

KWDI ISSUE PAPER

Research Title Study on Ways for Legislation to Reinforce the Protection and Support of Stalking Victims
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Legal Limitations in Response to Stalking and Measures to Strengthen Victim Protection and Support

Abstract

- Following a long discussion, the 「Act on the Punishment of Stalking Crimes」 has been established and implemented, which enables sanctions and punishment of stalkers and protection of victims. However, some limitations are pointed out where the definition of 'stalking' according to this law is narrow in range, and thus means to restrict the perpetrators are insufficient, with few measures to protect and support stalking victims during and after case processes.
- This study examines the limitations of stalking-related laws and policies and makes suggestions on legislation and revision measures to strengthen the protection and support of stalking victims. The study presents suggestions for amendments to stalking-related laws to prevent stalking and promote policies for the protection and support of stalking victims, with the legislation of 「Act on Prevention of Stalking and Protection of Victims」 and 「Act on the Punishment of Stalking Crimes」 as a legal basis.

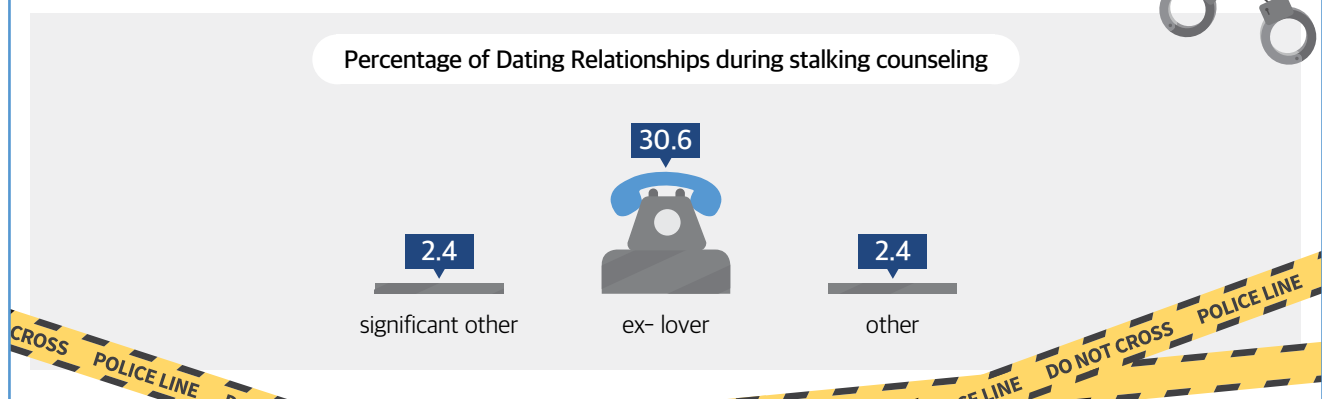
Stalking Perpetrators reported via emergency call center 1366

(Unit: Persons, %)

year	acquaintance														Stranger	total
	signi- ficant other	ex- lover	dating but not in relation- ship	spouse	ex- spouse	other	friend	school- related	work- related	service provider	met online	neighbor hood	acquain- tance of a friend	other		
number	28	358	28	0	18	6	41	2	75	21	56	131	25	204	178	1,171
percen- tage	2.4	30.6	2.4	0.0	1.5	0.5	3.5	0.2	6.4	1.8	4.8	11.2	2.1	17.4	15.2	100.0

* Source: Women's Human Rights Institute of Korea (2021) 「Report on violence against women and support in Early Stages in 2020」 10, p.19.

