

Knowledge Sharing on Korea's Development  
in Women's Policies

# Protection System for Children and Adolescents from Sexual Abuse

Deuk-kyoung Yoon



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Knowledge Sharing on Korea's Development in Women's Policies

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## **Protection System for Children and Adolescents from Sexual Abuse**

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**Protection System for Children and Adolescents from Sexual Abuse**

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Korean Women's Development Institute(KWDI) is a government-affiliated think-tank under the Prime Minister's Office of South Korea. It has contributed to realizing gender equality, improving women's social participation and welfare and advancing family life and state through comprehensive researches on women's policies.

## Foreword

South Korea has transformed itself from being an aid receiving country to an aid giving one after achieving an unprecedented economic growth during the past half century. Such growth was not confined to economic spheres only, but happened in many social arenas. Women's advancement was one area that has seen another dramatic transformation.

While efforts have existed to share Korea's development experience, such as Knowledge Sharing Program(KSP) spearheaded by South Korea's Ministry of Strategy and Finance(MOSF) and Development Experience Exchange Partnership(DEEP) by the Ministry of Foreign Affairs, there hardly existed initiatives to share women's advancement experiences in particular. The current study is the first of its kind and compiles the case analyses of women's development in various areas of South Korean society.

This study is an essential part of KWDI's multi-year ODA project titled "Strengthening Gender Equality Policy Infrastructure in the Asia-Pacific Region." This is a project aimed at establishing political and social infrastructure for gender-equal policy in the Asia-Pacific region. We believe South Korea's cases could serve as one model to consider for our partner countries in achieving this goal.

KWDI plans to share these case studies through various means such as policy consultation, workshops and international conferences. We will also come up with potential gender-related ODA projects that South Korean government can work with partner countries based on Korea's comparative advantage/experience. Our ultimate goal is to design a women's policy model tailored to local needs and work together to translate it into practice.

I hope the concerted efforts made by KWDI and partner countries will bring substantive changes in the lives of women in Asia.

**Myung-sun Lee, Ph. D.**

President

Korean Women's Development Institute



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# I

## Introduction





The system for protecting children and adolescents from sexual exploitation in South Korea is designed to protect children and adolescents from sexually-related crimes including sexual violence, prostitution, and exposure to indecent materials.

Internationally, the Convention on the Rights of the Child proclaimed the necessity of protecting children from sexual violence, prostitution, and pornography and called for governments to take appropriate action. The World Congress against the Sexual Exploitation of Children and Adolescents has held meetings in Sweden, Japan, and Brazil, and the action agenda adopted at these conventions has heightened the responsibilities of respective governments.

Starting in the 1990s, a series of high-profile heinous crimes against minors in South Korea fueled a social consensus regarding the need for better protection of children and adolescents against sexual abuse. The 1953 Criminal Law lacked specific provisions on crimes against minors, with the exception of provisions on statutory rape (rape of minors younger than 13 years old) that dictate punishment of the offender even if the victim consented to sexual intercourse. In 1997, the 1994 Act on the Punishment of Sex Crimes and Protection of Victims Thereof (hereinafter “the Anti-sexual Violence Act”) was revised to include provisions for heightened punishment for rape and sexual harassment of a minor aged less than 13 years old by using physical assault and/or coercion. Since that time, the related penalties have continued to be adjusted upward. Regulations regarding sex crimes against adolescents, which had long been limited to those provisions in the Criminal Law that simply stipulate the rape of a minor through power or influence, were complemented by the Act on the Protection of Juveniles from Sexual Abuse (later renamed as the Act on the Protection of Children and Juveniles from Sexual Abuse), which encompassed a wide range of sex crimes against adolescents including rape and sexual contact by forcible compulsion. This law also defines crimes regarding child/adolescent prostitution, including brokerage.

Along with the introduction of these punitive measures, regulations have been

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emplaced regarding the protection of victims during criminal procedures, prevention of repetition of crimes such as Sex Offender Registration and Community Notification, and prevention of sex crimes against minors.

Protection of children and adolescents from sexual offenses has been institutionalized over a relatively short period of time, as a public consensus was easily achieved regarding the brutality of crimes exploiting the vulnerability of minor citizens and the need to protect them. The implementation of such systems in the child and adolescent arena has been led to the introduction of similar systems for adults. However, issues with the related institutions have arisen since they were at times established without careful consideration of the pertinent details.

This paper will look into the current implementation of the Act on the Protection of Children and Juveniles from Sexual Abuse, related problems, and the pertinent future agenda.

## II

# Implementation Background

1. Domestic and International Standards for  
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## 1. Domestic and International Standards for the Protection of Children and Adolescents from Sexual Exploitation

### A. International Agreements

Every child and adolescent enjoys the right to protection and growing in a secure and comfortable environment. The first World Congress against the Commercial Sexual Exploitation of Children was held in Stockholm in 1996, and it was confirmed that sex crimes targeting children exist in all countries regardless of culture and region. At this international event, governments officially acknowledged the existence of child sexual exploitation, and a total of 122 countries adopted the Declaration and Agenda for Action designed to eradicate the commercial sexual exploitation of children.

At the Second World Congress, held in Yokohama, Japan in 2001, 161 governments signed on to the Agenda for Action expressing their commitment to the protection of children from sexual abuse. In 2000, the 10th anniversary of the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child regarding the sale of children, child prostitution and child pornography was adopted as a means to meet the goals of the convention and heighten the protection of children. The Third World Congress, held in 2008, reviewed the progress made since the 1996 Stockholm Declaration and Agenda for Action and the 2001 Yokohama Global Commitment and adopted Plans of Action regarding support measures for the protection of child victims of sexual exploitation. This Third Congress particularly focused its discussion on the promulgation of effective legal measures and programs to address novel issues in sexual exploitation that had become apparent since the Second Congress, inter-sectoral and inter-governmental cooperation, participation of children, and corporate social responsibility. Based on the results of these deliberations, the

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Congress suggested that governments, civil societies, and the international community take the actions needed to eradicate the sexual exploitation of children and adolescents. It moved a step beyond the previous two congresses by agreeing to remove the word “commercial” from the title of the congress and encompass the issue of sexual exploitation in a much broader sense. It also expanded its focus of attention to cover adolescents<sup>1)</sup> (Kim Mi-suk et al., 2009:162-168).

The following describes how South Korea in particular implemented the Plan of Action adopted at the third World Congress. The South Korean government has signed and ratified the 1991 UN Convention on the Rights of the Child, the 2004 Optional Protocol to the Convention on the Rights of the Child Relating to the Sale of Children, Child Prostitution and Child Pornography, the ILO Convention No. 182 on the Worst Forms of Child Labour, the UN Convention on Transnational Organized Crime, and the 2007 UN Convention on the Elimination of Discrimination against Women. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), which was signed on December 13, 2000, is pending ratification followed by the revision of the Criminal Law regarding human trafficking April 15, 2013.

In South Korea, the legal age for marriage is 18 for both men and women, and all forms of sexual exploitation of children and adolescents are prohibited by the Act on the Protection of Children and Juveniles from Sexual Abuse, as well as other related laws, all of which have been designed in accordance with international standards regardless of beliefs regarding customary age for sexual consent and marriage.

The South Korean legal system promotes the protection of the privacy of both victims and offenders in sexual exploitation, especially during the

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1) This paper defines adolescents as young adults aged over 17 but younger than 24 years old. The UN Convention on the Rights of the Child defines children as those under the age of 18.

investigation and trial process, and encourages all possible measures for preventing the stigmatization and social exclusion of victims. The Medical Treatment and Custody Act stipulates that sex offenders with pedophilia disorder<sup>2)</sup> among those subject to treatment and protective custody must undergo treatment for up to 15 years and then serve any remaining prison term. Sex offenders can also be kept supervised for a certain amount of time through the community sex offender management system, which includes sex offender community notification and electronic monitoring after their disimprisonment.

Any criminal behaviors performed by child or adolescent victims during their victimization are decriminalized. Accordingly, adolescents who sell sex to adolescents adult buyers are not subject to punishment. A child or an adolescents of sexual abuse legally assumes the status of a victim,<sup>3)</sup> and thus becomes entitled to the extension of child-friendly approaches throughout the legal process. The Prosecutors' Office has developed investigation rooms dedicated for child and woman victims, and any offices lacking such rooms have initiated a child/woman-friendly environment in their interrogation video recording room as a strategy to maximize the protection of the rights of victims during the investigation process.

In addition to the strenuous efforts that have been made toward preventing the sexual exploitation of children and adolescents, a multilateral referral structure has been established and reinforced in order to provide child victims of sex crimes with comprehensive support and services. Sunflower Children's

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2) Pedophilia is a psychiatric disorder as defined by the World Health Organization in which an adult or adolescent is primarily sexually attracted to young children.

