

Current Status and Recommendations on Laws and Systems Tackling Digital Sexual Crimes¹⁾

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Summary

- Digital sexual crimes represent serious problems and can be especially damaging for the victims, as taking illegal photographs via digital devices do not stop after the their production, distribution, consumption, or participation. Instead, digital sexual crimes perpetuate through distribution and re-distribution, as a permanent deletion of the photographs can be extremely challenging. Also, the recent Telegram Nth Room case illustrates an increasingly evolving form of digital sexual crime, as the case entailed the organized and sophisticated practices involved in the production, distribution, and possession of sexually exploitive materials; gaining of criminal profits; distribution threats; premeditation of the crime; and linkage to criminal activities in offline spaces.
- The present study aims to review digital sexual crimes, the status of case handling, the contents of relevant laws, and gaps in the legal measures, and recommends how these elements can be strengthened in the future. In particular, the study will examine relevant law revisions and efforts to improve measures that are currently underway in the wake of the recent Telegram Nth Room case.
- The criminals must receive strict punishments that are reinforced in accordance with relevant law revisions, case handling standards, and sentencing standards, and laws should be swiftly revised to introduce the system proposed by the measures to eliminate digital sexual crimes. Overall, the government should strengthen the punishments for digital sexual crimes to enhance alertness about criminal activities among the criminals, while ensuring a thorough protection of the victims.

1) This paper is a partial summary and excerpts of the research 「Analysis on Prosecutors' Office Statistics on Violence against Women (II) : Focusing on Digital Sexual Crimes and False Accusation」 conducted in 2019 by Deuk-kyoung Yoon, Jeong-hye Kim, Jae-yeong Cheon, and Young-mi Kim, and of the presentation from the 「27th Gender and Legislation Forum」.

The seriousness and new aspects of digital sexual crimes

- Digital sexual crimes represent serious problems and can be especially damaging for the victims, as taking illegal photographs via digital devices do not stop after the their production, distribution, consumption, or participation. Instead, the criminal activities can spread exponentially through distribution and re-distribution, making it extremely challenging to locate where the illegal photographs and videos ended up and thereby nearly impossible to permanently delete them.
- In particular, the recent Telegram Nth Room case represented a vicious crime that objectified women for sexual exploitation. The case involved the persistent exploitation of certain people, while simultaneously engaging in the production, distribution, and possession of sexually exploitive materials. The case also illustrated the commercialization of criminal profit-making activities and the sophistication of an organized crime with the division of roles shared by many criminals, revealing that digital sexual crimes are now becoming increasingly organized and sophisticated.
- Specifically, the case included a variety of grave criminal acts entailing digital sexual crimes, such as the production and sharing of sexually exploitive videos, coercion, intimidation, indecent act by force, rape, child abuse, obscene acts using the medium of communication, the transmission and distribution of the personal information of the victims in sexually exploitive materials through information and communications networks, etc. Thus, it is imperative to prepare broad measures that deal with the gravity of the crime.
- The government is proposing early prevention of digital sexual exploitation crimes, strict punishments, and law revisions. For example, the Ministry of Gender Equality and Family and the Ministry of Justice established the measures to investigate digital sexual crimes, protect the victims, and ban the distribution of sexually exploitive materials, while the Supreme Prosecutors' Office prepared the case handling standards for cases involving sexually exploitive videos, and the Supreme Court's Sentencing Commission created the sentencing standards on the crimes of taking photographs by using cameras, etc.
- The present study examined the characteristics of the crimes of taking photographs by using cameras, etc., the results of the prosecution's dispositions, the results of first trials, problems with the laws tackling digital sexual crimes, and the revised laws and institutional improvements aimed at eradicating digital sexual crimes, and thereby explored future tasks for improvements.

