and reputation of victims)^{7,8}

※ In a survey of judges, 90 percent of respondents said they thought that prosecutors or lawyers had asked inappropriate questions to victims during the witness interrogations of sex crimes trials.⁹

※ There are cases that during the trial, not only witness interrogation but also evidence related to the victim's privacy unrelated to the case are secured by applying for fact-finding, etc. to pressure the victim with the identity of the pseudonym victim and past disease information.¹⁰

- In an open trial, it is natural to faithfully guarantee the accused's right to cross-examine, but it cannot be considered that inappropriate content and methods, such as the victim's privacy, sexual history, and contempt, are included in the scope of the right to cross-examine. This may cause the victim to hesitate to testify, etc., and thus may make meaningless the victim's right to state in the court proceedings guaranteed under the Constitution.

* Article 27 ⑤ of the Constitution of the Republic of Korea

Criminal victims may make statements in the trial proceedings of the case as prescribed by law.

- Nevertheless, there are no practical measures to limit 'inappropriate interrogation on personal information such as sexual history and reputation of victims' that many victims raise.¹¹

※ The current witness support focuses on promoting the victim's psychological stability as a special case of the witness interrogation method, and the witness interrogation 'contents' is left to the exercise of the right to command litigation at the discretion of the judge, but specific restrictions are not set.

※ The Practice Guideline for Sexual Crimes (issued by the Court Administration) allows a judge to receive and review the opposing interrogation items from the accused in advance, specify inappropriate parts, hear the accused's opinion on the purpose of proof thereon, and decide whether to restrict the next interrogation, but it is often not implemented in practice.¹²

7 [Court Administration, "A Study on the Witness Protection of Victims of Sexual Violence against Women, Children, and Disabled Persons and its Realization Plan." (2012), p.98-110

8 On June 28, 2021, Hankyoreh 21 『The sense of contempt of the victim who was not protected.』

9 Supreme Court Gender Law Research Association on April 5, 2019 『Subsequent Issues in Sex Offences in Court after Me Too』

10 Although the victim of sexual violence conducted an investigation and trial under an alias, the accused applied for a request to inquire about the hospital medical records containing the victim's privacy information unrelated to the crime, and the court granted the above application resulting in disclosing the victim's real name, resident number, and past disease information to the accused. (September 12, 2019, Oh My News, 『The High Military Court that handed over 'victim information' and perpetrators who leaked it』)

11 Article 299 of the Criminal Procedure Act, Article 29 of the Sexual Violence Punishment Act, Article 25 of the Juvenile Sexual Protection Act, Article 74 of the Criminal Procedure Rules, and Article 2 of the Rules on the Examination and Trial of Sexual Violence Crime Case, etc. and Protection of Victims, etc. are indirectly mentioned as a regulation that can limit inappropriate questions in the witness interrogation process for victims of sexual violence, but more specific guidelines should be prepared. (Seminar for the Prevention of Secondary Sexual Violence by the Ministry of Gender Equality and Family – Focusing on Secondary Damage by Investigation Agencies, Courts, Media, Attacker, etc. (Page 30)

12 Judicial Policy Institute, 『A Study on the Trial Reference of Victims' Witness Examination in Sexual Violence Trial Procedure』, p. 213

※ The UN Committee on the Elimination of Discrimination Against Women¹³ recommended the prohibition of the use of evidence of victims' sexual background in judicial proceedings through the 8th deliberation on Korea's national report (February 22, 2018)¹⁴

▶ Overseas Legislation

- (Germany) The Criminal Procedure Act has provisions on the general litigation command rights, such as that the presiding judge may not allow questions unrelated to the main issue (Article 241), and regulations restricting the right to ask questions to protect the personal rights of witnesses (Article 68a)*.

* Article 68a of the German Criminal Procedure Act (Restriction of the Right to Question for the Protection of Personality) (1) Questions concerning facts that may be a disgrace to witnesses or relatives under Article 52(1) or related to their private areas of life should only be asked if it is inevitable.

- (United States) Federal and all states are implementing the 'Rape Shield Law', which limits the interrogation about sexual violence victim witness' past sexual experiences and the evidence ability.

▶ The Federal Rules of Evidence: 1) evidence submitted to prove the victim's sexual behavior and 2) evidence submitted to prove the victim's sexual orientation is denied in principle in the civil and criminal proceedings regarding sexual misconduct (§412(a)(1)(2)) are not allowed the availability of evidence ability, except an exceptional case to prove that there was consent of a victim.

▶ If the accused makes an application by a written statement stating the purpose of submitting a specific evidence to determine the evidence ability on victim's sexual history, the court will send it to the victim or parties, perform an interrogation in advance and give the victims an opportunity to state their opinions. The documents and interrogation report related to the application will be sealed (§412(c)(2))¹⁵

- (Other) In principle, evidence on sexual history of victims of sexual violence is prohibited in the UK, Canada, and Australia.¹⁶

▶ Related Proposal Bill

- A revision to Sexual Abuse Punishment Act was proposed in the 20th National Assembly to restrict the statement and interrogation on the sexual history of sexual violence victims or to exclude the evidence ability of related evidence based on the presiding judge's right to command the lawsuit, and the related revision is pending in the 21st National Assembly.

13 Committee on the Elimination of Discrimination against Women, "Concluding observations on the eighty periodic report of the Republic of Korea", p5-6

14 The international treaty, which was adopted by the United Nations General Assembly to improve gender equality and women's status and entered into force in 1981, imposes obligations on the related state to realize women's human rights and gender equality and provides measures to be taken by the state. (189 states ratified, Korea ratified in 1984)

15 Cho Ki-young 『Improvement of witness interrogation method for sexual violence victim』pp. 132-133

16 Judicial Policy Institute: 『Research on trial references to victims' witness interrogation in sexual violence trial procedures』

Date of proposal (Initiative proposal Rep.)		Law name	Details	Progress
20 th	2016. 12. 20. (Rep. Chung Chun-sook) ¹⁷	Sexual Abuse Punishment Act	Special provisions for the use of evidence of sexual violence victims' sexual history and the exclusion of interrogation	Discarded (Expired)
	2018. 3. 28. (Rep. Park Kyung-mi)			
	2018. 11. 2. (Rep. In Jae-geun)	Juvenile Protection from Sex Abuse Act	Prohibition of the use of sexual history evidence of victims in cases of sexual violence against children and adolescents	
21 st	2021. 6. 30. (Rep. Song Jae-ho)	Criminal Procedure Act	The presiding judge limits the interrogation on victims' sexual history	Related committee mooring

► Direction of improvement

- It is desirable to stipulate in the Criminal Procedure Act the grounds for restricting the litigation command rights of the presiding judge and the evidence ability and make it a general principle of litigation so that the application for examination and evidence related to the victim's privacy can be restricted.^{17,18}

17 Compared to the 2016 and 2018 amendments that restrict the ability of evidence, the 2021 amendment to protect the personal rights of witnesses who are victims of sex crimes by improving the method of questioning witnesses is more consistent with the Korean Criminal Procedure System (Jo Ki-young, 『Improvement of Witness Examination Method for Victims of Sexual Violence Crimes』, page 134)

18 Dissenting opinions on the amendment that limits the admissibility of evidence to privacy-related questions as follows: It may 1) conflict with the evidence exclusion provisions of the Criminal Procedure Act or the principle of evidence free evaluation, 2) The Supreme Court has established the Supreme Court rules to protect the victims of sexual violence in the course of examination and trial. (Opinion of Ministry of Gender Equality and Family)(Article 2 (Protection and Consideration) of the Rules on the Examination and Trial of Sexual Violence Crime Case, etc. and Protection of Victims: The court, prosecutor, the accused, lawyer or other litigation related persons shall take into consideration the human rights and characteristics of the victim and shall endeavor not to make an interrogation or statement concerning privacy of victim unrelated to the pending case or cause a situation which make the victim feel sexual shame or fear.), 3) The Criminal Procedure Act (Article 299: The presiding judge may restrict statements or interrogations of persons involved in litigation to the extent that they do not harm the essential rights of persons involved in litigation if they are duplicated or unrelated to the litigation.), The Rules of Criminal Procedure Act (Subparagraph 1 of Article 74: Prohibition of Threatening or Insulting Interrogation) Sexual Abuse Punishment Act (Article 29(1): Investigation agencies, courts, and litigation related persons shall carefully consider the age, psychological condition, or the presence or absence of aftereffects of sexual violence victims, and take care not to damage the character or reputation of the victim or infringe private secrets during investigation, interrogation and trial.) Juvenile Protection from Sex Abuse Act (Article 25(1): Investigation agencies, courts and litigation related persons shall carefully consider the age, psychological status, or the presence of aftereffects of victims of sex crimes against children and adolescents, and take care not to damage the personality or reputation of the victim or infringe private secrets during the investigation and trial.), 4) If the gender history is related to the relationship between the accused and the complainant, the occurrence process, the circumstances after the incident, a trial and trial based on it are inevitable, so the exclusion of uniform evidence needs to be fully reviewed (Opinion of the Ministry of Justice)., 5) There is a need for extensive investigation to discover substantive truth at the investigation stage, but there is room for difficulties of investigation, such as complaints about excessive investigation on the matters that cannot be used as evidence in the trial (Police Agency opinion), 6) It is necessary to examine whether the system to exclude evidence that could unfairly affect the judgment of the jury

- In order to prevent the victim from being exposed to inappropriate interrogation under the legal grounds and procedures, it is desirable to legislate the contents of the "Practice Manual for Sexual Crimes" which allows the presiding judge to receive and review interrogation details from the accused in advance and restrict inappropriate interrogation contents.

c. Problems of digital evidence investigation methods

► Current regulations related to the evidence investigation of the victim video

Article 292-3 (Other methods of investigation of evidence) of the Criminal Procedure Act: The provisions which are necessary for the investigation of evidence other than documents as drawings, photographs, recorded tapes, videotapes, discs for computers, and other things made for information input shall be prescribed by the Supreme Court rules.

Article 134-4 ③ (Investigation of Video Recordings) of the Rule of Criminal Procedure Act: The court shall investigate by dismantling the seal and reproducing all or part of the video recordings at the trial preparation or trial date. In this case, the video recording may be reproduced in a place other than the court equipped with electronic facilities necessary for reproduction and investigation.

► Problems

1) Absence of grounds for non-disclosure of hearing

- When investigating the evidence of the victim video, a closed hearing is usually conducted, such as the expulsion of a person in the audience, but there is a deviation by the court due to the lack of clear grounds for this.

in the criminal trial-based Anglo-American legal proceedings can be harmonized with our criminal justice system., 7) There is the possibility of harming the accused's right to defend and the lawyer's essential right to defend. However, 1) If the Criminal Procedure Act stipulates the judge's authority to command litigation on inappropriate questions, such as questions related to the privacy of victims unrelated to the case, and limits the ability to evidence on questions that violate it, it is not contrary to the criminal procedure law system or the principle of free evaluation. Since existing regulations such as 2) and 3) have not been effective in protecting victims from questions unrelated to the case in court and there are big differences depending on each trial court tendencies, it is not reasonable to oppose the establishment of regulations that can protect victims more effectively based on the existence of above provisions which did not protect victims properly. The need for the discovery of substantive truth, as shown in 4) and 5), can be addressed by providing the exceptional recognition of the admissibility of evidence in such cases. 6) Since evidence ability limitations may have occurred as a necessary system for jury system, but one system is developing in a new way, with various utility, not limited to the origin, it is insufficient to deny its utility as a method to prevent inappropriate privacy disclosure and harm which is one of the biggest reasons for causing extreme pain to the victim, actively reporting or prosecuting, or fearing participation in the trial proceedings under the current criminal procedure system. 7) The accused's defending right and the lawyer's defending right is not an unlimited right, and interfering with court attendance and testimony, making it difficult to discover the substance, by intentionally inflicting pain or insults on the victim with privacy attacks unrelated to the case or with untrue and reckless contents in some cases are never related to the accused's defending right or the lawyer's defending right. Therefore, the Criminal Procedure Act shall stipulate judges' litigation command right at the time of interrogation on the privacy of victims unrelated to the case, limit the evidence ability on questions that violate it, but establish an exceptional provision only if it is necessary for finding substantive truth, for the protection of victims.

※ The examination of evidence on the victim video materials of digital sex crime case does not fall under the "examination" stipulated in the Sexual Abuse Punishment Act (Article 31 - Non-disclosure of hearing), so the method of examination of evidence depends on the consideration of the presiding judge.

→ When examining evidence, it is necessary to establish a standard to exercise the litigation command right regarding the proceedings of the hearing by stipulating clear grounds for non-disclosure in the law.

2) Absence of regulations related to the reproduction method of the victim video

- Digital evidence such as digital sex crime victim videos and photos (hereinafter referred to as "damaged videos") such as illegal photographs is usually played through a large screen installed behind the prosecutor's seat or the accused's seat in the court, and evidence investigation is conducted in a way that the court, the prosecutor, the accused, the accused's lawyer, etc. watch this together.

| Court Screen Photo |



Source: Legal Press, February 24, 2020

- The method in which video is played in front of many people in court may cause secondary damage, such as shame and anxiety of victims. But where digital evidence is a victim video, there are no specific provisions concerning the adoption method, place, etc. and there is a limit of depending upon the litigation command right of the presiding judge.

* In the situation where people unrelated to the case are in the courtroom audience, there are many cases where evidence investigations have been conducted by playing copies of illegally filmed videos as they are.¹⁹

* In the trial of Cho Joo-bin, the operator of the so-called 'Doctor's Room', the victim suggested an opinion to play the damaged video in the judge's office, not in court, but was not accepted.²⁰

→ There needs to be a basic provision concerning the method of reproducing the victim videos which can protect the victim's personal character, honor, and personal secrets.

a. Secondary damage as a result of litigation records being disclosed, etc.

- Secondary damages continue to occur during the investigation and trial of sexual crimes, such as digital sex crimes, as the suspect or the accused, or the media that received his or her report, leaks* the victim's private information

* There are frequent instances of indiscriminate coverage of personal life information revealed during the witness interrogation process, particularly when the accused or victim is a celebrity²¹

* In the 2021 Naju child sexual assault case, media outlets revealed material such as photographs of the victim's home, satellite images, and maps. In the case of the national short track athlete's sexual assault in 2021, the victim's private messenger conversations unconnected to the sexual assault case were leaked to the media as a result of the perpetrator's breach of litigation-related data²²

- According to current law, disclosing a victim's 'personal information' or using the 'litigation record itself' for purposes other than responding to a trial in connection with a pending case is a criminal offense*; however, separate specific sanctioning regulation for the misuse and abuse of personal information learned during the litigation process is non-existent

* Abuse of viewed or copied documents: No more than one year in prison or a fine of no more than 5 million won (Article 266-16 of the Criminal Procedure Act)

* Leakage of the victim's identity, privacy, or confidentiality: Up to three years in prison or a fine of up to 30 million won (Article 50, Article 24, Paragraph 1 of the Act on the Punishment of Sexual Crimes and Protection of Victims²³

19 On September 3, 2021, Oh My News, 'Everyone in the audience room saw...' The court openly played the digital sexual crime video.」

20 Hankyoreh, June 12, 2020, 'Court agonizing over viewing evidence of Cho Joo-bin sexual exploitation.」2

21 2018. 7. 26. Media Today, 'Report on Ahn Hee-jung's Trial, the Media was 'Ahn Hee-jung's Helper', etc.

22 2021. 10. 19. Mediaus Sports and Human Rights 'Stop the secondary damage causing reporting on Shim Sukhee.」 (<http://www.mediaus.co.kr/news/articleView.html?idxno=228001>)

23 **Criminal Procedure Act Article 266-16 (Prohibition of Abuse of Viewed or Copied Documents, etc.)** ① The accused or his defense counsel (including those who previously served as the accused's or his defense counsel; the same shall apply in this Article) shall not deliver or present to others (including those provided through the use of telecommunications facilities) for any purpose other than the purpose of utilizing copies of documents and documents, etc., pursuant to Article 266, paragraph 3 (1), that the public prosecutor has perused or copied for the purpose of preparing the case or related litigation.

※ The German Criminal Code prescribes penalties for 'publication of facts discovered during a closed court hearing or through public records pertaining to the case'²⁴

- If a dispute arises over media coverage, some cases are resolved through mediation by the Press Arbitration Commission, including the deletion of articles and compensation of damages; however, there are no regulations governing media reporting on victims or statistics pertaining to confidentiality obligations.

→ It is necessary to establish a new regulation on punishment and sentencing considerations for the act of the accused leaking or revealing the litigation record gained via reading or copying or the victim's private information learned during the trial.

※ According to current court sentencing standards, 'causing damage in the course of attempting to reach an agreement' is an aggravating factor in sexual violence cases, but it typically refers to 'a case in which an agreement is compelled' by disclosing or expressing an intention to disclose the crime and applying pressure. This does not apply in instances where information about the victim's sexual history, other than the crime itself, is maliciously or aggressively disclosed regardless of the agreement

b. Inadequate protection of access to and copying rights to litigation records

- In the case of digital sex crimes, ① the victim is unaware of the fact of the offense, ② it is difficult to specify the precise type of offense or the accused, and ③ there are many cases where the fact of the offense can be specified only after it is secured as evidence by an investigation agency.

²⁴ If the accused or his or her defense counsel violates paragraph 1, he or she shall be penalized by imprisonment for not more than one year or a fine of not more than five million won.

Article 24 (Prohibition on Disclosing a Victim's Identity or Privacy) ① A public official in charge of, or involved in, an investigation or trial of a sexual violence crime, or a person who has served in the office, shall not disclose or reveal to others the victim's address, name, age, occupation, school, appearance, or other personal information and photographs that can specify and identify the victim, or the victim's private life secrets.

② No one shall, without the victim's consent, publish the victim's address, name, age, occupation, school, appearance, and other personal information or photographs that can specify and identify the victim under paragraph 1 in a newspaper or other printed matter; nor shall it be disclosed through broadcasting or information and communications networks in accordance with subparagraph 1 of Article 2 of the Broadcasting Act.

Article 50 (Penalty Provisions) ② A person who violates any of the following subparagraphs must be penalized by imprisonment for a maximum of three years or a fine up to 30 million won.

1. A person who violates the obligation under Article 24, paragraph 1, or Article 38, paragraph 2, to prohibit the disclosure of the victim's identity and privacy;
2. A person who violates Article 24, paragraph 2 by disclosing the victim's personal information or photographs;

24 In accordance with Article 353 d of the German Criminal Code (Delivery of banned court hearings), a person who falls under any of the following subparagraphs shall face a maximum sentence of one year in prison or a fine.

1. A person who, in violation of the law, publicly disclosed the contents of public records relating to a trial or case in a court where disclosure is prohibited;
2. A person who violates the court-ordered duty of silence by disclosing without authority details learned during a closed hearing or through public documents pertaining to the case;
3. A person who has publicly released the entirety or a substantial portion of an indictment or other public documents relating to criminal proceedings, civil penalties for negligence, or disciplinary procedures in their original text prior to the reading at the trial or the conclusion of the litigation process.

- While it is necessary for the victim to participate in the trial process in order to express his or her opinion or to directly verify the evidence in order to recover or prevent the spread of damage, under current law, perusal and copying of lawsuit records for victims may be restricted due to the ongoing trial or other victims' personal information issues.
 - Additionally, under current law, the right to request access to and copying of the accused's and defense counsel's litigation records is recognized as a right and is not a matter for the presiding judge to decide; however, victims and their attorneys may read and copy litigation records only when the presiding judge recognizes the need for remedies and grants permission (Article 294, paragraph 4 of the Criminal Procedure Act), and these are typically limited to victim statements or submitted documents.
- It is imperative to establish a new regulation that ensures victim access and streamlines the process for obtaining authorization to view and copy litigation records, including evidence of the victim's body being filmed or recorded.

3 Recommendations

a. Ensuring victims of sexual violence the right to choose their mode of testimony.

- To ensure the various victim testimony methods specified in laws such as the Act on the Punishment of Sexual Crimes and the Protection of Victims, it is recommended to specify the method of testimony in court in the information provided to victims during the investigation and prosecution process (such as the application for victim support); and to amend the court's 'Application for Witness Support Procedure' to substantially guarantee victims' right to choose the method of testimony.

b. Improving the method for interrogating sexual crime victims

- To ensure that the system of protection for victims of sexual crimes based on the presiding judge's right to direct litigation can operate on clear grounds and standards, it is recommended to establish a legal basis for limiting the interrogation of personal information such as sexual history and reputation of victims in criminal trials that is unrelated to admission of guilt or innocence.

- It is advised that a new regulation be incorporated to the Criminal Procedure Act in which the presiding judge receives and reviews interrogation matters in advance to avoid inappropriate interrogation when the victim is examined as a witness, and in which, if the victim is asked about restricted interrogation matters, the presiding judge limits the admissibility of evidence of the questions and answers.

Current Criminal Procedure Act	Amendment
<p>Article 299 (Restriction on Unnecessary Pleading, etc.) If the statements or interrogations of persons involved in the litigation are redundant or unrelated to the litigation, the presiding judge may limit them to the amount necessary to protect the parties' fundamental rights.</p>	<p>Article 299 (Restriction on Unnecessary Pleading, etc.) ① <Same as the left> ② When conducting a hearing on cases of sexual violence crimes stipulated in the 「Act on Special Cases concerning the Punishment of Sexual Violence Crimes」 and sexual violence crimes against children and juveniles (hereinafter referred to as "sexual violence crimes") under the 「Act on the Sexual Protection of Children and Juveniles」, the presiding court shall <u>restrict the content of the interrogation if it has the potential to violate a victim's personal rights, such as sexual history and privacy, and is not related to an admission of guilt or innocence.</u></p>
<p>< Newly Established ></p>	<p>Article 299-2 (Special Cases concerning Interrogation of Victims of Sex Crimes) ① Prior to the examination of witnesses against victims of sex offenses, the accused or his defense counsel <u>shall submit matters to be interrogated to the presiding judge.</u> ② By reviewing in advance the interrogation matters presented by the accused or his defense counsel, the presiding judge <u>shall limit the interrogation matters covered by Article 299, paragraph 2.</u> ③ Notwithstanding paragraph 2, if the accused or the defense counsel questions the victim about matters of interrogation restricted by the presiding judge, <u>the subject of the interrogation and the victim's responses are not admissible as evidence unless the following circumstances exist:</u> 1. With the victim's or legal representative's consent 2. When knowledge about the victim's sexual history provides conclusive proof establishing the defendant's innocence or establishing the basis for a sentence reduction or exemption ④ Examination of evidence pursuant to the proviso to paragraph 3 and relating statements shall not be disclosed. ⑤ The victim may decline to answer any question that falls under Article 299, paragraph 2, and may request that the judge limit the query.</p>

c. Improving the digital evidence investigation method

- When examining evidence of photographs and videos of the victim's body, etc., in the case of sexual crimes such as digital sex crimes, it is advocated that the hearing principles be established in the Sexual Violence Punishment Act to ensure that indispensable non-public hearings are held.
- Additionally, it is advised that video evidence be examined using separate video/audio equipment for each judge, prosecution, defendant, or defense counsel (rather than a large screen) in order to assure a non-public hearing.

Current Criminal Procedure Act	Amendment
Article 31 (Disclosure of Trial) ① The trial on a sexual assault charge <u>may not be publicized</u> as a decision to safeguard the victim's privacy.	Article 31 (Disclosure of Trial) ① The trial for a sexual assault case may not be made public in order to safeguard the victim's privacy. <u>The hearing must, however, be kept private</u> when examining evidence for video recordings of sex crimes in which some or all of the victim's body appears.
〈Newly Established〉	Article 31-2 (Special cases concerning evidence investigation) The court shall conduct evidence investigations in the following manner for recording tapes, computer disks, and so on that are required to protect the victim's character, honor, and private secrets, such as the appearance of all or part of the victim's body, or other media that can record audio or video in a similar manner (hereinafter referred to as "recording media, etc."): <ol style="list-style-type: none"> 1. A means of <u>displaying the recording media on individual monitors</u> for judges, prosecutors, and defense counsel. 2. A means of <u>playing the sound of the recording medium through a separate sound device linked to separate monitors</u> for judges, prosecutors, and defense counsel. 3. A means of playing the recording or videotaping media by <u>specifying the minimum range required for crime proof</u>, etc. 4. Any further measures required to protect the victim's character, honor, or a private secret.

d. Prohibiting secondary harm caused by leakage of private information

- It is advised that acts that cause secondary damage by leaking or exposing the victim's private information learned in the process of litigation records or the trial against the victim's will be prohibited, and that sanctions be established in the event of a violation.

- Furthermore, if the accused causes secondary damage as described above, it is advised that this be specified in the sentencing criteria as an indispensably weighted sentence component.