3) The Act on the Protection of Children and Juveniles from Sexual Abuse divides sex crimes into sexual violence and prostitution. Under this law, sexually molested adolescents are defined as victims but adolescents engaged in prostitution are considered to be subjects of sex-buying activities, classifying them as subject to protective disposition. Some argue that it contradicts the spirit of the law to classify prostituted adolescents as subjects for protective disposition since this serves to occlude the fact of the victimization of adolescents in prostitution.



Center, an organization dedicated to the issue of child sexual abuse, operates a nation-wide victim support system, maintains expert groups to assist child victims, and offers correctional treatment-based education for offenders under the age of 18.

## B. Constitutional Implications of the Protection of Children and Adolescents from Sexual Offenses

While children and adolescents as well as adults are members of society, they are often treated differently due to their age. The Act on the Protection of Children and Juveniles from Sexual Abuse defines children and adolescents as the aged under 19 according to the traditional South Korean age reckoning system in which one year is added to a person's age on the first day of each year. While it may be argued that children and adolescents should be treated as equal to adults since they are equal members of society, a government's efforts to get rid of harmful environments and ensure the protection and development of its child and adolescent members seem to be soundly legitimate and justifiable given the general consensus that children and adolescents are undergoing a process of mental and physical development and are considered to lack discernment, self-control, and judging ability compared to adults<sup>4)</sup>. In this

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4) The Constitutional Court of Korea has also identified the physical and psychological immaturity of adolescents as a major ground for justifying enactment activities that limit the basic rights of adolescents and certain adults. See Constitutional Court 1995. April 20. Confirming the unconstitutionality of Article 4 of the Bucheon City Ordinance on the Prohibition of the Installation of Cigarette Vending Machines et al. and Article 4 of the Gangnam-gu Ordinance on the Prohibition of the Installation of Cigarette Vending Machines et al.; Constitutional Court 1996 February 29. 94 Confirming the unconstitutionality of Article 3-5 of the Act on the Regulation of Amusement Businesses Affecting Public Morals; Constitutional Court 1996 February 29. 94 Confirming the unconstitutionality of Article 2-6 of the Act on the Regulation of Amusement Businesses Affecting Public Morals; Constitutional Court 1997 March 27. 94 Confirming the unconstitutionality of Article 6-1-13 of the Enforcement Decree of the School Health Act; Constitutional Court 1999 September 16. 96 Confirming the

sense, protection of children and adolescents is a central task of any state and society in order to sustain its existence. In this regard, government's intervention is necessary to a certain extent and the differential treatment of children and adolescents can be constitutionally justified.

From the perspective of paternalism, government's intervention in the affairs of children and adolescents can be manifested in two avenues. First, the government protects and supports children and adolescents from the viewpoint of welfare, perceiving them as subjects for cultivation. This approach is represented by the Framework Act on Juveniles, the Juvenile Welfare Support Act, and the Juvenile Activity Support Act. Alternatively, the state considers them as subjects for protection, making efforts to shelter them from unwholesome surroundings such as exposure to sexual exploitation. The Juvenile Protection Act and the Act on the Protection of Children and Juveniles from Sexual Abuse take this standpoint.

Government intervention often sparks controversy when the approach is based on paternalism, perceiving children and adolescents to be subjects for protection rather than for cultivation. Protection entails regulation, which in turn results in restrictions upon the freedom and rights of children and adolescents. The South Korean government's system for protection of children and adolescents from sexual exploitation imposes such institutions that restrict the freedom and rights of children and adolescents and/or adults on the grounds of promoting the protection of these children and adolescents (Lee Chun-hwa et al., 2007:35-36). It also emphasizes the responsibilities of members of society for securing the safe and healthy development of children and adolescents, believing that the society as a whole is responsible for the issues regarding its teen-age youths.

As an example, a constitutional petition was submitted claiming that the sex

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unconstitutionality of [Note 13] of Article 42 of the Enforcement Decree of the Food Sanitation Act; and Constitutional Court 2001 January 18. 99 Confirming the unconstitutionality of Article 2 of the Juvenile Protection Act.

offender community notification system violates the doctrine of double jeopardy, the anti-overrestriction principle, the principle of equality, and the principle of due process. While the Constitutional Court voted in favor of its unconstitutionality by a 5 to 4 vote, the number of votes was not enough to meet the minimum for the confirmation of unconstitutionality as stipulated by Article 23-2-1 of the Constitutional Court Act<sup>5)</sup>. As a result, the sex offender community notification system turned out to be constitutional on the grounds that it does not violate the anti-overrestriction principle as its goal is to protect children/adolescents and communities from the dangers of sex crimes rather than punishing offenders. It also stated that the degree of restriction upon the general human rights and in particular the privacy rights of buyers of sex with children and adolescents does not outweigh the public interest in the protection of teenagers from sex crimes.

## 2. Incidents Driving the Institutionalization of the Protection of Children/adolescents from Sexual Exploitation

A case of sexual abuse by a step father that occurred in the 1990s became one of the major incidents that prompted the institutionalization of the protection of children and adolescents from sexual abuse. In this case, a victim repeatedly raped by her stepfather told her story of victimization to a boyfriend, and the couple together eventually murdered the stepfather.

Another high-profile case was about a woman who had been raped by a neighbor when she was a child. Due to the past experience, the victim suffered difficulties as an adult in maintaining her marriage and a normal social life, and finally killed her childhood rapist.

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5) 2003 June 26. 2002 14 Plenary Assembly: Article 20-2 of the Act on the Protection of Juveniles from Sexual Abuse.

These two cases became emblematic incidents that highlighted the necessity for the enactment of a special law to punish child sexual abuse offenders in consideration of the severity of the harm that sexual assault can bring to victims who lack the ability to fully grasp and respond to what occurred to them. Soon after the opening of the Korea Sexual Violence Relief Center in 1993, the anti-sexual violence act was passed in 1994, impelled by case data collected by rape crisis centers across the country.

Sex crimes targeting children and adolescents continued to alarm society into the 2000s and led to efforts to bulwark the child/adolescent sexual abuse prevention system such as increasing the punishments meted out to child molesters and retrospective application of electronic tagging.

In terms of adolescent prostitution, domestic circumstances were highly conducive to the enactment of the Act on the Protection of Juveniles from Sexual Abuse. Severely hit by the Asian financial crisis of 1997, South Korea witnessed a surge in family disintegration and runaway teenagers in the late 1990s, many of whom fell into the clutches of the sex industry. This enactment was the result of combined efforts of women and adolescent support organizations as well as the government's Commission on Youth Protection<sup>6)</sup>. Reflecting the social circumstances of the time, the government focused on the protection of prostituted adolescents and introduced a number of institutions including the sex offender community notification system as a means of showing the government's resolution to eliminate rampant adolescent prostitution.

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6) The campaign for the enactment of the Act on the Protection of Juveniles from Sexual Abuse was initiated by civic groups including the Naeil Women's Center for Youth, Korea Sexual Violence Relief Center, and Korean Womenlink Counseling Center for Domestic and Sexual Violence. In order to raise awareness of the danger of the then-prevalent "Yeonggye (Young Chick) Culture", in which prostitution involving teenagers was considered normal, these organizations conducted a series of seminars, a survey of lawmakers, a live debate on TV, a performance at the National Assembly, and public campaigns.



### III

## Implementation of the System for Protection of Children and Adolescents from Sexual Exploitation

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## 1. History of Enactment of Related Laws

In order to review the history of the laws related to the protection of children and adolescents from sexual abuse, it is necessary to examine laws that include provisions designed for that purpose.

In the early days of the Republic of Korea, the Criminal Law enacted on September 18, 1953 broadly addressed violence against women by stipulating criminal punishments regarding rape, battery, and the trafficking of women. This law, however, which defined rape and sexual harassment as crimes against chastity, was insufficient for fully protecting vulnerable children and adolescents from the threat of sex crimes. The Criminal Procedure Act defined most sex crimes, including rape, as an offense subject to complaint, meaning that an investigation could not be initiated without a complaint by the victim. What is worse, victims were prohibited from making complaints against their parents or a spouse's parents. Under this legal system, children and adolescents could not be properly protected from the daily threat of sexual violence.

With the frequent recurrence of horrendous sex crimes, a public consensus emerged regarding the need for a proactive response to sexual violence focused on post-action controls and preventive measures protecting vulnerable individuals.

The increased report of sexual violence cases and related public concern in the early 1990s led to the enactment of the 1994 Act on the Punishment of Sex Crimes and Protection of Victims Thereof. Considering the flaws in the existing sex crime regulations and the provisions making the offense subject to complaint, this law served as an opportunity to heighten public awareness of the severity of sex crimes that had long remained obscured, such as incest and sexual assaults on the disabled. The enactment of the anti-sexual violence law also brought to the surface issues of violence against women, women's human rights, and the development of law and policy. While the existing Criminal Law



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emphasized the punishment of criminals, the newly introduced anti-sexual violence law inserted the protection of the human rights of victims into the process of reporting, investigation, and trial (Na Dal-suk, 2013:279-280). Regulations on the protection of children and adolescents were in general addressed through the enactment of special laws.