Current status of digital sexual crimes

- General status of digital sexual crimes
 - According to the analysis of the data²⁾ of 4,948 suspects who were filed for prosecution in 2018 for taking photographs by using cameras, etc., which is the main legal ground related to digital sexual crimes, the types of victimization involved taking photographs (82.0%), taking photographs + distribution (9.4%), and distribution/re-distribution (6.3%).³⁾

- The gender ratio of the suspects was 94.0% males and 2.6% females. The gender ratio of the victims⁴⁾ was females (80.3%), males (3.3%), and females + males (1.8%).
- The relationships between the suspects and victims were found to be mostly strangers (62.6%), followed by lovers (7.1%), colleagues/friends (3.9%), and ex-lovers/ex-spouses (3.5%). In terms of the age distribution of the suspects and victims, the suspects' ages were 20-29 (31.4%), 30-39 (23.5%), and 19 or younger (18.7%). Many of the victims were aged 20-29 (25.0%), followed by 19 or younger (12.0%), and 30-39 (6.9%).
- The most dominant motive for the crime was found to be miscellaneous or unknown (83.5%), and an analysis of this limited information on data showed that specific motives involved: accident (curiosity) (7.1%), sexual gratification (7.0%), retaliation (1.1%), profit (1.0%), illness (0.3%), and self-display (0.1%). Male suspects were most likely to report sexual gratification (7.4%) and accident (curiosity) (7.4%) as their motives, while female suspects were most likely to report retaliation (9.2%) as their motive for the crimes.
- Overall, most digital sexual crimes involved unknown people (62.6%), unspecified people (66.7%), parts of the body (45.1%), public space (47.8%), unidentifiable subject (48.5%), and taking photographs of targets (82.0%). The motives for the crimes were likely to be by accident (curiosity) or for sexual gratification. However, the information on the data were limited, so making any generalization would be difficult. The types of victimization tended to involve taking photographs, followed by taking photographs + distribution (almost 10%). The results suggested that there has been a considerable degree of victimization due to the non-consensual distribution of sexual photographs, which is an act previously known as 'revenge porn'.

• Status of the prosecutor's dispositions

- The prosecutor's dispositions of the 4,948 suspects resulted in 2,561 (51.8%) cases resulting in non-indictment, 1,952 (39.5%) cases of indictment, and 435 (8.8%) transfers to juvenile protective disposition. The cases resulting in non-indictment (2,561 people, 51.8%) included 1,211 (24.5%) cases with suspension of indictment, 1,134 (22.9%) with no charge Cases with no charge⁵⁾, 153 (3.1%) dismissals, 47 (1.0%) with absence of the right to prosecute, 9 (0.2%) not guilty, 4 (0.1%) with other reasons, and 3 (0.1%) unverifiable. The cases resulting in indictment (1,952 people, 39.5%) included 103 (2.1%) with detention, 1,161 (23.5%) without detention, and 688 (13.9%) with summary orders.
- There were no significant differences in indictment rates between crime locations, tools used for the crimes, or the gravity of the crimes based on the victims. Even for the grave crimes (e.g., those involving naked bodies, videos of sexual intercourse, etc.), non-indictment rates were found to be higher than indictment rates. The indictment rates were not high even when the photographs were distributed on illegal pornography websites (20.5%) or Webhard/Torrent (13.3%) where a permanent deletion of any photograph is impossible.

2) This data utilizes the information on decisions resulting in non-indictment and the first trial rulings provided by the Ministry of Justice's Korea Information System of Criminal Justice Services filed in 2018 for 4,948 suspects who committed violations regarding 'taking photographs by using cameras'. Korea Information System of Criminal Justice Services (KICS), www.kics.go.kr

3) The statistics include unverifiable data (2.3%).

4) The figures for 'victims' are based on the percentages of victims per suspect, so the actual percentages of female victims are estimated to be higher than the figures suggest.

5) Cases with no charge include cases with lack of evidence.

- Detention rates were 8.9% for distribution, 6.3% for involving videos of sexual intercourse, 25.0% for involving Webhard/Torrent, and 3.7% for involving internet communities. The results demonstrated that detention rates were not high even when the cases involved a great deal of sexual shame or distribution of photographs to many unspecified people in spaces where people could access an unlimited number of plays/ views of photographs.

