

Research Title

Gender Analysis of Precedents on Digital Sexual Crimes: Focusing on Crimes Related to Filming and Distributing Intimate Images

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Judicial Decisions and Recommendations for Legal and Sentencing Reform Regarding Crimes Involving Intimate Images

Abstract

- ▶ Recent legislative reforms have introduced higher statutory penalties for digital sexual crimes, new offense categories, and sentencing guidelines. However, a significant number of cases still remain beyond the reach of effective punishment and regulation, and concerns persist that the law continues to be applied with undue leniency.
- ▶ This study conducts a qualitative analysis of judicial decisions in cases involving intimate image-related offenses, focusing on case characteristics, judicial reasoning, and the application of sentencing guidelines, alongside a quantitative analysis of sentencing patterns. From a gender-sensitive perspective, the study examines judicial tendencies, evaluative criteria, and the practical operation of sentencing guidelines in cases involving the production and distribution of intimate images. Based on these analyses, it identifies key limitations in existing legal frameworks and judicial practices concerning intimate image-related offenses.
- ▶ Drawing on these findings, the study proposes the following measures for legal and sentencing reform:
 - With respect to the legal definition and adjudication of offenses involving intimate images: (1) the removal of the requirement of 'sexual desire or shame,' alongside the incorporation of a context-sensitive understanding of sexual conduct; (2) the restructuring of offense categories — such as the production, manipulation, distribution, and consumption of intimate images — in accordance with underlying legislative intent; and (3) the refinement of legal interpretation and targeted statutory amendments to ensure the effective imposition of sanctions.
 - With respect to sentencing decisions and the improvement of sentencing guidelines for crimes involving intimate images, the study recommends the stricter application of sentencing factors, the development of more detailed evaluative criteria, the elimination of certain sentencing factors, the revision of existing criteria, and broader systemic adjustments in sentencing practices.

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Classification	Sentencing Factor	Proposed Reform
Measures for the Interpretation of Constituent Elements and Legal Reform	Removal of the 'sexual desire or shame' requirement and adoption of a context-sensitive interpretation	
	Reconfiguration of offense categories — such as the filming, manipulation, distribution, and consumption of intimate images — in line with legislative intent	1) Establishment of the concept of non-consensual 'creation' of intimate images 2) Refinement of the concepts of non-consensual distribution and consumption of intimate images
	Ensuring effective enforcement through enhanced legal interpretation and partial statutory amendments	1) Introduction of aggravated penalties for the filming and distribution of intimate images involving personal data 2) Abolition of the offense of distribution for non-commercial purposes 3) Application of possession offenses to the possession or control of links 4) Introduction of a new regulatory provision covering the continued non-consensual possession of intimate images 5) Rigorous enforcement of provisions on habitual offending 6) Aggravated punishment for habitual offenses involving the consumption of intimate images and the distribution of child and adolescent sexual exploitation material 7) Criminalization of threats or coercion involving deception about intimate images
Sentencing Determination and Reform of Sentencing Guidelines	Non-punishment upon victim's request	Strict application and the development of more detailed evaluative criteria
	Substantial recovery of harm (including deposit/escrow)	Removal as a mitigating factor or revision to reflect a victim-centered evaluation of harm recovery
	Prior convictions or criminal record	Limitation of mitigation to defendants who qualify as genuine first-time offenders
	Measures to prevent the further dissemination of harm	Restriction to cases involving the actual cessation of distribution
	Causing severe harm to the victim	1) Deletion of 'sexual shame' from the category of psychological harm 2) Recognition of identifiability (i.e., the possibility of confirming the victim's identity) as an aggravating factor
	Victims in vulnerable situations	Application not limited to cases involving the explicit 'exploitation' of vulnerability
	Harm caused during attempts at settlement	Expansion to include secondary victimization, regardless of whether it occurs during the settlement process
	Minor harm	1) Cases in which the content of the filmed material is difficult to discern, or in comparable circumstances: removal from mitigating factors 2) Discontinuation of mitigation practices based on non-distribution or limited distribution of the material 3) Cases involving minimal levels of threat or coercion: removal from mitigating factors
	Particularly egregious methods of offending	1) Distribution through highly transmissible means: establishment of a clear definition and inclusion as a distinct aggravating factor 2) Aggravation in cases involving the filming and distribution of intimate images that include personal data
	Sincere remorse	Introduction of additional grounds for exclusion from its application as a mitigating factor