For sexual offenses, the anti-sexual violence act of 1994 was passed to cover both child and adult victims. The 1961 Prostitution Prevention Act and the 2004 Act on the Punishment of Procuring Prostitution and Associated Acts addressed crimes related to prostitution, but these two laws were mainly concerned with adults.

The Act on the Protection of Juveniles from Sexual Abuse<sup>7)</sup> was passed in 2000 in order to particularly address the sexual exploitation of child and adolescent victims. Originally, the main purpose of this law was to resolve the issue of adolescent prostitution, which had become a grave social concern due to the surging number of runaway teenagers in the wake of the Asian financial crisis and their exploitation by the sex industry. In the process of enactment, however, it was expanded to cover the protection of children and adolescents from sexual offenses in general. Since then, policies and institutions regarding sexual violence have continued to be reinforced, influenced by a series of child sexual abuse cases that shocked the public at large. Meanwhile, however, the prostitution aspects of the act have not been developed to the same degree.

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7) The Act on the Protection of Children and Juveniles from Sexual Abuse, which was established on February 3, 2000, was renamed the Act on the Protection of Children and Juveniles from Sexual Abuse upon its revision on June 9, 2009. This was to explicitly show that the law includes children even though children are covered by the law given the definition of adolescents as anyone under the age of 19.

## 2. Punishment of Sex Criminals Exploiting Children and Adolescents

### A. Punishment of Sexual Abusers of Children/adolescents

#### 1) The Act on Special Exemptions Concerning the Punishment, etc. of Sexual Violence Crimes

##### a) Overview

The Act on Special Exemptions Concerning the Punishment, etc. of Sexual Violence Crimes (hereinafter “the Special Exemptions Act”) was enacted with the goal of securing the lives and physical safety of the victims of sexual offenses and establishing a sound social order by defining special exemptions regarding the punishment and legal procedures of sex crimes. With the 1994 anti-sexual violence act separated into the punishment act and the victim protection act on April 15 of 2010, the punishment of sex crimes came to be dictated by the punishment act.

The Special Exemptions Act does not define sexual violence per se, but simply lists the crimes falling under the rubric of sexual violence such as rape and sexual contact by forcible compulsion as set out in the Criminal Law. As this law does not include provisions specifying the age of those subject to the law, the Act on the Protection of Children and Adolescents from Sexual Abuse (hereinafter “the child and adolescent protection act”) applies first in the case of sex crimes involving people under the age of 19.

One of the notable regulations related to the protection of children and adolescents is the introduction of statements via video recording allowed to victims under the age of 19.

b) Major details regarding sexual violence crimes

Sex crimes subject to the Special Exemptions Act include special robbery and rape (break-in and rape); aggravated rape (rape that involves a deadly weapon or more than one offender); incest; rape of a disabled individual; rape of a minor under the age of 13; the crime of injury including rape; the crime of murder including rape; like-rape; and sexual contact by forcible compulsion.

In addition, sexual contact using compulsive power, sexual contact in a public space, intrusion into a public space for sexual purpose, sexual conduct using communication devices, and indecent photography using a camera, etc. are all subject to punishment. In the case of the crime of special robbery and rape, a failed attempt is also subject to punishment.

The recent revision of the law (implemented on June 19, 2013 as Act Number 11556; comprehensively revised on December 18, 2012) omitted the provisions on offenses being subject to complaint, taking into account the assertion that an offense being subject to complaint hampers proper punishment of sex crimes and results in secondary victimization since it exposes a victim to constant pressure or coercion from the offender's side to drop the case. It also expanded the range of crimes subject to exemption from the restriction on the period of public prosecution to include sexual contact by forcible compulsion and quasi-indecent conduct by forcible compulsion. Finally, the revision added the offense of intrusion into public space for sexual purposes.

Regarding the punishment of sexual violence, the revision expanded the category of "relatives" to include cohabiting relatives and altered the definition of a victim of rape against a disabled person or a child under the age of 13 from "female" to "individual".

c) Special exemptions concerning the punishment of sexual violence

The Special Exemptions Act defines cases of special exemptions regarding the punishment of sexual offenses.

In accordance with regulations on the concurrent penalty of both punishment and obligatory attendance of anti-sexual violence education, offenders who are sentenced to a fine, restrictions on physical freedom, or suspension of execution are required to attend a crime repetition prevention program or a sex crime treatment program for up to 500 hours. Such programs include diagnosis of abnormal deviant behavior and related counseling in addition to sexuality education.

The court can conduct an investigation before delivering a program attendance order as a means to ascertain the physical and psychological characteristics, psychological development process, and family history of the accused.

In addition, the law specifies an exemption from the limitations of the complaint provision in order to enable victims to file a complaint against their own or their spouse's lineal ascendants. Through a further exemption clause, the provision on the reduction of punishment as defined by the Criminal Law that allows a reduction of the punishment, when a crime is committed under the influence of alcohol or other substances, may not be applied to an offender in the case of sexual assault.

An exemption from the period of restriction of public prosecution dictates that in the case of child/adolescent victims, the period of the restriction of public prosecution begins only from the day when the victim becomes a legal adult. The period also extends a further ten years when scientific evidence such as DNA exists in the case of rape and/or sexual contact by forcible compulsion. This restriction period does not apply to rape and sexual contact by forcible compulsion perpetrated against a child aged under 13 or an individual with a physical or mental disorder.

The Act on Special Exemptions Concerning the Punishment of Specific

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Violent Crimes is applied mutatis mutandis to legal procedures of the crimes of sexual violence regarding the protection of witnesses and victims from the revelation of their identity. Accordingly, the victim or the reporter of a case is entitled to protection as a witness in investigation process.

The confidentiality rule regarding the identity and privacy of a victim prohibits former and incumbent public officials involved in an investigation or trial of a relevant case from disclosing the address, name, age, job, school, appearance, photos, and/or any other information that may provide clues as to the identity of a victim. In the meanwhile, when there is sufficient evidence to believe that the accused committed the crime, the identity of the accused, including facial images, can be revealed as deemed necessary to the public interest such as for the prevention of repeated crimes.

Furthermore, the law prescribes exclusive investigation teams for victims of sexual violence, the appointment of a state-appointed lawyer for the victim (legal assistant system), a designated judge system for crimes of sexual violence and the appropriate care and consideration that must be taken by those involved in the investigation and trial process in order to avoid damage to the dignity and privacy of the victim, for example by carefully taking account of the age, mental condition, and possible post-traumatic disorders of the victim.

When a victim is younger than 19 years old or lacks discretionary judgment due to physical or mental disorders, his/her statement and the investigation process should be recorded and preserved using a video recording device, and the trial can be closed to ensure the privacy of the victim.

The court should have in place proper facilities to provide protection and support for the victim and to keep the victim from contact with the accused offender and/or his or her companions both before and after the trial. The court is also required to have a witness assistant who is tasked with managing such facilities and providing protective services to the victim.

The court may consult with experts such as psychiatrists, psychologists, and

social welfare experts regarding the mental status and statements of the offender and/or victim. When a victim is younger than 13 years of age or suffers from a physical or mental disorder, the court should seek the opinions of related experts on the mental status and statements of the victim.

Along with the provisions on accompaniment by someone of trust, the Minister of Justice may introduce programs to foster statement assistants able to aid victims of sexual abuse who have difficulty in the communication and expression of their input during the legal process. These assistants may be allowed to participate in the investigation and trial process to help child victims under the age of 13 or those with communication difficulties.

When there are significant difficulties posed by witness interrogation using a video relaying device or with the victim's appearance in court on the date of trial, the preservation of evidence can be requested. Here, victims aged less than 16 years old are considered to face significant difficulties in appearing in front of the court.

Legal assistants for victims of sexual violence, witness support facilities and assistants to provide protection and support for a victim who appears in the court as a witness, as well as statement assistants for victims with communication difficulties, were all introduced in the recent revision of the Special Exemptions Act (implemented on June 19, 2013 as Act Number 11556; comprehensively revised on December 18, 2012). As to legal assistants, the related provisions were transferred from the Child/adolescent Protection Act to the Special Exemptions Act. The statement assistant system is an expansion of the previous system of statement analysis experts. All in all, both the statement assistant system and the legal assistant system are expected to greatly contribute to protecting and supporting child and adolescent victims of sexual abuse.