[Table 1] Status of the prosecutor's dispositions

(Unit: number of persons, %)

Total	Indictment			Non-indictment	Transfer to juvenile protective disposition
	Order of a formal trial		Summary order		
	Detention	Indictment without detention			
4,948(100.0)	1,952 (39.5)			2,561 (51.8)	435 (8.8)
	103(2.1)	1,161(23.5)	688(13.9)		

- Status of non-indictment dispositions for the crimes involving high frequency of taking photographs and distribution
 - An analysis of cases resulting in non-indictment including suspension of indictment and no charge based on the frequency of taking photographs and distribution of photographs indicated that the rates of suspension of indictment were nearly 50% or over 50% when the frequencies of taking photographs were 11-49 (54.5%), 2-10 (53.6%), and 50-99 (46.7%), and when the frequencies of distribution were 2-10 (50.0%).
 - The rates of cases resulting in no charge were nearly 50% or over 50% when the frequency of taking photographs were 100 or higher (66.7%), 50-99 (53.3%), 11-49 (40.9%), and when the frequency of distribution were 50-99 (100.0%), 100 or higher (66.7%), and 11-49 (55.0%).
- Overall, the prosecution's dispositions on digital sexual crimes revealed that non-indictment was highly likely even when the crimes involved naked bodies or videos of sexual intercourse. There were no meaningful differences between indictment versus non-indictment rates based on the victims' body area, crime locations, tools used, or the gravity of the crime based on criminal targets. The indictment rates were not high even when the photographs were distributed to media that cannot permanently delete the photographs. The detention rates were also found to be not high even when the cases involved a serious level of sexual shame or the distribution of photographs to many unspecified people in spaces where people could access an unlimited number of plays/views of photographs. In addition, the suspects received non-indictment by the prosecutor (suspension of indictment, no charge) even when their crimes involves

high frequency of taking photographs and distribution.

- Analysis of the first trial sentencing decisions by year (Seoul-based courts)

- An analysis of the first trial sentencing decisions by year compared three periods including 2011 ~ April 2016, 2017, and 2018 for all five district courts in Seoul (central, eastern, western, southern, and northern).
- Among a total of 1,541 people in the period of 2011 ~ April 2016, some 1,109 (72.0%) people received monetary penalty, followed by 226 (14.7%) people receiving prison sentence + suspension of execution, and 115 (7.5%) people receiving monetary penalty + suspension of sentence. For a total of 370 people in 2017, some 200 (54.1%) people received monetary penalty, followed by 103 (27.8%) people receiving prison sentence + suspension of execution, and 41 (11.1%) people receiving prison sentence. For a total of 506 people in 2018, some 222 (43.9%) people received monetary penalty, followed by 220 (43.5%) people receiving prison sentence + suspension of execution, and 52 (10.3%) receiving prison sentence.⁶⁾
- A comparison between the three periods revealed that the proportions of people receiving monetary penalty were decreasing (72.0% → 54.1% → 43.9%), while the proportions of those receiving prison sentence + suspension of execution were increasing (14.7% → 27.8% → 43.5%). Overall, the decrease in the proportions of those receiving monetary penalty and the increase in the proportions of those receiving prison sentence + suspension of execution suggested an increasing strictness of minimum punishment. However, the proportions of people receiving prison sentence remained at the 10% range, indicating that the suspects tended to receive minor punishment despite the gravity of their crimes.

[Table 2] Comparison of the first trial sentencing decisions by year (Seoul)

(Unit: number of persons, %)

Type of punishment at the first trial	2011 ~ April 2016 ¹⁾	2017 ²⁾	2018
Prison sentence	82(5.3)	41(11.1)	52(10.3)
Prison sentence + Suspension of execution	226(14.7)	103(27.8)	220(43.5)
Monetary penalty ³⁾	1,109(72)	200(54.1)	222(43.9)
Monetary penalty + Suspension of sentence	115(7.5)	22(6)	3(0.6)
Not guilty	9(0.6)	4(1.1)	9(1.8)
Total	1,541(100)	370(100)	506(100)

Note: 1) The statistics for the period 2011 ~ April 2016 were cited from the Korean Women Lawyers Association (2016).