Percentage of Dating Relationships during stalking counseling



1. Background & Issues

- ▶ Previously, stalking has been largely understood as an abnormal and pathological obsession with celebrities, but constant counseling and research on stalking now reveals that stalking is a behavior more routine, pervasive, and gender-based. In particular, stalking is closely related to Intimate Partner Violence, such as domestic violence or dating violence, and most of talking happens in acquaintances. According to stalking counseling statistics via Emergency Call 1366 Center, 84.8% of stalking counseling was caused by acquaintances, where ex-lover accounted for 30.6% of the perpetrators, occupying the highest proportion (Women's Human Rights Institute of Korea, 2021:10). Previous studies on stalking status show that nature of stalking and characteristics of stalking relationships are gender-defined.
- ▶ However, if the stalking perpetrator is a family member, such as a spouse, or a current or ex-lover, or if the perpetrator expresses feelings such as favor or love toward the victim, there appears a tendency to understand the situation from perpetrator's perspective rather than focusing on the impact on the victim. Only considering pathological stalking as the only behavior subject to regulation while underestimating violence in close relationships might make it difficult to detect and prevent in advance socially normalized stalking that is gender-violent in nature, such as stalking in coercive control between spouses or lovers at present or in the past. It is only when daily routine events are compiled comprehensively and analyzed in the context that life-threatening stalking reveals itself. Underestimating or underrating stalking behavior in close relationships could mistakenly detach individual behavior to separately examine whether each behavior would be considered dangerous rather than collectively, and conclude not dangerous.
- ▶ With increased social awareness of gender-based violence such as dating violence or domestic violence and increased attention regarding issues of stalking cases leading to violent crimes involving kidnapping, confinement and murder, the need to treat stalking as a crime and to protect the victims. In turn, the government has arranged policies to prevent stalking and to support victims, and 「Act on the Punishment of Stalking Crimes, "Stalking Punishment Act"」 has been enforced since October 2021. However, this new law is mainly made to regulate and punish the perpetrators and does not work sufficiently as a legal basis to protect and support stalking victims.
- ▶ The National Assembly has consistently made legislative attempts to restrict stalking behavior and fill the gaps in victim protection, but most of the bills proposed were focused on handling and punishing stalking cases. However, stalking raises anxiety or fear through continuous and repetitive reach, disrupting safety, freedom, and peace of life of victims. It seems more urgent to stop stalking immediately, prevent further stalking, and secure victim's safety. In other words, protecting and supporting the victims along with sanctions against the perpetrator would be the key in responding to stalking.

2. Results

① Responsibilities of the nation and local governments

- ▶ In order to prevent stalking and to ensure that policies to protect and support victims of stalking are established responsibly and promoted effectively, it is necessary to clearly specify the accountability of the nation and local governments as well as a legal basis for budgeting and implementing major policies.
- ▶ There is a need to define the responsibilities of the state and local governments to prevent stalking crimes and protect and support the victims, such as establishing and operating a stalking reporting system. Also, considering that stalking threatens the victim's safety and peace in daily lives, happens consistently and repeatedly, in many cases occurs in close relationships present/past, can be enlarged by taking advantage of the victim's personal information, and can victimize others around the target victim, it is essential to ensure the main victim as well as other supporters safe via secured safety and support system.
- ▶ For stalking victims, it is most important to ensure safety and stability in their daily lives. This does not simply refer to passive and defensive damage prevention and recovery measures that protect victims from stalking crimes, but rather means that support should be actively provided to secure peace in life. Therefore, it would be vital to clarify the direction that stalking punishment and victim protection are headed, by separately providing for the state and local governments to take measures to maintain safety and peace in the daily lives of stalking victims. Measures to secure safety and maintain peace in the daily lives of victims include personal protection measures, accompanying daily activities, temporary protection, housing relocation support, and support to enhance the protection of the living space.

② Defining stalking and stalking victims

- ▶ The definition of stalking behavior under the 「Stalking Punishment Act」 is very narrow. 'Approaching' the other does not necessarily mean physical and direct approach like following around the victim, but should also encompass any kind of action that causes threat by reaching the victim in any form, including messages, goods, or services; that makes other closely related persons to the victim feel threatened; or that disturbs peace in daily lives of victims who feel shadowed, or watched online and offline, even without direct contact.
- ▶ However, 「Stalking Punishment Act」 mainly focuses on a physical approach online or offline, and the target of stalking to whom people or objects are delivered is limited to the victim, co-habitant or family, lacking regulations to apply to a third party. The narrow definition of stalking might reduce the scope of protection entitled for stalking victims in case of processes as well as through formal procedures of the Stalking Punishment Act.

- ▶ Until 「Stalking Punishment Act」 is revised, it would be possible to minimize limitations to victim protection and support by expanding the scope of stalking subject to victim protection under 「Stalking Victims Protection Act」 as an alternative. However, unless the definition of stalking under 「Stalking Punishment Act」 is revised, victim protection and support by the police, prosecutors, and courts in investigation and trial procedures is still limited, and thus revision is essential for victim protection.