Current Criminal Procedure Act	Amendment
<p>Article 24 (Prohibition on Disclosing a Victim's Identity or Privacy)</p> <p>① A public official in charge of, or involved in, an investigation or trial of a sexual violence crime, or a person who has served in the office, shall not disclose or reveal to others the victim's address, name, age, occupation, school, appearance, or other personal information and photographs that can specify and identify the victim, or the victim's private life secrets.</p> <p>② No one shall, without the victim's consent, publish the victim's address, name, age, occupation, school, appearance, and other personal information or photographs that can specify and identify the victim under paragraph 1 in a newspaper or other printed matter; nor shall it be disclosed through broadcasting or information and communications networks in accordance with subparagraph 1 of Article 2 of the Broadcasting Act.</p>	<p>Article 24 (Prohibition on Disclosing a Victim's Identity or Privacy)</p> <p>① A public official in charge of, or involved in, an investigation or trial of a sexual violence crime, or a person who has served in the office, shall not disclose or reveal to others the victim's address, name, age, occupation, school, appearance, or other personal information and photographs, <u>or victim's private information obtained through public documents such as private trials and litigation records, etc.</u> that can specify and identify the victim, or the victim's private life secrets</p> <p>② No one shall, without the victim's consent, publish the victim's address, name, age, occupation, school, appearance, and other personal information or photographs <u>or victim's private information obtained through public documents such as private trials and litigation records, etc.</u> that can specify and identify the victim under paragraph 1 in a newspaper or other printed matter; nor shall it be disclosed through broadcasting or information and communications networks in accordance with subparagraph 1 of Article 2 of the Broadcasting Act.</p>
<p>Article 50 (Penalty Provisions) ② A person who violates any of the following subparagraphs must be penalized by imprisonment for a maximum of three years or a fine up to 30 million won.</p> <ol style="list-style-type: none"> 1. A person who violates the obligation under the Article 24, paragraph 1 or Article 38, paragraph 2 to prohibit the disclosure of a victim's identity and privacy; 2. A person who violates Article 24, paragraph 2 by disclosing the victim's personal information, photographs, and so on. 	<p>Article 50 (Penalty Provisions) (Same as the left)</p> <ol style="list-style-type: none"> 1. A person who violates the obligation under the Article 24, paragraph 1 or Article 38, paragraph 2 to prohibit the disclosure of a victim's identity, privacy and <u>private information obtained through private trials and public documents.</u> 2. A person who violates Article 24, paragraph 2 by disclosing the victim's personal information, photographs, and <u>private information obtained through private trials and public documents.</u>

e. Improving the litigation record reading and copying system

- It is advised that explicit reading and copying laws be developed so that, in principle, it ensures the victim's access to the victim's self-reported statements, submitted documents, and the media that contains victim's body videotaped and recorded among the litigation records.
- In principle, the presiding judge grants the victim's request for viewing and copying of litigation records, and it is proposed that the mechanism for viewing and copying litigation records be improved to notify the reason if it is denied.

Current Criminal Procedure Act	Amendment
<p>Article 27 (Special Cases for Appointing Attorney for Victims of Sexual Violence Crimes)</p> <p>① Victims of sexual assault crimes and their legal representatives (hence referred to as "victims, etc.") may appoint an attorney to protect them from potential harm in criminal proceedings and to ensure access to legal representation.</p> <p>② Under paragraph 1, attorneys may express their opinions by participating in a public prosecutor's or judicial police officer's investigation into victims, etc. However, opinions may be stated during an investigation with the approval of the public prosecutor or judicial police officer.</p> <p>③ Attorneys may present and provide an opinion pursuant to paragraph 1 prior to the suspect's arrest, questioning, evidence preservation procedure, trial preparation date, and trial procedure. In this case, the Supreme Court Regulations shall establish precise matters pertaining to appropriate procedures.</p> <p>④ Attorneys may read or copy related documents or evidence after evidence preservation procedure, or related documents or evidence in the course of litigation pursuant to paragraph 1.</p> <p style="text-align: center;">〈Newly Established〉</p> <p>⑤ Under paragraph 1, attorneys have unrestricted representation rights in all litigation actions in which representation of victims, etc. is permissible in criminal proceedings.</p> <p>⑥ In the absence of an attorney for the victim, the public prosecutor may appoint a public defender to represent the victim's rights and interests in criminal proceedings.</p>	<p>Article 27 (Special Cases for Appointing Attorney for Victims of Sexual Violence Crimes)</p> <p>① ~④ 〈Same as the left〉</p> <p>⑤ When an application for perusal or copying is made pursuant to paragraph 4, the presiding judge shall grant permission, but may deny or limit the scope of such request if there is a compelling reason not to grant permission, such as the progress of the trial, the need for personal information protection, or other factors. <u>In the event of a refusal to read, copy, or reduce the scope, the applicant shall be informed of the reason.</u></p> <p>⑥ Where the presiding judge authorizes perusal or copying pursuant to paragraph 5, the purpose for which the copied litigation record may be used may be restricted conditions deemed as appropriate may be attached.</p> <p>⑦ A person who has perused or copied litigation records in accordance with paragraph 4 shall not degrade the honor or peace of life of connected persons or obstruct investigations or trials by exploiting the information obtained via reading or copying.</p> <p>⑧ 〈Same as the left〉</p> <p>⑨ 〈Same as the left〉</p>

Current Criminal Procedure Act	Amendment
<p>〈Newly Established〉</p>	<p>Article 41-1 (Perusal and Copying of Litigation Records of Victims of Sex Crimes) ① Victims of sexual offenses or their legal representatives may request the presiding judge for perusal or copying of the <u>victim's self-reported statements and submitted documents, as well as photographs or videos featuring part or all of the victim's body</u> among the related documents or evidence following preservation of evidence or the related documents and evidence in the pending litigation.</p> <p>② Upon receipt of the request under paragraph 1, the presiding judge shall grant it, but may deny it or limit the scope of the request if there are reasonable grounds to deny it, such as the progress of the trial, etc. In the event of a refusal to read, copy, or reduce the scope, the applicant shall be informed of the reason.</p> <p>③ The provisions of Article 27, paragraphs 6 and 7, shall apply mutatis mutandis to the conditions of permission and the restrictions on use for perusal or copying.</p>

4 Expected effects

- Allowing victims to choose their testimonial technique, defending victims' human rights in court by explicitly stipulating the right to view and copy relevant video recordings, as well as the victim's own statement and any other documents submitted, and substantially guaranteeing the right to testify in court proceedings.
- Providing defined and objective norms for exercising litigation command based on the law and avoiding secondary damage during the trial process by preventing attacks on victims' private life unrelated to the case and the disclosure of private information.
- Constructing advanced trial procedures to respond to new crimes by requiring the non-disclosure in principle of the evidence investigation method of digital sex crimes, which has recently become a severe problem, as well as restrictions on screening on wide screens.
- Ascertaining the substantive truth and increasing trust in the judicial process by decreasing the probability of errors in substance judgment caused by secondary harm.

RECOMMENDATIONS

The 7th Recommendation

Plan of Efficient Seizure and Prevention of
Re-distribution of Video of Cyber Sexual Crime



DIGITAL SEX CRIMES
TASK FORCE TEAM •
EXPERT COMMITTEE
ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 7th Recommendation

– Plan of Efficient Seizure and Prevention of Re-distribution of Video of Cyber Sexual Crime –

Key Takeaway

1. Basic policy

- Considering the characteristics of videos of digital sex crimes that exist in the form of electronic files and can be copied indefinitely from the moment they are produced, it is recommended to introduce special regulations on confiscating methods, etc. to ensure the effectiveness of confiscation.

2. Recommendations

- It is recommended that the method of 'obtaining a copy of the electronic file and deleting the original file' (aka 'cutting method') is to be specified in the Act on Sexual Violence Punishment as a method of confiscating videos of digital sex crimes.
- It is recommended to join the "Cybercrime Convention, Council of Europe" promptly to lay a foundation for expediting and revitalizing international judicial mutual assistance in the investigation of digital sex crimes.
- In relation to digital sexual crime video materials, it is recommended that investigative agencies introduce a system that orders the Internet platform operator, where the video material is distributed or stored, to preserve the video material as a pre-confiscation stage (preservation order system).
- In relation to matters requiring a warrant or permission issued by the court at the stage of the investigation of digital sex crimes, it is recommended that a special regulation be newly inserted in the Act on Sexual Violence Punishment to acknowledge the victim's address, residence, or the place where the victim is presently located as the standard points for the territorial jurisdiction as well.

3. Expected effect

- Prompt investigation and prevention of re-distribution of the videos by stipulating special cases of territorial jurisdiction in the investigation stage and confiscating methods considering the characteristics of digital sex crimes
- Laying the legal foundation which makes the prompt and efficient cross-border judicial mutual assistance available
- Protect victims by securing evidence and preventing re-distribution by preserving the video of damage that is evidence through the preservation order and blocking the access of suspects to the subject of confiscation

1 Background

a. Characteristics of digital sex crimes

- Video materials of digital sex crimes are electronic files, not material objects, which can be reproduced infinitely, thus: the distinction between originals and copies is meaningless; may be redistributed at any time unless the original and all copies are deleted as it may be stored on online storage via web hard or cloud service provider.
- A number of criminal acts and criminals are involved, centered around the produced video
 - ※ Any act of producing, distributing, selling, leasing, providing, or publicly displaying, screening, possessing, purchasing, storing, or watching the video material shall be punishable as a crime (Act on Sexual Violence Punishment, Article 14).
- Distribution through internet sites using overseas servers is the most problematic issue.

b. The need to improve the current seizure and confiscation system

- The current Criminal Act and the Criminal Procedure Act stipulate the following regarding seizure and confiscation.

Article 48 (Confiscation and Additional Collection) ① A thing which is not the property of a person other than the criminal, or which was acquired by a person other than the criminal with the knowledge of its nature after commission of the crime, may be confiscated in whole or in part if it is:

1. A thing which has been used or was sought to be used in the commission of a crime;
2. A thing produced by or acquired by means of criminal conduct;
3. A thing received in exchange for a thing mentioned in the preceding two subparagraphs.

② When the things mentioned in the preceding paragraph cannot be confiscated, the equivalent price thereof shall be collected.

③ When only a part of a document, books and drawing, special media records, such as electromagnetic records, etc., or valuable security is confessable, that part shall be destroyed.

Criminal Procedure Law Article 106 (Seizure) ① If necessary, a court may seize any articles thought to be used as evidence or liable to confiscation, only when such articles are deemed to be connected with the accused case: Provided, That the same shall not apply where otherwise provided in Acts. (Amended Jul. 18, 2011)

② A court may designate articles to be seized and order the owner, possessor, or custodian thereof to produce such articles.

③ Where the object to be seized is a computer disc or other data storage medium similar thereto (hereafter referred to as "data storage medium or such" in this paragraph), the court shall require it should be submitted after the data therein are printed out or it is copied within the specified scope of the data stored: Provided, That the data storage medium or such may be seized, when it is deemed substantially impossible to print out or copy the specified scope of the data or deemed substantially impracticable to accomplish the purpose of seizure.

- In addition, in the special law, there is a provision for confiscation or mandatory confiscation of property depending on the nature of the crime.
ex) Crime Proceeds Concealment Control Act, Narcotics Control Act, Customs Tariff Act, Cultural Heritage Protection Act, etc.
- Considering the characteristics of digital sex crimes, where the crime outcome is an electronic file and can be reproduced indefinitely from the moment of production, it is necessary to review the introduction of special regulations on the confiscating methods, etc. to secure the effectiveness of seizure and confiscation

2 Problems and improvement plan of the confiscation system in digital sex crimes

a. Method of confiscation

- In the confiscation and search phase, the range of detection of the existence and location of the videos stored in non-physical spaces such as the cloud other than physical storage media including mobile phones and external hard drives is narrow, and there is a deviation depending on the capability and will of the investigation agency.
- Unlike traditional confiscation, which allows for the exclusive control of investigative agencies, due to the nature of digital data of which the same copy can easily be created and spread, if there is a copy in the cloud even if the information storage medium is confiscated, the confiscated person, the investigative agency, and a third party can share and occupy it at the same time.

* As an access restriction measure to block concurrent file sharing by the confiscated person and a third party, the investigation agency previously requested the confiscated person who is the subject of investigation to delete the file or information, or sent an official letter to the telecommunication service provider to request the deletion and the telecommunications service provider decided on the access restriction measure through explanatory procedure after the temporary measures to restrict access in consideration of Article 44-7(Prohibition of Distribution of Illegal Information, etc.) of the Information and Communications Network Act and its own terms.

- In practice, after the so-called 'Nth room case', the so-called 'cutting'-style seizure and search* method was designed. It is positive that it is possible to exclude the confiscated person's occupation of the video by taking measures to delete the original videos as one of the

'dispositions necessary for the execution of a warrant' (Criminal Procedure Act, Article 120), however, the problem of concurrent file sharing and occupying of a 3rd party who is not the confiscated person has not been solved.

* When requesting a warrant for confiscation or search, it shall be stated that the warrant is executed by 'copying and confiscating the original file of the video from the information storage medium and then deleting the original file'. In accordance with the warrant issued under the 'condition of returning the copy afterwards if the video is not acknowledged as sexual exploitation material', the original is copied and confiscated from storage media such as the cloud, and then the original is deleted.

- It is difficult to confiscate if the video is stored in an data storage medium owned by a third-party telecommunications service provider, such as web hard, cloud, e-mail, or messenger.
 - ⌘ Personal information not related to criminal activity is also stored in the data storage medium of the telecommunications service provider, and the data storage medium cannot be confiscated in the situation where the service is providing and there is no clear ground rules to force the telecommunications service provider or investigated person to delete the data.
 - ⌘ In practice, with the cooperation of the telecommunication service provider, the investigative agency confiscates the copies of the data by printing, copying, hard copying, or imaging.
- Council of Europe 'Cybercrime Convention'(described later) stipulates the following confiscating methods in cyber crimes.

Article 19 – Search and seizure of stored computer data

3. Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:
 - a. seize or similarly secure a computer system or part of it or a computer-data storage medium;
 - b. make and retain a copy of those computer data;
 - c. maintain the integrity of the relevant stored computer data;
 - d. render inaccessible or remove those computer data in the accessed computer system.

⌘ This shows the principle execution method of cybercrime confiscation. In digital sex crimes where the creation of an electronic file is a criminal outcome, It should be considered as a principle that the confiscation is done by acquiring a copy of the electronic file, blocking access to the electronic file, or deleting the electronic file.

- In current practice, in order to prevent the re-distribution of the video in digital sex crimes, confiscations are carried out by copying and confiscating the original files and then deleting the original files (so-called 'cutting method'). It is necessary to specify such confiscating methods in the Act on Sexual Violence Punishment, and present a sample of confiscation warrants in digital sex crimes in the enforcement ordinance or enforcement rules.

b. International Judicial Mutual Assistance in Criminal Matters

- The biggest problem in digital sex crimes is the distribution of victim videos through overseas servers.
- 「Council of Europe Convention on Cybercrime」(On January 25, 2022, signed by 66 countries including 46 members of the Council of Europe) * regulates cross-border access to computer data for expediting and efficiency of cross-border judicial mutual assistance related to cyber crimes.

※ Korea is not a member, however the rules in this convention show the general investigation method in cybercrime recognized in many countries around the world.

* Main contents of the Convention on Cybercrime of the Council of Europe

- Listing the cybercriminal acts that parties to the Convention should criminalize and acknowledging the expedited preservation orders, production order, and confiscation/search methods for cyber crimes, etc. as cybercrime investigation methods
 - Production order
 - Acknowledging the production order for the subscribers information, etc. (Article 18)
 - The 2nd Additional Protocol allows production order to be made directly to foreign Internet service providers without going through judicial assistance procedures under certain conditions (Article 7)
 - Confiscation and search for cyber crimes
 - Acknowledging the confiscation and search into the computer system in its own country which is connected to the computer system that is subject to the investigation (Article 19 Paragraph 2)
 - Rules for mutual assistance regarding accessing to the system located in overseas (Article 31)
- The most important function of the 「Convention on Cybercrime」 is to expedite mutual assistance in criminal matters between countries in cybercrime investigations, therefore, we need to promptly sign the convention.

c. Preservation order system for the video

- Under the current law, there is no system that orders the subject of confiscation until a confiscation warrant is issued.
- ※ Exceptions of confiscation without warrant are acknowledged, however, it shall be limited to the cases when it is for arresting or detaining a criminal suspect or there exists an exigent circumstance during or right after the crime at the crime occurrence place.
- Even if an investigative agency discovers a video of cyber sexual crime being distributed through the communications network, it is difficult to seize it actively unless a warrant is issued, and while a warrant is being issued, the video can be widely distributed.

- The video of cyber sexual crime has value as evidence to prove the digital sexual crime, and at the same time, as a result generated by the crime, it is an object that should be confiscated to prevent further crime and protect the victim.
- When an investigation agency discovers a video of cyber sexual crime that is being distributed through the communications network, it is necessary to introduce a system that orders the owner of the video of cyber sexual crime or telecommunication service provider to preserve the video material so that the video material is not deleted by the owner and at the same time block the access to the video of cyber sexual crime so that the video is not furtherly distributed.
- 'Convention on Cybercrime, Council of Europe, stipulates the 'computer data* expedited preservation orders system' (Articles 16 and 17)²⁵ and orders telecommunication service providers to preserve 'computer data (information) legally collected and stored in accordance with relevant laws and regulations or company policies' for a certain period of time
- ※ 'Computer data' means 'programs suitable for performing functions through the computer system as well as all facts, information and concepts in a form suitable for processing in a computer system'.
- ※ Countries that are implementing the preservation order system of the above Convention under their own laws are the United States²⁶, Italy, France, Netherlands, Portugal, Norway, Finland, etc.²⁷

25 Article 16 (Expedited preservation of stored computer data)

1. Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.
2. Where a Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored computer data in the person's possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.
3. Each Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.
4. The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Article 17 (Expedited preservation and partial disclosure of traffic data)

1. Each Party shall adopt, in respect of traffic data that is to be preserved under Article 16, such legislative and other measures as may be necessary to: a) ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and b) ensure the expeditious disclosure to the Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.
 2. The powers and procedures referred to in this article shall be subject to Articles 14 and 15.
- ※ 'Traffic data' means 'all computer data related to communication using a computer system, generated by the computer system constituting a part of the communication network, and indicating the source, destination, route, date and time, size (capacity), duration of the communication or type of service used'

26 With respect to U.S. Code, Title 18, Section 2703(a)–(e) stipulates the authority of a government agency to require a telecommunications service provider in possession of customer communications record data to provide such data

- In Korea, amendments to the Criminal Procedure Law have been proposed for the purpose of introducing a preservation order system²⁸, therefore, it is necessary to amend the Criminal Procedure Law.

(i.e., Production order). It made it possible by obtaining court order/permission. On the other hand, Paragraph (f) acknowledged the order of a government agency (investigation agency) to allow telecommunications service provider to preserve the data before a court's production order and recognized that it can be done without a court order. This is because it is just for preserving evidence as an emergency disposition as the preservation order is not a seizure, and it takes time until the submission of data under the court order or issuance of the seizure order.

※ Title 18 § 2703 – Required disclosure of customer communications or records

(f) Requirement To Preserve Evidence

(1) In general.— A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(2) Period of retention: Records referred to in paragraph (1) shall be retained for a period of 90 days, which shall be extended for an additional 90-day period upon a renewed request by the governmental entity.

27 For applicable countries and applicable regulations, refer to the page 80, 7, 25 January 2013, Council of Europe, Assessment report – Implementation of the preservation provisions of the Budapest Convention on Cybercrime.

28 The Office of Court Administration is against the amendment as: ① it is questioning whether there is a need for a separate preservation request to an information and communications service provider as it is sufficient to issue and execute a seizure warrant in case of a need for seizure; ② it may impose an unnecessary burden on telecommunication service providers; and ③ it is necessary to obtain the permission of the court, such as the permission to request for provision of communication confirmation data under the Protection of Communications Secrets Act, because judicial control over the possibility of abuse by investigative agencies is necessary even if the system is introduced.

However, ①the 「Cybercrime Convention」 acknowledge the preservation order system for computer data including traffic data, and preservation orders are already acknowledged in many countries, thus, it is necessary to acknowledge the 'preservation order by the investigation agency' as a preemptive measure for confiscating 'the video of cyber sexual crime that is the subject of confiscation'; ② Preservation order is ordering the telecommunications service provider (eg, cloud service provider, Internet platform operator where the video of cyber sexual crime is being distributed, etc.) to preserve the video of cyber sexual crime from being deleted by the owner and block access from the owner, etc. Thus, it is not a seizure, but an emergency measure taken preemptively before confiscation in order to prevent the video of cyber sexual crime from being deleted until the confiscation warrant is issued. Therefore it is difficult to view it as an unnecessary burden; ③ Preservation order is not a confist but can be recognised as an emergency disposition taken preemptively before confiscation to simply preserve evidence until a seizure warrant or seizure order is issued by court as it takes time to issue the warrants. Thus, it is its essential attribute that the investigative agency can conduct it independently without order/permission of a court. Therefore, to say that a court warrant is necessary for preservation order based on the ground that court warrant is required for providing communication fact check data (it can be said that it is a kind of production order based on the court order/permission) while acknowledging the need for the introduction of a preservation order system is a misunderstanding the difference between preservation order system and production order.

※ Preservation order and Production order are different in their purpose and characteristics. In case of Production order, its compulsion is acknowledged, however, search and seizure are not conducted directly by an investigative agency, but the telecommunications service provider provides the data according to the order issued by the investigative agency based on the court's permission (Although, compared to seizure in the original meaning where the search and seizure are conducted directly by the investigation agency, it can be understood that the restriction on basic rights is relatively weak), thus, it is a type of confiscation in a broad sense as an investigative agency acquire data and urgency is not its requirements. Therefore, it should be considered possible if there is a permission (or warrant) of the court.

Date of proposal Representative proposal	Content	Note
May 1, 2009 Lee Jong-Geol	Article 106 (Seizure) ② --- Where the object according to the paragraph 1 is to be obtain information remembered in a computer disc or other data storage medium similar thereto (hereafter referred to as "data storage medium or such" in this paragraph) and it is admitted that it is urgently necessary, the court shall order to the person who is storing and managing the concerned data to preservice the relevant information ---. In this case, the retention period shall be limited to the minimum necessary scope.	Discard by expiration
February 2, 2015 Kim Do-Eup	Article 108-2 (Request for Preservation of Data, etc.) ① In case of need for seizure, courts may request to preserve the concerned data not to be deleted or changed within the scope of 30 days in writing to the Information and Communications service provider specified in the Article 2 Paragraph 1 Subparagraph 3 of 「Act on Promotion of Information and Communication Network Utilization and Information Protection, etc.」. Provided that, if it is recognized that there is a good reason, it may be extended only once within the scope of 30 days. ② In the case of Paragraph 1, if it is deemed unnecessary to confiscate the relevant data, the request for preservation shall be canceled without delay.	Discard by expiration
February 4, 2021 Kim Hee-gon	Article 216-2 (Emergency Preservation of Electronic Data) ① Where the evidence is likely to be destroyed or urgencies exists when securing electronic data stored in data storage media such as video data, text record, etc., a prosecutor or judicial police officer may take emergency preservation measures of seizure, search, and verification of the relevant electronic data. ② In the case of paragraph (1), the prosecutor or judicial officer shall, without delay, request a warrant for seizure, search, or verification with the court or file an application for preservation of evidence.	

d. Investigative jurisdiction

- Under the current law, there is no special provision for territorial jurisdiction as a criterion for the determination of the court in charge of issuing a warrant at the investigation stage, therefore, the court in charge of issuing a warrant at the investigation stage will be determined according to the territorial jurisdiction which decides the court in charge of lawsuit.

Criminal Procedure Law Article 4 (Territorial Jurisdiction) ①The territorial jurisdiction of the court shall be determined by the place of offense, the place of domicile or residence of the criminal defendant, or the place where the criminal defendant is presently located

※ The jurisdiction of the prosecution is subject to the jurisdiction of the court²⁹, and if the case does not fall under the jurisdiction of the court corresponding to the prosecution office to which it belongs, the prosecutor shall forward the case to the competent public prosecutor's office.³⁰

²⁹ **Public Prosecutor's Office Act Article 3 (Establishment and Jurisdiction of Public Prosecutors' Offices)** ④ The jurisdiction of each level of public prosecutor's office and branch offices shall be governed by the jurisdiction of each level of court and district court branch office.

- Regarding the meaning of 'place of crime'* as a standard for territorial jurisdiction, there is a controversy over the criteria for determining a place of offense related to 'abstract endangering offense' conducted through the Internet³¹, and the precedent below shows this current situation well.