2) The data were cited from p.61 of 「Damage from Online Sexual Violence and Victim Protection」 by Deuk-kyoung Yoon and others (2016).

3) The data on monetary penalty excludes summary orders without requests of formal trials (the court case numbers marked with 'summary order case') but includes summary orders with requests of formal trials (the court case numbers marked with 're-request of summary order for the first trial single case') and summary orders upon the first trial rulings (the court case numbers marked with 'first trial single criminal case').

Current status of laws and systems tackling digital sexual crimes

A review of relevant laws

- **Relevant laws**
 - Digital sexual crimes can inflict physical and mental damages by causing sexual shame to the victims even in the absence of any physical contact, through the production, distribution, etc. of photographs and videos via digital devices. Digital sexual crimes are broadly divided into production type, distribution type, participation type, and consumption type. These crimes are characterized by the ability to duplicate, which is inherent in digital contents; the organic relationship between the online and offline spaces; and the collective act of abuse.
 - The conceptual structure for the four types of digital sexual crimes focuses on the use of digital devices, and is subject to the application of Article 14 (Taking photographs by using cameras) of the 'Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes' (also known as the sexual crimes punishment law) which is the law addressing the production and distribution of illegal photographs. Other relevant laws tackling cyber sexual crimes include the prohibition on the circulation of obscene information in cyber space under the 'Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.' (also known as the information and communications network law), and the prohibition of the production, distribution, etc. of child or youth pornography under the 'Act on the Protection of Children and Youth against Sex Offences' (also known as the youth sex offences protection law), and so on. Also, the 'Telecommunications Business Act' contains provisions for the prohibition on the circulation of illegal photographs, etc. by online service providers. The term 'digital sexual crime' is a policy-related term, not a legal term, and all of the provisions mentioned above can be grouped together under those addressing digital sexual crimes.
- **Changes in the prohibition of taking photographs by using cameras, etc. under the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes**

Law	Enforcement date and provision
Act on the Punishment of Sexual Crimes and the Protection of Victims Thereof	[Enforced on April 1, 1994] [Act No. 4702, January 5, 1994, enactment] - No provision related to taking photographs by using cameras, etc.

Law	Enforcement date and provision
Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes	<p>[Enforced on December 28, 1998] [Act No. 5593, December 28, 1998, partial revision] Article 14-2 (Taking photographs by using cameras, etc.)</p> <ul style="list-style-type: none"> - Punishment only for a person who takes photographs against the will of a person photographed - Punishment only for a person who takes photographs of another person's body (Punishment by imprisonment for not more than five years or by a fine not exceeding ten million won)
	<p>[Enforced on April 15, 2010] [Act No. 10258, April 15, 2010, enactment] Article 13 (Taking photographs by using cameras, etc.)</p> <ul style="list-style-type: none"> - Punishment for a person who takes or distributes photographs against the will of a person photographed (Punishment by imprisonment for not more than five years or by a fine not exceeding ten million won) - Aggravated punishment for a person who takes and distributes photographs against the will of a person photographed for the purpose of making profits (Punishment by imprisonment for not more than seven years or by a fine not exceeding thirty million won)
	<p>[Enforced on June 19, 2013] [Act No. 11556, December 18, 2012, complete revision] Article 14 (Taking photographs by using cameras, etc.)</p> <ul style="list-style-type: none"> - Punishment for a person who takes photographs not against the will of a person photographed but distributes photographs against the will of the person photographed; a lighter punishment in comparison to a person who takes photographs against the will of a person photographed (Punishment by imprisonment for not more than three years or by a fine not exceeding five million won)
	<p>[Enforced on December 18, 2018] [Act No. 15977, December 18, 2018, partial revision] Article 14 (Taking photographs by using cameras, etc.)</p> <ul style="list-style-type: none"> - Addition of a provision on punishment for a person who distributes photographs against the will of a person photographed who took the photographs himself/herself - Separate provisions specified for taking photographs and for their distribution - Fine increased from maximum ten million won to maximum thirty million won for a person who takes photographs against the will of a person photographed - Same punishment prescribed for a person who takes photographs against the will of a person photographed and distributes photographs against the will of a person after the person took the photograph not against his/her will - Addition of a provision related to the distribution of a duplicate of a photograph showing a photograph of a person's body (including a duplicate of its duplicate) - Increased punishment through the deletion of fine for a person who distributes photographs (taken with or without consent) or their duplicates against the will of a person photographed for the purpose of making profits (Punishment by imprisonment for not more than seven years or by a fine not exceeding thirty million won → punishment by imprisonment for not more than seven years)