## 2) The Act on the Protection of Children and Juveniles from Sexual Abuse

### a) Overview

In 1999, sex crimes targeting teenagers, including adolescent prostitution or compensated dating with teenagers, and the production of pornography involving adolescents emerged as a social issue, prompting a need for the enactment of a law to protect teenagers from sexual exploitation. Upon a bipartisan proposal, the National Policy Committee of the National Assembly drafted a bill and the Act on the Protection of Juveniles from Sexual Abuse (Act Number 6261) was promulgated on February 3, 2000. It took effect on July 1 of the same year.

Renamed the Act on the Protection of Children and Juveniles from Sexual Abuse on June 6, 2009, the law consists of clauses regarding: special exemptions on the punishment and procedures for sex crimes against children and adolescents; reporting of sex crimes, emergency measures, and support; protection and guidance of children and adolescents; and community notification and employment restrictions for convicted sexual offenders.

Considering children and adolescents to be subjects for protection, the main goal of this law is to define adolescent prostitution as a form of sexual abuse and exploitation of adolescents even if the adolescent in question voluntarily consented to the sexual conduct, as well as to punish the adults involved in the trade. This special initiative to eradicate sexual crimes targeting minors adopts such measures as registration, community notification, and employment restrictions for offenders convicted of child/adolescent sexual abuse with an aim to prevent victimization and promote the safety of children and adolescents. Adolescents involved in prostitution are considered to be subject to guidance and protection as they are defined as adolescent victims rather than criminals.

The sex crimes against children and adolescents defined by this law include rape, sexual contact by forcible compulsion, prostitution, forcing children/adolescents to

sell sex, and production/distribution of indecent materials involving children and adolescents<sup>8)</sup>. Children and adolescents are defined as those under the age of 19 according to the South Korean age reckoning system

b) Major details regarding crimes of sexual violence

Sexual violence defined by the Child/adolescent Protection Act includes the crimes of rape, indecent contact by forcible compulsion, etc.; crimes of rape, etc. against children and adolescents with disabilities; crimes of injury including rape; and crimes of murder including rape.

In relation to crimes including rape and sexual contact by forcible compulsion, etc. against children and adolescents, those who rape children or adolescents by using physical assault and/or coercion are subject to a period of incarceration ranging from life imprisonment to a minimum of five years (Article 7). Here, rape includes like-rape, sexual contact by forcible compulsion, quasi-rape, quasi-sexual contact by forcible compulsion, rape and sexual contact using power and/or influence, and failed attempts at rape. Following revision, this law featured a modified definition of victims of rape from female children and adolescents to children and adolescents (implemented on March 16, 2012 as Act Number 11047; partially revised on September 15, 2011) earlier than did the Criminal Law and the Special Exemptions Act.

Rape of children and adolescents with disabilities refers to the rape of a disabled child or adolescent by an adult aged 19 or older or the act of compelling someone to have sexual intercourse with a disabled child or adolescent. What is notable is that sexual intercourse with a disabled child/adolescent without resorting to power or influence is also subject to punishment. This law is expected to enhance

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8) While crimes related to indecent materials involving children and adolescents, which are becoming a growing concern, differ in nature from crimes of prostitution, they will be discussed as part of crimes of prostitution due to the lack of related statistics and research data.



the protection of the disabled as it enables the practical punishment of an adult engaged in a long-term sexual relationship with a disabled child/adolescent with an intellectual disability.

c) Special exemptions regarding the punishment of crimes of sexual violence

Through special exemptions regarding the punishment of sex crimes against children and adolescents, provisions in this law are applicable to both the crimes of sexual violence and prostitution, unless otherwise specified. The only clause related to sexual violence is that of the non-application of the provision of the reduction of punishment in consideration of the influence of alcohol as defined by the Criminal Law.

Special exemptions to crimes of sexual violence are the following: the provision on the reduction of punishment in consideration of the influence of alcohol may not be applied; the restriction on the period of public prosecution only begins from the day when the child/adolescent reaches the age of legal adulthood; and the restriction on the period of public prosecution is not to be applied to cases of the against a minor under the age of 13. The conviction of a crime or the suspension of execution should be concurrent with an order to attend up to 500 hours of a repeated crime prevention program or a sexual assault treatment program. Furthermore, the law dictates that the dignity and privacy of victims be protected in the process of investigation and trial.

In particular, prosecutors who investigate sex crimes involving children or adolescents should pursue the termination of parental rights if the accused offender is the parent or guardian of the victim. The heads of child protection agencies, rape crisis centers, and shelters can request that a prosecutor file for the termination of the parental rights of the accused. The provision on the termination of parental rights in the child/adolescent protection act has been applied mutatis mutandis from the Child Welfare Act. If a termination of

parental rights is ordered, the court can issue a protective measure on behalf of the victim, in respect of the victim's opinions, through which the victim is dispatched to others holding parental rights, relatives, or support facilities.

Similar to the Special Exemptions Act, the Child/adolescent Protection Act also has in place special exemption clauses regarding the video-recording of evidence, evidence preservation, accompaniment by someone of trust, appointment of a state-appointed lawyer for the victim, and confidentiality. Child/adolescent victims and their families may access and photocopy documents and evidentiary materials related to their trial upon permission from the judge. Both the joint penal provisions, in which an individual violator and his/her supervisor are punished, and the provisions that set forth the punishment of South Koreans engaged in overseas sexual exploitation of children/adolescents that enables the expedited acquisition of crime-related information from concerned overseas governments, exist only in the child/adolescent protection act.

When those liable for reporting sex crimes, the heads or employees of the facilities and organizations as listed in Article 34-2, have committed sex crimes against the children/adolescents under their protection, guidance, or treatment, punishment is aggravated by up to 150% of the sentence conventionally defined for the respective crime. Those liable for reporting sex crimes can include doctors, school principals, and the heads of welfare facilities for the disabled.

## B. Punishment of Child/adolescent Prostitution

### 1) Overview

The enactment of the child/adolescent protection act served as an opportunity, at least in terms of related legal phrasing, to demonstrate changes in the perspective toward prostituted adolescents.

According to the 1961 Prostitution Prevention Act, all activities related to prostitution are punished including brokering, exploiting, and selling/buying of

sex, with no exception provided to adolescent prostitutes, who were simply considered “an actor of prostitution”.

This Anti-prostitution Act in principle punished all actors of prostitution, stating that “both the actor and the partner of prostitution are subject to imprisonment of less than one year, up to 300,000 KRW in fines, detention, or a minor fine.” By defining the act of prostitution as “engaging in sexual activities with unspecified individuals in return for receiving financial rewards,” however, the law narrowly defined the act of prostitution as the selling of sex, making male buyers partners, not actors, in prostitution. This legal definition of prostitution showed that the primary focus of punishment was on the seller of sex (prostituted women), in contradiction to the joint penal provisions stipulated in the law (Kim Ji-seon, 2001:103-104).

The dual policy of prohibition of all activities related to prostitution and of guidance on prostituted women subjected prostitutes to control and punishment regardless of their age. This application of the same rule to all prostitutes was not because the proportion of adolescent prostitutes was insignificant. In fact, teenage prostitutes were preferred by male buyers and pimps. It was estimated that about one-third of prostitutes were female teenagers, and around 70% of those recruited through human trafficking, which emerged as a channel for meeting the rising demand for prostitutes by the sex industry in the mid-1980s, were young women under the age of 20 (Kim Ik-gi et al., 1996:126).

The 2004 Act on the Punishment of Procuring Prostitution and Associated Acts reaffirmed that both selling and buying of sex is illegal. However, adolescents were defined as prostituted victims and excluded from punishment. With the enactment of the Child/adolescent Protection Act, the status of children and adolescents as subjects for protection, including prostituted minors, has been confirmed.

Child/adolescent prostitution and pornography, which rapidly spread through the diffusion of information and communication technologies, is an emerging

concern that requires an accurate assessment of its status and appropriate countermeasures.

## 2) Major Details Regarding the Crimes of Prostitution

The child/adolescent protection act includes provisions regarding the crimes of prostitution and production/distribution of indecent materials involving children and adolescents.

The buyers of sex with children or adolescents are subject to terms of imprisonment of one to ten years or 20-50 million KRW in fines. Those who entice children/adolescents to sell sex or broker their prostitution are subject to imprisonment for up to one year or fines of up to 10 million KRW.

In relation to forcible compulsion of children and adolescents, imprisonment of a minimum five years is mandated for: 1. those who use physical assault and/or threat to force children/adolescents to sell sex; 2. those who place children/adolescents in jeopardy by indebting them or who force them to sell sex by means of power and/or influence; 3. those who force children/adolescents to sell sex by exploiting their position as a guardian or supervisor in employment or other relations; and 4. those who entice and broker children/adolescents to sell sex. Imprisonment of seven years or longer is mandated for those who have committed items 1-3 above and receive, demand, or are promised all or part of the financial reward in return for the sex trade. Anyone who entices children/adolescents to sell sex is subject to imprisonment of up to seven years or up to 50 million KRW in fine. Failed attempts at the first two items are also subject to punishment.