* In general, a crime site stipulated as territorial jurisdiction under the Criminal Procedure Act is a place where the facts corresponding to the elements of the crime occurred, △ the place of action, △ the place of result occurrence, △ including the intermediate place (where an intermediate phenomenon occurred in the process of moving the action and the result)

- In the case indicted by the Gwangju District Court for posting and distributing pornographic videos at a residential area in Incheon, as the crime of distributing pornography is an abstract endangering offense, so jurisdiction over the place of result occurrence other than the place of action (Incheon) is not recognized, violation of jurisdiction was sentenced by the court. (2017 No 4725)
- In the case indicted by the Incheon District Court for posting insulting comments about the victim on the bulletin board of the 'Ilbe' site with a computer from an unknown place, the court recognized the jurisdiction over the victim's place of living base for the place of offense as the place of result occurrence based on the following grounds: In the case of the abstract endangering offense, not only to the place of action but also the place of result occurrence are the place of which offence is highly likely to be occurred. If the defendant can reasonably predict or intends to have a result at that place, it can be regarded as 'the place of offense'. (2015No60)
- In the case of the Seoul Eastern District Court for distributing malicious programs by posting a downloader that secretly installs malicious files on the 'Naver' cafe in a residential area in Nowon, violation of jurisdiction was sentenced based on the grounds that the place of offense is where the criminal posted the malicious program or the domain server, in which the malicious program is posted, is located (Seongnam). (2020No1511, Supreme Court decision)

30 **Criminal Procedure Law Article 256 (Commitment to Other Jurisdiction)** If a prosecutor considers that the case does not come within the jurisdiction of the court corresponding to the prosecutors' office to which he/she belongs, he/she shall transfer the case, together with the documents and articles of evidence, to a prosecutor of the prosecutors' office corresponding to the competent court.

31 In the case of general Internet crimes, if 'everywhere accessible through the Internet is a place of crime', the place of crime is too broadly extended. Thus, there is a risk that the place of offense can be extended too widely. Whereas in the case of abstract endangering offense committed by means of the Internet, since the occurrence of a result is not a component of a crime, according to the prevailing view, the place of action can only be recognized as the place of offense, but this raises the problem of acknowledging the place of offense too narrowly. The majority opinion seeks to expand the scope of the place of offense by expanding the place of action (eg, by extending the scope of the action to a domain server site, etc.) as the place of result occurrence cannot be recognised as the place of offense in the case of abstract endangering offense. On the other hand, in Germany, among abstract endangering offenses, in the case of crimes punishing verbal expression or dissemination of which requirements include 'acting suitable for or aptitude for ~', these crimes are classified as 'abstract/concrete endangering offense' or 'aptitude offense'. In the case of these crimes, the place of result occurrence can be recognized, and the opinion that the place of result occurrence is the place where such aptitudes are realized or the result of expression and dissemination occurred is argued as the dominant theory. (Among the above precedents, the "2015No60" that recognizes "the living base of the victim" as the place of result occurrence saying that the place of result occurrence can be recognized even in an abstract endangering offense, is similar to Germany's above view). In the case of abstract endangering offense, especially 'abstract endangering offense committed through the Internet', there are conflicts of opinions starting from the question of 'can the place of result occurrence be recognized?' to the questions such as 'which places can be regarded as the place of criminal action', 'in case of following the opinion recognising the place of result occurrence, which place can be regarded as the place of result occurrence'.

- When investigating digital sex crimes, there are cases* where the warrant application is rejected due to the violation of territorial jurisdiction and the investigation is delayed, it is necessary to introduce special territorial jurisdiction provisions in relation with the compulsory disposition at the investigation stage in consideration of the characteristic of the digital sex crimes.

* A case where a search and seizure warrant was applied for a digital sexual crime suspect whose personal information is specified, but the prosecution or court dismissed the warrant for violation of jurisdiction as it is not the jurisdiction for the place of offense nor the jurisdiction for the defendant's the place of domicile, residence or the place where the criminal defendant is presently located. In this case, it is possible to transfer the case to the National Police Agency or the Public Prosecutor's Office located in the jurisdictional court in accordance with the territorial jurisdiction standards under the current law, but it is difficult to avoid the delay in the investigation.

- Examples of Foreign Legislation

♦ Austria³²

- Separating the investigation stage and trial stage and stipulates the court's territorial jurisdiction (Criminal Procedure Act Article 36)
- In the case of a warrant issued by the court during the investigation stage, the competent court having jurisdiction over the area where the prosecutor's office conducting the investigation process is located has territorial jurisdiction.

♦ Switzerland³³

- Territorial jurisdiction standards of a court in cases where media can be punished Provision is specified in the Article 28 of the Criminal Law³⁴ (Criminal Procedure Act Article 35)
- Where the location of the media company, the address or residence of the suspect is unknown, the place where it was distributed

- In the case of digital sex crimes, in the investigation stage, it is necessary to add the victim's address, residence, or the place where the criminal defendant is presently located as the base place of territorial jurisdiction.

32 Criminal Procedure Act Article 36 Jurisdiction (1) In the investigation stage, the court's judgment and the adoption of evidence are in charge of the competent court of the area where the prosecutor's office is located.

33 Criminal Procedure Act Article 35. Jurisdiction of the Court in Crimes by the Media

1. If a media offense under Article 28 is committed in Switzerland, the authority in which the media business is located shall have the jurisdiction.
2. If the author has been identified and his/her residence or domicile is Switzerland, the authority of the suspect's residence or domicile shall have the jurisdiction. In this case, the litigation procedure shall take place in the area where the prosecution was first commenced. In the case of an offense subject to complaint, the complainant can choose between the two territorial jurisdictions.
3. In cases where jurisdiction cannot be determined according to paragraphs 1 and 2, the authority in charge of the place where the media work is distributed shall have the jurisdiction. If the dissemination takes place in multiple places, the authority in the place where the prosecution was first initiated shall have jurisdiction.

34 Article 28 of the Swiss Criminal Code provides for "media punishment".

- ※ Article 4 of the current Criminal Procedure Act was established in the 1950s and has not taken into account crimes through the Internet. Since the purpose of criminal prosecution is to prosecute criminals, the address of the suspect, etc. should be considered as the main territorial jurisdiction standard. However, the current Criminal Procedure Act Article 4 is only considering the benefit of the defendant, but the benefit of the victim at the investigation stage has never been considered. According to the view that the place of result occurrence can be recognized in the case of 'abstract/concrete endangering offense' or aptitude crimes, the victim's address, residence, and the place where the victim is currently located can also be recognized as the place of offense.
- ※ The National Police Agency Order³⁵ acknowledged that the office which received the first case report has the investigation jurisdiction in cases where the place of offense and the suspect are unclear in a crime through information and communications networks.

3 Recommendations

a. Newly introduced regulations specifying 'cutting confiscation' of videos of digital sex crimes

- Recommended to specify the method of 'obtaining a copy of the electronic file and deleting the original file' (so-called 'cutting confiscation') as a method of seizure of video of digital sex crimes in the Act on Sexual Violence Punishment.
- Amendment (Example)

Current Act on Sexual Violence Punishment	Amendment
<Newly Inserted>	Article 41-3 (Seizure of Videos of Sexual Crimes) Where a telecommunications service provider possesses or manages the video footage of each crime under Articles 14 through 14-2, the prosecutor shall confiscate the video of cyber sexual crime by obtaining a copy of the video of cyber sexual crime and ordering the deletion of the video.

- ※ It is necessary to specify in the Enforcement Decree or Enforcement Regulations to state that the 'original version of the video of sexual crimes, the same copy as the original, and the edited copy of the original' are subject to seizure in the seizure warrant.

35 **[Rules for Jurisdictions of Cases and Investigation of Cases under Jurisdiction]** (National Police Agency Order)
Article 5 (Jurisdiction of Cases) ① Jurisdiction of cases shall be based on the police station having jurisdiction over the place of offense and the suspect's domicile, residence, or the place where the suspect is presently located.
Article 6 (Designation of Jurisdiction when Jurisdiction Is Unclear) ① In the case of any of the following cases, if both the place of offense and the suspect are unclear, the agency that first received the case report shall have the jurisdiction of the case, unless there are special circumstances.

b. Joining the Cybercrime Convention

- Joining the Council of Europe Cybercrime Convention is one of the most effective ways to expedite and strengthen judicial cooperation with foreign countries in cybercrime investigations. Therefore, it is recommended to prepare the foundations to expedite and strengthen mutual judicial assistance in digital sex crimes investigations by joining the Convention on Cybercrime.

c. Establishment of a preservation order for video of cyber sexual crime

- In relation to video of digital sex crimes, it is recommended to introduce a system in which the investigative agency orders the operator of the internet platform where the video victim is distributed or stored to preserve the video material as a pre-confiscation stage.
- Amendment (Examples)

Current Act on Sexual Violence Punishment	Amendment
<p>〈Newly Inserted〉</p>	<p>Article 41-2 (Preservation Order on Images of Sexual Crimes) When a public prosecutor or judicial police officer discovers a video of each crime under Articles 14 through 14-2 on an information and communications network, he/she may order the telecommunications service provider who possesses or manages the video to preserve such video of cyber sexual crime to prevent them from being deleted or changed.</p>

d. Establishment of special regulations on territorial jurisdiction in the investigation stage

- In the case of digital sex crimes, in relation to matters requiring a warrant or permission issued by the court in the investigation stage, it is recommended that a special regulations be newly established in the Act on Sexual Violence Punishment to recognize the victim's domicile, residence, or the place where the victim is presently located as the base place for the court's territorial jurisdiction.

- Amendment (Examples))

Current Act on Sexual Violence Punishment	Amendment
〈Newly Inserted〉	Article 41-2 (Special Cases of Jurisdiction) ① In each of the crimes of Articles 14 through 14-2, the investigation agency having jurisdiction over the victim's domicile, residence, or the place where the victim is presently located may investigate the case. ② In the case of paragraph (1), in relation to the matters requiring a warrant or permission issued by the court in the investigation stage, the victim's domicile, residence, or the place where the victim is presently located shall be considered as the base place for the court's territorial jurisdiction.

※ If the place of offense and the suspect are unclear in the future, it is necessary to consider a plan to grant the jurisdiction of investigation to the office that firstly received the case report.

4 Expected effects

- By clearly stipulating the confiscating methods for the videos of digital sex crimes where the original copy is to be deleted in the law and recognizing the special regulations on territorial jurisdiction in investigation stage considering the characteristics of the digital sex crimes, ensure the prompt investigation and prevention of re-distribution of the videos of digital sex crimes.
- Laying the legal foundation for prompt and efficient cross-border judicial assistance in digital sexual crime investigations
- Protect victims by securing evidence and preventing re-distribution by preserving the video of cyber sexual crime that is evidence through the preservation order and blocking the access of suspects, etc. to the subject of confiscation

RECOMMENDATIONS

The 8th Recommendation

Improvement of Inappropriate Terms such as
Sexual Shame



DIGITAL SEX CRIMES
TASK FORCE TEAM •
EXPERT COMMITTEE
ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 8th Recommendation

– Improvement of Inappropriate Terms such as Sexual Shame –

Key Takeaway

1. Basic policy

- It is recommended to change inappropriate terms such as "sexual shame" specified in the law for the execution of criminal justice, such as the sex crime punishment law, into the act-oriented gender-neutral legal terms.

2. Recommendations

- a. Deletion of the term 'sexual shame' under the Sexual Offences Punishment Act
 - It is recommended to delete terms such as "sexual shame" in Articles 13 through 14-3 of the Sexual Violence Punishment Act and replace them with the phrase "sexually targeting a person's body," a legal term centered on the infringed legal interests and perpetrating acts.
 - ※ Many laws stipulating "sexual shame" such as the Juvenile Sexual Protection Act, the Child Welfare Act, the Senior Welfare Act, the Social Service Use and Use Rights Management Act, the Long-Term Care Insurance Act, the Disabled Welfare Act, the Act on Support for Activities of Persons with Disabilities, the Act on the Prohibition of Discrimination against Persons with Disabilities, Relief of Rights need to be revised for the same purpose.
- b. Deletion of the term 'sexual shame' under the laws and regulations related to the investigation and the execution of sentences
 - It is recommended that the term 'sexual shame' under Article 56 of the Human Rights Protection Investigation Rules and Article 214 of the Enforcement Rules of the Criminal Execution Act is deleted and changed into the term "sexually targeting a person's body."
- c. Delete the term 'sexual harassment'
 - It is recommended again to replace the term "sexual taunting" that is highly likely to caricature sex crimes and dilute criminality with the objective and neutral "sexual harassment".

3. Expected effects

- Protection of victims of sex crimes against stereotypes arising from "shamefulness" and secondary perpetration demanding victimhood.
- Improving the social understanding of the difference and diversity of emotions felt by victims of sex crimes, and realizing the therapeutic justice by recovering the actual crime damage thereby.
- Ensuring that the criteria for determining criminal responsibility for sex crimes are clearly established as a legal concept that can objectively evaluate the perpetrating act itself and the trust in criminal justice is restored.

1 Background

- The term "sexual shame" in the sex crime punishment law or the trial ruling has been pointed out as a problem of excluding victim's complex feelings of damage and promoting prejudice such as victimhood.¹
- In some cases, unnecessary misunderstanding** is caused that 'shame*', which is a subjective and moral concept, acts as a criterion for determining the establishment of a crime and the criminal responsibility and harms the objectivity and neutrality of legal judgment.

* Dictionary meaning: 'A person has no face to look at others or she is not proud of herself. Or something like that (Standard Korean Dictionary).

** The precedent has judged that the criterion for 'sexual shame' is not the victim's subjective concept, but the concept of the general public's point of view, but the investigation practice still asks the victim whether she felt sexual shame and uses it as a criterion for determining whether a crime is established.

- Public institutions and local governments are pushing for measures to improve gender-based terms, but as described later, there are still gender-discrimination terms in many laws of criminal justice that apply directly to the general public, such as the Sexual Violence Punishment Act and the Childhood Sexual Protection Act. Thus, the improvement is urgently required.

2 Limitations of the concept of 'sexual shame' under the Sexual Offences Punishment Act

a. 'Sexual shame' as a criterion for judging sex crimes

- In applying the current sex crime punishment law, such as the Criminal Act and the Sexual Violence Punishment Act, 'act that causes sexual shame or disgust*' is usually stated as a legal concept for sexual acts other than sexual intercourse.

* "In the crime of forced molestation, molestation means 'objectively causing sexual shame or disgust to the general public and infringing on the victim's sexual freedom as an act contrary to good sexual morality' (2016Do17733, etc.)."

- In particular, in digital sex crimes, which are non-contact sex crimes, 'sexual shame' is directly specified in the law as a key component of crime establishment.

¹ Hankyoreh, August 15, 2020. "Sexual shame, I didn't feel it." "I felt sexual anger." Hankyoreh, September 28. "Sexual shame with sexual violence?" It was unpleasant, annoying, disgusting.", etc.

Laws	Contents
Sexual Violence Punishment Act	<p>Article 13 (Obscene act using communication media) A person who makes a speech, sound, writing, drawing, video, or object causing the sexual shame or disgust through a telephone, mail, computer, or other communication medium for the purpose of inducing or satisfying sexual desire of himself or another person reach the other person shall be punished by imprisonment for not more than two years or a fine of not more than 20 million won.</p> <p>Article 14 (Photographing using a camera, etc.) ① A person who photographs a person's body that can cause the sexual desire or shame using a camera or other mechanical device with similar functions against the will of the photographed subject shall be punished by imprisonment for not more than 7 years or a fine of not more than 50 million won.</p> <p>Article 14-2 (Distribution of false video, etc.) ① A person who edits, synthesizes, or processes (hereinafter referred to as "video, etc." in this Article) a photograph, video, or audio targeting a person's face, body, or voice (hereinafter referred to as "editing, etc." in this Article) in a form that can induce the sexual desire or shame against the will of the subject of the video, etc. for the purpose of distributing shall be punished by imprisonment for not more than 5 years or a fine of not more than 50 million won.</p> <p>Article 14-3 (Threatening or coercion using photographs, etc.) ① A person who threatened a person using photographs or replicas (including replicas) that may cause the sexual desire or shame shall be punished by the limited imprisonment of not less than one year.</p>
Act of Juvenile Sex Protection	<p>Article 2 (Definitions) The terms used in this Act shall have the following meanings.</p> <p>4. (Abbreviated). C. An act of contacting or exposing all or part of the body, causing the sexual shame or disgust of the general public.</p> <p>5. The term "child/youth sexual exploitation material" means that a child/youth, or a person or expression that can be clearly recognized as a child/youth appears and performs any act or other sexual act coming under each item of subparagraph 4 in the form of a film, video, game, computer, or other communication medium.</p> <p>Article 11 (Production and distribution, etc. of sexual exploitation materials of children/youth) ① A person who produces, imports, or exports sexual exploitation materials of children/youth shall be punished by the life imprisonment or limited imprisonment of not less than five years. (hereinafter omitted)</p> <p>Article 15-2 (Dialogue for the purpose of sexual exploitation, etc. for children/youth) ① Where a person aged 19 or older commits any of the following acts to children and juveniles through an information and communication network for sexual exploitation, he/she shall be punished by imprisonment for not more than three years or a fine of not more than 30 million won:</p> <p>1. Continuing or repeating conversations that may cause sexual desire, shame or disgust, or having children/youth engage in such conversations continuously or repeatedly (hereinafter omitted)</p>

※ Other laws that stipulate "sexual shame"

Laws	Contents
Child Welfare Act	<p>Article 17 (Prohibited Acts) No person shall engage in any of the following acts:</p> <p>2. Sexual abuse, such as sexual taunting, which causes or mediates indecent acts on a child or causes sexual shame on the child.</p>
Act for the Welfare of the elderly	<p>Article 39-9 (Prohibited Acts) No person shall engage in any of the following acts against a person aged 65 or older:</p> <p>2. Sexual assault and sexual taunting, etc. that cause sexual shame to the elderly.</p>

Laws	Contents
Act on the Use of Social Services and the Management of Use Rights	<p>Article 23 (Rescission of Provider Registration, etc.) ① If a provider falls under any of the following subparagraphs, the head of Si/Gun/Gu may revoke the registration or suspend the business for a period of six months: However, in cases falling under subparagraphs 1, 2, 4, and 7, registration shall be revoked.</p> <p>6. Where an employee under his/her management commits an act equivalent to assault, injury, sexual taunting or sexual violence causing sexual shame against a user who receives social services.</p>
Act for the Elderly Long-Term Nursing Care Insurance	<p>Article 37 (Rescission of Designation of Long-Term Care Institutions, etc.) ① Where a Long-Term Care Institution falls under any of the following, the head of Special City/Special Do/City/Gun/Gu may cancel the designation or order the suspension of business within six months: However, in cases falling under subparagraphs 1, 2-2, 3-5, 7, or 8, the designation shall be revoked.</p> <p>6. Where an employee of a long-term care institution has committed any of the following acts. However it is excepted where the head of a long-term care institution has not neglected to take due care and supervision of the related work to prevent such acts:</p> <p>B. Sexual assault and sexual taunting, etc. that causes sexual shame to the recipient;</p>
Act for the Welfare of Disabled Persons	<p>Article 59-9 (Prohibited Acts) No person shall engage in any of the following acts:</p> <p>1. Sexual taunting, sexual violence, etc. that cause sexual shame to the disabled</p>
Act for the Support of the Disabled Activities	<p>Article 24 (Rescission of designation of an activity support agency, etc.) ① Where an activity support agency falls under any of the following, the head of Special City/Special Do/City/Gun/Gu may cancel the designation or order the suspension of business within six months.</p> <p>6. Where an activity support worker or other activity support organization has committed any of the following acts:</p> <p>B. Sexual violence and sexual taunting, etc. that cause sexual shame to the recipient;</p>
Act on the Prohibition of Discrimination against the Disabled and Relief of Rights, etc.	<p>Article 32 (Prohibition of harassing, etc.) ⑤ No one shall violate the right of sexual self-determination of the disabled or engage in the verbal expressions, taunting, molestation and rape using disability conditions.</p>

- Sexual shame is derived from the concept of "indulgence" under the Criminal Law, which defines "stimulating sexual desire of ordinary people, causing sexual excitement, and harming normal sexual shame against sexual ethics" as obscene activity (2003Do6514), and the act of reaching it is treated as punishable sexual act.
- Although rape and molestation are crimes that violate personal legal interests (Chapter 31 of the Criminal Code), the concept of molestation, the concept of molestation, the main aspect of behavior, was derived from the concept of obscene behavior, which is related to the infringement of social legal interests, which is a crime against sexual customs (Chapter 22 of the Criminal Act). This can be seen as the influence of the Japanese criminal law referenced at the time of enactment of the criminal law.

※ Japanese criminal law deals with sexual violence crimes such as rape and sexual customs crimes in the same chapter (Chapter 22: Obscene, adultery, and bigamy) regardless of violation of personal or social legal interests, stipulates the crime of forced pornography (Article 176) and treats 'obscene' as a constituent factor in the sexual violence.

- However, it is necessary to judge whether or not a crime that violates the right to sexual self-determination under the Korean Criminal Law, which differs in the protection legal interests of sexual violence crimes and sexual customs crimes, is committed on a different basis from sexual acts punished as obscene activity.

b. Overseas Legislation Cases

- Germany and the United Kingdom removed the concept of 'obscene' and 'indulgence' from crimes that infringe on sexual self-determination and established the concept of 'sexual behavior' through the revision of the law to improve moralistic laws under the old criminal law.

Germany criminal law (Revised in 2015)	Article 184h (Definitions) 1. Sexual behavior refers only to acts with certain prominence (vonneiger Erheblichkeit) in light of the view of legal interests protected in each article. 2. Sexual behavior in front of others refers only to actions performed in front of others who perceive the process of action
Sexual Offences Act of the United Kingdom (Revised in 2003)	Article 78 (Sexual Acts) For the purpose of Part 1 (excluding Articles 15A and, 71), if a reasonable person judges the insertion, physical contact, or other acts as follows, the act is sexual. (a) In connection with that, whatever the circumstances and the purpose of the person are, their attributes are sexual, or (b) Sexuality because the attribute can be sexual or because the circumstances and purpose associated with it are sexual

- In particular, the United Kingdom classified "indecent assault" according to the gender and changed it into the concept of "sexual assault" in the 1956 Sex Offences Act to "sexual assault" so that it can objectively evaluate only whether the perpetrator's behavior is sexual from a public point of view.

c. Spread of social awareness on the gender discrimination legal terminology revision

- Spread of social awareness of the need to revise the term along with a sense of problem that 'sexual shame' is a sexist legal term that causes prejudice and shrinks victims.

※ According to a survey of 503 women conducted by the Korean Women's Association between June and July 2021, the deletion and change opinion the term "sexual shame" should be changed to other terms such as

discomfort (39.2%) and "other expressions emphasizing the perpetrator's behavior" should be used (59.2%) is a majority.²

※ According to the 2018 survey on 48 experts such as professors, prosecutors, judges, police, lawyers and NGOs by the Korea Institute for Criminal Policy concerning 'The need of change of social legal interest term, they responded that it is necessary to change the term "sexual shame" to the term "sexual displeasure" (65.2%) or the term "sexual insult" (63%).³

- In 2021, the Supreme Prosecutors' Office changed "sexual shame" to "sexual displeasure" according to the guidelines and rules of the Supreme Prosecutors' Office's "Guidelines for Management of Workers such as Public Officials in the Supreme Prosecutors' Office", and Seoul Metropolitan Government enforced 'Zero Sexual Violence' Policy to change the term 'sexual taunting' to the term 'sexual harassment'.
- The Supreme Court's recent ruling (2019Do16258, so-called 'leggings' ruling) stated that the sexual shame felt when sexual freedom is violated can occur in various forms, such as anger, fear, lethargy, and humiliation as well as feeling of shame and humiliation, and suggested the criteria which should consider the various layers of damage emotion and the position and perspective of a victim in a specific crime situation in determining whether or not sexual shame is induced.
- Legislatively in the 21st National Assembly, 13 amendments to the law to amend 'sexual shame' into 'sexual displeasure' or 'sexual insult' in the Gender Equality Act and the Aviation Security Act (Including the proposal to change 'sexual shame' under the Sexual Violence Punishment Act to 'sexual displeasure' or 'sexual humiliation'⁴) have been proposed and pending.

d. The need to revise the term 'sexual shame'

- 'Sexual shame' is a concept based on the past 'chastity' notion and there is a possibility to make a victim, not an act of the perpetrator, the subject of the assessment.
- As such terms are presented as criteria for determining the guilt or innocence of sex crimes, victims may feel the psychological burden of taking a sexist attitude in criminal proceedings or sexual shame is mistaken as criteria for them to feel, resulting in distorted victimhood being forced.

² 2021.09.28 Korean Women's Association's forum on "Sexual Shame, It's Not Okay".

³ Korea Institute for Criminal Policy, Improvement of Gender Violence-related Legal System (2018)

⁴ Rep. Ko Min-jung's proposal, bill number 203173

※ When victims file a complaint or testify in an investigative agency or court, they think that stating 'They felt sexual shame' is easy or advantageous to be recognized as a victim of sexual violence, or there are cases⁵ in which lawyers advise to make statements in accordance with the criteria so that they can fall under the aggravating factor of the sexual crime sentencing standard, 'increasing the victim's extreme sexual shame'.

- In addition, there may be misunderstanding that a victim's subjective feelings determine whether or not a crime is established or affect legal judgment, causing distrust in the criminal justice system.
- 'Sexual shame or disgust' is a moral concept based on obscenity or indecency, and applying the standard of social legal interest infringement to personal legal interest infringement does not conform to the principle of modern criminal law that activates the state's punishment right focusing on acts that harm others.
- It is necessary to replace the term 'sexual shame' by establishing a neutral legal concept that can objectively evaluate the perpetrator's behavior, focusing on violence itself through sex, not sex.

