

Abstract

Study on Ways for Legislation to Reinforce the Protection and Support of Stalking Victims

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I . Research Purpose and Method

The purpose of this study is to prepare a legal basis for reinforcing the protection and support of stalking victims. To this end, the study analyzed legislative bills concerning the protection and support of stalking victims proposed by lawmakers in the 20th-term and 21st-term National Assembly, reviewed the current laws related to the protection and support of victims of gender-based violence, including sexual and domestic violence, and conducted a literature review and expert counsel regarding ways for legislation to protect and support stalking victims. The contents of the study include i) confirmation of the necessity for improving laws to reinforce the protection and support of stalking victims, ii) analysis of legislative

bills proposed to the National Assembly concerning the protection and support of stalking victims, iii) analysis of laws on the protection and support of gender violence victims, iv) preparation of contents of legislation on the protection and support of stalking victims, and v) preparation of ways for legislation on the protection and support of stalking victims.

II. Research Findings

1. Ways for Legislation

In the early phase of enforcing the Act on the Punishment, etc. of Stalking Crimes, it may be possible to use the support systems and institutions for victims of domestic and sexual violence. However, it is necessary to establish a body dedicated to support stalking victims and a support system needed for them as soon as possible. Therefore, rather than making up for the related contents in the Framework Act on the Prevention of Violence against Women, or roughly including stalking victims in the scope of protection and support in the Act on the Prevention of Domestic Violence and Protection, etc. of Victims or in the Act on the Prevention of Sexual Violence and Protection, etc. of Victims, it is appropriate to make a separate law on the protection and support of stalking victims.

2. Ways of Legislating the Act on the Protection and Support of Stalking Victims

The purpose of the bill on the Act on the Protection and Support of Stalking Victims is to prevent stalking and to protect and support its victims, thereby contributing to the promotion of human rights.

In the bill, ‘stalking’ means a series of acts that cause anxiety or fear, either in person or through a third person, in the other person by threatening the safety of the life, body, or daily life of the other person or any other person closely related to the staked person. Any threat to safety includes not only threat to the life or body but also threat to safety in daily life. Whether any act of threat to safety arousing anxiety or fear falls under stalking should be comprehensively judged by putting together all the acts that constitute stalking rather than individual acts respectively because stalking is a series of acts.

It is necessary to legislate a provision on the responsibilities of the State and local governments for preventing and stopping stalking and protecting and supporting stalking victims. In this regard, the State and local governments should take measures for ① establishing and operating a stalking report system, ② conducting surveys, research, education, and public relations to prevent and stop stalking, ③ installing and operating facilities to protect and support the victims, ④ establishing protective and supportive systems for the victims to secure their safety, including the protection of personal information, ⑤ preparing safety actions to protect the personal safety of those who support stalking victims, ⑥ providing support services for the victims, ⑦ establishing and operating an interdepartmental cooperation system to facilitate the protection and support of the victims, and ⑧ improving related laws as well as establishing, implementing, and assessing policies to prevent and stop stalking and protect and support the victims. To fully carry out these responsibilities, the State and local governments should also take budgetary measures. Going beyond passive measures for stalking victims, the State and local governments should take positive measures necessary for securing the safety of the victims and for

protecting their peace and quiet in everyday life. The State and local governments should also conduct education and training necessary for those who are engaged in investigation and judgment of stalking and those who are engaged in supporting stalking victims in order to improve and promote their awareness and understanding of stalking.

Support for stalking victims should include i) support for minors or students, of whom the victims are guardians or parents, to go to a school in an area other than their place of address, ii) support for employment of the victims and people around them who came to need the support due to the stalking of the victims, iii) support for legal consultation and representation of lawsuits on behalf of the victims, iv) housing support for the victims, v) medical support for the victims, and vi) support for livelihood of the victims who have difficulty making a living. Also, support for online stalking victims should include deletion of the information related to the stalking.

Employers should not give disadvantages to who reported the stalking (that is, reporters) or workers who fell victim to stalking. No one should take measures related to the stalking that give administrative or economic disadvantages to the reporters or victims. When requested by workers who fell victim to stalking, employers should allow them necessary time to attend any investigation agency or court, to receive physical or mental treatment, and to transfer their residences for the reasons of the stalking. When leave is requested, it should be five-day paid leave. At the request of the victimized workers, employers should take appropriate measures to protect these workers, including change of business contact information, change of working hours or work places, and relocations.