1 Research Background and Problems

- ▶ Following the 'Nth Room' case, a Telegram-based sexual exploitation scandal, legislative reforms relating to digital sexual crimes were introduced, including higher statutory penalties and the introduction of new offense categories, such as the consumption of sexually exploitative materials and the production and distribution of fabricated or manipulated images. In addition, sentencing guidelines for digital sexual crimes were established and have been in effect since 2021 in order to ensure effective punishment.
- ▶ Despite these legislative reforms, cases continue to fall outside the reach of existing punitive and regulatory frameworks. Critics have further pointed out that comparatively severe sentences have been imposed only in a small number of high-profile cases that attract significant public attention, while the reforms appear to have had little substantive impact across the broader spectrum of cases.

- ▶ At the level of judicial decision-making, concerns have been raised regarding statutory interpretation resulting from legislative gaps or unduly lenient judicial approaches. As a result, the law has been applied in ways that are inconsistent with its underlying legislative intent. Further criticism has been directed at the failure to properly reflect established criteria for assessing sentencing factors, as well as the unwarranted reduction of sentences through unjustified mitigating considerations.

2 Findings and Analysis

◉ Judicial Approaches and Limitations in Cases Involving Intimate Images

- ▶ An analysis of judicial interpretations of the constituent elements under Article 14 of the Act on Special Cases Concerning the Punishment of Sexual Crimes — which governs the filming, distribution, and consumption of intimate images — and Article 14-3, which addresses threats or coercion using such images, reveals that certain forms of conduct infringing upon legally protected interests — namely, the victim's sexual autonomy and general personal rights — are not fully captured by existing criminal provisions. These gaps stem either from the limitations of textual interpretation or from deficiencies in the statutory framework itself.
- ▶ In offenses involving illicit recording using cameras or similar devices, the primary issues concern the absence of the victim's consent and the nature of the subject being recorded.
 - With respect to the absence of consent, evidentiary difficulties arise in cases where the victim appears to be facing the camera, making it challenging to establish non-consent.
 - Although the statutory requirement that the filmed material be capable of arousing 'sexual desire or shame' has been interpreted more broadly, by considering the context of the filming and the nature of the material rather than limiting the analysis to subjective feelings of embarrassment, limitations remain. Specifically, where sexual intent is not readily discernible from factors such as camera angle or distance, yet the material is produced with sexual intent and later distributed or consumed within a sexualized context, such conduct may escape criminal punishment. Furthermore, by interpreting the object of filming as limited to the 'direct' capture of another person's body, acts of indirect filming that are substantively equivalent to direct filming may be excluded from criminal liability.
- ▶ In cases involving the distribution of intimate images, several interpretive issues have arisen, including whether the distribution occurred against the victim's will, the definition of the subject matter of distribution ('filmed material or its reproductions'), the scope of the statutorily defined categories of prohibited conduct, and the interpretation of 'for-profit intent.'
 - Courts generally determine the absence of consent to distribution by considering factors such as the content of the material and the identifiability of the victim. Absent exceptional circumstances, such as the victim's explicit consent, courts tend to find that the victim did not consent to the dissemination of the material. In some cases, prosecution proceeds under general obscenity laws, where the victim's consent is not at issue. However, given the relatively low statutory penalties for such offenses, the defendant's culpability may be recognized at an inappropriately reduced level.