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Stalking Victim Protection and Support System

- ▶ Victims of stalking "crime" are subject to protection and support for general crime victims, and if stalking occurs among family members, it is subject to a domestic violence victim support system. In addition, stalking victim support is provided by domestic violence and sexual violence victim support institutions. However, in any support system, there is a limit to providing adequate support fit for the impact of stalking.
- ▶ Stalking is closely related to gender-based violence and intimacy violence, and a majority of the victims are women. Providing support for victims of stalking under a support system for domestic or gender-based violence enables comprehensive support by closely examining relatedness to gender-based violence accompanied by stalking. Thus, it would be advised to strengthen support for victims of stalking related to gender-based violence and enhance competency for support within the current support system.
- ▶ However, not all stalking can be comprehended under gender-based violence context as it varies in motive, behavior, type of perpetrator, relationship with the victim, and characteristics of the victim, and there is a need for expertise in responding to stalking. It is rather difficult to cover all victims of stalking with a support system for domestic or gender-based violence, and there is a concern that providing support for victims of stalking unrelated to gender violence might burden the work or blur the responsibilities of support providing agencies.
- ▶ It is recommended that the state and local governments establish and operate victim support centers exclusively dedicated to stalking victims and cooperate with private institutions both substantially and financially, in addition to providing support for victims of stalking through domestic or gender violence support centers. In the short term, the state and local governments should establish support centers for the stalking victims in affiliation with the police, for example locating the center in the vicinity of the police station, thereby strengthening the protection of the facility users. In the mid-to-long-term, the state and local governments are expected to expand the support system by cooperating with private institutions.

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Protection and Support for Victims of Stalking

- Protection and support provided by the state and local governments
- ▶ Stalking is an act that violates the safety, freedom, and peace in the life of victims by approaching, shadowing, spying on the victim or making the victim continuously recognize the existence and interest of the perpetrator. The state and local governments are obligated to provide protection and support for victims of gender violence or stalking crimes.

- ▶ It is advised that in order to recover from the impact of stalking, understanding the nature of stalking, providing counseling, psychological counseling, and risk assessment of stalking for the victims, as well as establishing a safety plan both online and offline.
 - ▶ If the victim loses occupation due to stalking or is in financial difficulties, or if the victim or a family member of the victim has to move residence, workplace, school, etc., emergency livelihood support, short or mid-to-long-term protection, or support for schooling, residence, or employment should be provided.
 - ▶ Schooling support should not be limited to the victim and the family, but should be applicable to those affected by the impact of stalking, to ensure substantial protection. In addition, employment support should include those in need due to stalking, to minimize the economic risk caused by stalking and support recovery from the impact.
 - ▶ Legal support should be provided in civil, criminal or domestic cases, such as medical support for the treatment of the mental and physical injury caused by stalking, legal counseling and information provision, lawsuits, or claims for damages.
 - ▶ It is necessary to provide information in response to online stalking, and to support the request to remove traces of online stalking that occurred in the form of posting information that infringes personality by impersonating the victim or a close acquaintance.
- Victim protection at work
 - ▶ The victims or those influenced by stalking are vulnerable to employment or business disadvantages in the process of reporting, processing, or handling the case, and recovering from damage. It is necessary to prohibit disadvantages at work for stalking victims and reporters, and to sanction them in case of violation.
 - ▶ Where banning disadvantages for stalking victims at work is victim protection in passive form, supporting victims to recover from the impacts of stalking and secure a peaceful daily life would be considered an active one. Allowing stalking victims to take leave at work, shorten work hours, change work locations, change work hours, and switch arrangements would ensure that victims of stalking would take measures to stop the stalking and recover without economic risk.

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Protection and Support for the Victims in Processing the Case

- Sanctions against emergency measures, etc., and violations thereof
- ▶ The core of victim protection is to increase the possibility of intervention by public authority to restrict the perpetrator before continuing or repeating stalking or committing a more serious crime, so the scope of protection of emergency and provisional measures should encompass the victim and others in close relations.
- ▶ Since stalking can vary widely in its kind, provisional or emergency measures also need to be expanded or exhaustive in consideration of the multilateral and variable nature of stalking behavior.

● Safety measures

- ▶ Since 「Stalking Punishment Act」 does not stipulate safety measures for the protection of victims, there is no choice but to apply the general provisions of safety measures for the victims. As a result, the scope of personal safety measures might be reduced or preventive protection insufficient. Therefore, it is necessary to establish new regulations for personal safety measures.

● Protection of private information

- ▶ Since stalking is basically a form of approaching the victim, it is important to protect the victim's information in order to prevent further access and impact, but it is often inevitable to collect private information of the victim in the judicial procedures and are prone to be exposed to suspects and defendants.
- ▶ There have been efforts to secure the safety of victims in the form of measures and related bills, but there is still a limit to covering or taking protective measures after submitting the information. It is necessary to implement a system that enables pseudonym processing of all records, so that victims of the crime, including those of stalking, are sufficiently protected and can claim compensation for damage.