☞ Among the bills initiated by the 20th National Assembly, the amendment proposal⁶ to change the term "sexual shame" in the illegal filming crime (Article 14) of the Sexual Violence Punishment Act into "sexually target a person's body." is worth referring to in that the criteria for determining the act of offense were presented centering on the infringed legal interest.

- Laws, regulations and punishment rules that can directly apply to the general public or affect their rights and obligations during the investigation process and execution stage are also the basis for criminal justice, so the term "sexual shame" needs to be changed to gender neutral term.

3 Recommendations

a. Revision of the term "sexual shame" under the Sexual Violence Punishment Act

- It is recommended to delete terms such as "sexual shame" in Articles 13 through 14-3 of the Sexual Violence Punishment Act and replace them with the phrase 'making a person's body a sexual object' which are legal terms centered on the infringed legal interests and perpetrators.

5 2021 09.28 Korean Women's Friendship Association forum "Sexual Shame, It's Not Okay".

6 [Amendment proposal (proposed by Rep. Yoon So-ha, Bill No. 2019185)] Article 14 of the Sexual Violence Penalty Act (photographing using a camera, etc.) ① A person who uses a camera or other similar function to photograph a person's body as a sexual subject without the consent of the person to be photographed or re-uses photographed items by mixing, pirating or editing shall be punished by imprisonment for not more than 5 years or a fine of 30 million won.

- Specific law proposal (draft)

Current Sexual Violence Punishment Act	Revision Proposal
<p>Article 13 (Obscene act using communication media) A person who delivers a speech, sound, writing, picture, video or things causing the <u>sexual shame or disgust</u> through a telephone, mail, computer, or other communication medium for the purpose of inducing or satisfying the sexual desire of himself for another person shall be punished by imprisonment for not more than two years or a fine of not more than 20million won.</p> <p>Article 14 (photographing using a camera, etc.) ① A person who <u>photographs a person's body that can cause sexual desire or shame using a camera or other similar function against the will of a subject</u> shall be punished by imprisonment for not more than 7 years or a fine of not more than 50 million won.</p> <p>Article 14-2 (Distribution, etc. of False Video, etc.) ① A person who edits, synthesizes, or processes (hereinafter referred to as "edit, etc.") the filmed material, video or audio (hereinafter referred to as "video, etc." in this Article) which is made of a person's face, body, or voice against the will of a subject and <u>in a way of causing a sexual desire or shame</u> for the purpose of announcing, etc. shall be punished by imprisonment for not more than 5 years or a fine of not more than 50 million won.</p> <p>Article 14-3 (Threatening or coercion using filmed materials, etc.) ① A person who threatened a person using the filmed materials or replicas (including the replicas of replicas) that <u>may cause sexual desire or shame</u> shall be punished by the limited imprisonment of not less than one year.</p>	<p>Article 13 (Obscene act using communication media) A person who delivers a speech, sound, writing, picture, video or things <u>making a person's body a sexual object</u> through a telephone, mail, computer, or other communication medium for the purpose of inducing or satisfying the sexual desire of himself or another person shall be punished by imprisonment for not more than two years or a fine of not more than 20 million won.</p> <p>Article 14 (photographing using a camera, etc.) ① A person who <u>photographs a person's body as a sexual object using a camera or other similar function without the consent of a subject</u> shall be punished by imprisonment for not more than 7 years or a fine of not more than 50 million won.</p> <p>Article 14-2 (Distribution, etc. of False Video, etc.) ① A person who edits, synthesizes, or processes (hereinafter referred to as "edit, etc.") the filmed material, video or audio (hereinafter referred to as "video, etc." in this Article) which is made of a person's face, body, or voice against the will of a subject and <u>in a way of making a person's body a sexual object</u> for the purpose of announcing, etc. shall be punished by imprisonment for not more than 5 years or a fine of not more than 50 million won.</p> <p>Article 14-3 (Threatening or coercion using filmed materials, etc.) ① A person who threatened a person using the filmed materials or replicas (including the replicas of replicas) that <u>makes a person's body a sexual object</u> shall be punished by the limited imprisonment of not less than one year.</p>

※ The Juvenile Sexual Protection Act, the Child Welfare Act, the Senior Welfare Act, the Social Service Use and Use Rights Management Act, the Elderly Long-Term Care Insurance Act, the Disabled Welfare Act, the Disabled Activity Support Act, and the Disabled Discrimination and Rights Relief Act (P.3) which are mentioned above also need to be revised for the same purpose.

※ 'Sexual displeasure' and 'sexual insult', etc. were proposed as 'alternative terms for 'sexual shame', but it is judged that sexual neutral expressions centered on the perpetrator will be more appropriate to objectively judge the perpetrator's behavior.

b. Revision of the term 'sexual shame' under the laws and regulations related to the investigation and execution of sentences

- It is recommended to remove the term 'sexual shame' stipulated in the Human Rights Protection Investigation Rule (Article 56) and the Enforcement Rule (Article 214) of the Criminal Execution Act, and replace it with 'making a person's body as a sexual object' which is a legal term centered on the infringed legal interests and inflicting acts.
- Specific law contents (Proposal)

Current Human Rights Protection Investigation Rules	Revision Proposal
<p>Article 56 (Protection of Victims of Sexual Violence, etc.) ① When investigating victims of sexual violence or domestic violence (hereinafter referred to as 'sexual violence, etc. '), particularly the following matters shall be paid attention:</p> <p>5. Where a photograph or video (CD, videotape, etc.) of a person's whole body or its part that <u>may cause sexual shame</u> is submitted as evidence, it shall be sealed separately from the investigation record and attached to the end of the investigation record or disposed of as confiscated materials so that it cannot be disclosed to the general public.</p>	<p>Article 56 (Protection of Victims of Sexual Violence, etc.) ① When investigating victims of sexual violence or domestic violence (hereinafter referred to as 'sexual violence, etc. '), particularly the following matters shall be paid attention:</p> <p>5. Where a photograph or video (CD, videotape, etc.) which <u>filmed a person's body as a sexual object</u> is submitted as evidence, it shall be sealed separately from the investigation record and attached to the end of the investigation record or disposed of as confiscated materials so that it cannot be disclosed to the general public.</p>
Current Enforcement Rules of Sentence Execution Act	Revision Proposal
<p>Article 214 (Regulation) Inmates shall not engage in any of the following acts:</p> <p>4. An act of doing indecent behavior or causing another person to feel <u>sexual shame</u> or disgust by sexual behavior.</p>	<p>Article 214 (Regulation) Inmates shall not engage in any of the following acts:</p> <p>4. Acts of doing indecent behavior or <u>doing sexual behavior to the other person for the purpose of sexual desire or satisfaction.</u></p>

c. Other - Revised the term 'sexual harassment'

- It is recommended again that the term 'sexual taunting', which is currently used in many laws,⁷

⁷ [Child Welfare Act]

Article 17 (Prohibited Acts) No person shall engage in any of the following acts:

2. Act which directs the indecent acts on children or mediates it, or sexual harassment act that causes sexual shame on children.

[Welfare Act for the Elderly]

Article 39-9 (Prohibited Acts) No person shall engage in any of the following acts against an elderly person (a person aged 65 or older):

2. Sexual assault, sexual taunting, etc. that cause sexual shame

[Act on the Prohibition of Discrimination and Relief of Rights for Persons with Disabilities]

Article 3 (Definitions) The definitions of terms used in this Act are as follows.

21. The term "bullying, etc." means physical, mental, emotional, and verbal acts inflicted on persons with disabilities by means of bullying, neglect, abandonment, harassment, abuse, financial exploitation, and infringement of their

is inappropriate as it is highly likely to caricature sexcrimes and dilute criminality like the contents of the 5th recommendation of the Specialized Committee on Digital Sex Crimes dated January 28, 2021 and thus it should be replaced with 'sexual harassment'.

right to sexual self-determination, etc.

Article 32 (Prohibition of bullying, etc.) ⑤ No one shall violate the right of sexual self-determination of persons with disabilities or engage in verbal expressions stimulating shame, taunting, sexual molestation and rape using disability conditions.

[National Human Rights Commission Act]

Article 2 (Definition) 3. "Discrimination in infringement of equality" means any of the following acts due to gender, religion, disability, age, social status, place of origin (it means birth place, registration base place, principal abode place before adult), country of origin, ethnicity, appearance, and physical conditions, marriage status such as married, unmarried, separation, divorce, separation by death, remarriage, actual marriage status, pregnancy or childbirth, family type or family situation, race, skin color, ideology or political opinion, criminal record, sexual orientation, educational background, medical history, etc.

D. Sexual taunting act

It means that in relation to the work, employment and or other relationships, the employees, users, or workers of the public institution (It refers to state agencies, local governments, schools established under Article 2 of the Elementary and Secondary Education Act, Article 2 of the Higher Education Act and other Acts, and organizations related to public officials under Article 3-2 (1) of the Public Service Ethics Act) make others feel sexual humiliation or disgust by using his/her position or by sexual behavior in relation to his/her work, etc. or give the disadvantage of employment on the grounds that they do not comply with sexual behavior or other demands, etc.

[Basic Act on Gender Equality]

Article 3 (Definitions) 2 The term "sexual taunting" means a case where an employee, user, or worker of a state agency, local government, or a public organization prescribed by Presidential Decree (hereinafter referred to as "state agency, etc.") falls under any of the following in relation to the work, employment and or other relationships:

A. Making the other person feel sexual humiliation or disgust by using his/her position or sexual behavior or sexual demands in relation to his/her duties, etc.:

Article 31-2 (Measures in the Case of Sexual Taunting) ① If the head of a state agency, etc. finds out that sexual taunting has occurred (including the case where the head of the state agency is an actor of the sexual taunting case), he/she shall notify the Minister of Gender Equality and Family without delay unless there is the victim's explicit objections and submit the measures to prevent recurrence under Article 31 ① to the Minister of Gender Equality and Family within three months from the date of knowing the relevant fact.

Article 31-3 (Diagnosis and Recommendation for Improvement of Organizational Culture to Prevent Sexual Taunting)

① The Minister of Gender Equality and Family may diagnose and recommend the organizational culture of state institutions, etc. if necessary to prevent sexual harassment.

[Equal Employment Law for Men and Women]

Article 2 (Definitions)

2. The term 'sexual taunting in the workplace' means that a business owner, senior person, or worker makes other workers feel sexual humiliation or disgust by using his/her position in the workplace or by sexual behavior, etc. in relation the business, or gives the disadvantage in the working conditions and employment on the grounds that they didn't follow sexual behavior or other demands.

Article 12 (Prohibition of Sexual Taunting in the Workplace) The employer, senior officer, or worker shall not commit sexual taunting in the workplace.

Article 37 (Penalty) ② Where an employer commits any of the following violations, he/she shall be punished by the imprisonment of not more than three years or the fine of not more than 30 million won:

2. In the case of unfavorably treating a worker and a victim worker who reported the occurrence of sexual taunting in the workplace in violation of Article 14(6).

Article 39 (Fine) ① Where an employer commits the sexual taunting in the workplace in violation of Article 12, a fine of not more than 10 million won shall be imposed.

4 Expected effects

- Protection of victims of sex crimes from the secondary harm demanding stereotypes and victimhood arising from the term 'shamefulness'.
- Realization of therapeutic justice, such as enhancing social understanding of the difference and diversity of emotions felt by victims of sex crimes and recovering actual crime damage through this.
- Clearly establishing the criteria for determining the criminal responsibility for sex crimes as a legal concept that can objectively judge the act itself and restoring trust in criminal justice.

RECOMMENDATIONS

The 9th Recommendation

Improve Methods for Seizure and
Confiscation in Digital Sex Crimes Cases and
Strengthen Economic Support for Victims

DIGITAL SEX CRIMES
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ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 9th Recommendation

– Improve Methods for Seizure and Confiscation in Digital Sexual Offense Cases and Strengthen Economic Support for Victims –

Key Takeaway

1. Basic Policy

- We recommend adopting new regulations on the necessary confiscation and collection and emergency search and seizure and increasing economic support for victims of digital sexual offenses through reformation of statutes and independent budgeting to block the (re)distribution of tapes of victims of digital sexual offenses in the criminal justice process and thoroughly deprive offenders of criminal proceeds.

2. Recommendations

- Establish Regulations on Necessary Confiscation and Collection in Relation to Digital Sex Crimes
 - We recommend adding new regulations on necessary confiscation and collection to the Acts on punishment of sexual offenses so that the storage media used for illegal videos, compilations and child or youth sexual exploitation material and filming (production) and possession can be effectively seized and discarded.
 - We recommend adopting new regulations on the necessary confiscation and collection in relation to criminal proceeds acquired through digital sexual offenses.
- Establish New Regulations on Emergency Seizure and Search in relation to Digital Sexual Offenses
 - We recommend adding new legislation for independent emergency seizure and search to the Criminal Procedure Act to allow for seizure and search without a warrant and have a warrant be issued after the fact to prevent further damage in the case that it is apparent that any video found by chance during the process of searching a storage medium confiscated legitimately is an illegal video.
- Reformation of Statutes and Independent Budgeting to Increase Economic Support for Victims of Digital Sexual Offenses
 - We recommend reforming relevant statutes to substantiate economic support in order that immediate, systematic and continuous support can be provided to victims based on a clear standard immediately upon the occurrence of damage.
 - We recommend allocating any recovered criminal proceeds from digital sexual offenses to the Ministry of Justice's budget for 'support for victims' and allotting the crime victim protection fund for provision of necessary practical support to victims of digital sexual offenses, such as deletion of videos.

※ We recommend creating a separate category for 'victims of digital sex crimes' in the budget plan for the crime victim protection fund in the long term.

3. Expected Effects

- Alleviation of victims' permanent anxiety toward possible redistribution or spread of the videos through definite elimination of the possibility of redistribution by seizure and disposal of the videos at issue and the original storage mediums

- Elimination of economic motives through recovery of criminal proceeds from digital sexual offenses as necessary to thereby strengthen the deterrents against crimes, and reduction in social costs spent in preventing recidivism and responding to crimes
- Establishment of a legal and institutional foundation for expedient legal investigations in relation to seizure and search in digital sexual crime cases and provision of full victim protection through active response to 'hidden' digital sexual offenses.
- Creation of further projects in support of victims of digital sexual offenses within the nation, expansion of financial support for the victims through stable financing, and acceleration of recovery

1 Background

- As for digital sex crimes, one perpetrator usually targets multiple victims*, and many victims are unaware of the crimes. Since endless duplication is possible for such videos and the possibility of circulation is high from the point of production, prompt collection of evidence and thorough seizure and search and confiscation and disposal for the purpose of preventing redistribution are crucial.

* March 24, 2022 press report by the Ministry of Gender Equality and Family: According to the 『Trend and Trend Analysis of Sex Offenses against Children or Juveniles』, analyzing the court judgments on the criminals convicted of digital sex crimes against children or juveniles in 2020 and thus subject to registration of personal information, there were 23 perpetrators and 45 victims in cases involving pornography distributed using communication media, 157 perpetrators and 301 victims in cases involving filming via cameras and 102 perpetrators and 167 victims in cases involving production of sexual exploitation material, which means there was an average of 1.8 victims per perpetrator.

- It is highly important to promptly collect evidence and enhance responsiveness to crimes by addressing problems that occur in investigations of digital sexual offenses under the changed criminal justice system, such as delays in investigation and the possibility of redistribution of the videos at issue, while adhering to procedural justice, including observation of due process in the course of investigation and the act of guaranteeing the rights of defense of suspects in the criminal justice system
- Further, digital sexual offenses cause psychological and economic damage to the victims, such as by bringing major changes in their lives, including exposure of one's identity, the possibility that the extent of damage may expand infinitely, spreadability, relocation or resignation due to the risk of redistribution, or by restricting their social activities. Despite the risk that such damage will have permanent effects, since it is hard to calculate damages from such crimes, it would be difficult to provide relief through civil or criminal procedures. Thus, it is necessary to implement measures to expand economic support for such victims.

2 Problems in Current Seizure-Search and Confiscation-Disposal Methods

a. Voluntariness of Confiscation of Storage Media Containing Electronic Information

- As a video which constitutes a digital sexual offense is subject to confiscation and disposal pursuant to Article 48 of the Criminal Act¹, in the event that such a video is stored in an information storage device such as a mobile phone, the investigative agency would ① seize only the electronic information connected to the crime from the storage device and delete said electronic information or return the original storage device with the suspect's consent, ② or seize the storage medium itself and discard it after receiving a judgment that it can be confiscate, since one cannot exclude the possibility of restoration even if the original were to be deleted.
 - However, in a recent lower court case, a confiscation order was not issued for the storage medium containing the video, such as a mobile phone, on the grounds that the video falls into the category of 'voluntary confiscation' as prescribed in Article 48 of the Criminal Act. The extent and significance of confiscation and disposal (whether the electronic information or the entire storage medium is to be confiscated, etc.) differ by case, and since the Supreme Court classifies it as 'voluntary confiscation,' there is a possibility that the video may be restored or redistributed.
- ※ There exists a precedent case in which the decision on omission of confiscation issued in the first trial was annulled and confiscation was ordered in the appellate trial on the grounds that it exceeded the scope of discretionary authority over voluntary confiscation (Seoul High Court Decision 2020NO1683 Dated April 22, 2021). However, the Supreme Court has ruled that a decision to not confiscate the subject items is not unlawful as the decision on whether or not to confiscate is at the discretion of the court.

Referential Precedents

Supreme Court Decision 2017DO5905 dated October 23, 2017

In such cases as the violation of the Act on the Protection of Children And Youth against Sex Offenses (rape), violation of the Act on Special Cases Concerning the Punishment Of Sexual Crimes (taking photographs or videos by using cameras), injury, special crime, etc., the prosecutor appealed by stating that the appellate

1 Article 48 (Confiscation and Additional Collection)

① A thing which is not the property of a person other than the criminal, or which was acquired by a person other than the criminal with the knowledge of its nature after commission of the crime, may be confiscated in whole or in part if it is

1. A thing which has been used or was sought to be used in the commission of a crime;
2. A thing produced by or acquired by means of criminal conduct
3. A thing received in exchange for a thing mentioned in subparagraph 1 or 2.

court's non-issuance of a judgment that the video of the rape scene filmed and saved by the defendant is to be confiscated was unlawful. However, the Supreme Court ruled, "the subject mobile phone constitutes a thing which has been used in the commission of a crime" prescribed in Article 48(1)(1) of the Criminal Act, and the subject clip is an electronic record stored in the mobile phone, which constitutes a thing produced by means of criminal conduct prescribed in Article 48(1)(2) of the Criminal Act, and in such a case, since it is at the discretion of the court whether or not to confiscate the mobile phone and clip, it cannot be said that the court's confiscation of the clip found in the mobile phone, and not the mobile phone itself, is unlawful."

Supreme Court Decision 2021D07233 Dated September 9, 2021

Even though the defendant was declared guilty in the first trial and appellate trial for violation of the Act on Special Cases Concerning the Punishment Of Sexual Crimes (taking photographs or videos by using cameras), only the subject video was confiscated, and not the mobile phone used by the defendant in committing the crime. The prosecutor appealed the decision, and the Supreme Court stated, "Since confiscation as defined in paragraph 1 of Article 48 of the Criminal Act is made voluntarily, it cannot be said that the judgment made in the lower court reflects a misunderstanding of the legal principle behind confiscation as prescribed in paragraph 1 of Article 28 of the Criminal Act, as in the grounds for the appeal, simply because it was not judged that the items seized from the defendant were to be confiscated.

⇒ It is necessary to thoroughly confiscate and dispose of the video at issue and its storage medium seized in the course of investigation in order to prevent secondary damage from restoration and redistribution of the video and protect the victim.

b. Voluntariness of Confiscation and Collection of Criminal Proceeds

- Any criminal proceeds acquired by the perpetrator through the production and distribution of illegal videos not only serve as a motive for the crime but also are a factor in the possible restoration or redistribution of the subject videos by the perpetrator or a third party after the investigation or trial.
- Recently, some digital sexual offenses have been classified as serious crimes to which the Regulation on Criminal Proceeds Concealment applies; however, since the confiscation and collection prescribed in the above regulation are 'voluntary confiscation and collection, the restitution of criminal proceeds from digital sexual offenses is also at the discretion of the court.

[Act on Regulation and Punishment of Criminal Proceeds Concealment (abbreviation: Regulation on Criminal Proceeds Concealment)]

Article 2 (Definitions) The terms used in this Act shall be defined as follows:

1. The term "specific crime" means a crime committed for the purpose of acquiring illegal profits as prescribed under the following subparagraphs.
 - a. Death, imprisonment with or without labor for an indefinite term, or imprisonment with or without labor for a term not less than three years (excluding a crime prescribed in subparagraph 2(b) of this Article)
2. The term "criminal proceed" means any of the following items:
 - a. Property generated by committing serious crimes or acquired in return for such crimes

Article 8 (Confiscation of Criminal Proceeds) ① Any of the following properties may be confiscated:

1. Criminal proceeds;
2. Any property derived from criminal proceeds
3. Criminal proceeds related to the criminal acts prescribed in Article 3 or 4
4. Any property generated by the criminal acts prescribed in Article 3 or 4, or any property acquired in return for such criminal act.
5. Any property acquired as a fruit of or in compensation for any property prescribed in subparagraph 3 or 4, any property acquired as compensation for these properties, or any other property acquired by the possession or disposition of the property.

Article 10 (Collection of Equivalent Value) ① Where it is impracticable to confiscate the property under the provisions of Article 8(1) or where it is deemed inappropriate to confiscate the property in light of the nature of such property, the conditions of its use, the existence of a right of any person other than the parties to the offense to such property, or other circumstances, the monetary equivalent to the value of such property may be collected from any of the parties to the offense.

⇒ It is necessary to thoroughly confiscate and collect any proceeds acquired through digital sexual offenses in order to prevent secondary damage from the digital sexual offenses or possible restoration and redistribution of the subject videos and thereby protect the victim.

c. Concerning Extent of Seizure of Voluntarily Submitted Electronic Information Storage Media

- The Court recently issued a judgment that procedure such as ▲ the principle to selectively seize copies of relevant information and ▲ the act of guaranteeing the defendant's right of participation must be strictly followed in the same way in which seizure and search procedure with warrant is followed in the case of seizing electronic information storage media, such as a mobile phone used in filming the illegal content (2016DO348 issued on November 18, 2021 in full court)
- According to the above, in the case that the investigative agency finds another illegal video in the course of searching the storage medium containing the video at issue, after having the storage medium be voluntarily submitted, since the validity of seizure is only applicable within the scope associated with the fact of suspicion that served as a motive for the voluntary submission, in order to obtain the separate video causing damage, the agency must immediately stop the search and request a warrant, which is a complicated procedure, and further, there is a risk that the evidence may be destroyed or burned while the separate warrant is being issued.
- In addition, it is difficult to determine relevance at the investigation site since court judgments on the extent to which objective relevance to the fact of suspicion serving as a basis for the seizure can be recognized are inconsistent (※ see referential precedents). Consequently, there

is a growing number of cases where a verdict of not guilty is reached since the seized video at issue is judged to be illegally obtained evidence.

- It is impossible to confiscate and delete the video at issue if a verdict of not guilty is rendered due to a procedural issue in collecting evidence, and there is a risk of further damage from redistribution of the video at issue.

Referential Precedents

Supreme Court Decision 2016DOD348 dated November 18, 2021, decided in full court

- In this case, in which Victim A of a sexual assault (filming using a camera) voluntarily submitted two cellular phones of the defendant, even in the event that information storage media such as cellular phones are voluntarily submitted, the extent of confiscation of voluntarily submitted materials is limited to the actual facts constituting an offense (crime of filming of Victim A using a camera), which served as a basis for the initial seizure, and the electronic information closely related to the crime (① items strictly required to bear relevance),
- In the case that a third party voluntarily submitted information storage media, the scope of the information to be submitted shall be checked. Even in the case that the third party submitted evidence outside of the scope of the fact of suspicion which served as a basis for the voluntary submission, only information recognized as having objective relevance to said fact of suspicion can be seized. In the case of searching, duplicating, or printing from the storage media, the right of participation of the suspect, who is the actual person from which items were seized, shall be guaranteed and the suspect shall be provided with a list of electronic information seized (② guaranteeing of right of participation of suspect, from whom items were seized),
- Even though the sexual assault against Victims B and C (filming using camera) was a similar crime or crime of the same kind, since is viewed as a crime of a separate case, if any video on B or C is found, the investigative agency must stop the search immediately and have a separate search and seizure warrant be issued, and if such procedure is not followed, the above video will be viewed as evidence collected illegally and its admissibility will not be recognized.

※ First Trial : Found guilty → Second Trial and Supreme Court: Found not guilty (denial of objective relevance, right of participation not guaranteed, etc.)