- Because the object of non-consensual distribution offenses is defined as ‘filmed material or its reproductions,’ courts have interpreted indirectly generated images as ‘reproductions,’ thereby extending punishment to cases where the body is not directly filmed and reflecting the legislative intent to prohibit such dissemination. However, this approach relies on distinctions among ‘original images,’ ‘reproductions,’ and ‘reproductions of reproductions.’ At the same time, Article 14(1) continues to hinge on whether the act constitutes direct or indirect filming, meaning that, irrespective of legislative intent, punishment may still be precluded based on this distinction. This indicates a need for legislative reform.
 - Structural limitations in the legal framework require that conduct fall within one of the six enumerated categories of non-consensual distribution for criminal liability to be established. This has led to gaps in criminal enforcement. For example, acts constituting ‘provision’ may be prosecuted as ‘distribution,’ resulting in acquittal. Likewise, conduct involving merely showing the material without transmitting it to a third party, or sending it to the victim’s family members, may result in acquittal or prosecution only for lesser offenses, such as the offense of obscene communication via telecommunication media. Consequently, certain acts that enable third parties to view intimate images against the victim’s will remain beyond the reach of criminal sanctions. Moreover, in cases involving real-time streaming in which another person’s body is partially exposed, only the offense of non-consensual filming is recognized, because real-time dissemination is not treated as a separate act of distribution, precluding criminal liability for distribution.
 - With respect to the interpretation of ‘for-profit intent,’ courts generally recognize indirect gains derived from the unlawful act as sufficient to establish such intent. However, inconsistencies remain, as there are cases in which the for-profit provision has not been applied despite evidence that the material was sold, underscoring the need for further legislative clarification.
- ▶ Even in cases where a perpetrator has repeatedly filmed multiple victims using similar methods, courts have often applied only the basic offense of illegal filming using cameras or similar devices, without recognizing the conduct as constituting a habitual offense. As a result, the enhanced penalties applicable to habitual offenders are not imposed.
- ▶ With respect to the consumption of intimate images, four categories of conduct are prohibited by law. The analysis focuses on issues concerning the role of consent, the legal assessment of link-based possession, and the treatment of possession as a separate offense from filming.
- Offenses involving the consumption of intimate images are recognized only where the filming or distribution occurred against the will of the subject. Because the legal framework does not address whether the act of consumption itself occurs without the subject’s consent, it fails to regulate cases in which intimate images are obtained without the subject’s consent despite the absence of non-consensual filming or distribution, as well as cases in which a person continues to possess such images after the subject has withdrawn consent.
 - Courts have held that transmitting a link enabling the download of such material constitutes distribution. However, the Supreme Court has ruled that merely receiving a link—without proof that the material was actually downloaded through that link—does not satisfy the elements of possession. Accordingly, while purchase may be established where payment is proven, it is often difficult to prove such payment. Moreover, where links are obtained free of charge, prolonged possession through such links may escape criminal liability.

- Where material is copied from the storage medium used at the time of filming to a different storage medium, the possession offense is applicable. However, cases have arisen in which perpetrators copied intimate images to a new storage medium, yet the possession offense was not applied, making it impossible to confiscate the storage medium to which the files had been transferred.
- ▶ The offense of threats or coercion using intimate images is currently limited in scope to ‘filmed material,’ and courts tend to require proof that such material was in fact created.
- Although consensually filmed material falls within the scope of the offense, intimate audio recordings do not. Accordingly, where a perpetrator uses such recordings to threaten or coerce a victim, the enhanced penalties provided under this provision do not apply.
- Courts have held that, for the offense of threat or coercion using intimate images to be established, it is not necessary that the material be shown to the victim or that there be a realistic likelihood of its distribution. Accordingly, the offense may, in principle, be established even where the material no longer exists at the time of the offense. However, courts have also held that the material must at some point have actually been created. As a result, where the creation of the material cannot be proven—or where a perpetrator threatens to distribute another person’s intimate images by deceiving the victim into believing that those images depict him/her—only the general offense of intimidation under the Criminal Act is available.

● Analysis of Judicial Decision-Making Based on Case Characteristics in Crimes Involving Intimate Images

▶ Sexual Filming and the Use of Intimate Images in Intimate Partner Relationships

- In the context of sexual interactions between intimate partners, non-consensual filming frequently occurs as a normalized practice. In numerous cases, defendants filmed their partners without seeking consent, continued filming despite their partners’ explicit refusal, or persistently pressured the victim until ostensible ‘consent’ was obtained. Although the presence of consent or acquiescence may lead courts to conclude that the conduct does not constitute non-consensual filming, cases classified by courts as ‘consensual filming’ do not necessarily reflect genuine, voluntary consent grounded in trust and mutual respect.
- When defendants assert implied consent based on an intimate relationship, courts generally hold that prior consensual filming, such as recordings of sexual activity, does not constitute continuing or blanket consent to future filming within the relationship. Nevertheless, in some cases, the existence of an intimate partner relationship has been considered a mitigating circumstance in sentencing.
- Within intimate relationships, perpetrators often exploit their relatively greater access to their partner’s digital devices or accounts to obtain intimate images without authorization. Such images are subsequently used as tools of control within the relationship. Threats to distribute intimate images are frequently used as a means of coercion in the context of intimate partner violence, particularly following the breakdown of the relationship. Indeed, most instances of threats involving intimate images occur as a form of post-separation abuse.