Regarding brokering, a sentence of imprisonment of seven years or longer is mandated for: 1. those who receive a profit in exchange for providing a venue for child/adolescent prostitution; 2. those who receive a profit from brokering child/adolescent prostitution or by providing brokering information over an information or communications network; 3. those who provide money, land, or real estate in the knowledge that it will be used for crimes related to the first

two items; 4. those who allow the hiring of children/adolescents at a business establishment that provides or brokers child/adolescent prostitution.

A penalty of imprisonment for up to seven years or a maximum of 50 million KRW in fines is applied to: 1. those who entice, recommend, or force others to buy the sex of children/adolescents for purposes of profit; 2. those who provide a venue for child/adolescent prostitution; 3. those who broker child/adolescent prostitution or provide brokering information on an information and communications network; and 4. those who promise items 2 or 3 as part of their business. Those who entice, recommend, or force others to buy sex with children/adolescents for non-commercial reasons are subject to imprisonment of up to five years or up to 30 million KRW in fines.

Those who use physical assault and/or threat to force a victim and his/her parent or guardian as defined in Article 3-3 of the Child Welfare Act to settle a case will be subject to imprisonment of up to seven years.

Meanwhile, the Child/adolescent Protection Act contains provisions on both definitions and punishment related to indecent materials exploiting children and adolescents. Indecent materials involving children and adolescents are described as materials displaying a child/adolescent or a person/object that obviously represents a child/adolescent performing sexual intercourse or other sexual acts. Such materials include films, videos, games, or any other forms of visual representation using a computer or other communication devices.

The punishment for the production and distribution of indecent materials exploiting children/adolescents is as follows: 1. those engaged in the production, import, or export of such materials are subject to imprisonment for from five years to life; 2. those who sell, rent, distribute, or otherwise provide such materials, who own or transfer such materials for the before-mentioned purposes, or who publicly display or broadcast such materials are subject to imprisonment for up to ten years; 3. those who distribute, provide, or publicly display or broadcast such materials should be sentenced to imprisonment of up

to seven years or up to 50 million KRW in fines; 4. those who broker children/adolescents to the producers of such materials in the knowledge that the children/adolescents will be used to produce such materials are subject to imprisonment of a minimum three years. Furthermore, those who knowingly possess indecent materials involving children/adolescents will be punished with imprisonment of a maximum of one year or up to 20 million KRW in fines. Failed attempters of production, import or export of indecent materials.

In terms of child/adolescent prostitution, those who engage in the act of buying sex from a child or adolescent or who send children/adolescents abroad or bring children/adolescents from abroad knowing that they would be used to produce indecent materials are subject to imprisonment for five years to life. Failed attempters at such activities are also subject to punishment.

Regarding the obligations of online service providers, those who fail to take measures to screen out indecent materials involving children/adolescents and to immediately delete, prevent the transmission, or discontinue any such materials discovered in the information and communication network under their liability are subject to terms of imprisonment of up to three years and up to 20 million KRW in fines. However, punishment will be exempted if it can be proved that the service provider has made strenuous efforts to screen out such materials and/or it is technically impossible to prevent the transference or ensure the discontinuance of such materials.

Online service providers of the special types defined in Article 104 of the Copyright Act are obliged by Presidential Decree to display on their users' screens or transferring program when the user searches, uploads, or downloads materials stored in computers other devices, warning signs that clearly express that the production, distribution, and/or possession of indecent materials including children/adolescents is subject to criminal punishment.

## C. Related Policies

Following an incident in which an elementary school-age girl was sexually molested and murdered in Jeju Province in 2007, the government announced “Comprehensive Measures for the Protection of Children and Women” in April 2008, the contents of which included the protection of children and women from sexual violence, assurances of prompt arrest and punishment of offenders, and strengthening the protection and support provided for victims. In order to oversee and further ensure the implementation of those measures, the Taskforce to Monitor the Implementation of the Protective Measures for Children and Women<sup>9)</sup>, a joint effort undertaken by nine ministries, was created and a total of 19 meetings among related ministries had been convened by October 2012 (Ministry of Gender Equality and Family, 2013:143).

When a series of grave sexual violence cases alarmed the country in 2012, the Taskforce to Eradicate Sexual Violence against Children and Women<sup>10)</sup> was formed to devise the Measures to Eradicate Sexual Violence against Children and Women. In addition, a Special Committee on the Prevention of Sexual Violence against Children and Women was installed in the National Assembly with an aim to expedite the revision of related laws.

Regarding the protection of children and adolescents from prostitution, the 2009 revision of the child/adolescent protection act allowed for the punishment of those who simply entice children/adolescents in order to buy sex from them.

9) Chaired by the Vice Minister of Gender Equality and Family, the Taskforce to Monitor the Implementation of the Protective Measures for Children and Women consists of officials at a level equivalent to head of bureau from the Ministries of Education, Science & Technology, Security & Public Administration, Strategy and Finance, Health and Welfare, Justice, and Culture, Sports & Tourism; the Korea Communications Commission; and the National Police Agency.

10) The measures include refinement of the sex offender community notification system, expansion of victim support services, improved oversight of individuals with criminal records, and strengthening the protections provided to children from underprivileged households.

To secure the efficacy of this provision, the Ministry of Gender Equality and Family joined forces with the National Police Agency to develop a program called Youth Keeper and distribute it to schools and via internet with a goal of the prompt reporting to police of activities suspected of being directed at luring minors into prostitution in online chatting rooms. The National Police Agency also operates Ahnjeon Dream Center, a support center for children, women, and the disabled.<sup>11)</sup> Internet users can report via the center's website any suspected activities involving child/adolescent prostitution.

## D. Evaluation

In regard to the punishment of offenders committing sex crimes against children and adolescents, recent revisions of the Child/adolescent Protection Act and the Special Exemptions Act have resulted in the following changes: abolishing the provision on offenses subject to complaint; expanding the cases of exemption from the application for the period of public prosecution; recognizing male victims of the crime of rape; introducing the crime of like-rape in the Criminal Law; introducing "difficulty of resistance" to the conditions required in the crimes of quasi-rape of a disabled person; including cohabiting relatives among relatives as defined in crimes of incest; abolishing the condition of "women with no habitual lewd acts" in the conditions constituting the victim of the crimes of lewd act brokerage; including "influence" as a means for the crime of extortion against children/adolescents; adding "punishment of the conduct of disseminating the unsolicited photos against the intention of the victim" to the crime of unsolicited photography; and introducing the crime of intrusion into public space for sexual purposes (Korea Sexual Violence Relief Center, 2013:38-54).

Other revisions include expanding the coverage and authority of legal assistants to victims of sexual violence; introducing the statement assistant program;

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11) [www.safe182.go.kr](http://www.safe182.go.kr), formerly known as 117 Center



establishing a legal basis for the installation of witness support facilities; refining provisions on the accompaniment of someone of trust and video-recording; refining the provisions related to support for victims in the investigation and trial process; and strengthening the protections granted to the safety and privacy of victims (Korea Sexual Violence Relief Center, 2013:54-71).

The full-scale revision of these two laws brought about significant changes in the punishments and criminal procedures directed at crimes of sexual violence. It is greatly encouraging that a major portion of the positive revisions are designed to promote the protection of child/adolescent victims. The following describes suggestions for future improvement.

One positive aspect of abolishing the requirement of a victim's complaint is that it eliminates the potential for secondary victimization stemming from the offender's cajoling and/or threatening of the victim designed to induce them to drop the case. It also frees the victim from the trauma in deciding whether or not to punish the offender. However, prosecution can at times be pursued against the intention of the victim, which may also compromise efforts to protect victims. As a prosecution can be initiated simply upon the reporting of a case from a rape crisis center without the involvement of the victim, it may deprive a victim who does not wish to initiate criminal procedures of their right to consult with a counseling center regarding the issue. Therefore, it seems necessary to ease the reporting obligation placed on rape crisis centers out of respect for the victim's intentions. Further suggestions include strengthening the protection of the personal information of the victim, strengthening measures to protect against secondary victimization in the investigation and trial process, and assessing whether it is reasonable to reflect a victim's expressed opinion on non-punishment as grounds for reducing the punishment meted out to an offender (Korea Sexual Violence Relief Center, 2013:39-41).

The rights of legal assistants have expanded from the right to attend the investigation of the victim to the right to participate in the investigation of the

victim, present opinions, and interrogate the accused prior to the detention of the accused.

While the statement assistant system obliges investigative authorities and the court to notify a victim of his/her entitlement to receive support from a statement assistant, the legal assistant, system features no such obligatory notification. Investigative authorities and the court should be required to advise a victim of the right to legal assistance, and a notification letter should be dispatched to victims to inform them of the appointment and roles of a legal assistant.