Supreme Court Decision 2019DO7342 dated November 25, 2021

- In this case, where the eight hidden cameras secretly installed by the defendant in a motel room were voluntarily submitted by Victim A, who is the motel owner, and then were seized. In the appellate court, the admissibility of the evidence was denied and in that aspect, the defendant was found not guilty on the grounds that the illegal videos showing the remaining victims other than Victims B and C, who reported a hidden camera after discovering it, were judged to be evidence of a separate case, of which its objective relevance to the fact of suspicion which became the motive for the voluntary submission is not recognized, that the purpose of submission by A, who was the initial submitter, was uncertain, that the right of participation of the suspect was not guaranteed, that a list of electronic information was not provided, etc.
- However, the Supreme Court ruled that in the event that a victim voluntarily submits a 'hidden camera' secretly installed solely for the purpose of illegal filming, no separate procedure needs to be followed besides the process of seizing, and that it is not appropriate to deny the admissibility of the above videos simply because the right of participation of the suspect was not guaranteed and a list of items seized was not provided since the privacy of the suspect does not require protection. Therefore, the Supreme Court reversed

and remanded the judgment rendered in the appellate court.

※ First Trial: Found guilty→Second Trial: Found not guilty→Supreme Court: Remanded after reversal on grounds that the defendant is guilty

Supreme Court Decision 2016DO82 rendered November 25, 2021

- No video on Victim A was found on the smartphone voluntarily submitted by the defendant, who was arrested for filming Victim A's body inside a subway. Naked pictures secretly taken of Victim B, who was the defendant's girlfriend, were found and seized. In the case where the defendant was indicted for filming Victim B using a camera, the photos of Victim B were not recognized as having objective relevance to the fact of suspicion, which served as a motive for voluntary submission, and their admissibility were denied on the grounds that they are unlawful since the suspect's right of participation was not guaranteed.

※ First Trial: Found guilty→Second Trial: Found not guilty→Supreme Court: Found not guilty (appeal dismissed)

※ However, the Supreme Court recognized objective relevance in a case where videos filmed of other victims at different times and places were found in the mobile phone seized with a warrant on a charge of attempted illegal filming in a public restroom (filming did not occur) (Supreme Court Decision 2019DO10309 dated December 30, 2021).

Supreme Court Decision 2019DO6730 dated November 25, 2021

- In a case where photos taken of other victims by the defendant at bus stops, inside metro stations, etc. were found while police were searching the mobile phone voluntarily submitted by the defendant on the charge [violation of Acts on punishment of sexual assault (filming using camera)] in the defendant's presence together with the defendant, the appellate court viewed the video clips on the other victims as lacking admissibility and thus declared the defendant not guilty on the grounds that the other illegal videos taken at different times, dates, and locations and of different victims are not recognized as having objective relevance to the fact of suspicion, which became the motive for voluntary submission, that is uncertain whether it can be viewed that the other illegal videos of the defendant were also voluntarily submitted, that the right of participation of the defendant was not guaranteed, and that a list of the electronic information submitted was not provided, but
- The Supreme Court held as follows: since the video on Victim A and the videos on other victims were all taken at public places such as the subway, bus stop, etc., considering the nature of the crime, it is suspected that the defendant regularly engages in such an act and that it stems from the defendant's sexual preference or tendency. Thus, the videos are viewed to be indirect evidence or circumstantial evidence and thus, their objective relevance is recognized. Since the videos showing the victim's other crimes were found while the police were searching the mobile phone together with the defendant, the police gave substantially gave an opportunity to participate. Also, the defendant identified the time and location at which each illegal video was taken and produced and submitted a list of crimes to the police, which is seen to equivalent to providing the defendant with a detailed list. Therefore, it is viewed that the photos were lawfully seized by means of voluntary submission.

※ First Trial: Found guilty→Second Trial: Found not guilty→Supreme Court: Found guilty (reversal and remand)

3 Limit on Economic Support for Victims

- Victims of digital sexual offenses often lead restricted social lives by resigning from their jobs, etc. due to anxiety, fears that other videos may exist or the subject video would be redistributed, exposure of their identity, etc., and hence suspend economic activities, or they face financial difficulties such as by completely losing a place of residence due to relocation, etc.
- Also, the extent of physical and psychological damage from the psychological pain that generally persists for a long time after the crime, the amount of money spent on having an agency delete the video,* etc. are considerable.

* As for digital content, the cost is known to range from 500,000 won to 3 million won or higher depending on the level of difficulty of deletion.

- Nevertheless, as for digital sexual offenses, it is difficult to determine the exact amount of damage and thus, it is not easy to apply for an order of criminal compensation or claim civil compensation. Also, there is insufficient support in this regard at present.²

※ In 2020, the number of digital sexual offenses increased by approximately 79.6% compared to the previous year (2,690 cases in 2019 → 4,831 cases in 2020). However, the economic support provided by the Ministry of Justice in 2019~2020 for victims of digital sexual offenses (a total of 363.69 million won) constituted only 1.92% of the entire budget for economic support (18.863.54 billion won) [Source: Korean National Police Agency, Korean Crime Victims Support Association of the Ministry of Justice]

⇒ There is a definite need to establish a system for providing economic support based on the nature of the damage, i.e., using part of the recovered criminal proceeds from digital sexual offenses to support victims of digital sexual offenses.

4 Recommendations

a. Institute Necessary Regulations on Confiscation and Collection in Relation to Digital Sexual Offenses

- We recommend adopting new regulations on necessary confiscation and collection of the originals of the storage media used in filming (producing) and possessing illegal videos, compilations and child or youth sexual exploitation material to thereby confiscate the storage media themselves and establish a legal basis for disposal.

² The Hankyoreh's news article dated September 6, 2021 "Difficult to provide support since the amount of damage from digital sexual offenses cannot be calculated," <https://www.hani.co.kr/arti/society/women/1010625.html>

- We recommend establishing a legal basis for fundamentally prohibiting the acquisition of economic gain from digital sexual offenses by instituting new regulations on necessary confiscation and collection of criminal proceeds from digital sexual offenses.
- Detailed Legal Content (Proposal)

Current Act on Punishment of Sexual Violence	Proposed Amendments
<p>〈 to be newly instituted 〉</p>	<p>Article 14-4 (Confiscation and Collection) ① In the case of an object owned or occupied by a person who committed a crime prescribed in Article 14 or Article 14-3 that was used · offered or acquired in the course of committing the crime (including electronic information), if any person other than the criminal <u>acquired the object with the knowledge of its nature after the crime, the object shall be confiscated, and if it is impracticable to confiscate the object, the value thereof shall be collected.</u></p> <p>② Any proceeds that arose from a criminal act prescribed in Article 14 or Article 14-3 (hereinafter referred to as "criminal proceeds") and property derived from criminal proceeds shall be confiscated and <u>if it is impracticable to confiscate the property, the value thereof shall be collected</u></p> <p>③ Article 8 or Article 10 of the 「Act On Regulation and Punishment of Criminal Proceeds Concealment」 shall apply <i>mutatis mutandis</i> to matters concerning confiscation or collection of criminal proceeds and property derived from criminal proceeds prescribed in paragraph 2.</p>

※ The Act on the Protection of Children and Youth against Sex Offenses requires the same amendments to the intent

b. Institute New Regulation on Independent Emergency Seizure and Search

- In the case it is apparent that a video discovered in the course of searching a information storage medium legally seized through a warrant or voluntary submission is illegal, it is necessary to facilitate prompt seizure without a warrant in order to prevent suspension of investigation or further damage which would otherwise occur if an additional warrant were to be requested and obtained.
- However, since this is an exception to the general principle that a warrant is to be issued, we recommend instituting a regulation on independent emergency search and seizure in the Criminal Procedure Act, in alignment with judicial control, to allow for search and seizure without a warrant under strict conditions and have a warrant be issued after the fact.

- In the current Criminal Procedure Act, there is a provision on the search and seizure of items other than materials submitted voluntarily*; however, since this is on condition that it will be accompanied by an arrest and imprisonment during or right after the crime, there is a need to separately institute a regulation that allows independent emergency search and seizure to be conducted without a warrant and without necessitating an arrest and imprisonment at a place other than the crime scene in the case of emergency.³

* Seize and search at the locus of the arrest (Article 216, paragraph 1, subparagraph 2, paragraph 2), seize and search at the locus of the arrest (Article 216, paragraph 3), seize and search an article owned or possessed by a person under emergency arrest (Article 217)

※ In a number of foreign countries, including the US and Germany, separate from the arrest of humans, search and seizure of evidence pertaining to the case at hand or a separate case without a warrant is allowed.

US	As an exception to the principle that a search and seizure require a warrant, in accordance with the Plain view doctrine (clear-view doctrine) established by precedent ⁴ , an investigative agency can seize clear evidence of a crime found in plain sight at a location to which they have legal access without a warrant
Germany	The Code of Criminal Procedure includes a provision on 'independent discovery by chance' ⁵ , according to which an investigative agency can provisionally seize evidence of a crime of the perpetrator or a crime of a third party found by chance during a lawful search

3 In this connection, there is an opposing view that independent emergency search and seizure should not be allowed on the grounds that there is a possibility that emergency search and seizure may restrict the principle that a warrant is to be issued, for efficiency and convenience, and that it may violate an individual's privacy or leak a company's trade secret through the so-called a 'cast-style search and seizure': however,

① considering the fact that evidence pertaining to the subject case or a separate case that had not been previously expected can surely be found at the investigation site, and that there exists a realistic need to immediately prevent damage or destruction of evidence on the site, ② the fact that since the current Criminal Procedure Act recognizes emergency seizure and search on a highly limited basis (Article 217 of Criminal Procedure Act: Seizure and search of the possessions of a person under emergency arrest), there is a limit to responding to emergency situations such as destruction of evidence, which is extreme even from the perspective of comparative law, ③ the fact that although the purpose of an investigative agency is to conduct compulsive disposition in rem at a relatively low level of violation of basic human rights, for its implementation, an unreasonable situation inevitably occurs, in which the extent of violation of basic human rights is constituted as that of compulsory disposition in personam, which is against the principle of proportion, while according to current regulations, in order for an investigative agency to acquire any criminal evidence newly recognized and identified, they have no choice but to place the suspect under emergency arrest on a separate charge or catch him/her in the act and then conduct the accompanying search and seizure (they may have the suspect submit evidence voluntarily, but there is a low possibility that he/she would be willing to submit evidence that may be used against him/her), ④ the fact that in a situation where the suspect cannot be arrested, there could also exist an emergency situation where there is a risk that an accomplice may destroy evidence, ⑤ the fact that the need to secure evidence through emergency search and seizure is especially high since it is easy to delete or manipulate digital evidence and since there is a high possibility of destruction or damage as digital evidence is susceptible to natural phenomena, such as humidity, and physical shock, in many cases, the scope of the target crime is limited, independent emergency search and seizure of digital evidence are exceptionally allowed through the setting of set conditions, and review of the legality and validity of the matter is conducted through judicial control after the fact.

4 Coolidge v. New Hampshire (403 U.S. 443 (1971))

5 Section 108 of the German Code of Criminal Procedure (Seizure of Other Objects) ① If objects which indicate that another offence has been committed are found during a search, they shall be provisionally seized even though they are not connected with the ongoing investigation. The public prosecution office shall be informed thereof.

Austria	Similar to Germany, there exists a clause in the Code of Criminal Procedure ⁶ stating that evidence of another crime found during a search can be preserved without a seizure warrant
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- Detailed Legal Content (Proposal)

Current Criminal Procedure Act	Proposed Amendments
<p>〈 To be newly instituted 〉</p>	<p>Article 217 (1) (Compulsory Disposition without Arrest or Detention and Independent Warrant) ① In cases where a prosecutor or a senior judicial police officer finds electronic information concerning a crime <u>not connected with the relevant case by chance</u> in relation to seizure, search, or inspection of <u>electronic data storage medium</u> as stipulated in Article 215, or seizure, search, or inspection of electronic data storage medium voluntarily produced by their owner, possessor, or custodian as stipulated in Article 218, if a probable cause exists to suspect that an offense punishable with death penalty or imprisonment, with or without labor, for an indefinite term or for a minimum term of not less than three years or a <u>serious crime prescribed by other Presidential Decree</u> was committed and if it is necessary to urgently seize the article, the prosecutor or senior judicial police officer may seize such article without a warrant.</p> <p>② If it is necessary to keep in custody continuously electronic data seized pursuant to paragraph (1), a prosecutor or senior judicial police officer shall make a request for a warrant of seizure and search without delay. In this case, <u>such request for a warrant of seizure and search shall be filed within 48 hours from the time of arrest.</u></p> <p>③ If a prosecutor or senior judicial police officer does not make a request for a warrant of seizure and search or fails to have a warrant of seizure and search issued as requested pursuant to paragraph (2), he/she shall return the seized electronic data immediately.</p>
Current Criminal Procedure Act	Proposed Amendments
<p>〈 To be newly instituted 〉</p>	<p>Article 108 (1) (Compulsory Disposition without Arrest or Detention and Independent Warrant) 'Serious crime prescribed by other Presidential Decree' prescribed in Article 218 (1) is as follows:</p> <ol style="list-style-type: none"> 1. Article 11 of the Act on the Protection of Children and Youth against Sex Offenses 제11조 2. Articles 14 and 14 (2) of the Act on Special Cases Concerning the Punishment of Sexual Crimes

⁶ Section 122 of the Code of Criminal Procedure of the Republic of Austria ② If an object through which a crime different from the crime of the subject case can be inferred is located during a search, the object can be preserved. In relation thereto, a separate report must be written up and submitted to the prosecutor without delay.

c. Expansion of Economic Support for Victims of Digital Sexual Offenses

▶ Reformation of Statutes for Actualization of Economic Support

- Economic support equates to payment of the ‘actual’ cost of recovery from the primary damage, which can support victims in their road to recovery. It is advisable to initiate support immediately after the damage occurred and maintain support systematically.
- We recommend revising the 「Guidelines on Economic Support for Crime Victims」 (established rules of the Korean Prosecution Service (the “KPS”)) to
 - ▲ specify the target crime as a digital sexual offense,
 - ▲ provide for economic support even for victims of crimes that occurred ten or more years ago since the scale of distribution has no* time or physical restrictions, and
 - ▲ relax the requirements for receiving support for medical expenses in order that victims of digital sexual offenses can receive prompt and definite support based on clear standards.

* USA’s AVAA (The Amy, Vicky, and Andy Child pornography victim assistance Act of 2018) creates a full or substantial restitution system on the premise that damage can reoccur at any point in the victim’s life in the case of digital sexual offenses (including losses projected to occur in the future, determination of the aggregate causation, etc.)

- Detailed Content (proposal)

Current 「Guidelines on Economic Support for Crime Victims」 (KPS rules)	Proposed Amendments
Article 3 (Items Eligible for Economic Support) ① These guidelines apply to crime victims who suffer from bodily or psychological damage due to the crimes stipulated in any of the following subparagraphs. <ol style="list-style-type: none"> 1. Crime prescribed in Article 13, Article 24 or Article 26, Article 28, Article 29, Article 31, or Article 32 2. Crime prescribed in Article 333 or Article 342 of the Criminal Act 3. Crime prescribed in Article 제188, Article 124, Article 125, Article 136, Article 144 of the Criminal Act 4. Each crime prescribed in all subparagraphs 3 of the Criminal Act and Special Criminal Act, which is subject to aggravated punishment, and attempted crime in the case of punishment of a person who attempted a crime. 5. Other crime that harms the security of life or body 	Article 3 (Items Eligible for Economic Support) ① 〈Same as left〉 <ol style="list-style-type: none"> 1. ~ 4. 〈Same as left〉 5. Article 13 or Article 14-3 and such attempted crimes of the Act on Special Cases Concerning the Punishment Of Sexual Crimes and crimes stipulated in Article 11 and Article 15-2 of the Act on the Protection of Children And Youth against Sex Offenses 6. 〈Same as subparagraph 5 of current Act〉

Current 「Guidelines on Economic Support for Crime Victims」 (KPS rules)	Proposed Amendments
<p>Article 4 (Period of Economic Support) ① The procedure for economic support for a crime victim in accordance with these guidelines cannot be initiated after three years have passed from the date on which the crime victim or his/her counsel became aware of the damage and perpetrator or 10 years after the date on which the criminal injury occurred.</p> <p>② Notwithstanding the preceding paragraph, in the case that a juvenile became a victim of sexual violence, sexual harassment, or any other sexual assault, the period of procedure for economic support therefor shall not be initiated until he/she has attained the majority .</p> <p>Article 28 (Requirements for Application) In the case that it is necessary for a crime victim who satisfies the requirements stipulated in Article 3 to receive medical services at a medical institution for at least five weeks due to a bodily injury from the crime, all or part of the actual cost maybe covered. However, a crime victim relief fund is not considered.</p>	<p>Article 4 (Period of Economic Support)</p> <p>① 〈Same as left〉</p> <p>② Notwithstanding the preceding paragraph, in the case of the crimes prescribed in subparagraph 5 of Article 3, economic support can be initiated even if 10 years have passed from the date on which the criminal injury occurred.</p> <p>③ 〈Same as paragraph 2 of the current Act〉</p> <p>Article 28 (Requirements for Application) In the case that it is necessary for a crime victim who satisfies the requirements stipulated in Article 3 to receive medical services at a medical institution for at least five weeks due to a bodily injury from the crime, all or part of the actual cost maybe covered (However, in the case of the crime prescribed in subparagraph 5 of Article 3, a bodily injury requiring medical treatment of a minimum of five weeks is not required. However, a crime victim relief fund is not considered.</p>

Budgeting for Support of Victims of Digital Sexual Offenses

- We recommend preferentially drawing up a support fund for crime victims for any recovered criminal proceeds from digital sexual offenses.
 - In the case of property crime, the property of the victim of a predicate offense can be confiscated and returned to the victim (Article 6 of the Act on Special Cases Concerning the Confiscation And Return of Property Acquired Through Corrupt Practices); however, since criminal proceeds acquired from digital sexual offenses do not constitute a 'property of a victim of a predicate offense,' they are not subject to restitution.
 - Since recovered criminal proceeds are transfered to the general accounting of the Ministry of Justice as prescribed in the current Act, it is difficult to immediately use them to create a relief fund for victims.⁷

⁷ The Ministry of Justice operates criminal proceeds that have been recovered, and since the amount confiscated or collected is viewed as a kind of punishment (Article 41, subparagraph 9, of the Criminal Act, Article 48 of the Criminal Procedure Act), the confiscated amount, confiscated valuables, etc. are transferred to the general accounting of the Ministry of Justice in accordance with relevant legislation

- The confiscated amount and collected amount are devolved to the National Treasury, transferred to the general accounting of the Ministry of Justice, used for various projects of the Ministry of Justice, including victim support,

- Since criminal proceeds from digital sexual offenses are direct revenues generated as a result of criminal acts and are as such closely related to the injuries, it is necessary to use part of the recovered criminal proceeds to establish a separate relief fund for the victims.
 - We recommend allotting the protection fund for crime victims, among the budget items of the Ministry of Justice, toward actual economic support, such as the cost of deleting the videos at issue, the cost of living, etc.
 - In consideration of the fact that injuries from digital sexual offenses require continuous support over a long period, such as deletion of the problem videos at hand, counseling, etc., it is necessary to increase economic support for victims.
- ※ We recommend creating a separate category for ‘support for victims of digital sexual offenses’ in the budget plan for the crime victim protection fund in the long term.

5 Expected effects

- Establish a legal basis for necessary confiscation and disposal of original storage media containing videos that constitute digital sexual offenses and alleviate any permanent anxiety experienced by victims toward secondary distribution or spread by more effectively blocking the possibility of redistribution of the subject videos .
- By devolving criminal proceeds to the National Treasure through necessary confiscation and collection, fundamentally prohibit acquisition of profit from digital sexual offenses, strengthen the deterrents against crimes by eliminating economic factors, and reduce the social costs spent in preventing recidivism and responding to crimes.
- Establish a legal and institutional foundation that allows for expedient and lawful investigations without any suspension of proceedings by instituting new regulations on emergency search and seizure independent from arrest and imprisonment, and provide full victim protection by actively responding to ‘hidden’ digital sexual offenses.
- Expand economic support for victims of digital sex crimes through secure financing of the nation’s relief efforts for victims of digital sexual offenses and help victims quickly return to their normal lives.

recovered criminal proceeds are not separately used for victim support de (refer to material detailing Ministry of Justice’s 2020 budget and fund management plan)

RECOMMENDATIONS

The 10th Recommendation

Improve System for Serving Notice to
Guarantee Crime Victims' right to
Make Statement and Right to Know

DIGITAL SEX CRIMES
TASK FORCE TEAM •
EXPERT COMMITTEE
ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 10th Recommendation

– Improve System for Serving Notice to Guarantee Crime Victims' right to Make Statement and Right to Know –

Key Takeaway

1. Basic policy

- We recommend revising relevant legislation and the system for operations so that victims of crimes, including sexual offenses, can receive proper updates on the criminal procedure based on their specific rights set out in relevant legislation.'

2. Recommendations

- Amend Criminal Procedure Act in Relation to Notices to Victims
 - We recommending revising the Criminal Procedure Act to include 'progress of investigation', 'result of disposition of case,' 'current status of execution of sentence and execution of sentence of probation' in the list of notices that are to be served to the victim in criminal proceedings and make notification mandatory regardless of whether or not the victim makes a request.
- Establish Practical System for Notification of Status of Execution of Procedures
 - We recommend using terms which can be easily understood by the average person in notices of process of investigation or results of disposition and improve the notice form by including actual information concerning the progress so as to not exclude the victim from participating in the proceedings.
- Other – Reform System for Giving Notice to Victims in Disciplinary Procedure
 - We recommend amending legislation concerning disciplinary action to include serious acts of infringement on legal interests where there exist victims, such as digital sexual offenses, as part of the results of the disciplinary action subject to notification and make notification of the disposition results to the victim mandatory.

3. Expected Effects

- A crime victim's right to know and right to make a statement guaranteed through provision of sufficient information on the criminal procedures
- Increase in crime victim participation in criminal justice
- Reduction in criminal justice expenditures through the early blocking of the possibility that the perpetrator may make a false claim during investigation or trial or that errors may be made in deciding on the admissibility of the evidence, etc. and the resulting discovery of substantial truth

1 Background

- The current Criminal Procedure Act stipulates* a system for notifying the crime victim of the status of the criminal procedures, such as the results of disposition of the perpetrator.

* Articles 258 and 259-2 of the Criminal Procedure Act, the Crime Victim Protection Act (Article 8-2) and the Enforcement Decree (Article 10)¹

1 [Criminal Procedure Act]

Article 258 (Disposition to Complainant) ① If, in a case in which a criminal complaint or accusation has been lodged, the prosecutor has decided to or not to institute a public prosecution, withdrawn public prosecution, or sent the case to a prosecutor of another prosecutors' office pursuant to Article 256, the prosecutor shall inform the complainant or accuser in writing, of the gist thereof, within seven days after such disposition has been made.

② Where a prosecutor has decided not to institute a public prosecution or taken a disposition pursuant to Article 256, he/she shall promptly inform the criminal suspect of the gist thereof.

Article 259 (Notice not to Institute Public Prosecution to Complainant) With respect to a case in which criminal complaint, accusation, or demand has been lodged, if a disposition not to institute a public prosecution has been made, the prosecutor shall, upon request of the complainant or accuser, promptly inform such complainant or accuser of the reasons therefor in writing within seven days.

Article 259-2 (Notice to Victims) A prosecutor shall, promptly upon receiving an application from a victim of a crime or his/her legal representative (including a victim's spouse, lineal relative, and sibling, if the victim is dead), notify the applicant of whether the indictment has been instituted for the crime, the time and place of trial, the result of trial, and the facts about detention such as whether the criminal suspect or the criminal defendant is detained or released.

Article 245-6 (Notifying Complainants of Transmission) In cases falling under subparagraph 2 of Article 245-5, the senior judicial police officer shall notify the complainants, accusers, victims, or their legal representatives (where the victim is deceased, including his or her spouse, lineal relatives, and siblings) in writing of the gist of and reasons for not transferring the case to the prosecutor, within seven days from the date of transmitting the relevant documents and the article of evidence.

[Guarantee, etc. of Participation in Criminal Procedures]

Article 8 (Guarantee, etc. of Participation in Criminal Procedures) ① The State shall ensure that the crime victim is afforded the criminal procedural rights to exercise, including the right to consult with a criminal investigator with regard to the relevant criminal case or to attend the trial or other proceedings and make a statement.

② The State may, if requested by a crime victim, provide him/her with information pertaining to criminal proceedings, such as the results of the investigation to persons alleged to be perpetrators, a date for a public trial, the results of the trial, execution of a sentence, and the current status on the execution of the sentence of probation, as prescribed by Presidential Decree.

Article 8-2 (Provision, etc. of Information to Crime Victims) ① The State shall provide a crime victim with the following information in the course of investigation and trial:

1. Information pertaining to the crime victim's criminal procedural rights, such as his/her right to participate in the relevant trial and make statement;
2. Information pertaining to support for the crime victim, such as payment of criminal injury relief fund and the current status of organizations related to protection and support for the crime victims;
3. Other information deemed necessary for protecting rights and promoting welfare of the crime victim.