- The voluntary sharing of intimate images entails inherent risks, as such sharing is effectively irreversible. While individuals in intimate relationships may share such images with the expectation that they will not be disclosed to third parties or will be promptly deleted, there is no effective mechanism to enforce deletion once the images have been recorded or transmitted. Consequently, even after the relationship has ended, the former partner may continue to possess and exploit the images.
 - Gender-discriminatory and heteronormative norms surrounding sexuality provide the structural basis for the use of intimate images as instruments of coercion and control, particularly against women and sexual minorities.
- Sexual Filming Involving Children and Adolescents and the Restrictive Interpretation of ‘Child and Adolescent Sexual Exploitation Material’
- In cases where children and adolescents are victims, non-consensual filming and threats of dissemination frequently occur during intimate relationships or as part of post-separation abuse. There are also instances in which filming takes place as an extension of physical sexual violence within the family.
 - In cases involving strangers, perpetrators typically approach children and adolescents through open chat platforms, social networking services (SNS), and messaging applications. Where initial contact occurs online, perpetrators often do not need to meet victims in person; instead, they obtain sexually intimate images through a range of coercive tactics, including grooming, coercion, and threats.
 - The patterns and dynamics of victimization vary significantly by gender. In particular, some male victims subsequently become perpetrators themselves, contributing to the expansion and perpetuation of offending networks.
 - Crimes involving the non-consensual filming of children and adolescents would ordinarily attract enhanced penalties under the provisions governing the production and distribution of child and adolescent sexual exploitation material in the Act on the Protection of Children and Youth Against Sex Offenses. However, courts have in some cases acquitted defendants or instead convicted them of the offense of non-consensual filming, which carries comparatively lower penalties, under the Act on Special Cases Concerning the Punishment of Sexual Crimes, on the grounds that the conduct does not fall within the statutory definitions of “child and adolescent sexual exploitation material” or “production.” This trend reflects an unduly lenient judicial approach to such offenses.
- Compounded Exploitation Through Filming in the Context of Prostitution, and the Formation of Sustained Perpetrator-Victim Relationships
- In the context of prostitution, the production and use of intimate images function as mechanisms for concealing the offense, disseminating the material, economic extortion, and ongoing sexual exploitation. These practices create a continuous cycle of victimization that extends beyond the initial act of prostitution.
 - Despite the widespread occurrence of sexual filming in the context of prostitution, the number of corresponding judicial decisions is relatively limited. This finding suggests that adult women who experience non-consensual filming and threats of distribution in connection with prostitution are far less likely than child and adolescent victims to report such offenses or obtain successful prosecutions.

- Defendants who initially meet victims under the pretext of engaging in consensual commercial sex frequently proceed to film without the victim's knowledge or in disregard of explicit refusal. In some cases, victims who resist filming are subjected to physical violence and additional criminal acts. The images obtained in this manner, along with records of commercial sex or related encounters, are subsequently used as instruments of coercion, enabling perpetrators to exert ongoing control over victims and to compel continued compliance with minimal risk of being reported.

► Victims Rendered as 'Obscene Material' and Inadequately Addressed Rights Violations

- Crimes involving intimate images are governed not only by the offenses of non-consensual filming and non-consensual distribution, but also by offenses such as the use of communications media to distribute obscene material and the general distribution of obscene material, under which the material is treated as 'obscene.' These provisions are primarily applied in cases where the victim's wishes are difficult to ascertain or where the defendant's knowledge that the conduct was against the victim's will cannot be readily established. However, with respect to conduct that falls outside the scope of existing legislation—such as the transmission of material to the subject or the subject's family members, or the sexual manipulation and distribution of otherwise ordinary photographs—even where the material is distributed against the victim's will, it is treated as 'obscene material.'
- When the sharing of obscene material forms the basis of criminal liability, the law does not prohibit the sharing of another person's intimate images irrespective of that person's will. Furthermore, a person whose intimate images have been transmitted to them by another, or whose ordinary images have been combined with other text or sexually manipulated and used in contexts of sexual degradation, is—even where a conviction for the use of communications media to distribute obscene material or for the distribution of obscene material is secured—treated merely as a recipient of obscene material. The victim, as the person depicted in such material, is reduced to a mere component of it, and the nature of the rights infringed upon is left insufficiently articulated.