Although it can be considered a positive development that the revised law clearly states the legal assistant's right to present opinions while attending the victim-investigation process since legal assistants are often appointed only after the recording of a victim's initial statement and are not notified of the transfer or prosecution of the case or the scheduling of the investigation and trial, there have been complaints that their rights to attendance are frequently compromised. Hence, investigative authorities and the courts should be obliged to notify legal assistants regarding the details of their investigation, as well as trial procedures and schedules. Education on support for victims of sexual violence should be offered to all legal assistants before they enter service and their activities need to be evaluated on a regular basis (Korea Sexual Violence Relief Center, 2013:55-57).

Meanwhile, laws and policies related to child/adolescent prostitution seem to be receiving considerably less attention compared to those regarding sexual violence. While the frequent recurrence of high-profile cases of child sexual assault fuels policies regarding child sexual abuse, anti-prostitution measures targeting children and adolescents have been relatively neglected. A comprehensive and sustainable support system is needed in order to serve the cycle of runaway female teenagers falling prey to sexual violence and prostitution.

### 3. Prevention of Repeated Crimes against Children and Adolescents by Sex Offenders

Measures to prevent the repetition of crimes against children and adolescents by sex offenders include community electronic monitoring, chemical castration, and employment restriction. The responsibility for community notification has been transferred from the Government Youth Commission to the courts, according to which the court now mandates sex offender registration and community notification upon conviction of a crime. The nature of community notification is not punishment, but a security measure<sup>12)</sup> implemented for the purpose of prevention of repetition of crimes and to promote public safety. Electronic monitoring and chemical castration are also security measures in nature. The same can be said for employment restriction, while noting that it is not executed as the result of court order.

As an extension of the measures to protect children and adolescents from sex crimes, the revision of the Special Exemptions Act and the Child/adolescent Protection Act executed on April 15, 2013 expanded the application of the sex offender community notification and employment restriction provisions to sex offenders with adult victims.

#### A. Community Notification

##### 1) History of the Community Notification System

In general, notification of personal identification information refers to revealing to the public detailed information on an individual such as the person's image, job, address, and date of birth. The sex offender community notification system is a system through which the personal information of those

12) A security measure differs from punishment, which is a penalty resulting from illegal conduct in the past or holding an offender accountable for such conduct, in that it is a purposive method designed as a response to future risk (Lee Jae-sang, 2011:13).

convicted of sex crimes and convicts with a high risk of repeated crimes (name, resident registration number, permanent address and actual place of residence, job or workplace address, physical features, image, license plate number) is registered and part of this information is broadcast to the general public or the community around the convict's place of residence<sup>13)</sup> (Ministry of Justice, 2012:1).

Introduced upon the enactment of the 2000 Juveniles Protection Act, the system has become firmly established over the past 12 years. It has been changed to the sex offender registration and notification system, including refined provisions and an expansion of the length of the notification period.

Upon its introduction, the community notification system aimed at preventing adolescent prostitution but has since shifted its focus to the prevention of sexual assault against children and adolescents. Its provisions and methods have been complemented as well.

The community notification system was introduced grounded in a strong governmental commitment to address adolescent prostitution, which was a grave social concern at that time. While the offenders in crimes of rape of teenagers were included, the major focus of this system was on adult buyers of adolescent prostitution. Following a public series of violent sexual assaults targeting minors, including the *Yongsan* child murder case, there arose a public uproar calling for stronger punishment of sexual violence offenders. Accordingly, the community notification system turned its focus to sexual violence offenders.

The components of the system have also been expanded from the simple identification of criminals subject to community notification by the Prime Ministerial Youth Commission to the registration of offenders, provision of public access to the registry, and the mailing out of offender information as

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13) While the child/adolescent protection act includes offenders of crimes of prostitution among those subject to community notification, the special exemptions act includes only sexual violence offenders. In the light of the theme of this paper, the community notification system for the former is explained here.

ordered by the court. This change is modeled partly on systems in place in the U.S. As to registration, offenders are required to submit a new photograph on an annual basis along with notification of any changes in their personal information. In accordance with the renovated system, offenders' information is kept in the registry for a longer period of time; registration and notification is made upon the release of an offender from prison; and detailed personal information on the offender including a photo and address is made public. The general public is informed of the whereabouts of the offenders through the internet access to the registry and notification by mail, helping them to avoid potential risks. The community notification system has evolved toward the protection of potential victims from its original punitive orientation in which the notification occurred only once, information could be vague and outdated, and the information was published simply at the time when a final judgment was made (Kim Ji-seon et al., 2013:152-153).

The history of the changes in the system is as follows. In accordance with the sex offender notification and public access program, from July 1, 2000 to February 3, 2008, the personal information of buyers of adolescent prostitution was announced in the form of a public announcement in government publications, websites of central and local governments and district offices, and the website of the Youth Commission following the decisions of the Prime Ministerial Youth Commission (renamed the National Youth Commission in 2005). From June 30, 2006 to February 3, 2008, the sex offender registration and notification system was implemented and the personal information of convicted sex offenders was registered with and displayed at local police stations according to the determinations of the National Youth Commission. Between February 4, 2008 to December 31, 2009 the registration and public access system was expanded and offenders subject to public notification were determined by the order of the court. At that time, display by public announcement was abolished, the Ministry of Health and Welfare was in charge

of registration and public access of the information and the information was made available at local police stations. Since January 1, 2010, the information has been accessible on the Internet under the authority of the Ministry of Gender Equality and Family. In addition, as of April 15, 2010, the crimes subject to registration and notification have been expanded from sexual offenses against children aged under 13 to those against minors younger than 19. From April 16, 2011, the system was further expanded to include offenders involved in sexual assaults against adult victims (Ministry of Justice, 2013:2). Since April 15, 2013, the Ministry of Justice has been tasked with registration and the Ministry of Gender Equality and Family with the publication and distribution of information via mail.

## 2) Major Details of the Community Notification System

### a) Registration of sex offenders

In addition to those sentenced to community notification, those convicted of sex crimes as prescribed by the Child/adolescent Protection Act and crimes of sexual violence according to the Special Exemptions Act are subject to registration. Those sentenced to a fine for possessing indecent materials including children and/or adolescents as defined by the Child/adolescent Protection Act are exempted. With the revision of the Special Exemptions Act on April 15, 2013, the registration of sex offenders is managed by the Ministry of Justice.

The court must inform those convicted of sex crimes of whether or not they are subject to registration, and if so, of their obligation to submit personal information. The court is also required to deliver the details of the community notification order in writing along with the written judgment to the justice minister within 14 days of the final judgment.

Those subject to registration are obliged to submit their personal information to the chief of the police station holding jurisdiction over their address within

30 days after the final judgment has been issued. If detained in a correctional or a treatment/custodial facility, the person should submit this information to the head of the facility.

Personal information should include the offender's name, resident registration number, permanent address and actual place of residence, job and address of workplace, physical information (height and weight), and license plate number. The head of the police station or the correction facility is responsible for ensuring that color photographs of the registree are taken at the time of submission of the above-mentioned information. The photos should show images of the registree's upper body from the front and from left and right profiles, as well as a full-body image. They should be preserved in electronic format. In the beginning, registrees were required to bring photos taken on their own, but this was shifted to photos taken at the police station or the correction facility following complaints of difficulty in identifying offenders due to low-resolution photographs.

If any of their personal information changes, registrees must submit the relevant new information, including the details and cause of the change, within 20 days after the change. Photos should be renewed annually and taken at the police station that holds jurisdiction over their address. Registrees detained at a correction facility or a treatment/custody facility should submit new color photos taken before the termination of their detainment.

Under the supervision of the Minister of Justice, the information of registrees should include the criminal record of the person regarding sex crimes (type of crime and frequency) and whether or not they are subject to electronic monitoring. This information should be preserved for 20 years, and it can be distributed to prosecutors and heads of police stations for use in the prevention and investigation of sex crimes.

#### b) Publication and community notification of the information

Online publication and community notification of information on sex offenders fall under the authority of the Ministry of Gender Equality and Family.

Upon handing down the final judgment on a case, the court should pronounce an order to publicize information on the offender by means of the information and communication network for the period of mandatory registration. Those subject to such publication include anyone who is believed to pose a danger of repeated crimes among those who have committed sexual assault and/or sex crimes against children/adolescents and among those who were subject to the provisions on the non-punishment of mentally disabled sexual assault offenders. The publication of this information is exempted in case that an offender is under the age of legal adulthood, or if justifiable grounds for not doing so are identified.

The information to reveal includes name, age, permanent address and actual place of residence, physical information (height and weight), photographs, a type of crime subject to registration (date of final judgment, type of crime, and sentence), criminal records regarding sexual violence (type of crime and frequency), and whether or not electronically monitored.