② Necessary matters concerning the detailed methods, procedures, etc. for providing information under paragraph (1) shall be prescribed by Presidential Decree.

[Enforcement Decree of the Crime Victim Protection Act]

Article 10 (Provision of Information Related to Criminal Procedures on Crime Victims) ① Detailed matters of information related to criminal procedures which may be provided to victims of crime pursuant to Article 8 of the Act shall be as follows:

1. Matters related to investigation: Results of disposition of an investigative agency, such as prosecution, non-prosecution, stay of prosecution, stoppage of a person for reference, and transfer;
2. Matters of the progress of a trial: The date of a trial, a court to which a public action is instituted, the text of a judgment, the date of adjudication, the decision of judgment, whether to appeal;
3. Status of the execution of sentence: Provisional release, release, transfer, death, desertion, etc.;
4. Status of the execution of probation: The competent probation office, the date of commencement and the date of completion of probation, community service, orders to attend a lecture, the date of suspension and the date of cancellation of the suspension of probation, etc.

② In principle, information related to criminal procedures shall be provided to victims of crime: Provided, That where explicit consent has been given by a victim of crime, the relevant information may be provided to a crime victim support corporation.

Article 10-2 (Provision of Information on Crime Victims) ① When a prosecutor or judicial police officer investigates

Information for Criminal Procedures Offered to Crime Victims

- Notice of Results of Disposition : Disposition of the prosecutor, such as disposition, non-prosecution, transfer, forwarding of protection cases, and the date thereof
- Notice of Start of Trial : The date of a trial and a court to which a public action is instituted
- Notice of Results of Trial : Results of the trial such as the text of the judgment, the date of adjudication, the decision of judgment and whether to appeal
- Notice of Status of Detention : Circumstances related to the suspect such as the date and place of detention, review of legality of detention and release on bail
- Notice of Release : Matters related to transfer, such as the date of provisional release and the date of release due to termination of execution of sentence of imprisonment
- Notice of Status of Execution of Probation : The date of commencement and the date of completion of probation, the date of suspension and the competent probation office

- Victim notification is highly crucial in that it strengthens the rights to know by allowing victims have easy access to substantive and procedural details of the concerned criminal cases and actually gives the victims the opportunity to participate in the proceedings, such as exercising of the victims' rights to make statements* as guaranteed by the Constitution.

* Constitution of the Republic Of Korea

Article 27 (5) : A victim of a crime shall be entitled to make a statement during the proceedings of the trial of the case involved as under the conditions prescribed by Act.

- As for sexual offenses especially, 30% or more of the perpetrators had a relationship with the victim, such as a romantic relationship*(the percentage of cases in which the perpetrator had a relationship with a victim, such as a romantic relationship, was approximately 23% for assault cases, approximately 11% for robbery cases, and approximately 7% for theft cases), and due to the unique nature of sexual crimes, namely the fact that they entail secondary harm, there is a definite need to provide details of the investigation into the concerned case, the progress of the trial, and whether or not the perpetrator is to be detained.

a crime victim, he/she shall provide information of the subparagraphs of Article 8-2 (1) of the Act on the crime victim: Provided That if not investigating a crime victim, he/she shall provide information as follows:

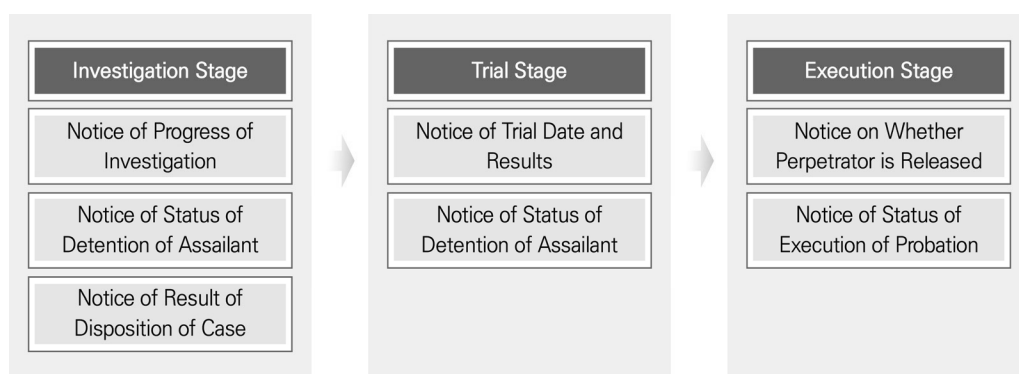
1. A judicial police officer: When forwarding or not forwarding cases;
2. A prosecutor: When disposing cases.
- ② A prosecutor or judicial police officer may substitute the provision of information pursuant to paragraph (1) with provision of information to the guardian of a crime victim (referring to a person having parental authority, a protector, a person who protects or fosters the victim or has such obligation thereto, or a person who substantially protects or supervises the victim due to the relationship of business or employment, etc.) or a person who is in fiduciary relation.
- ③ Notwithstanding paragraphs (1) and (2), a prosecutor or judicial police officer may not provide information where there is a difficult reason in provision of information such cases that a crime victim specifically refuses the receipt of information, or it is ambiguous to identify the location of a crime victim.
- ④ It shall be in principle for provision of information under paragraph (1) and (2) as delivering in writing: Provided, That where there is a cause making it impracticable to deliver in writing such as cases that a crime victim disobey the request of attendance, it may be provided by oral, telephone, facsimile, mail or other similar means.

* According to the『KPS'2020 Crime Analysis』, for perpetrators that were of legal age, 35.3% have had a relationship with the victim, such as a romantic relationship, 59.3% were unrelated parties, and 5.5% fell into the category 'others.' For perpetrators that were juveniles, 42.4% have had a relationship with the victim, such as a romantic relationship, 52.8% were unrelated parties, and 4.8% fell into the category 'others.'

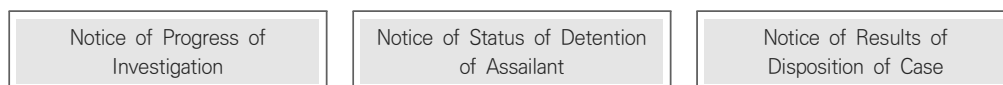
- Guaranteeing victims the right to actively participate in criminal justice is one of the practical ways to find substantial truth and protect the victims, and as such, related legislation should be revised to allow for timely provision of information concerning the criminal justice proceedings and the results to crime victims, including victims of sexual offenses.

2 Current Status of Regulations Related to Victim Notification

a. Victim Notification in Each Stage of the Criminal Procedure in Accordance with Existing Regulations



▶ Investigation Stage



- There is no regulation which provides a clear basis for notification of the progress of an investigation, and it is stipulated in the『Regulations on Mutual Cooperation Between Prosecutors and Senior Judicial Police Officers and General Criminal investigation Rules²』,

2 【Regulations on Mutual Cooperation Between Prosecutors and Senior Judicial Police Officers and General Criminal investigation Rules】

Article 12 (Notification of Progress of Investigation) ① The prosecutor or senior judicial police officer shall make effort to properly notify the interested persons of the progress of the investigation.

② The specific method and procedure for giving notice in accordance with paragraph 1 shall be determined by the Commissioner General of the Korean National Police Agency, the Minister of Justice, or the Commissioner General of the Korea Coast Guard.

which is a Presidential Decree, and lower statutes* as basic obligations and exceptional discretionary matters

*「Guidelines for Interim Notice of Cases of Complaint or Accusation」(KPS rules), 「Guidelines for Police Investigation」(rules of the Ministry of the Interior and Safety), 「Guidelines for Criminal Investigation」(KNPA's order), 「Guidelines for Protection and Support for Crime Victims」(KNPA's order)³

3 【Guidelines for Interim Notice of Cases of Complaint or Accusation】

Article 3 (Types of Notice) ① Interim Notices include three types, namely notice of direction of investigation of cases of complaint or accusation (hereinafter referred to as "notice of direction of investigation"), notice of direction of further investigation of cases of complaint or accusation (hereinafter referred to as "notice of direction of further investigation") and interim notice of investigation of cases of complaint or accusation (hereinafter referred to as "interim notice of investigation").

② In cases where a prosecutor directs a senior judicial police officer to investigate a case of complaint or accusation, he/she shall serve notice of direction of investigation of the case of complaint or accusation to the complainant or accuser.

③ In cases where a prosecutor directs a senior judicial police officer to further investigate a case of complaint or accusation transferred from the senior judicial police officer, he/she shall serve notice of direction of further investigation of the case of complaint of accusation to the complainant or accuser and the defendant. Provided That if the senior judicial police officer transferred the case with an opinion that prosecution should be terminated or if the personal information of the defendant is unknown, notice shall not be served.

④ In the event that a case of report or accusation under investigation by a prosecutor failed to be decided within three months from the date on which the case of report or accusation was registered (the date of acceptance if the prosecutor directly accepted the case and ordered a senior judicial police officer to proceed with investigation, the date of registration for a case forwarded by a senior judicial police officer or transferred from another office, and the date of resumption for a case for which investigation resumed), interim notice of investigation shall be sent to the complainant or accuser. The same applies in the event that a case which was directly accepted by a prosecutor and for which direction of investigation was given to a senior judicial police officer is not forwarded within three months from the date of acceptance or in the event that a case which was forwarded to a prosecutor by a senior judicial officer and for which direction of further investigation was given to the senior judicial police officer is not re-forwarded within three months from the date of forwarding.

⑤ After interim notice of investigation was served in accordance with paragraph 4, upon the complainant or accuser's request or in the even that further notice is deemed substantial, interim notice of investigation may continue to be served.

【Rules Concerning Police Investigation (rules of the Ministry of the Interior and Safety)】

Article 11 (Notice of Progress of Investigation) ① The senior judicial police officer shall give notice of the status of execution of investigation to the complainant, accuser, victim, or his/her legal representative within seven days from any of the dates stipulated in the following paragraphs (where the victim is deceased, including his or her spouse, lineal relatives, and siblings; hereinafter referred to as "complainant"). Provided That, if the complainant's contact information is unknown or his/her whereabouts are uncertain, notice of the status of execution of investigation shall be provided within seven days from the date on which the contact information or whereabouts are made known.

1. The date on which investigation is initiated in accordance with a report, complaint, accusation, petition, or appeal.

2. The date on which one month has passed from the date of initiation of an investigation according to subparagraph 1.

② Notice prescribed by paragraph 1 can be made in the way requested by the complainant such as by phone, facsimile, e-mail, or text message. In the case that there is no method separately requested by the complainant, notice shall be served in writing or via a text message. In this case, a written notice of progress of investigation shall be sent using attached Form 9.

③ A senior judicial police officer shall keep in the case records a copy if notice of the progress of the investigation was given in written form or the gist in written form if notice was given in any other way. A copy, in the case that a senior judicial police officer gives notice of the progress of the investigation in written form,

④ Notwithstanding paragraph 1, if the case falls under any of the following paragraphs, a senior judicial police officer shall provide notification of the progress of the investigation. In this case, a report detailing this fact shall be written up and filed in the case records.

1. In the case that the complainant does not wish to be notified

2. In the case of serving the complainant with the mandatory notice on the status of the investigation in advance

3. In the case that the honor or rights of an interest have been infringed

4. In the case that there are concerns that a retaliatory crime or secondary damage may occur

- According to the above regulations, ▲ the police should give notice of the progress of investigation, ▲ the prosecution has the obligation to give notice of distribution, notice of directives to conduct investigation, and notice of directives to conduct further investigation and also give interim notice of investigation after three months have passed from the date of receipt, in connection with cases of complaint or accusation.
- Although the basis for notification of the results of disposition of a case can be found in the Criminal Procedure Act, which stipulates that it is mandatory notification, its scope is limited.
- More specifically, ▲ although it is mandatory for the prosecution to give notice of the results of disposition of cases(prosecution·non-prosecution·transfer · request for further investigation)

【Guidelines for Criminal Investigation】

Article 13 (Notice of Status of Execution of Investigation) ① If a person subject to notification in accordance with Article 11(1) of the Guidelines for Criminal Investigation is deceased, lacks the ability to communicate, or is a juvenile, the police officer shall notify give notice to his or her legal representative, his or her spouse, lineal relatives, siblings, or other family member (hereinafter referred to as "legal representative"). In the case that the person subject to notification is a juvenile, notice shall be given to said person also.

② Notwithstanding paragraph 1, in the case that the victim is a juvenile, if the perpetrator or suspect is the legal representative, notice shall not be given to the legal representative. Provided That, if needed, with the juvenile's consent, notice may be sent to a person in a trusting relationship with him or her.

【Guidelines for Victim Protection and Support】

Article 18 (Notice of Status of Handling of Cases) ① If the victim inquires into the progress of the investigation, the relief organization providing protection or the person in charge of the case shall provide an update in a way easily understandable by the victim to the extent that it does not affect the investigation.

② As for other matters concerning notifying the victim of the status of the execution of investigation, Article 11 of the Guidelines for Police Investigation and Article 13 of the Guidelines for Criminal Investigation shall apply.

【Guidelines for Protection and Support for Crime Victims】

Article 24 (Provision of Information on Criminal Procedures) ① Upon receiving an application from the crime victim, his/her legal representative, or counsel, the prosecutor or investigation officer shall provide information on the criminal procedures, such as the status of execution of punishment against the perpetrator (limited to suspect or defendant who caused injury), including the result of disposition of the case, the time and place of trial, the result of trial, the facts about detention such as whether the criminal suspect is detained or released. In this case, in accordance with Article 53(1) of the Regulations on Mutual Cooperation Between Prosecutors and Senior Judicial Police Officers and General Criminal investigation Rules, such information shall be provided even in the absence of an application from the crime victim. Provided That, if there are concerns that information regarding the criminal procedures may cause harm to the honor or privacy, life or physical safety, or quiet life of an interested person, such information may not be provided.

② The application stipulated in Article 1 shall be prepared using annex 16 'Application for Provision of Information on Criminal Procedure' and submitted to the public service center or the victims support division at any time. Provided That, an application for provision of information on the status of execution of punishment, such as whether the suspect will be released, can be made after a trial is scheduled. In the case that the intent of the crime victim has been confirmed in accordance with Article 19(1), it shall be viewed that an application for provision of such information has been submitted.

【Regulations on Mutual Cooperation Between Prosecutors and Senior Judicial Police Officers and General Criminal investigation Rules】

Article 53(Notice of Investigation Results) ① In cases where the prosecutor or senior judicial police officer rendered the ruling under Article 51 or 52, he/she shall notify the complainants, accusers, victims, or their legal representatives (where the victim is deceased, including his or her spouse, lineal relatives, and siblings; hereinafter referred to as the "complainants") and the suspect of the contents. Provided That, in the case of a decision to suspend the accusation against the suspect as defined in subparagraph 4 of Article 51(1) or a decision made to suspend an indictment pursuant to subparagraph 3 of Article 52(1), notice shall be sent to the complainants only.

① in complaint or accusation cases regardless of whether or not the complainant submits an application, ② as for cases that do not involve complaints or accusations, notice is provided only upon request by the victim (Articles 258 and 259-2 of Criminal Procedure Act)*, and ▲ the police is only obligated to give notice of disposition 'without transfer'** (Article 245-6 of Criminal Procedure Act).

* The 「Guidelines for Protection and Support for Crime Victims」, which are KPS guidelines, provide that it is mandatory to notify the victim of the results of disposition of the case upon the victim's request⁴

** The 「Enforcement Decree of the Crime Victim Protection Act」 and 「Regulations on Mutual Cooperation Between Prosecutors and Senior Judicial Police Officers and General Criminal investigation Rules」⁵, which are Presidential Decrees, provide that it is mandatory to give notice of all decisions, such as a decision to forward, not forward, or transfer.

- As for providing notice on whether the perpetrator is detained, the Criminal Procedure Act and 「Guidelines for Protection and Support for Crime Victims」, which are KPS guidelines, provide that if the victim has made a request, the prosecution shall provide information on the perpetrator's whereabouts, such as the date of arrest, place of detention, whether she/he gets released as a result of review on the legality of arrest, cancellation of arrest, etc.

※ The 「Enforcement Decree of the Crime Victim Protection Act」, which is a Presidential Decree, (provisional release, release, transfer, death, or desertion) prescribes that information on the status of the execution of the sentence shall be provided in principle.

4 【Guidelines for Protection and Support for Crime Victims】 Article 24 (Provision of Information on Criminal Proceedings)

① Upon receiving an application from the crime victim, his/her legal representative, or counsel, the prosecutor or investigation officer shall provide information on the criminal procedures, such as the status of execution of punishment against the perpetrator (limited to suspect or defendant who caused injury), including the result of disposition of the case, the time and place of trial, the result of trial, the facts about detention such as whether the criminal suspect is detained or released. In this case, in accordance with Article 53(1) of the Regulations on Mutual Cooperation Between Prosecutors and Senior Judicial Police Officers and General Criminal investigation Rules, such information shall be provided even in the absence of an application from the crime victim. Provided That, if there are concerns that information regarding the criminal procedures may cause harm to the honor or privacy, life or physical safety, or quiet life of an interested person, such information may not be provided.

② The application stipulated in Article 1 shall be prepared using annex 16 'Application for Provision of Information on Criminal Procedure' and submitted to the public service center or the victims support division at any time. Provided That, an application for provision of information on the status of execution of punishment, such as whether the suspect will be released, can be made after a trial is scheduled. In the case that the intent of the crime victim has been confirmed in accordance with Article 19(1), it shall be viewed that an application for provision of such information has been submitted.

5 【Enforcement Decree of the Crime Victim Protection Act】 Article 10 (Provision of Information Related to Criminal Procedures on Crime Victims)

① Detailed matters of information related to criminal procedures which may be provided to victims of crime pursuant to Article 8 of the Act shall be as follows:

1. Matters related to investigation: Results of disposition of an investigative agency, such as prosecution, non-prosecution, stay of prosecution, stoppage of a person for reference, and transfer;

【Regulations on Mutual Cooperation Between Prosecutors and Senior Judicial Police Officers and General Criminal investigation Rules】 Article 53 (Notice of Investigation Results) ① In cases where the prosecutor or senior judicial police officer rendered the ruling under Article 51 or 52, he/she shall notify the complainants, accusers, victims, or their legal representatives (where the victim is deceased, including his or her spouse, lineal relatives, and siblings; hereinafter referred to as the "complainants") and the suspect of the contents. Provided That, in the case of a decision to suspend the accusation against the suspect as defined in subparagraph 4 of Article 51(1) or a decision made to suspend an indictment pursuant to subparagraph 3 of Article 52(1), notice shall be sent to the complainants only.

▶ Trial Stage

Notice of Trial Date and Trial Results

Notice of Status of Detention of Assailant

- Provisions for a notice of trial date and notice of trial results, are included in the Criminal Procedure Act, Crime Victim Protection Act and 「Rules for Case Hearings or Trials for Sexual Offenses, etc. and Victim Protection」⁶, which is a rule created by the Supreme Court, etc.
 - More specifically, in the case that the victim submits an application, ▲ the Prosecution shall send a notice of commencement of a trial, such as the date of commencement of the trial, a court to which a public action is instituted, etc., a notice of trial results, such as the text of a judgment, the date of adjudication, whether to appeal, the decision of judgment, etc., ▲ and in the event that the victim of sexual assault or sexual offenses against children or juveniles and his/her legal representative appoints an attorney-at-law, or the prosecutor selects a public defender for the victim, the court shall notify the victim's attorney of the trial date.
 - ※ The 「Enforcement Decree of the Crime Victim Protection Act」, which is a Presidential Decree, prescribes that information concerning matters of the progress of a trial (the date of a trial, a court to which a public action is instituted, the text of a judgment, the date of adjudication, the decision of judgment, whether to appeal, etc.), shall, in principle, be provided to the victim.
- As for a notice of status of detention of assailant, Criminal Procedure Act and the 「Guidelines for Protection and Support for Crime Victims」, which are KPS rules, stipulate that upon the victim's request, the Prosecution shall provide information on the whereabouts, such as the date of arrest of the perpetrator, place of detention, release due to the review of legality of arrest, cancellation of arrest, etc.
 - ※ The 「Enforcement Decree of the Crime Victim Protection Act」, which is a Presidential Decree, stipulates that information concerning the status of the execution of sentence (provisional release, release, transfer, death, desertion, etc.) shall, in principle, be provided to the victim.

6 **[Rules for Case Hearings or Trials for Sexual Offenses, etc. and Victim Protection] Article 4 (Notice of Date Fixed for Trial)** ① In the case that a victim of sexual violence, sex offenses against children or youth, or crimes of child abuse or his/her legal representative appointed an attorney-at-law or the prosecutor selected a public defender for the victim, when documentation proving the appointment of said attorney-at-law (hereinafter referred to as the "victim's attorney") is submitted, the court shall notify the victim's attorney of the date fixed for the trial. ② The notice stipulated in paragraph 1 may be given in writing, by phone, electronic mail, facsimile, text message via a mobile phone, or other proper means.

Article 6 ① If there is an request from the victim's attorney to make a statement on the degree and results of damage, the victim's opinion concerning punishment of the criminal defendant, and other matters relating to the relevant case during the trial proceedings, the court shall have the statement be made on the date of the trial.

Article 7 ① The court in receipt of the application stipulated in Article 6(1) shall notify the victim's attorney, who made the request to make a statement, of the date on which the statement on the opinion is to be made.

► Execution Stage

Notice on Whether Perpetrator
is Released

Notice of Status of Execution
of Probation

- As for a notice of status of release of perpetrator, the Criminal Procedure Act and the Guidelines for Crime Victim Protection and Support⁷, which are KPS rules, stipulate that upon the victim's request, the Prosecution shall send notices of the information on the whereabouts and execution of sentence against the defendant, such as suspension of execution of penalty, date of provisional release, the date of release due to termination of execution of sentence of imprisonment, etc.

^{**} The Enforcement Decree of the Crime Victim Protection Act⁷, which is a Presidential Decree, stipulates that information on the status of the execution of sentence (provisional release, release, transfer, death, desertion, etc.) shall, in principle, be provided to the victim.

- As for a Notice of Status of Execution of Probation, the Crime Victim Protection Act and its Enforcement Decree⁷ stipulate that information concerning the status of the execution of probation, such as the competent probation office, the date of commencement and the date of completion of probation, community service, orders to attend a lecture, the date of suspension and the date of cancellation of the suspension of probation, shall, in principle, be provided.

b. Detailed Procedures for Notification

- (Subject) Complainants or accusers (compulsory notification), victims (notify only upon request) or their legal representatives, counsel for victims of sexual assault (regardless of whether an

7 [Crime Victim Protection Act]

Article 8 (Guarantee, etc. of Participation in Criminal Procedures) ① The State shall ensure that the crime victim is afforded the criminal procedural rights to exercise, including the right to consult with a criminal investigator with regard to the relevant criminal case or to attend the trial or other proceedings and make a statement.

② The State may, if requested by a crime victim, provide him/her with information pertaining to criminal proceedings, such as the results of the investigation to persons alleged to be perpetrators, a date for a public trial, the results of the trial, execution of a sentence, and the current status on the execution of the sentence of probation, as prescribed by Presidential Decree.

[Enforcement Decree of the Crime Victim Protection Act]

Article 10 (Provision of Information Related to Criminal Procedures on Crime Victims) ① Detailed matters of information related to criminal procedures which may be provided to victims of crime pursuant to Article 8 of the Act shall be as follows:

4. Status of the execution of probation: The competent probation office, the date of commencement and the date of completion of probation, community service, orders to attend a lecture, the date of suspension and the date of cancellation of the suspension of probation, etc.
- ② In principle, information related to criminal procedures shall be provided to victims of crime: Provided, That where explicit consent has been given by a victim of crime, the relevant information may be provided to a crime victim support corporation.

application is submitted, it is mandatory to give notification of the results of the disposition of a case, the trial date and the due date for a statement of opinion)*

- (Timing) △ The police shall give notice of the progress of investigation and results of disposition of the case on the starting date of the investigation, every one month after investigation has started, and within seven days from the date on which the case is closed △ the Prosecution ① shall give notice of the progress of investigation and notice of the result of disposition of the case as soon as the case has been disposed on the date of assignment and within seven days after three months have passed since the case was registered, ② for all other matters, information shall be provided as soon as there arises any basis.
- (Method) Can be provided in writing (in principle), orally, by phone, post, facsimile, electronic mail, text message via a mobile phone, etc.
- (Nationwide portal service offered) Various criminal justice information* is provided online through the Korea Information System of Criminal Justice Services Website (kics.go.kr)

* ① Case progress inquiry (check progress of police · prosecution · court case and penalty payment) ② check notices and court records ③ application for civil services and issue of certificate ④ provision of victim support services, etc.