● Changes Before and After the Implementation of Sentencing Guidelines for Digital Sexual Crimes

- According to the annual reports of the Sentencing Commission, the number of judicial decisions involving digital sexual crimes — such as illegal filming using cameras or similar devices and the distribution of such materials — has increased each year. While the overall compliance rate with sentencing guidelines across all categories of offenses was 92.2% in 2021 and 92.1% in 2022, the compliance rate for digital sexual crimes was significantly lower, at 81.6% in 2021 and 80.7% in 2022 — more than 10 percentage points lower than the overall average (Sentencing Commission, 2022: 243; Sentencing Commission, 2023: 261).
- The Sentencing Commission's annual reports indicate that, following the introduction of the sentencing guidelines, both the proportion of custodial sentences (i.e., unsuspended imprisonment) and the average sentence length have increased. Compared with bodily injury offenses, crimes involving intimate images are associated with higher guideline ranges and longer average sentences, while the proportion of sentences falling within the mitigated range is lower. However, a different pattern emerges when sentencing distributions are compared across offense types. For bodily injury offenses, average sentences fall within both the standard and aggravated ranges. In contrast, for illegal filming offenses, average sentences fall only within the standard range, while for distribution-related offenses, they fall within the mitigated and standard ranges. This suggests that, despite the relatively higher guideline ranges for distribution-related offenses, actual sentencing practices have not fully reflected those higher ranges.

Quantitative Analysis of Sentencing in Crimes Involving Intimate Images

- ▶ With respect to sentencing outcomes, suspended sentences of imprisonment constituted the largest proportion, accounting for 54.6% of all defendants. This was followed by fines (29.2%), unsuspended imprisonment (14.2%), and suspended pronouncements and other dispositions (1.9%). The average term of imprisonment imposed was 13.2 months, while the average term of imprisonment with suspension was 24.9 months. The average fine amounted to KRW 5,245,000. Confiscation of evidence was ordered in 72.8% of cases, while destruction of evidence was ordered in 12.7%.
- ▶ In terms of the applicable legal provisions and offense types, filming-related offenses accounted for the overwhelming majority (92.2%), followed by distribution-related offenses (12.8%), possession-related offenses (5.6%), habitual offenses (0.9%), and for-profit distribution offenses (0.6%).
- ▶ Regarding victim characteristics, the vast majority of victims were female (90.3%), while male victims accounted for 6.1%. In the remaining 3.7% of cases, the victim's gender could not be identified. Percentages have been rounded to one decimal place; therefore, the total may exceed 100%. In terms of age distribution, individuals aged 19-29 years constituted the largest group (41.6%). Cases involving multiple victims (52.8%) were slightly more common than those involving a single victim (47.2%).
- ▶ As for aggravating factors or other unfavorable sentencing circumstances, the most frequently cited was 'particularly egregious methods of offending' (58.6%), followed by 'failure to obtain forgiveness from the victim' (37.3%), 'causing severe harm to the victim' (30.1%), 'offenses targeting unspecified or multiple victims or offenses repeated over a substantial period' (22.4%), 'significant social harm and risk' (19.4%), and 'prior criminal record' (18.3%).
- ▶ In contrast, mitigating factors or favorable circumstances most commonly included 'absence of prior criminal record' (77.8%), followed by 'voluntary surrender or confession and full disclosure of the offense' (64.2%), 'sincere remorse' (59.0%), 'efforts toward substantial recovery of harm (including court deposits)' (34.8%), 'non-distribution or limited distribution of the material (including dissemination within restricted settings such as small group chats)' (31.0%), and 'non-punishment upon the victim's request' (20.7%). Additionally, 'undergoing or having undergone psychiatric treatment or counseling following the offense' and 'participation in or completion of sexual violence prevention education' were observed in 4.5% and 3.9% of cases, respectively.
- ▶ A higher frequency of offending conduct—such as the number of instances of filming, distribution, or possession—was associated with an increased likelihood of unsuspended imprisonment, indicating that more severe punishment is imposed in cases involving repeated or extensive criminal acts. At the same time, defendants who received suspended sentences or suspended pronouncements tended to have made relatively larger court deposits, suggesting that larger court deposits may influence the imposition of more lenient outcomes, including suspended sentences. The analysis also indicates that cases explicitly involving child or adolescent victims were subject to more stringent punishment than cases in which no minor victim was identified.
- ▶ An examination of sentencing outcomes in relation to aggravating factors shows that more severe penalties were imposed in cases where the following considerations were cited: 'particularly egregious methods of offending,' 'causing severe harm to the victim,' 'offenses committed against unspecified or multiple victims, or repeatedly committed over a substantial period,' and 'prior criminal record.' In addition, statistically significant differences in sentencing outcomes were observed depending on whether factors such as 'lack of forgiveness from the victim,' 'failure to reach a settlement,' or 'the victim's explicit request for severe punishment' were referenced in the court's reasoning.