● Protection and support for victims in investigation or interrogation procedures

- ▶ The 「Stalking Punishment Act」 does not take measures to protect and support victims in investigation and trial procedures, except for an exclusive investigation system.
- ▶ Since securing the safety of victims and private information for stalking is utmost important than any other crime and there is a high need for legal support, it is advised to apply measures for victims of sexual violence such as closed hearing, interrogation or witness examination using transmissive media, e.g. video, lawyer support system for legal assistance. Applying 「Act on Protection of Specific Crime Informants」 as in 「Act on Special Cases Concerning the Punishment of Sexual Crimes」 will also help protect the private information and personal safety of victims of stalking.

● Providing information about victims

- ▶ By allowing access to information about the perpetrator would enable the identification of the stalker as well as the processing of the case, it would enable the counterpart to plan for safety and gain control of daily life. Considering the characteristics of stalking centered on continuous and repetitive approaches, it is necessary to actively guarantee the victim's information rights by reinforcing notification to the victim even if there is no risk of retaliation, and releasing the notification only upon the victim's request.

● Victim protection order

- ▶ The 「Stalking Punishment Act」 does not have a victim protection order system, in which victims, etc., can directly apply for protective measures to the court. It is necessary to revise the law so that the victim protection order can be received at the request of the victim, etc., to the court without necessarily going through an investigative agency.

● Ensuring Sustainability of Victim Protection

- ▶ There is a possibility that there will be a gap in the protection of victims when the provisional decision becomes ineffective in accordance with the non-prosecution disposition or non-delivery decision. Temporary measures are aimed at "protecting victims", and in some cases, it may be necessary to continue protecting victims through prohibition or other measures even after non-prosecution or non-delivery decisions. In order to maintain victim protection measures while decision is made again according to the need for victim protection for each case, it would be reasonable to remove the clause with automatic loss of effect for the provisional decision.
- ▶ To protect the victim in case of continued or recurred stalking after the conviction, orders prohibiting stalking, including summary orders, suspended sentences, and probation, online and offline, direct or with any third party, are required to be imposed.

3. Policy Suggestions

● Legislative measures to strengthen the protection and support of victims of stalking

- ▶ It is appropriate to establish a necessary support system for victims of stalking by enacting independent legislation on protection and support for victims of stalking, and to found an agency dedicated to the matter.

● 「Act on Prevention of Stalking and Protection of Victims」 Recommendations

- ▶ The enactment of the 「Act on Prevention of Stalking and Protection of Victims」 is aimed at the prevention of stalking and the protection and support of victims and thereby contributing to the promotion of human rights. The component of the legislation is as follows.

<Table 1> components of 「Act on Prevention of Stalking and Protection of Victims」

Article 1 (Purpose)	Article10 (Medical support)
Article 2 (Definition)	Article11 (Livelihood support)
Article3 (Responsibilities of the state and local governments)	Article12 (Support for removal of information)
Article4 (Protection of safety and peace in life)	Article13 (Prohibition of disadvantages against the victim)
Article5 (Education·Training)	Article14 (Protection of victim worker)
Article6 (Schooling support)	Article15 (Support institutions)
Article7 (Employment support)	Article16 (Respecting the victim's opinion)
Article8 (Legal support)	Article17 (Confidentiality obligation)
Article9 (Housing support)	Article18 (Penalty)