The publication of this information over information and communication networks is executed by the Minister of Gender Equality and Family. When the publication order is confirmed, the court should deliver an attested copy of the order in writing to the Minister of Justice within 14 days of the final judgment. At that point, the Minister of Justice should deliver the information without delay to the Minister of Gender Equality and Family so that the publication order can be immediately executed.

In accordance with the provisions on the prohibition of abuse of this information, it should only be used to monitor individuals with a potential to commit sex crimes against children and adolescents. Furthermore, the obtained



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information should not be recirculated in publications such as newspapers and magazines, broadcasting services, or privately on the information and communication network. Neither should it be modified or deleted.

Except for the purpose of the prevention of sex crimes, such information should not be used to discriminate against registrees in terms of employment (excluding employment at organizations related to children/adolescents as defined by Article 56-1), use of housing or social welfare facilities, and education and vocational training.

### c) Postal notification of the information

An order to mail out the information should be issued upon the delivery of the final judgment of the case. According to this order, the personal information of the offender is mailed to residents, heads of daycare facilities and kindergartens, principals of schools, and heads of community centers in the community in which the offender resides. This system was introduced on January 1, 2011 in order to raise awareness of sex crimes and to prevent repeated crimes by sex offenders by providing households with young children and heads of educational organizations for children and adolescents with information regarding the whereabouts of those convicted of sex crimes.

This mailing of the information was introduced in order to complement the limitations of the online publication system, which required regular visits to the related website to obtain information on sex offenders and failed to provide their actual address<sup>14)</sup>.

Individuals subject to the postal notification order are those who are judged to have a potential for repetition of crimes among offenders who have sexually abused children/adolescents, those who committed crimes of sexual violence as

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14) *Postal Notification of the Information of the Offenders of Sex Crimes against Children and Adolescents*, promotional material from the Ministry of Gender Equality and Family.

defined by the Special Exemptions Act, and those who committed child/adolescent sexual assault but could not be punished under Article 10-1 of the Criminal Law. Offenders under the age of legal adulthood or those who are believed to exhibit justifiable grounds for exemption are excluded from this order. While offenders sentenced to a fine had been excluded in the past, the relevant provision was deleted in the revision of the Child/adolescent Protection Act made on December 18, 2012.

The postal notification order should be executed within the following periods:

1. for those sentenced to the suspension of execution, within one month from the date of the initial registration of the information;
2. for those sentenced to imprisonment or heavier punishment, within one month from the date of establishing a place of residence upon release from prison;
3. in the case of those who move to a new place of residence, within one month from the date of registration of the changed information.

If the registree is already residing in or has newly moved into an area, the information distributed via mail should include the person's name, age, permanent address and actual place of residence, physical information (height and weight), photographs, the type of crime subject to registration (date of final judgment, type of crime, and sentence), criminal record regarding sexual violence (types of crime and frequency), and whether or not subject to electronic monitoring.

The information is mailed to households with children and adolescents (to parents/guardians), heads of daycare facilities and kindergartens, principals of elementary/middle/high schools, and heads of district offices and community centers, heads of private cram schools, and heads of organizations serving children and adolescents in the relevant community. This information is also displayed for 30 days on the bulletin boards of local community centers.

## B. Employment Restriction at Organizations Servicing Children and Adolescents

The goal of employment restriction is to prevent sex offenders from becoming involved in the operations and/or work for organizations related to children and adolescents. To this end, those convicted of sexual offenses are prohibited from operating or working for organizations related to children and adolescents for a period of ten years.

The sex offender employment restriction system consists of the restriction of employment, a reporting obligation, supervision of related organizations regarding their practices for screening employees, and requests to terminate any contract with an employee that is found to be subject to employment restriction.

In compliance with the Child/adolescent Protection Act, those sentenced to imprisonment or treatment/custody as a result of sexual violence against children, adolescents, or adults (excluding those sentenced to a fine) may not work for a business that involves visiting the home and providing educational services directly to children and/or adolescents for ten years from the date of the termination of the whole or part of their sentence or from the date when the execution of the sentence is suspended or excused. Organizations and businesses subject to employment restriction include: kindergartens; schools; cram schools; after-school program service providers; private tutoring; adolescent protection/rehabilitation centers; shelters for adolescents; daycares; child welfare facilities; counseling centers for prostituted victims; management offices of multi-family housing complexes; sports facilities that allow use by children and adolescents; medical facilities; businesses that provide online/computer gaming facilities and/or online/computer gaming services; security service providers; for-profit businesses that plan and host activities for adolescents; for-profit businesses that provide services related to entertainment activities including acting, dancing, performing on musical instruments, singing, reciting, etc.; training and/or counseling service

providers for those who intend to provide the above-mentioned services; and organizations/facilities/businesses where the employment or entrance of children and adolescents is allowed and those which either maintain or demonstrate the potential for hierarchical relations between child/adolescent users and their staffs or that are considered to include a possibility of sex crimes against children and adolescents. Those subject to employment restriction are prohibited from operating, pursuing employment at, or providing services to such facilities.

The Minister of Gender Equality and Family or the heads of related central governmental agencies should inspect, either directly or through inquiries to relevant agencies, whether or not those convicted of sex crimes operate or working for facilities related to children and adolescents.

The heads of central governmental agencies can request that the head of a relevant facility terminate the employment contract with a concerned person if that person is discovered to have been convicted of a sex crime subject to employment restriction. They can also require the head of a facility to cease operations. If the head of the facility fails to abide by the request to terminate the employment of the concerned person, a fine of up to 10 million KRW is applied.

## C. Electronic Monitoring

### 1) Background behind the Introduction of the Electronic Monitoring System

Electronic monitoring is designed to continuously verify of the whereabouts of sex offenders, including those who have offended against children younger than 13 years old, for up to ten years. This system was first introduced in Florida in the United States in 1997 and had been implemented in approximately ten countries as of 2008. After the sexual molestation and murder of a child from the Yongsan district of Seoul in 2005, there was a public call for stricter

punishment of child sexual abuse offenders. The electronic monitoring system was introduced as a result of efforts to prevent similar crimes.

## 2) The Act on the Electronic Monitoring of Specific Offenders of Sexual Violence: Enactment, Revisions, and Evaluations

The Act on the Electronic Monitoring of Specific Offenders of Sexual Violence was introduced with an aim to protect citizens from crimes of sexual violence by taking the additional measure of attaching an electronic monitoring device to the body of sex offenders for the purpose of preventing the repetition of offenses by those convicted of crimes of sexual violence (enacted on April 27, 2007; took effect on September 1, 2008). According to this law, selected sex offenders are monitored electronically in order to confirm their locations<sup>15)</sup>.

After only nine months from the implementation of the law, a revision was made to rename it the Act on the Electronic Monitoring of Specific Criminals (hereinafter “the Electronic Monitoring Act”) and to include kidnappers of minors in the list of those subject to electronic monitoring (revised on May 8 of 2009).

The subsequent revision introduced the following changes: it expanded the application of electronic monitoring to murderers; it eased the requirements for a petition for an electronic monitoring order for child sexual abuse offenders; it increased the maximum number of years of monitoring from 10 to 30; it placed electronically monitored convicts under mandatory probation for as long as they were so monitored; it imposed residence restrictions on those subject to electronic monitoring; it allowed those subject to electronic monitoring to engage in domestic or overseas travel for more than seven days only upon permission; it appointed an exclusive probation officer for each electronically monitored convict; and it allowed retroactive application of the electronic monitoring system to child sexual abuse offenders who were serving their

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15) Electronic monitoring uses electronic waves to monitor the whereabouts of a material or a person with a monitoring device attached.

prison term at the time of the implementation of the system or to those who completed their prison terms less than three years ago (revised on April 15 of 2010).

After a string of high-profile child-related sex crimes, including the murder of an elementary school child in Anyang in 2007 and a failed attempt at kidnapping an elementary school child in Ilsan in 2008, the law underwent further revisions expanding its application. The revision of December 18, 2012 was a continuation of such efforts. As to the reasons for the expansion, the government stated that i) electronic monitoring is justified as a means to protect the lives and safety of citizens and to address the public anxiety swelling in the aftermath of a series of violent crimes targeting children; and ii) it can be expected to greatly contribute to the suppression of repetition of crimes by sex offenders.

The major aspects of the 2012 revision include the following: i) cases subject to the doubling of the length of the period of electronic monitoring were expanded from offenders of the defined specific crimes against victims under the age of 13 to include those against victims younger than 19 years of age (Article 9); ii) the specific crimes were expanded to include robbery (Article 2-1), failed attempts at specific crimes, and recidivist offenders of specific crimes (Articles 2-2, 3-2, and 3-3); iii) conditions on petitions for an electronic monitoring order were eased regarding crimes of sexual assault targeting those under the age of 19 and those with physical or mental disorders (Article 5); iv) electronically monitored punishment was allowed to be retroactively applied to the crimes of robbery, sexual violence, and failed attempts at murder (Appendum Article 2-1); and v) in regard to probation, information sharing was strengthened between probation facilities and investigation agencies (Article 16-2) and probation was introduced for those who had completed their prison terms (Article 21-2 or 21-8).