- ▶ Conversely, analysis of sentencing outcomes in relation to mitigating factors indicates a tendency toward more lenient punishment—reflected in a lower proportion of unsuspended prison sentences and a higher proportion of suspended pronouncements—when factors such as ‘absence of prior criminal record,’ ‘sincere remorse,’ ‘substantial or meaningful efforts toward recovery of harm’ (including court deposits), ‘non-punishment upon the victim’s request,’ ‘removal of the images and implementation of effective measures to prevent further dissemination,’ and ‘the defendant’s stable social ties’ were cited. Furthermore, mitigation was often applied on the basis that the material had not been distributed or had only been distributed to a limited extent, or on the grounds that the defendant had undergone or was undergoing psychiatric treatment or counseling following the offense.

● Qualitative Analysis of Sentencing in Crimes Involving Intimate Images

▶ Application of Mitigating Factors among Special Sentencing Factors

- In some cases, the factor ‘the content of the filmed material is not readily discernible or other similar circumstances’ has been treated as a mitigating consideration, even where the lack of clarity resulted not from deliberate manipulation by the defendant, but from inadvertence or poor camera operation. Rather than recognizing this as a special mitigating factor, the sentencing guidelines should be amended to treat the distribution of intimate images together with information capable of identifying the victim as an aggravating factor.
- Cases have also been observed in which sentence reductions were granted on the basis of ‘substantive measures to prevent further dissemination of harm,’ grounded solely in the defendant’s deletion of filmed material or the deletion and monitoring of harmful content through a digital content removal service, without verifying whether those measures actually contributed to the victim’s recovery.
- In some cases, courts have granted sentence reductions on the ground of ‘non-punishment upon the victim’s request’ where defendants reached financial settlements despite the absence of genuine remorse. Under the definition of this sentencing factor, the mitigating effect of ‘non-punishment upon the victim’s request’ should not apply where the defendant has not demonstrated genuine remorse.
- Where offenses are committed against an unspecified number of victims—in many instances without the defendant even knowing the victims’ identities—a further problem has been identified: sentence reductions have been granted based solely on the wishes of those victims whose identities have been confirmed not to seek punishment.

▶ Application of Aggravating Factors among Special Sentencing Factors

- Where a defendant planted a hidden camera in advance, or distributed a victim’s personally identifying information together with intimate images via social media platforms or other highly transmissible means, such conduct has been treated as ‘a particularly egregious method of offending’ and applied as an aggravating factor.
- Where a defendant publicly distributed intimate images of a former partner out of retaliatory hostility or animus, or threatened the victim with distribution while transmitting the images to the victim, such conduct has been treated as ‘a reprehensible motive’ and applied as a basis for aggravated punishment.

- Cases in which the factor ‘victim vulnerable to the offense’ was applied as an aggravating consideration—where the victim was particularly vulnerable to the offense because of physical or mental disability or age at the time of the offense—were relatively infrequent.
- Where an offense was recognized as causing ‘extreme sexual shame’ to the victim, the factor ‘causing severe harm to the victim’ was applied as an aggravating factor.