3 Problems and Measures for Improvement in System for Notifying Victims

a. Establish Legal Basis for Notice of Progress of Investigation

- Prompt notification of information concerning the criminal case to the crime victim or assailant is directly related to ensuring the safety of the victim and is also a necessary condition for the victim's smooth participation in the proceedings.
- The victim's participation in the proceedings is not limited to the trial stage, and rather there is a need to guarantee participation at a greater level so that the victim can actively express his/her opinions or respond properly by submitting relevant evidence during the investigation stage, in which it is decided whether or not the case is to be prosecuted.
- To that end, sufficient substantive and procedural information concerning the progress of the investigation should be provided to the crime victim, but there is currently an overlap in applicable provisions in various guidelines and regulations and discrepancies in the information

provided, and thus there may be confusion as to how the regulations are to be interpreted and applied.

ex) There is no regulation concerning 'status of execution of probation' in the Criminal Procedure Act or the KPS rules; however, the Crime Victim Protection Act stipulates that relevant information shall be provided. The Criminal Procedure Act stipulates that the results of disposition of the case shall be provided if the victim has made a request. Investigative rules, which are a Presidential Decree, prescribe that notification is mandatory regardless of whether the victim submitted a request.

- Especially, in the investigation phase, the legal basis for 'progress of a case' is stipulated in subordinate provisions (instruction, rules, etc.), and not in any Acts. If a procedure is regulated by subordinate provisions, such as internal policies, in such a way, it gets managed by the investigation agency at its sole discretion. Thus, an issue of equity could arise among the victims, or notification system itself may become futile.

- Realistically speaking, for a crime victim that is not a complainant or accuser, notices are sent restrictively only upon request by the victim. Hence, since the victim is unable to properly check the progress of investigation before the case is concluded, it is difficult to take appropriate action.

- ※ In particular, when the case records are sent to the Prosecution after the police completes the further investigation, due to omission of related notices (case records are returned, the Prosecution issues a new case number, etc.), many cases conclude prematurely before the victims get the chance to take action at the prosecution level.

⇒ As notification of the progress of a case is an important procedure created to protect the basic rights of crime victims, such as the right to know, it is necessary to include a clear and specific basis in an Act, not a subordinate provision.

- ※ However, if the victim does not wish to receive a notice at his or her own address, it is necessary to respect the privacy and views of the victim, in terms of the method for delivery, and this should be sufficiently reflected in Presidential Decree.

b. Improve notification practices in accordance with 'Application Submission by Victims'

- For non-prosecution cases, a majority of notices concerning criminal proceedings are sent out in accordance with the victims' submission (or lack of) of applications. However, often times, the victims themselves are not aware that such rights of application exist or do not hold sufficient information and therefore are not able to properly exercise their rights.

- ※ There exists a search tool which allows crime victims to check the status of the respective cases on the Korean Institute of Communications and Information Sciences (KICS) website or its mobile app. However, this

is limited to five major, serious crimes, such as murder, robbery, sexual offense and arson, and the victim is required to submit a separate consent to provision of information in written form.

- Efforts should be made to provide accurate information in advance so that the victim can decide whether to exercise the right to apply for provision of notification with full knowledge of the existence of the right and its details and incorporate such when providing job training for the investigation agency in charge of sending notices and the employees who handle administrative tasks of the court.
- However, the system for sending notices during criminal proceedings was created to realize the victim's rights guaranteed by the Constitution and other relevant provisions, such as the right to make a statement at the trial, and not as an act of kindness by the investigation agency. In this regard, the act of deciding to take or not to take specific measures depending on whether the victim submits an application or lodges a complaint or accusation does not result in sufficient protection of rights and therefore defeats the purpose of the system

it is necessary

⇒ It is advisable to make it mandatory to provide status updates on the criminal proceedings regardless of whether the victim submits an application or ends up suing the perpetrator, in order to ensure maximum protection of the victim's rights.

c. Substantiation of Notification

- A notice of the progress of investigation or the disposition result is generally sent in written form or via a text; however, such a notice lacks sufficient details and has become merely a formality due to the use of difficult legal terms. Therefore, it does not sufficiently provide the information necessary for one to exercise his or her rights.

⇒ In order that a crime victim can exercise his/her rights, such as the right to make a statement, by participating in the proceedings depending on how the case proceeds, it is necessary make attempts to improve the content of the notice and the form such as by including specific details on the reason for continuing the investigation and the basis of disposition without compromising the confidential nature of the investigation and using terms that the general public can easily understand to increase understanding.

ex) The expressions 'old form' and 'past trial' are included in the section for disposition on the Prosecution's current notice form for disposition results; however, such legal terms are not familiar to the general public and therefore, it is necessary to additionally explain the significance of each type of disposition and its effect.

- In addition, it is necessary to provide systematic and practical training to increase competency, such as gaining a better understanding of the tasks, in order to minimize the omission of notices manually managed by the person in charge at the investigation agency, and to continuously automate and advance the operational system related to sending notices.
- * Although the Prosecution's notices of distribution or disposition are automatically posted through the Korean Institute of Communications and Information Sciences(KICS), notices of the progress of an investigation, initiation of a trial and the status of detention are posted manually
- ** ex) On occurrence of a basis for notification or if the timing has passed, an informative statement is automatically posted through KICS

d. Other- Improve Victim Notification System in Disciplinary Procedures

- According to the current statutes concerning disciplinary action against civil servants⁸, in cases where the perpetrator is to receive disciplinary action on a charge of sexual offense, the procedure for guaranteeing the victim's rights, such as his/her right to know, right to make a statement, is inadequate.
- In the case that the suspect that may face disciplinary action is a state or local public official, notification of the result of the disciplinary action will be given the only if the victim makes a request (limited to victims of certain sexual assault or harassment)⁹, and the victim will be given the opportunity to attend and make a statement only for requested cases, such as serious disciplinary action (expulsion, removal, demotion, suspension from office). Provision of information concerning the status of execution of the proceedings and the results thereof is not a necessary process and may be excluded at the discretion of the disciplinary action committee.

8 [State Public Officials Act]

Article 75 (Issuance of Explanatory Note on Grounds for Disposition) ② Where the disposition-taking authority issues an explanatory note specifying the grounds for disposition that fall under sexual crime under Article 2 of the Act on Special Cases concerning the Punishment of Sexual Crimes or sexual harassment under subparagraph 2 of Article 3 of the Framework Act on Gender Equality, upon request of a victim, he/she shall also notify the victim of the results of the relevant disciplinary disposition.

[Decree on Disciplinary Action against Public Officials]

Article 11-2 (Victim's Right to Make Statement) At the request of a victim of a case to request a severe disciplinary action etc., a disciplinary committee shall offer him/her an opportunity to attend the committee to make a statement on the relevant case: Provided, That the same shall not apply in the cases of the following;

1. Where it is deemed that there is no need for making a statement again because a victim has made a full statement on the relevant case in the course of requesting a severe disciplinary action, etc.;
 2. Where it is likely that the statement of a victim causes a process of a disciplinary committee considerably delayed.
- ※ Make same amendments to Article 67 of Local Public Officials Act ②(Delivery of Explanatory Note on Grounds for Action and Request for Examination), Article 5-2 of Regulations on Discipline and Appeal of Local Public Officials (victim's right to make a statement)

- 9 The victims' rights to make statements, etc. were newly instituted through the April 16, 2019 amendments; before amendment, there was no regulation on victim participation in proceedings

※ In relation to suspects potentially facing disciplinary action, there are various strategies that guarantee the rights of defence, such as the opportunity for the disciplinary action committee attend the trial and make statements, receive notices of the results of the disciplinary action, etc.

⇒ It is necessary to improve the system for giving notice to victims of acts subject to disciplinary action, such as sexual violence and sexual harassment.

3 Recommendations

a. Revise Clauses that Provide Basis for Victim Notification in Criminal Procedure Act

- We recommend revising the clauses of the「Criminal Procedure Act」which provide a basis for victim notification to include 'progress of investigation,' 'results of disposition of the case' and 'status of execution of a sentence and status of execution of probation' in the types of information subject to victim notification in criminal procedures and make notification mandatory regardless of whether the victim submits an application for such.
- Detailed Legal Content (proposal)

Current Criminal Procedure Act	Proposed Amendments
<p>Article 259-2 (Notice to Victims) A prosecutor shall, promptly <u>upon receiving an application</u> from a victim of a crime or his/her legal representative (including a victim's spouse, lineal relative, and sibling, if the victim is dead), notify the applicant of whether the indictment has been instituted for the crime, the time and place of trial, the result of trial, and the facts about detention such as whether the criminal suspect or the criminal defendant is detained or released.</p>	<p>Article 259-2 (Notice to Victims) ① A prosecutor or <u>senior judicial police officer</u> shall notify a victim of a crime or his/her legal representative of whether (including a victim's spouse, lineal relative, and sibling, if the victim is dead) of the progress of investigation <u>into the criminal suspect or the criminal defendant</u>, results of disposition of the case, whether the indictment has been instituted for the crime, the time and place of trial, the result of trial, the facts about detention such as whether the criminal suspect or the criminal defendant is detained or released, and the facts about <u>execution of penalty against the criminal suspect or the criminal defendant</u>. In this case, notice shall be given to the extent that the victim's privacy is not violated.</p> <p>② Notwithstanding paragraph 1, if there are <u>special circumstances which raise to concerns that information regarding the criminal procedures may cause harm to the honor or privacy, life or physical safety, or quiet life of interested persons, including the suspect, defendant and victim, or if the victim explicitly expresses his or her intent to refuse, such information may not be provided.</u></p>

Current Criminal Procedure Act	Proposed Amendments
	③ The methods, procedures, etc. for providing notice under paragraph (1) and other necessary matters shall be prescribed by Presidential Decree.

b. Establish Practical System for Notification of Status of Execution of Procedures

- We recommend using terms which can be easily understood by the average person on notices of status of investigation or results of disposition and improve the notice form by including actual information concerning the progress so as to not exclude the victim from participating in the proceedings.

c. Other – Reform Victim Notification System in Disciplinary Procedures

- We recommend providing an institutional strategy which allows victims of acts subject to disciplinary action, such as sexual violence and sexual harassment, to participate in disciplinary proceedings and receive information, if they wish.
 - (Target acts) Pursuant to the State Public Officials Act and the Local Public Officials Act and statutes concerning disciplinary action, expand the types of cases subject to notification of results of disciplinary action to digital sexual offenses, such as production and distribution of sexual exploitation materials, serious acts of infringement of legal interests where victims exists, such as injury, and make amendments so as to make it a principle to give notice (gist) regardless of whether the victim makes a request (absent special circumstances)
 - Institute new regulations providing a basis for victims' statement on opinions and notification of results in each individual statute that regulates the process of a disciplinary action against judges·prosecutors·police officials·military personnel·firefighting officials·educational officials (ex: Discipline Of Judges Act, Act On Discipline Of Prosecutors, Police Officials Act, Firefighting Officials Act, Educational Officials Act, Military Personnel Management Act and each disciplinary action or rule).

4 Expected effects

- Substantial guarantee of crime victims' rights to know and victims' rights to make statements, which are guaranteed by the Constitution, through faithful provision of information regarding criminal procedures
- Increase in crime victim participation in criminal justice
- Criminal justice which leads to the finding of substantial truth through early blocking of the possibility that the perpetrator would make a false claim or that errors would be made in deciding on the admissibility of the evidence

RECOMMENDATIONS

The 11th Recommendation

Improvement of the
Criminal Compensation Order System for
Digital Sex Crimes Victims

DIGITAL SEX CRIMES
TASK FORCE TEAM •
EXPERT COMMITTEE
ACTIVITIES AND ACHIEVEMENTS

The Expert Committee on Digital Sex Crimes: The 11th Recommendation

– Improvement of the Criminal Compensation Order System for Digital Sex Offense Victims –

Key Takeaway

1. Basic policy

- It is recommended that the current criminal compensation order system be improved so that victims of sexual crimes such as digital sex crimes can quickly and simply receive compensation in criminal procedures.

2. Recommendations

- Expansion of subjects of compensation orders to all digital sex crimes in general
 - By amending the 「Act on Special Cases Concerning Expedition etc.」, the basis law of criminal compensation, it is recommended that the subject of the compensation order is to be expanded to all digital sex crimes, including crime of production and distribution of 'child or juvenile sexual exploitation', and production and distribution of illegal 'synthetic materials', and threats or coercion of using the filmed material, etc.
- Establishment of provision of partial approval and using ex officio compensation orders
 - In the case where a claim for compensation is only partially justifiable, it is recommended that the standards for the use and operation of compensation orders is specified in the law so that partial approval but not the whole dismissal is in principle, and unless it goes against the will of the victim, the court can issue a compensation order ex officio.
- Introduction of anonymous service of compensation order to prevent secondary damage
 - In order to protect victims of sexual crimes such as digital sex crimes, when a compensation order is accepted and a judgment is served, it is recommended to establish a legal basis to serve it without showing the victim's identity data.

3. Expected effect

- By expanding the subjects of compensation orders to new sexual crimes mediated by digital technology in general, victims of digital sex crimes can quickly, practically and ultimately recover damages through criminal procedures without going through separate civil litigation procedures.
- Improving the practical use and effectiveness of the compensation order system by specifying the principle of partial citation and the use of ex officio compensation orders in the 'law'
- Prevent secondary damage and protect victims from exposure of personal information of victims of sexual crimes such as digital sex crimes during the service and execution of compensation orders by establish a legal basis for 'anonymous service'

1 Background

- The victims of digital sex crimes are mainly children and adolescents who are digital media-friendly but has no economic foundations*. Victims often face economic difficulties due to the exposure of identity, the possibility of infinite spread of damage, dissemination, and the risk of re-distribution, resulting in overall changes in living conditions such as moving or resignation, etc. or restrictions on social activities.

*「Results of the intensive crackdown on illegal distribution networks and distributors of cyber sexual violence (March ~ June '21)」 Status of victims by age group

Classification	Total	Teenagers	Twenties	Thirties	Forties	Fifties and over
Ratio (%)	100	50.2	38.9	9.5	0.5	0.8
Total number of people (number)	378	190	147	36	2	3
		98.6 %				

Source: National Police Agency National Investigation Headquarters

- There is a need to improve the criminal compensation order system that compensates for crime damage within the criminal procedures so that victims of digital sex crimes can easily and quickly receive compensation for physical and mental damage suffered as a result of the crime.

2 Current state of criminal compensation order system

a. Criminal compensation order system for recovery of crime damage

- A compensation order is an order for civil compensating for damages caused by a criminal act at the same time as the court announces a conviction in a criminal trial procedure.

※ Ground rules:「Act on Special Cases Concerning Expedition etc.」¹

- In criminal proceedings, the methods of compensating for damages to victims of crime are classified into : ▲ Substantive law that stipulates restoration to the original state through punishment or independent sanctions (USA, UK), and ▲ Procedural law in which victims of criminal procedures seek civil compensation for damages (Germany, France, Japan), and we belong to the latter.

¹ Act On Special Cases Concerning Expedition Of Legal Proceedings Article 25 to 35 The criminal compensation order system was introduced when Act On Special Cases Concerning Expedition Of Legal Proceedings was enacted on March 1, 1981, and was also introduced into family protection cases when the Special Act on the Punishment of Domestic Violence Crimes was enacted in 1997.

| Legislation cases |

USA	<ul style="list-style-type: none"> • Order of restitution system <ul style="list-style-type: none"> - For the convicted defendant, the court orders the recovery of damages to the victim of crime in addition to or in lieu of the statutory sentence - The subjects are in wide range including the criminal law offenses described in Title 18 of the Federal Code, some drug offenses, and product trafficker. In principle, compensation orders are essential for certain crimes such as sexual abuse and violence. - For restitution, in addition to the payment of money, returning property or service are also possible. Damages that can be compensated includes property damage but not alimony.
Germany	<ul style="list-style-type: none"> • Incidental Litigation System (Victim Rights Reform Act) <ul style="list-style-type: none"> - Victims claim property rights arising out of the crime in criminal procedures - There are no restrictions on the scope of crimes including crimes harming life, body or property, etc. and the subjects of claim includes alimony, claim for returning stolen goods, claim for profit, request for omission, etc. as well as material damages. - Can be applied to the court where the indictment has been filed and also to the prosecutor at the stage of the investigation. <ul style="list-style-type: none"> ※ At the time of enactment of the Act On Special Cases Concerning Expedition Of Legal Proceedings, the German model was reflected as a legislative example.
France	<ul style="list-style-type: none"> • Action Civile system (Criminal Procedure Law) <ul style="list-style-type: none"> - Action Civile, which is the right of a crime victim to claim compensation for damage caused by the crime, can be exercised in a civil court or incident to a criminal case (indictment) at a criminal court - A corporation can be a party to a Action Civile, and a victim who becomes a plaintiff of Action Civile is recognized as a party who can take part in a criminal trial, and can bring a lawsuit against not only the principal and accomplices of the crime, but also the heirs and third parties responsible for the crime.
Japan	<ul style="list-style-type: none"> • Compensation order system (Crime Victim Protection Act) <ul style="list-style-type: none"> - Criminal court considers and decides on a claim for compensation "after" conviction for a criminal case when the victim files a claim for damages to the defendant. - Its subjects are limited to murder, injury, rape, molestation, abduction, and inducement, and do not include property criminals and negligence criminals. - If there is a legitimate objection from a party to the trial of compensation for damage, it will be considered as a lawsuit filed in the competent district court or summary decision court designated by the applicant, and the civil litigation procedure will be proceeded.

- Via the compensation order, the victim can quickly obtain the Schuldtitel without the burden of litigation costs without filing a separate civil suit.

※ Under the current law, the cost of the procedure for a compensation order is borne by the national treasury in principle, the authentic copy of sentence of conviction containing the finalized compensation order or the compensation order with pronouncement of provisional execution has the same enforcement power as the authentic copy of the civil judgment.²

² **[Act On Special Cases Concerning Expedition Of Legal Proceedings] Article 34 (Effects of Orders for Compensation and Compulsory Execution)** ① An authentic copy of the written conviction whereto entered a finalized order for compensation or an order for compensation with a declaration of a provisional execution, shall have the same effect as an authentic copy of civil judgment with executive force, with regard to a compulsory execution under the Civil Execution Act.

Article 35 (Costs of Litigation) The costs of procedures for an order for compensation shall be borne by the National Treasury, except for the cases where a person to bear such costs has been specially determined.

- Compensation for damages can be achieved through a criminal consensus with the perpetrator, but in the case of sexual offenses, there is a negative perception in relation to the consensus, such as suspicion in the purity of the motive for complaint or report or the truth of the content, etc., and secondary damage can also occur, as it is abused as a means of reducing the sentence of the offender. Therefore, there is a greater need to use the compensation order system as a legitimate exercise of rights rather than a consensus.
- Criminal compensation orders system overview

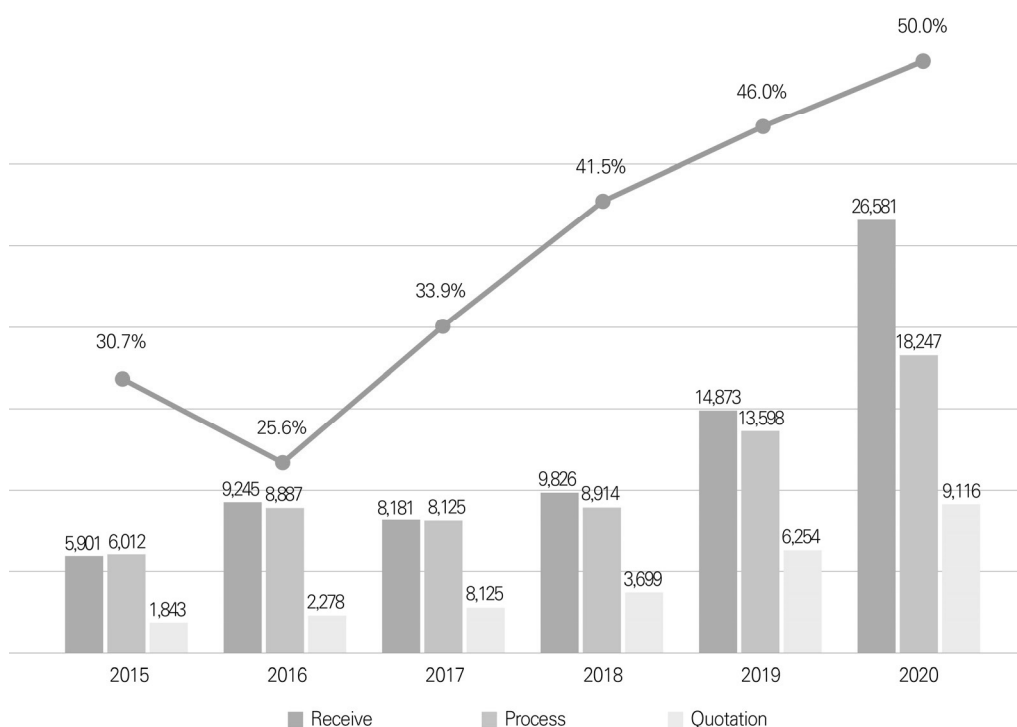
Scope of crimes	<p>Robbery, theft, violence, fraud, embezzlement, etc. and some sexual violence crimes* under the Criminal Act,</p> <p>* Article 10 (Indecent Acts through Abuse of Occupational Authority), Article 11 (Indecent Acts in Crowded Public Places), Article 12 (Intrusion upon Publicly Used Places with Intent to Satisfy Sexual Urges), Article 13 (Obscene Acts by Using Means of Communication), and Article 14 (Taking Photographs or Videos by Using Cameras) under the Act on Sexual Violence Punishment, Article 13 (Buying Sex of Child or Youth) and Article 14 (Coercive Conduct against Children or Youth) under the Act of Juvenile Sex Protection</p> <p>※ In other criminal cases, the amount of compensation for damage agreed between the defendant and the crime victim</p>
Reasons for exception	<p>▲ When the victim's name and address are unclear, ▲ When the amount of damage is unspecified, ▲ When the existence or scope of the defendant's liability for compensation is uncertain, ▲ When there is a concern about significant delay in the trial procedure or compensation order is considered to be unfair in the criminal trial procedures, order for compensation cannot be made.</p>
Scope of compensation	<p>Direct material damage and medical expenses incurred as a result of the criminal act, alimony, or the amount of compensation agreed upon between the defendant and the victim of the crime</p>
Initiation of procedure	<p>▲ (Application) Victims of crime, etc. (the person him/herself, his/her heir or their legal representative) apply for compensation for damages in writing or verbally to the court where the case is in pending until the conclusion of the hearings of the appeals court</p> <p>– Prosecutors are obliged to notify victims of a claim for compensation when prosecuting the cases which are subject to application, Courts are obliged to notify applicants of the trial dates when compensation order was requested.</p> <p>※ Compensation request cannot be applied if a claim based on other procedures for damages for criminal damage is pending with the court</p> <p>▲ (Ex officio) The court can order compensation ex officio</p>
Withdrawal and rejection of claim for compensation	<p>– The applicant may attend and make a statement on the trial date, and even if he/she does not attend, the court may consider the claim for compensation without his/her statement.</p> <p>– Claims for compensation can be withdrawn at any time before the compensation order is finalized</p> <p>– The court dismisses the claim for compensation ▲ if it is deemed that the claim for compensation is not lawful, or ▲ if it is recognized that there is no reason for compensation order.</p> <p>※ It is impossible to apply for objection against the dismissal or partial acceptance of the application for compensation nor the same compensation claim again.</p>

Sentencing and Effect of Compensation Order	<ul style="list-style-type: none"> - Compensation order is issued at the same time as a announcement of conviction and by ordering the payment of a certain amount of money, the object of compensation and the amount can be indicated on the judgement and provisional execution can be declared - An authentic copy of a written conviction judgment containing a finalized compensation order or a compensation order with provisional execution has the same effect as an authentic copy of a civil judgment with enforcement power under the Civil Execution Act <p>※ When the compensation order is confirmed, it is impossible to claim compensation for damages according to other procedures within the range of the accepted amount.</p>
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b. current state of operation of criminal compensation orders

- Although the number of victims' request for compensation order continues to increase (2019.14,873 cases→2020. 26,581 cases 78% increase) based on the efforts to activate the compensation order. However, although the acceptance rate was the highest in 2019 (50% for the first instance, 49.9% including the appeals) in 2019, the average of the first instance for the past 8 years was only 32.5%, which is generally low and there is no significant increase in the number of acceptance compared to the increase in the number of applications.

| District Court (1st instance) application for compensation order and processing status |



Source: Office of Court Administration, 2021 Judicial Yearbook

- Moreover, the application and processing of compensation order cases are mainly focused on property crimes such as fraud or theft, etc. where the amount of compensation is relatively easy to calculate. And when it comes to sex offense, the average annual sum of the first-instance compensation order accepted for the past 5 years was 320,570,000 won, which accounts for only 0.49% of the total average annually accepted amount. And it is extremely underutilized, except for rape, which is accompanied by direct bodily harm, among sexual crimes.

| Current Status of Compensation Order Cases by District Court (1st Instance) by Crime and Amount |

Year	Total		Sexual violence		Theft and robbery		Fraud and blackmail		Violation of Act On The Aggravated Punishment Of Specific Economic Crimes (Theft, fraud, embezzlement, etc.)	
	Number of cases	Order amount	Number of cases	Order amount	Number of cases	Order amount	Number of cases	Order amount	Number of cases	Order amount
2016	2,278	6,100,702 (100.0%)	13	18,445 (0.30%)	85	62,929 (1.03%)	1,968	2,716,977 (44.54%)	76	2,945,131 (48.28%)
2017	2,758	5,819,275 (100.0%)	8	10,100 (0.17%)	85	133,990 (2.30%)	2,359	2,910,553 (50.02%)	166	2,507,849 (43.10%)
2018	3,699	5,314,754 (100.0%)	17	104,165 (1.96%)	95	54,574 (1.03%)	3,247	2,642,124 (49.71%)	166	2,293,755 (43.16%)
2019	6,254	6,301,802 (100.0%)	19	19,105 (0.30%)	126	28,704 (0.46%)	5,769	3,122,413 (49.55%)	96	2,871,068 (45.56%)
2020	9,116	9,307,713 (100.0%)	15	8,471 (0.09%)	187	26,107 (0.28%)	8,287	4,457,314 (47.89%)	153	4,376,307 (47.02%)
평균		6,568,849 (100.0%)		32,057 (0.49%)		61,261 (0.93%)		3,169,876 (48.26%)		2,998,822 (45.65%)

Source: Office of Court Administration, 2021 Judicial Yearbook

3 Limitations and Improvement Plans for Criminal Compensation Orders Related to digital sex crimes

a. Problems of limitation on targeted crimes

- According to the current law, digital sex crimes are specified to be only subject to compensation orders under Act on Sexual Violence Punishment Article 13 (Obscene Acts by Using Means of Communication) and Article 14 (Taking Photographs or Videos by Using Cameras). Therefore, crimes with a high frequency of occurrence or serious illegality, such as the criminal of production and distribution of 'child/juvenile sexual exploitation material' and the production

and distribution of illegal 'synthetic materials' are excluded from the application for compensation order.³

- After the 2020 and 2021 amendment of the Act on Sexual Violence Punishment and the Act of Juvenile Sex Protection, crimes of production and distribution of 'child/juvenile sexual exploitation material' and production and distribution of illegal 'synthetic materials' are newly introduced and organized, however, the amendment to reflect such in the Act On Special Cases Concerning Expedition Of Legal Proceedings has not been made.