Law	Enforcement date and provision
Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes	<p>[Enforced on June 25, 2020] [Act No. 17086, March 24, 2020, partial revision]</p> <p>Article 14-2 (Distribution, etc. of fake videos)</p> <ul style="list-style-type: none"> - Addition of legislation relating to deepfake photographs of an identifiable person (Added to Article 14-2) - Establishment of grounds for punishment and increased fine for: a person who edits, synthesizes, or processes photographs, etc. targeting a person's body parts, etc. for the purpose of distributing, etc. them against the will of a person photographed in a form that may cause sexual stimulus or shame; a person who distributes, etc. these edited, synthesized, or duplicated photographs; a person who edits, synthesizes, or processes the photographs not against the will of the target person but distributes these edits, etc. against the will of the target person (Punishment by imprisonment for not more than five years or by a fine not exceeding fifty million won) - Aggravated punishment for a person who commits the crime for the purpose of making profits by using an information and communications network (Punishment by imprisonment for not more than seven years)

- Laws relating to other cyber sexual crimes

Law	Provision
Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.	<p>Article 44-7 (Prohibition on circulation of unlawful information)</p> <p>1. Prohibition on the circulation of obscene information on cyber space (a person who distributes, sells, rents, or displays information with obscene content openly in the form of code, words, sound, images, or motion picture) - Punishment by imprisonment for not more than one year or by a fine not exceeding ten million won</p>
Act on the Protection of Children and Youth against Sex Offences	<p>Article 11 (Production, distribution, etc. of child or youth Pornography)</p> <p>① Any person who produces, imports, or exports child or youth pornography - Punishment by imprisonment with labor for an indefinite term or for a limited term of at least five years, punishment of criminal attempts</p> <p>② Any person who sells, lends, distributes, or provides child or youth pornography for commercial purposes, or possesses or transports them for any of such purposes, or publicly exhibits or displays them - Punishment by imprisonment for not more than ten years</p>

Law	Provision
Act on the Protection of Children and Youth against Sex Offences	<p>③ Any person who distributes, provides, or publicly exhibits or displays child or youth pornography - Punishment by imprisonment for not more than seven years or by a fine not exceeding fifty million won</p> <p>④ Any person who procures a child or youth for a child or youth pornography producer, knowing that he/she is to be used for producing child or youth pornography - Punishment by imprisonment for at least three years</p> <p>⑤ Any person who possesses child or youth pornography knowing that it is child or youth pornography - Punishment by imprisonment for not more than one year or by a fine not exceeding twenty million won</p>

🔗 Achievements and limitations

• Achievements and their implications

Achievements related to the changes in the prohibition of taking photographs by using cameras, etc. (improvements to the flaws in punishment)

- With the introduction of the prohibition on taking photographs by using cameras, etc. in the revision of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes in 1998, several forms of non-physical sexual violence were defined as sexual crimes. This enabled the punishment of sexual crimes that violate privacy or personal rights.
- With the inclusion of the provisions involving duplicate copies (not the original photographs taken directly) in the revised law on December 8, 2018, it became possible to punish a person who reproduces files or videos illegally photographed during video chats, or a person who records a video of a sexual intercourse and makes it appear on a monitor after viewing it on a computer.
- The provision that limited the photographs to those of another person's body was revised to include bodies in general, enabling punishment in case a photograph of a person's body was distributed against the will of that person.
- Using a person's face to combine the image of the person's face with a sexual image (so called a 'deepfake photograph of an identifiable person') and then distributing this image causes serious violations of privacy and personal rights. This form of criminal act could not be punished as a sexual crime until recently, but the revision on March 24, 2020 made it punishable as a sexual crime.