- ▶ "Stalking" in the law refers to a series of acts that threaten the life, body, and life safety of the other party or a person closely related to it, directly or through a third party, causing anxiety or fear to the counterpart. The threat of safety includes not only the threat of safety to life or body, but also the act of threatening safety in life. Stalking is a series of actions, and the threat of safety, anxiety, or fear should not be considered individually, but should be viewed collectively as constituting stalking.
- ▶ The state and local governments should have responsibility provisions to prevent stalking and protect and support victims. The government and local governments shall establish measures to secure the safety of victims by: (1) operating a stalking report system; (2) Research, education and promotion for stalking prevention; (3) Founding and operating institutions for victim support; (4) Protection and support system for victim protection through information provision; (5) Safety measures for victim protection; (6) Provision of other support services for the victim; (7) Cooperative system among agencies for support system; (8) Establishing legislation or policies for stalking prevention and victim support. These measures should be pursued in accordance with budgeting support. The state and local governments should take necessary measures to actively secure the safety of victims and protect their daily lives, and provide necessary education and training for stalking investigators, trial workers, and stalking victims to raise awareness and a better understanding of stalking.
- ▶ Support for stalking victims includes support for school attendance for minors or students under the protection of victims, employment support including those around victims, legal counseling and legal representation, housing support, medical support, and support for removing personal information of online stalking victims.
- ▶ It is prohibited to disadvantage the reporter or worker related to stalking, or for anyone to cause any administrative or economic disadvantage to the reporter or victims of stalking. It is mandatory to allow stalking victims to claim time for stalking-related reasons such as attending investigative agencies and courts, physical and mental treatment, and relocation of residence, and upon request of the victim, appropriate measures should be taken to protect the victim. Here, the subject refers to employers under the 「Labor Standards Act」 as well as employers under the 「Act on the Protection of Temporary Agency Workers」, and the "victim workers" can cover indirect employment, special employment, and platform labor, including those who provide work similar to the employees.
- ▶ In order to protect and support victims and to effectively prevent the impact of stalking, the state and local governments shall establish and operate stalking victim support centers. The duty of these support centers should include, but are not limited to, (1) stalking report and counseling; (2) risk assessment and safety planning for securing safety; (3) providing for physical and mental stability for victims; (4) providing food and accommodation for the victims; (5) providing medical support; (6) accompanying to investigation and witness examination; (7) request for cooperation to affiliated institutions regarding legal procedures; (8) promotion for stalking prevention; (9) research on the impact of stalking; (10) other protection measures.

● Revising Act on the Punishment of Stalking Crimes

- ▶ In the definition of "stalking behavior", the phrase "against the other's will" not only shifts the focus from the perpetrator to the victim, but is also unnecessary since it overlaps with other components and thus should be deleted. Also, the subject of stalking which is currently defined as "counterpart, or the cohabitant or family", is advised to be changed to "the counterpart or a close acquaintance". Stalking through third parties can be examined in the category of stalking.
- ▶ It is recommended that the definition of stalking behavior is changed to an example regulation, including examples and comparisons. Adding to the comprehensive supplementary requirements would enhance clarity and minimize omission during interpretation. Types of stalking are: (1) requesting for service to the counterpart; (2) behavior that makes the counterpart or close acquaintances feel spied upon, shadowed, or are felt so; (3) collecting information or impersonation of the counterpart, close acquaintance, or a third party; (4) unauthorized alteration or false submission of information; (5) leaving private information or identifiable photos, videos, pictures, voice memo, or other contents at a recognizable state; (6) abusing pets or those in care, or guide dogs; and other various acts of stalking in comprehensive interpretation including "equivalent behavior".
- ▶ Emergency and provisional measures should be expanded, and sanctions strengthened when violated. The scope of protection of emergency and provisional measures should be extended from "the counterpart" to "the counterpart or close acquaintance", and "other measures necessary for protection" to the provisional measures should be added. The clauses automatically remove the effect of the provisional measure decision due to non-prosecution or non-delivery decision. In order to improve the effectiveness of emergency measures, the provisions of fines for violations of emergency measures are deleted and changed to criminal punishment. To enhance the effectiveness of emergency measures, fines or penalty measures for violations of emergency provisions are deleted, and are referred to as a criminal punishment.
- ▶ A new clause for personal safety measures should be established, and stalking victims should be provided with information about the perpetrator and information on case status to ensure safety by guaranteeing the victim's right to information. In addition, as for allocating lawyers according to victim hearing and other situations, and for witness interrogation broadcasted via media, certain sections for protecting private information, excluding retaliation components, is applicable from 「Act On Protection Of Specific Crime Informants」.
- ▶ Victims protection is strengthened by introducing a victim protection system where the counterpart can directly request a protection order, such as the prohibition of access to the court without through agencies such as the police or prosecution, adding other necessary measures for each type of protection order.
- ▶ To prevent the recurrence of stalking and to protect the victim after the conviction, punishment and victim protection measures should be applied side-by-side. In addition, an article on offence unpunishable over objection should be deleted since it burdens the victim, increases the accessibility of stalkers to the victim, and enables exemption of the perpetrator.

References

Women's Human Rights Institute of Korea (2021) *Report on violence against women and support in Early Stages in 2020: Seoul*.

Managing departments: Women's and Youth Rights Protection Division, Women's and Youth Rights Policy Division and Women's Policy Division of Ministry of Gender Equality and Family / Criminal Legislation Division of Ministry of Justice / Resident Service Division of Ministry of the Interior and Safety