※ Even if it does not fall under the crimes subject to the compensation order by regulation, it is possible to order compensation if there has been consensus on the amount of compensation between the defendant and the victim. However, in reality, it is difficult to expect such an agreement between the perpetrator and the victim.

※ The reason that crime victims are not actively using the system in practice is that compensate for damages is ordered in criminal procedures, which are fundamentally different from civil lawsuits in ideology and procedure.

→ In reality, it is not easy to thoroughly understand the right to claim for damages in criminal procedures, so there is a risk that the criminal trial, which should focus on the substantive judgment, becomes a civil trial for calculating the amount of damage. And as the right of expedite trial of a defendant may be restricted due to the procedural complexity in relation therewith, it is necessary to set the scope of the crimes subject to the compensation order in consideration of the purpose of the compensation order system, which is a prompt damage relief, and the problem that civil cases become criminal cases.

⇒ In case of digital sex crimes, the necessity of Δ prompt compensation is admitted in order to block the distribution of the videos, and Δ it falls under the case when it is difficult for the victim to claim damages through ordinary civil litigation separately from criminal litigation (e.g. when filing a civil litigation, the expected amount of compensation for damages is small).

3 **[Act On Special Cases Concerning Expedition Of Legal Proceedings] Article 25 (Order for Compensation)** ① When a conviction is to be declared in the procedures of criminal trial of the first instance or the second instance against any of the following crimes, the court may, either ex officio or upon request of the victim or his/her successor (hereinafter referred to as "aggrieved person"), order compensation for direct physical damage, medical expenses, and solatium that has occurred due to the criminal acts of the accused case:

1. Crimes stipulated in Articles 257 (1), 258 (1) and (2), 258-2 (1) (limited to crimes under Article 257 (1)) and (2) (limited to crimes under Article 258 (1) and (2)), 259 (1), and 262 (except the crime of death or injury resulting from violence to a lineal ascendant), Chapters 26, 32 (except for such crime under Article 304), 38 through 40, and 42 of the Criminal Act;
2. Crimes stipulated in Articles 10 through 14, and 15 (except attempted crimes referred to in Articles 3 through 9) under the 「Act on Special Cases concerning the Punishment, etc. of Sexual Crimes」 and crimes stipulated in Articles 12 and 14 under the 「Act on Protection of Children and Juveniles against Sexual Abuse」;
3. An aggravated punishment of a crime referred to in subparagraph 1 and an attempted crime in cases of punishing an attempted crime of such crime.

② The court may order compensation pursuant to paragraph (1) even for the compensation for damages agreed upon between the accused and the aggrieved person, in the accused case of crimes prescribed in paragraph (1) and other crimes.

And considering the balance with the current laws where compensation order can be claimed for the digital sex crimes against adults, it is reasonable to include the crime of digital sex crimes against children and juvenile and production and distribution of illegal 'synthetic materials' as the crimes subject to compensation order.

b. Limitation on the scope of compensation

- Due to the nature of digital sex crimes transcending time and space through the use of digital technology, it is difficult to fully identify the entire crime, and in many cases, only some crimes are prosecuted at the stage where only part of the damage is revealed.
- As a result, it is difficult to accurately estimate the total amount of damage and there is a limit to securing evidences for calculation of the damage. Therefore, there is a high possibility that the request for a compensation order will be dismissed on the grounds of 'unspecified amount of damage or indetermined scope of compensation, etc.'.
- Even if the compensation order is accepted, the scope is limited to direct material damage and medical expenses due to the crime, and alimony. Thus, in the case of digital sex crimes where the crime is committed without physical contact, the amount that victims can be compensated is often just small amount of alimony and cannot reach to the actual amount of the damage.

| * The number of acceptance and amount of claims for compensation in cases of sexual violence in 2020 |

Name of crime	Total	Up to 1 million won	Up to 5 million won	Up to 10 million won	Up to 50 million won	Over 50 million won
Crime of rape and sexual molestation	11	5	6	.	.	.
Act on Sexual Violence Punishment	7	2	2	.	3	.
Act of Juvenile Sex Protection	2	1	.	1	.	.
	20	40%	40%	5%	15%	
		80%				

Source: : Office of Court Administration, 2021 Judicial Yearbook}, Unit Number of cases

⇒ ① Increase the alimony calculation standard in consideration of the psychological pain that victims of digital sex crimes experience throughout their lives, such as fear of distribution,

etc., 'The costs related to the victims' self-help activities to prevent the spread are actively included in the material damage, ③ In case of delay in compensation, it is necessary to review the introduction of a plan to increase the effectiveness by acknowledging compensation for delayed damages.

- ※ Due to the nature of digital sex crimes, compensation for mental damage accounts for a large proportion of victims' damages, and when it comes to the trial and calculation of the amount of mental damage, criminal litigation can draw more efficient and accurate conclusions than civil litigation. Thus, it is possible to increase the acceptance rate by referring to the defamation part (refer to the annexed page) of the alimony calculation method for each type of illegal activity prepared by the Supreme Court in 2017.
- ※ Under the current law, lost income is excluded from the scope of criminal compensation. However, in the case of a digital sex crime, it is difficult to assume damage such as physical disability or loss of work ability by itself. And due to the possibility that the trial becomes complicated and prolonged, the actual benefit to include the lost income in the compensation scope is not huge.
- * The U.S. AVAA Act (The Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018) provides a practical compensation system for digital sex crimes, including full compensation on the premise that the damage can happen again at any time throughout the victim's life(including expected losses in the future, considering comprehensive cause-and-effect relationship, etc.)

c. Scope of the Counterparty of the Compensation Order

- Recently, as part of efforts to eradicate digital sex crimes, punishment and investigations have been strengthened through the revision of related laws such as the Act on Sexual Violence Punishment, etc. Especially, the prosecution applied the reinforced standards to not only sexual exploitation of children and juveniles but also crimes against adults, in the case of crimes possessing and watching illegal filmed materials, etc.
- However, even under this, if the perpetrator is a first-time offender, exceptionally, it is possible to request a suspension of indictment or a summary order for the offender of illegal film production. In this case, the victim cannot even apply for a criminal compensation order.
- Since the other party to the compensation order is the defendant in the concerned procedures of criminal trial, compensation order cannot be made to other accomplices who have not been prosecuted or the defendant for whom a summary order has been requested.
- Furthermore, although simple consumption crimes that are not related to traditional sexual violence crimes such as rape and molestation, etc. or have no history of recidivism, and one-time distribution crimes are frequent among digital sex crimes*, if a summary order has been requested to such offender, as the victims cannot apply for compensation order, the effectiveness of the system is poor.

*Result of intensive crackdown on illegal distribution network of cyber sexual violence and distributors (Mar. ~ Oct. 2021), analysis by crime type

Classification	Total	Purchase and possession, etc.	Distribution and sales	Illegal filming and production	Establishment and operation
Ratio(%)	100	41.4	40	10.7	5.9
Total number of people (no)	378	706	650	174	95

Source: National Police Agency National Investigation Headquarters

⇒ In order to faithfully guarantee the victims an opportunity to recover from damage through criminal compensation, from the stage before indictment, investigative agencies must fully understand the data related to sentencing factors, such as aggravation and mitigation factors, as well as data regarding whether there is a suspicion or not, and familiarize themselves with the case processing standards. and continuously check the work manual to ensure that dispositions that are practically consistent with the above are made.

d. Concerns about identity disclosure due to compensation order

- When applying for a compensation order, the victim must provide personal information in the application. However, when a copy of the compensation order application form is served or the claim for compensation is dismissed, it is possible not to inform the defendant of matters that can identify the victim, such as name and address⁴.
- However, even in the case of closed trial for sexual crime cases such as digital sex crimes (because the execution of the compensation order requires specifying the creditor), when the compensation order is accepted, the victim's name, address, and date of birth* are required to confirm the identities of the party, and identify the creditor for compulsory execution or performance of debts, and the victim's personal information is exposed to the defendant

4 [Act On Special Cases Concerning Expedition Of Legal Proceedings]

Article 28 (Service of Copy of Written Application on Accused) When an application for compensation is filed in writing, the court shall promptly serve a copy of such written application on the accused. In such cases, the court may serve the copy with all or part of the matters that can identify the applicant, such as the name and address of the applicant, ex officio or upon request of the applicant.

Article 32 (Dismissal of Application for Compensation) ① Where an application for compensation falls under any of the following subparagraphs, the court shall dismiss it by a decision:

1. Where an application for compensation is unlawful;
2. Where an application for compensation is acknowledged as groundless;
3. Where issuing an order for compensation is deemed unreasonable.

② When judgment under paragraph (1) is rendered simultaneously with the declaration of a conviction, it may be indicated in the text of the conviction.

③ The court may not state the matters identifying the applicant, such as the name and address of the applicant, in the written decision under paragraph (1).

during the service of a conviction containing an order to accept a compensation order or an application for compulsory execution.

* It is a different part from the civil judgment in which the procedure for granting a separate execution order is scheduled.

* 「Established Rules for Claims for Compensation」 Examples in the annexed page

⇒ To the extent that there are no restrictions on compulsory execution at the time of accepting the compensation order or execution stage, an institutional strategy should be prepared to process personal information anonymously so that the identity of the victim is not revealed.

e. System improvement to improve low acceptance rate

▶ Inducing prompt and accurate compensation application

- If a victim files a claim for compensation during the criminal trial procedure, the claim for compensation may be dismissed due to the delay in the litigation procedure.⁵

⇒ In order to prevent delays or omissions in the request for compensation, it is necessary to strengthen procedural guidance, such as notification⁶ to the victim, etc. so that the victim can quickly apply for a compensation order at the beginning of the trial, and the court can proceed with the hearing taking this into consideration, and provide sufficient legal aid such as assistance of a public defender for the victim, etc.

- Moreover, the calculation of the amount of compensation in civil damages is divided into active property damage, passive property damage, and mental damage according to the 'theory of 3 damage divisions' and the effect of excluding further litigation is granted for each. However, there are frequent cases of applying for an order for compensation based on the total amount without distinction of the damage as above, which can cause a problem of the effect of excluding further litigation in relation to civil litigation. And if the compensation order has been

5 **【Act On Special Cases Concerning Expedition Of Legal Proceedings】 Article 25(Order for Compensation)** ③ The court shall not order any compensation when a case falls under any of the following subparagraphs:

1. Where the name and address of the aggrieved person is not evident;
2. Where the amount of damage is not specified;
3. Where whether the accused is liable for compensation, or the extent thereof, is not clear;
4. Where it is concerned that the trial proceedings are likely to be considerably delayed, due to an order for compensation, or issuing an order for compensation in the criminal proceedings is deemed unreasonable.

6 **【Act On Special Cases Concerning Expedition Of Legal Proceedings】 Article 25-2 (Notification of Application for Compensation)** Where a public prosecutor has instituted a public action against a crime prescribed in Article 25 (1), he/she shall notify a victim or the victim's legal representative (including the victim's spouse, relatives in a direct line, brothers and sisters of the victim where the victim has died) thereof that the victim can apply for compensation under Article 26 (1).

finalized, it may not be possible to claim compensation for damages via other procedures within the scope of the accepted amount⁷. Therefore, it may be a reason for hesitating to accept the claim for compensation.

⇒ It is necessary to provide sufficient information so that the victim can make a specific application according to the theory of 3 damage divisions from the stage of the application for compensation.

► Partial acceptance and activation of ex officio compensation orders

- According to the court's practical rules of trial, 「Established Rules for Claims for Compensation」, if a claim for compensation is only partially reasonable, it should be partially accepted in principle, and should not be entirely dismissed, and it is stipulated that the system of ex officio compensation orders shall be used even if there is no application for compensation.

【Established Rules for Claims for Compensation】 (Established Rules for Trial No.1470)

Article 6 (Partial acceptance and use of ex officio orders) ① Where a claim for compensation is only partially reasonable, it should be partially accepted in principle, and should not be entirely dismissed.

② **Ex officio compensation orders system shall be used** as much as possible even if there is no application for compensation, however, especially in the case that the damage of the crime for which the indictment has been instituted is cash, an order for compensation shall be issued ex officio in principle, unless there is a reason falling under Article 25 (3) of the Act On Special Cases Concerning Expedition Of Legal Proceedings.

⇒ In order to supplement the low acceptance rate of the compensation order, as stipulated in the above established rules, if the request for a compensation order cannot be fully accepted, it shall not be immediately dismissed as 'the case where the existence or scope of liability for compensation is not clear', but it is necessary to actively review whether it falls under the reasons for partial acceptance.

⇒ Furthermore, in order to remedy the rights of crime victims, it is necessary for the court to activate the ex officio compensation order. And since it is impossible to claim for damages via other procedures within the scope of the accepted amount when the compensation order is confirmed, measures to check the intention of the victim in advance must be taken together.

※ Provided that, it is necessary to stipulate it as a principle in the Act On Special Cases Concerning Expedition Of Legal Proceedings, which is a law, since setting this only as an established rules, which is an internal rule of the court, broadens the discretion of the ordering body to actual operation and reduces effectiveness.

⁷ **【Act On Special Cases Concerning Expedition Of Legal Proceedings】 Article 34 (Effects of Orders for Compensation and Compulsory Execution)** ② When an order for compensation pursuant to this Act has become final and conclusive, an aggrieved person may not demand any damage compensation by means of any other procedures within the extent of the relevant admitted amount.

4 Recommendations

a. Expansion of subjects of compensation orders to the digital sex crimes in general

- It is recommended to expand the subjects of compensation orders to all digital sex crimes in general production and distribution of 'child/juvenile sexual exploitation material' and production and distribution of illegal 'synthetic materials', in order for victims of digital sex crimes to easily receive compensation in criminal procedures, by amending the 「Act on Special Cases Concerning Expedition etc.」.
- Specific legal content (draft)

Current Act On Special Cases Concerning Expedition Of Legal Proceedings	Amendment Plan
<p>Article 25 (Order for Compensation) (1) When a conviction is to be declared in the procedures of criminal trial of the first instance or the second instance against any of the following crimes, the court may, either ex officio or upon request of the victim or his/her successor (hereinafter referred to as "aggrieved person"), order compensation for direct physical damage, medical expenses, and solatium that has occurred due to the criminal acts of the accused case.</p> <p>1. Crimes stipulated in Articles 257 (1), 258 (1) and (2), 258-2 (1) (limited to crimes under Article 257 (1)) and (2) (limited to crimes under Article 258 (1) and (2)), 259 (1), and 262 (except the crime of death or injury resulting from violence to a lineal ascendant), Chapters 26, 32 (except for such crime under Article 304), 38 through 40, and 42 of the Criminal Act;</p> <p>2. Crimes stipulated in Articles 10 through 14, and 15 (except attempted crimes referred to in Articles 3 through 9) under the 「Act on Special Cases concerning the Punishment, etc. of Sexual Crimes」 and crimes stipulated in Articles 12 and 14 under the 「Act on Protection of Children and Juveniles against Sexual Abuse」;</p> <p>3. An aggravated punishment of a crime referred to in subparagraph 1 and an attempted crime in cases of punishing an attempted crime of such crime.</p>	<p>Article 25 (Order for Compensation)</p> <p>① < Same as left ></p> <p>1. <Same as left ></p> <p>2. Crimes stipulated in Articles 10 through 15 (except attempted crimes referred to in Articles 3 through 9) under the 「Act on Special Cases concerning the Punishment, etc. of Sexual Crimes」 and crimes stipulated in Articles 11, 12, 14 and 15-2 under the 「Act on Protection of Children and Juveniles against Sexual Abuse」;</p> <p>※ Added part : Article 14-2 (Distribution of False Video Products) and Article 14-3 (Intimidation or Compulsion by Using Photograph, etc.) of the Act on Sexual Violence Punishment, Article 11 (Production or Distribution of Child or Youth Sexual Exploitation Materials) and Article 15-2 (Conversation for the Purpose of Sexual Exploitation) of the Act of Juvenile Sex Protection</p> <p>3. <Same as left ></p>

b. Newly establish the provision of partial acceptance and use of ex officio order for compensation

- It is recommended to specify the standards of utilization and operation of the compensation order clearly in the law (「Act on Special Cases Concerning Expedition etc.」) as follows: Where a claim for compensation is only partially reasonable, it should be partially accepted in principle, and should not be entirely dismissed. Ex officio compensation orders shall be able to be issued, unless it is against the victim's will.
- Specific legal content (draft)

Current Act On Special Cases Concerning Expedition Of Legal Proceedings Current	Amendment Plan
〈Newly Inserted〉	Article 25-1 (Partial acceptance and use of ex officio orders) ①Where a <u>claim for compensation is only partially reasonable</u> , it should be partially accepted in principle, and should not be entirely dismissed. ② Ex officio compensation orders shall be made as much as possible <u>even if there is no application for compensation</u> .

c. Introduction of anonymous service of compensation order to prevent the secondary damage

- It is recommended to prepare legal grounds to serve the written judgement after acceptance of compensation order, without showing the victim's identity data.
- Specific legal content (draft)

Current Act On Special Cases Concerning Expedition Of Legal Proceedings	Amendment Plan
Article 31 (Sentence, etc. of Orders for Compensation) ① An order for compensation shall be issued simultaneously with a sentence of conviction. ② An order for compensation shall be issued by ordering the payment of the specified amount in cash, and the object and amount of compensation shall be indicated in the text of conviction. Reasons for an order for compensation shall not be indicated unless they are deemed particularly necessary. ③ An order for compensation may be sentenced that provisional execution thereof can be carried out. ④ Articles 213 (3), 215, 500 and 501 of the Civil Procedure Act shall apply mutandis mutandis to a sentence of provisional execution under paragraph (3). ⑤ When an order for compensation has been issued,	Article 31 (Sentence, etc. of Orders for Compensation) ① ~ ⑤〈 Same as left 〉

Current Act On Special Cases Concerning Expedition Of Legal Proceedings	Amendment Plan
the authentic copy of a written adjudication of conviction shall be promptly served on the accused and the aggrieved person.	⑥ The court may, ex officio or at the request of the applicant, omit the entry of matters that can identify the applicant, such as the name and address, etc. in the authentic copy of the <u>sentence of conviction</u> under paragraph (5) to be served on the defendant. Provided that, in the case of an order for compensation for the crimes stipulated in Chapter 32 of the Criminal Act and the crimes stipulated in subparagraph 2 of the same paragraph, among Article 25, Paragraph 1, Subparagraph 1, matters that can identify the applicant shall not be specified.

d. Others - Need of preparing a practical plan for activating orders for compensation.

- In order to practically activate the orders for compensation, it is necessary to ① realize to raise the alimony calculation standard; ② expand the scope of recognition of material damage by reflecting the characteristics of digital sex crimes; ③ acknowledge the compensation for delay in case of delay in compensation; ④ continuously check the working manual including strengthening the procedural guidance for the victims and providing sufficient legal aid, etc.

5 Expected effects

- By expanding the scope of compensation orders to new sexual crimes mediated by digital technology in general, victims of digital sex crimes can quickly, practically and ultimately recover from damages through criminal procedures without going through a separate civil litigation procedure.
- Enhancing the practical use and effectiveness of the compensation order system by specifying the principle of partial acceptance and ex officio use of the compensation order in the 'law'
- Protect victims and prevent secondary damage from exposure of personal information of victims of sexual crimes such as digital sex crimes in the process of service and execution of compensation orders by establishing a legal basis for 'anonymous service'

[Annexed]

Estimate method of alimony for defamation

Where the social evaluation of the victim is infringed or if the victim is unable to recover his or her personal life, social life, or economic activity, etc. due to defamation, the victim may suffer as much mental pain as death or serious injury. Moreover, even if the victim suffered damage due to defamation, if compensation is not sufficient, the victim suffers from more serious mental pain. In addition, in view of the significant impact of defamation on victims, there is a great need for suppression and prevention of recurrence. It is necessary to calculate an appropriate alimony by comprehensively considering these reasons.

Estimate method

Classification		Definitions	Standard amount and increase/decrease ratio				
Stage 1– Subject of application/ Standard amount		<input type="checkbox"/> In case of personal rights infringed due to the damage to reputation or credibility by intentional or gross negligence (Applicable only to cases where the damage has reached a considerable degree beyond a minor level) • According to the degree of damage, the types are divided into : "normal damage" and "significant damage".	<input type="checkbox"/> Standard amount <table><tr><td>Normal damage</td><td>50 million won</td></tr><tr><td>Significant damage</td><td>100 million won</td></tr></table>	Normal damage	50 million won	Significant damage	100 million won
Normal damage	50 million won						
Significant damage	100 million won						
Stage 2– Additional punishment on specific crimes		<input type="checkbox"/> Acts based on false facts <input type="checkbox"/> Acts of malicious, plotting harm, or commercial purposes <input type="checkbox"/> Acts of a person or group with significant influence and acts using such by means	<input type="checkbox"/> Additionally punished amount <table><tr><td>Normal damage</td><td>100 million won</td></tr><tr><td>Significant damage</td><td>200 million won</td></tr></table> • If the damaged reputation/credit value is so great that it is difficult to compensate the damage only by applying the aggravated amount, it is possible to increase the standard amount in excess of the above aggravated amount so that compensation corresponding to the damaged value can be made.	Normal damage	100 million won	Significant damage	200 million won
Normal damage	100 million won						
Significant damage	200 million won						
Stage 3	Normal increase	<input type="checkbox"/> The perpetrator's negligence/responsibility level and the motive for the offense • Prolonged and persistent illegal acts • Illegality of information collection process <input type="checkbox"/> Individual circumstances of the perpetrator • Where the perpetrator's organizational size and financial status are significant • Where the perpetrator has obtained considerable gain; • Concealment and manipulation of evidence, or attempts thereof; <input type="checkbox"/> Victim's individual circumstances • When the damage continuously remains. • When it is difficult to recover the reputation or credibility • When significant damage that is difficult to be compensated by property damage compensation occurred	<input type="checkbox"/> Increase/decrease the standard amount or aggravated amount within the scope of ±1/2 • In case of special circumstances, it is possible to increase · decrease the amount exceeding the above range.				
	Normal decrease	<input type="checkbox"/> The perpetrator's negligence/responsibility level and the motive for the offense • When it is for public interest • When citing reports from the media, etc. • When there is a reason taken into consideration <input type="checkbox"/> Individual circumstances of the perpetrator • Serious efforts to recover the damage • When there is a report on corrections or counterarguments <input type="checkbox"/> Victim's individual circumstances • When the victim is responsible, such as providing the cause, etc. <input type="checkbox"/> Degree of damage recovery • When the reputation and credibility has been recovered considerably • When a consolation money or settlement money has been paid					

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DIGITAL SEX CRIMES TASK FORCE TEAM- EXPERT COMMITTEE

ACTIVITIES AND ACHEIVEMENTS

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전문위원회 활동과 성과



Ministry of Justice of
The Republic of Korea