► Application of General Sentencing Factors and Consideration of Mitigating Circumstances

- There are cases in which defendants initially denied the charges during the investigative stage but later expressed remorse at trial, and despite the victim’s explicit request for severe punishment, courts mechanically recognized ‘sincere remorse’ as a mitigating factor based solely on formal written statements of apology.
- Although the sentencing guidelines for digital sexual crimes provide that mitigation should be excluded where a defendant has repeatedly committed offenses against unspecified or multiple victims—even in the absence of prior criminal convictions—numerous cases have nonetheless applied mitigation on the basis of ‘no prior criminal record,’ despite the offenses having targeted an indeterminate number of victims.
- Cases have further been identified in which prior offenses of the same kind were noted as an adverse circumstance, while simultaneously the absence of any criminal record other than those same prior offenses was cited as a favorable circumstance, thereby effectively precluding consideration of those prior offenses as an aggravating factor.
- While court deposits are intended to be recognized as mitigating factors on the basis of ‘substantial recovery of harm,’ courts have in some instances granted mitigation solely on the basis of the deposit itself, even where the victim has not granted forgiveness and no actual settlement has been reached. Similarly, mitigation has been applied where deposits were made for only a subset of multiple victims.
- In offenses involving illegal filming, courts often grant sentence reductions on the ground that the defendant ‘did not distribute’ or ‘did not sell’ the material, effectively treating the absence of distribution as a routine mitigating factor in filming offenses.
- Mitigation has also been applied in cases where the filmed content involved body parts already visible in public, or where the degree of exposure was deemed minimal, on the grounds that the defendant’s awareness of illegality was limited, that the infringement of rights or personal dignity was not severe, or that the degree of sexual humiliation was low.
- There are instances in which mitigation is granted on the basis that the victim had previously taken the images themselves, had consented to filming in the past, or had been in an intimate relationship with the defendant. This reflects the persistence of normative expectations regarding “ideal victimhood” in the sentencing of crimes involving intimate images.
- In cases where defendants simultaneously downloaded and distributed intimate images through peer-to-peer file-sharing platforms, mitigation has been granted on the grounds that they lacked awareness of the illegality or did not act with malicious intent.

- The defendant's personal characteristics — such as social ties, occupation (including civil-service employment), age, family relationships, and background — are frequently considered as mitigating factors.
- Conversely, some cases have taken into account as aggravating factors the risks and seriousness of digital sexual crimes, including the difficulty of deleting distributed material, the potential for replication and re-distribution, the fear such crimes generate among women, and the need to reform male-centered sexual norms.

3 Policy Recommendations

• Measures for the Interpretation of Constituent Elements and Legal Reform in Crimes Involving Intimate Images

► Removal of the Requirement of 'Sexual Desire or Shame' and Incorporation of Sexual Context

- Legal standards that rely on 'sexual shame' or obscenity tend to focus judicial assessment on whether particular body parts are exposed or emphasized in the course of filming. This approach narrows the scope of legal evaluation and makes it difficult to classify conduct as a sexual violence offense, even in cases where the exploitative nature of the act is evident.
- In legal interpretation, it is more appropriate to assess whether the conduct occurs within a predominantly sexualized context by considering not only factors such as the degree of exposure, camera angle, or emphasis on specific body parts, but also the perpetrator's intent and the context in which the images are produced, distributed, and consumed. From a legislative perspective, it is therefore necessary to remove the requirement of 'sexual desire or shame' and to revise statutory language to enable the punishment of acts involving the creation, consumption, and distribution of images of others within a sexualized context.

► Restructuring of Offenses Involving the Filming, Manipulation, Distribution, and Consumption of Intimate Images in Accordance with Legislative Intent

- First, it is necessary to establish the concept of the non-consensual 'creation' of intimate images. There are cases in which conduct—such as capturing video-call screens or producing sexualized images from ordinary photographs—is interpreted as falling outside the scope of current law, on the grounds that it does not involve the direct filming of another person's body. However, such conduct may reasonably be interpreted as constituting offenses such as illegal filming using cameras or the editing and fabrication of false images. From a legislative standpoint, there is a need to reconceptualize the relevant acts so as to regulate conduct that turns another person into the subject of a sexualized image against their will and enables its consumption or dissemination within a sexualized context. One possible approach is to prohibit the non-consensual 'creation' of intimate images regardless of the method employed, including direct filming, capturing images in which the body appears, screenshots, recordings, editing, compositing, or other forms of processing.