Implications for other types of cyber sexual crimes

- When a criminal distributes illegal photographs on the internet to make profits, it is difficult to identify the victims and to secure evidence connected to verifying specific body parts. Therefore, in practice, cyber sexual crimes are often punished in accordance with the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., instead of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes. In such cases, it is difficult to punish the criminals with imprisonment for up to seven years as prescribed under the prohibition on taking illegal photographs according to the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes. Instead, the criminals would receive the punishment of imprisonment for up to one year only as prescribed under the prohibition on the circulation of obscene information on cyber space according to the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.

• Limitations

- Distributing the whole-body school uniform photos of high school girls (also known as 'high school girls hidden cam'), or taking and distributing the photographs of sexual body parts or an unexposed body without the will of the person photographed, entail sexual objectification in the process of distribution. In this process, the victims get exposed to verbal sexual harassment. However, it is impossible to punish these criminal acts due to the Supreme Court's ruling that whole-body photographs are not regarded as the body parts that induce sexual shame or sexual stimulus as prescribed in the prohibition of taking photographs using cameras, etc.(Jang Da-hye, 2018:128).
- Under the prohibition of the circulation of obscene information according to the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., it is possible to punish the act of a third party's re-distribution of sexual photographs in case the person photographed agreed to being photographed but did not agree to distribution. However, imposing aggravated punishment for this crime is impossible under any provision related to sexual crimes.
- Although the crimes of taking photographs using cameras, etc. are responsible for expanding the types of digital sexual crimes, there are limitations in the punishment of the various types of crimes, as law revisions have been slow since the issue surfaced. Making constant revisions in laws according to the development of the issue would lead to complications in applying and implementing the law and would also undermine the protection of the victims.
- Digital sexual crimes are tantamount to the violation of personal rights, as they inflict mental and physical pain on the victims by inducing sexual shame through non-physical sexual violence even in the absence of any physical contact. There needs to be discussions on whether sexual shame is an essential requirement for a digital sexual crime, what roles it has for this crime, and whether it needs to be replaced with other requirements.

The notion of a body that may cause sexual stimulus or sexual shame

- Judicial precedents tend to decide "whether the photographed body part of a victim can cause sexual stimulus or shame, by objectively taking into account whether the body part corresponds to a body part that can induce sexual stimulus or shame among general and average population of the same gender and age group as the victim. Also, each decision is deemed as specific, individual, and relative, as it comprehensively considers not only the victim's clothing, degree of exposure, etc., but also the photographer's intention, the circumstance of taking photographs, the location, the angle, and the distance involved in taking the photographs, the image of the original photograph, any emphasis on specific body parts, etc.(Please refer to the Supreme Court, September 25, 2008, Sentencing 2008 Do 7007 Decision, etc.).
- Nude scenes or sexual intercourse scenes, etc. are acknowledged as the elements that can cause sexual stimulus or sexual shame. However, other cases are not acknowledged as such, depending on the clothing or the degree of body exposure of a clothed person photographed, or in case the photograph does not emphasize the chest area or shows a whole body or other body parts instead of a person's thigh area in particular, or in case upper body is photographed around a person's chest.
- In other words, case rulings on the crimes of taking photographs using cameras, etc. depend on what is meant by a body that can cause sexual stimulus and sexual shame.

The legal interest to be protected

- The Supreme Court views that prohibiting the act of taking photographs against the will of a person photographed involves "protecting the sexual freedom of the victim as a person and the freedom to not be photographed without permission" (The Supreme Court, July 24, 2014, Sentencing 2014 Do 6309).
- Prohibiting the distribution of photographs against the will of a person who agreed to being photographed entails the protection of victims' sexual self-determination, the protection of general personal rights, and the establishment of healthy sexual customs in society(The Constitutional Court, December 29, 2016, Sentencing 2016 Hun-Ba 153 Decision).
- The crime of taking photographs using cameras, etc. is a sexual crime that violates the right to sexual self-determination and healthy sexual customs.