To protect and support victims and to effectively prevent stalking from taking place, the State and local governments should establish and operate support centers for stalking victims. Support centers for

stalking victims should carry out the following services: ① receive stalking reports and conduct counseling on them, ② assess stalking risks and establish safety plans to secure safety, ③ support physical and mental security of the victims, etc. and their return to normal social life, ④ provide shelter, lodging and food for them, ⑤ provide medical support, including referring the victims to medical institutions for illness treatment and health care, ⑥ accompany the victims for the inquiry of investigation agencies and examination of witness at the court, etc., ⑦ request necessary cooperation and support to related agencies concerning judicial procedures, including filing accusations and compensation claims against stalkers, ⑧ conduct public relations to prevent stalking, ⑨ perform surveys and research related to stalking and stalking damages, and ⑩ other services necessary to protect the victims, etc.

3. Ways of Amending the Act on the Punishment, etc. of Stalking Crimes

First, expand the definition of stalking. Delete ‘against the will of the other person’ from the definition of stalking acts because it overlaps with other components and thus it is unnecessary. Instead, change the scope of stalking from the current one limited to ‘the other person or the stalked person’s cohabitant or family’ to ‘the other person or any person closely related to the stalked person.’ In addition, examine stalking through a third person as well in the category of stalking by main perpetrator. For the types of stalking acts, add the following to the currently listed acts: i) act of applying any service for the other person, ii) act of watching or tracking the other person or any person closely related to the stalked person, or act that makes the other person feel watched or tracked, iii) act of

impersonating the other person or any person closely related to the stalked person, or act of collecting and using the other person's information, iv) act of changing information of the other person or any person closely related to the stalked person without authority, or act of putting in false information, v) act of placing the other person's personal information, photos, images, pictures, voice, or content similar to them that can identify the other person in a state that others can recognize them, vi) act of abusing animals the other person looks after, including companion animals, or assistant dogs for people with disabilities. Finally, 'any act equivalent to the forementioned acts' should also be added to the scope of stalking to encompass various acts of stalking.

Second, expand contingency/emergency and provisional measures, and strengthen sanctions against the violation of these measures. Expand the scope of protection in the contingency/emergency and provisional measures from 'the other person who is stalked' to 'the other person and any person closely related to the stalked person' and add 'any other measure necessary for the protection' to the provisional measures. To improve the effectiveness of contingency/ emergency measures, delete the provision on the penalty against the violation of the contingency/emergency measures, and change the penalty to criminal punishment.

Third, establish a new provision on personal safety measures, and provide information related to the perpetrator's personal information and handling of the case in order to promote the safety of stalking victims by guaranteeing the victim's right to information. Also, considering the stalking victim's mental state and circumstances, appoint a defense lawyer or select a public defender for the victim, establish a provision on the examination of witness through video and other relay broadcasting devices, and apply the provision on the

protection of the victim's privacy in the investigation and ruling process.

Fourth, introduce a protection order system for stalking victims, so that they can directly file a request to the court for a protection order, including the prohibition of access to the victims, without going through investigation agencies, like the police or the prosecution.

Fifth, impose criminal punishment upon the stalker together with protective measures for the stalking victim to prevent the recurrence of stalking and to protect the victim after the stalker is convicted. Also, delete the provision on the no punishment of the offence against the victim's intention because the provision places the burden on the victim, raises the possibility of the stalker's access to the victim, and enables the stalker to be exempted.

4. Ways of Amending Other Laws to Strengthen the Protection and Support of Stalking Victims

First, amend the Framework Act on Gender Equality to lay a legal foundation for effectively implementing policies on the prevention of violence against women, encompassing stalking and violence between intimate relations, as well as policies on the protection and support of the victims.

Second, amend provisions on stalking in the Framework Act on the Prevention of Violence against Women.

Third, include stalking between family members in the Act on Special Cases Concerning the Punishment, etc. of Crimes of Domestic Violence to make it possible to take measures that reflect the characteristics of relationships between the victim and perpetrator, and to strengthen the protection of the victim in the

family.

Fourth, amend the Resident Registration Act to ease the burden of proving the reasons for changing the stalking victim's resident registration number and to prevent the stalker's access to or issuance of a copy of the victim's resident registration documents.

Research areas: gender violence and safety, laws and plans

Keywords: stalking, harassment, gender violence, violence against women, victim support