- Second, the conceptual framework governing non-consensual distribution and consumption of intimate images requires systematic revision. The purpose of criminalizing distribution-related offenses is to prevent the sharing of intimate images with third parties without the consent of the subject. In this context, ‘third parties’ should be interpreted as encompassing any person other than those with whom the images were originally shared with the subject’s consent. From a legislative perspective, it is advisable to integrate and streamline the various categories of distribution and consumption currently dispersed across provisions — such as those governing illegal filming and distribution, the dissemination of fabricated images, and the production and distribution of child and adolescent sexual exploitation material. A unified provision could define prohibited conduct as ‘acquiring or using intimate images without the subject’s consent, making them accessible to third parties, or facilitating their dissemination’. Additionally, aggravated punishment should be imposed where such conduct is carried out for profit or results in material gain.

► Strengthening Enforcement through Legal Interpretation and Targeted Legislative Reform

- Introduce aggravated penalties for filming and distributing intimate images containing identifying information.
- Abolish the separate offense of distribution without pecuniary intent.
- Extend possession offenses to cover the possession or control of links.
- Establish provisions governing continued possession of non-consensual intimate images.
- Ensure consistent application of habitual offender provisions.
- Impose aggravated penalties for repeat offenses involving the consumption of intimate images and the distribution of child and adolescent sexual exploitation material.
- Criminalize threats or coercion using deceptively created or manipulated intimate images.

● Measures for Sentencing Determination and the Improvement of Sentencing Guidelines in Crimes Involving Intimate Images

► Victim’s Request for Non-Punishment

- Ensure strict application and establish detailed evaluative criteria.

► Substantial Recovery of Harm (Including Court Deposits)

- Remove this factor as a mitigating consideration or revise it to reflect a genuinely victim-centered assessment of harm recovery.

► Prior Convictions or Criminal Record

- Apply interpretive standards rigorously to prevent mitigation based on the absence of prior criminal record in cases involving multiple or unspecified victims or repeated offending.

► Measures to Prevent Further Dissemination of Harm

- Remove this factor as a mitigating element in illegal filming offenses and reposition it as a general sentencing factor in distribution-related offenses. Eliminate references to ‘deletion or disposal prior to distribution.’ Limit its application to cases where, following distribution, substantial efforts and costs have been incurred to remove the material, effectively preventing further dissemination. This would ensure that mitigation is granted only where the spread of harmful material has been meaningfully contained.

► Severe Harm to the Victim

- Remove “sexual shame” from the concept of psychological harm and recognize the identifiability of the victim (i.e., the ability to ascertain personal identity) as an aggravating factor.

► Vulnerable Victims

- Apply the factor without limiting it to cases involving the ‘exploitation’ of vulnerability.
- Clarify that offenses against vulnerable victims are intended to warrant aggravated punishment.

► Harm Caused During Settlement Attempts

- Expand the scope to include secondary victimization occurring during investigation and trial, regardless of whether it arises during settlement negotiations.

► Removal of ‘Minor Harm’ Mitigation and Discontinuation of Non-Distribution-Based Mitigation

- Remove the factor ‘cases where the content of the material is not readily discernible or equivalent thereto’ from both special mitigating factors and grounds for suspended sentences.
- Discontinue sentencing practices that treat non-distribution or limited distribution as mitigating factors; instead, treat wide dissemination, or conduct facilitating such dissemination, as an aggravating factor.

► Particularly Egregious Methods of Offending

- Introduce a clear definition of ‘distribution through highly transmissible channels or platforms’ and establish it as a distinct aggravating factor; impose aggravated punishment where intimate images containing personal identifying information are filmed or distributed.

► Sincere Remorse

- Exclude its application where the defendant denies the offense, fails to cooperate with the investigation (e.g., by destroying evidence), or causes secondary harm to the victim.
- Establish criteria to ensure that ‘sincere remorse’ is not recognized solely on the basis of formal written apologies in the absence of genuine efforts to repair harm or compensate the victim.

References	Sentencing Commission. (2022). Annual Report 2021. Sentencing Commission. (2023). Annual Report 2022.
Supervising ministries	Ministry of Justice National Court Administration Sentencing Commission
Related ministries	Korean National Police Agency Ministry of Gender Equality and Family