The need to shift the legal interest to be protected

- Korean criminal law uses vague terms to describe the types of sexual behaviors corresponding to sexual crimes. These vague terms include sexual intercourse, attempted sexual intercourse, and indecent acts, and the wide use of these concepts imply that chastity is regarded as the legal interest to be protected. Making judgments about sexual matters based on subjective concepts such as shame, disgust, morality, etc. can increase ambiguity.
- The crimes of taking photographs using cameras, etc. which involve the violation of personal rights also employ subjective and ambiguous concepts for the standards on sexual stimulus or sexual shame, so these standards need to be replaced with appropriate alternatives.

- One of the bills initiated during the 20th National Assembly suggested replacing the term 'sexual shame' with 'sexual insult' (Lawmaker Lee Chun-seok's proposal on March 13, 2013). The trend in the legislation cases overseas suggests that several countries are replacing terms such as obscene act and sexual shame with other terms. In the United Kingdom, for example, the term referring to obscenity was replaced with the concept 'sexual'.
- For sexual crimes that violate personal rights, such as taking photographs using cameras, etc., it is crucial to describe them with the terms such as 'sexually objectifying' or 'act of harassment', and change the terms related to the victims' feelings into neutral expressions such as 'sexual displeasure, insult', etc. In addition to changing the terms, it is vital to consider adjusting the notion of obscenity, which is a social legal interest, to 'violation of sexual privacy' (Jang Da-hye, 2018:269).

🕒 Direction for the legislation and law revisions

- Create a provision prohibiting the violation of privacy in the Criminal Act, and revise Article 14 of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes.
 - 1) Categorize the basic crimes of the violation of privacy in Article 316-2 of the Criminal Act.
 - 2) If the crime is sexual in nature, give aggravated punishment, and include it in the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes.
 - 3) Revise Article 14 of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes.
 - Specify the provision with the title 'violation of sexual privacy, etc. using images'
 - Paragraph 1 : Punish the crime if the image subject to Article 316-2 of the Criminal Act was acquired in the public place or in a place where privacy is protected. An image refers to an act that involves taking photographs, editing them, or re-photographing them.
 - Provisions on aggravated punishment: Impose aggravated punishment if the act described in Paragraph 1 involves any of the following subparagraphs:
 - ① The act involves the distribution of an image to unspecified people without any consent.
 - ② The act involves breaking into another person's residence or surreptitiously watching a person from a distance to acquire an image.
 - ③ The person depicted in the image is identifiable or the image discloses personal information.
 - ④ The act involves distribution using information and communication network for the purpose of making profits.
 - ⑤ The act that Paragraph 1 refers to was perpetrated for the purpose of intimidation, coercion, taking property, or obtaining pecuniary advantage.

- Replace the term 'sexual shame' with 'sexual insult' or 'sexual displeasure'; replace the term referring to 'a body that causes sexual stimulus or shame' with 'sexual objectification of the body of another person' (Jang Da-hye, 2018:269).

4) Propose a bill to state the definition of digital sexual crimes in the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes.

- Define digital sexual crimes as: obscene acts using the medium of communication and the crime of taking photographs using camera, etc. under the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes; production, distribution, etc. of child or youth pornography under the Act on the Protection of Children and Youth against Sex Offences; and the circulation of obscene information on cyber space under the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. This would enable the punishment of cyber sexual crimes not only under the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes, but also under the Act on the Protection of Children and Youth against Sex Offences and the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. The change would in turn strengthen the punishment and ensure the protection of the victims during investigation and litigation processes.
- Apply the definition of digital sexual crimes used by the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes to the Sexual Violence Prevention and Victims Protection Act to secure the use of support services for the victims of digital sexual crimes.

Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes

Article 2 (Definitions) ② The "digital sexual crime" referred to in this Act is a crime involving any of the following subparagraphs:

- ① Article 13 (Obscene acts by using means of communication) of this Act.
- ② Article 14 (Taking photographs by using cameras) of this Act.
- ③ Article 11 (Distribution, etc. of child or youth pornography) of the 「Act on the Protection of Children and Youth against Sex Offences」
- ④ Article 74-1 (Circulation of obscene information on cyber space) of the 「Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.」

Recommendations to strengthen the punishment for digital sexual crimes and to protect the victims

- Recent revisions in the law and the establishment of case handling standards

- Revision in the Criminal Act (the bill was passed at the National Assembly's plenary session on April 29, 2020)
: The age criterion for statutory rape of minors was proposed to be raised from 13 to 16, so if the ages of the minor victims are 13 or older but below 16, only those who are 19 or older would get punishments, and this would eliminate the gap in the protection of minors; Punishment would be given to a person who prepares or conspires with intent to commit rape or attempted rape, which means that a person who simply prepares or conspires to commit rape, etc. would receive punishment even if the person does not actually commit rape.
- Revision in the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (the bill was passed at the National Assembly's plenary session on April 29, 2020) : The statutory punishment was proposed to be raised for the crimes of taking photographs using camera, etc. and distribution; It was proposed to clearly state that even if a person takes a direct photograph of his or her body, another person who distributes, etc. the photograph against the will of the person photographed would receive punishment; A person who possesses, purchases, saves, or views illegal sexual photographs, etc. would receive punishment; A person who threatens or coerces another person by using photographs, etc. that may cause sexual stimulus or shame would receive punishment; A person who prepares or conspires with intent to commit certain crimes, such as special robbery and rape, etc. would receive punishment.
- The Supreme Prosecutors' Office reinforced the standards for handling the production, distribution, and possession of sexually exploitive materials by enacting and implementing the 'case handling standards for illegal acts involving sexually exploitive videos' (April 9, 2020) to impose strict punishment for new types of digital sexual crimes (Supreme Prosecutors' Office, press release, April 9, 2020). The Supreme Court's Sentencing Commission is also preparing to substantially tighten the sentencing standards for digital sexual crimes.
- The 'measures to eliminate digital sexual crimes' (April 23, 2020), a joint work by relevant ministries, aims to create new provisions for the punishment of online grooming to ensure the protection of children and youth; introduce undercover investigations to facilitate the detection and reporting of digital sexual crimes; establish provisions to prohibit the purchase of sexually exploitive materials involving children or youth; strengthen the responsibility of internet service providers and introduce monetary penalty for any violations; and introduce an independent confiscation system to reinforce the seizure of profits made through criminal activities (Joint work of relevant ministries, press release, April 23, 2020). Also, a revision on the Act on the Protection of Children and Youth against Sex Offences proposes to replace the term 'child or youth pornography' with 'sexually exploitive materials involving children or youth' and to toughen the punishment for the crimes involving sexually exploitive materials related to children or youth (Lawmaker Kwon Mi-hyuk's proposal on May 7, 2020, Bill No. 24926).

- Future directions for the laws related to digital sexual crimes

- It is necessary to ensure that the strengthened punishments for digital sexual crimes are properly enforced in practice in accordance with the revised laws, the prosecution's case handling standards, and the Supreme Court's sentencing standards related to digital sexual crimes. Many have criticized that the punishment of digital sexual crimes has been a mere slap on the wrist so far, since although digital sexual crimes can be punished through statutory prison sentences, the suspects have often been receiving light punishment such as monetary penalty or suspension of execution. The punishment need be strengthened and should appropriately address illegal activities.
- Also, in order to improve the system for eliminating digital sexual crimes, swift legislation should be implemented to enforce the punishment of online grooming; introduce undercover investigations; add a provision prohibiting the purchase of sexually exploitive materials involving children or youth; reinforce the responsibility of internet service providers and impose monetary penalty for any violation; and introduce an independent confiscation system.
- In addition to the implementation of law revisions and prompt legislation, it is also necessary to clearly describe the strengthened punishment for digital sexual crimes and the protection and support for the victims. This can be achieved through the appropriate revisions in the Criminal Act and the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes, by defining digital sexual crimes as the violation of privacy as mentioned earlier, and through the introduction of the definition on digital sexual crimes in the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes and the Sexual Violence Prevention and Victims Protection Act.