## D. Chemical Castration

### 1) Background of the Introduction of the System

Chemical castration is the administration of medication on individuals with paraphillic disorder in order to reduce for a specific period of time or treat abnormal sexual impulses. This system was introduced in South Korea to sexual violence offenders against victims under the age of 16.

### 2) Establishment and Revision of the Act on the Medical Treatment of Sexual Impulses of Sex Offenders

The Act on the Medical Treatment of Sexual Impulses of Sex Offenders was legislated on July 23, 2010 and took effect on July 24, 2011, mainly focused on chemical castration. the term ‘medical treatment of sexual impulses’ in the title of the law means an abated term for chemical castration in which scientifically-suggested medication is used to diminish sexual impulses. Article 2-3 of this act explains chemical castration to be a technique to minimize abnormal sexual impulses or desires and a method to suppress for a limited period of time or treat deviant sexual impulses of individuals with paraphilia.

After eighteen months of implementation, the law went through a partial revision on December 18, 2012 to expand the range of criminals subject to a chemical castration order from sexual violence offenders against victims under the age of 16 to include all sexual assault offenders regardless of the victim’s age.

## E. Evaluations

The following is an assessment of the government’s measures to prevent repeated crimes against children and adolescents by sex offenders. First, the issue with the community notification system is that it does not seem to

seriously question about whether it is a valid manner to prevent crimes. While a great amount of information has been made public with the expansion of its subjects and the recipients of the related information, a further concrete plan is needed to address the utilization of the information. Without such a plan, it will simply reinforce the labeling effect on sex offenders while creating unnecessary fear and anxiety among residents living around such offenders (Korea Sexual Violence Relief Center, 2013:93). The introduction of a classification system is suggested in order to apply the registration/notification system by degree based upon the level of risk of committing further crimes (Kim Ji-seon et al., 2012:410-411).

As to electronically monitored punishment, controversy exists regarding the trend of expanding the range of those subject to the punishment, easing the conditions upon petitions for an electronic monitoring order, and extension of the length of the monitoring period.

In terms of the trend of expanding the range of those subject to the punishment, the relevant act was revised on December 18, 2012 to include those convicted of robbery; failed attempts at sexual violence, murder and robbery; and recidivist offenders related to sexual violence, murder and robbery. Upon the introduction of the law, Ministry of Justice emphasized the unique nature of sexual assault crimes as the rationale behind the necessity of electronic monitoring. Given this original attitude, there is concern that the revision in 2012 might be a government's attempt to increase state monitoring and control over its citizens by exploiting the public fear of sexual violence. While Ministry of Justice defends the implementation of the Electronic Monitoring Act on the grounds that the rate of repeated offenses steeply dropped from 14.8% in the period between 2006 and 2008 to 1.67% in the three years since the implementation of the Electronic Monitoring Act (September 2008 to December 2011)<sup>16)</sup>, limitations and problems with the

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16) *The Rate of Repeat Crimes Has Increased Since the Introduction of the Electronic*



system have emerged due to several offenders repeating crimes while under electronically monitoring (Korea Sexual Violence Relief Center, 2013:87-88).

When it comes to the easement of the conditions on a petition for an electronic monitoring order, the revision in 2012 added that electronic monitoring can be applied even to first-time offenders of sexual assault against minors under the age of 19 or those with physical or mental disorders. In order for this revision to be justifiable, however, more concrete evidence is required, such as statistical data that demonstrate a significantly greater rate of repeated crimes among offenders targeting minors or disabled persons relative to that of offenders against adult victims. No such evidence has been presented (Korea Sexual Violence Relief Center, 2013:88-89).

Regarding the extension of the length of the monitoring period, the revision in 2012 altered the range of the defined specific crimes for which the minimum length of the period of electronic monitoring is doubled by expanding it from defined specific crimes against minors younger than 13 years old to crimes against minors aged under 19 (Article 9). As a consequence, a significant increase is expected in the number of offenders subject to the doubling of the minimum period of electronic monitoring. Given that there has not been any problem so far as a result of the length of the period, it can be questioned if the extension of the length of the monitoring period was simply derived from government eagerness to display accomplishments (Korea Sexual Violence Relief Center, 2013:89).

As to chemical castration, some argue that the suppression of sexual functions through the administration of medication might be effective among those with paraphilia and recidivist sex offenders, but the impact on the reduction of the sexual violence crime in general is doubtful<sup>17)</sup>.

*Monitoring Punishment*, OhmyNews, December 22, 2012.

17) On February 8 in 2013, the Criminal Division 12 of the Daejeon District Court recommended an adjudication on the constitutionality of Article 4-1 (Petition for the Medical Treatment Order) and Article 8-1 (Judgment regarding the Medical Treatment

The revision of the Act on the Medical Treatment of Sexual Impulses of Sex Offenders made on December 18, 2012 expanded the range of those subject to chemical castration from sexual violence offenders against victims aged under 16 to all sexual violence offenders regardless of the victim's age, for a reason that there seems no reason to limit the application of the medical treatment of sexual impulses. However, this reason is not compelling enough to drive the expansion of this controversial system. More prudential grounds are required, such as concrete evidence proving why chemical castration is essential in addressing sex offences against adult victims or showing a high rate of offenders with mental disorders that require such medication (Korea Sexual Violence Relief Center, 2013:98).

## 4. Protection of Child/adolescent Victims

### A. Protection of Child/adolescent Victims in Accordance with the Act on the Prevention of Sexual Assault and Protection of Victims Thereof

#### 1) Support for Child/adolescent Victims

If victims of child sexual abuse and their school-age family members need to attend school in a school district outside of their existing address, central and local governments should support this need and anyone involved in school admissions services should protect their privacy. Vocational training and employment support can be offered to guardians of such victims.

The government may support victims through legal counseling and

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Order et al.), based on the application of an accused surnamed Lim, stating that “a forcible execution of the act on the medical treatment by a court order without the consent of the concerned person defies the anti-overrestriction principle and violates the concerned person's basic rights.”

representation. The Minister of Gender Equality and Family may request legal counseling support from the Korea Legal Aid Corporation and any fees incurred in counseling can be subsidized by the government.

Any employer of a sexual violence victim should not lay off or discriminate against the person for any reason related to the experience of sexual victimization.

If the heads and employees of facilities that protect, educate, or treat minors under the age of 19 by the South Korean age reckoning system come to learn about sexual victimization of a client, they should report it to an investigative agency without delay.

## 2) Establishment and Operation of Support Facilities for Child/adolescent Victims

Support facilities for victims of sexual violence can include rape crisis centers, whose services span receiving reports of sexual violence cases and providing counseling support for victims; providing housing and meals to victims; and providing diverse services ranging from counseling to treatment/therapy to remedial services.

Shelters are classified into five types: general shelters; shelters for the disabled; special support shelters; self-help group homes; and self-help group homes for the disabled. The length of available stay has been extended. Special shelters are provided for incest victims aged under 19. With the revision of the victims protection act on December 18, 2012, the age limit on minor victims eligible for an extension of stay was changed from 18 to 19. A stay at a shelter can be renewed once for a period of up to two years in accordance with a decree from the Minister of Gender Equality and Family.

The residents of shelters are provided with expenses to cover living, education, and child rearing.

Comprehensive support centers for sexual violence victims include One-stop

Support Centers for victims of violence against women and school violence, Sunflower Children's Centers, and Sunflower Centers for Women and Children.

## B. Protection of Child/adolescent Victims in Accordance with the Child/adolescent Protection Act

### 1) Protection of Child/adolescent Victims and Provision of Therapy/treatment

If an offender is a cohabiting family member of a child/adolescent victim, the victim should be protected by applying mutatis mutandis the provisions on victim protection measures in the investigation and trial process and registration of offenders as defined in the Act on Special Exemptions Concerning the Punishment etc. of Domestic Violence Crimes.

The government can request counseling centers or designated medical centers to provide counseling and/or treatment programs for child/adolescent victims, their parents and siblings, and any other persons as defined by Presidential Decree in order to encourage their physical and mental rehabilitation.

The range of the providers of counseling and treatment programs for child/adolescent victims aged under 19 has been expanded from counseling centers to include designated medical centers for sexual violence victims. When victims request counseling/treatment programs from these centers, the centers may not dismiss any such request without a justifiable cause. This new measure is expected to increase access to counseling and treatment program providers in regions outside of the Seoul metropolitan city, contributing to the recovery of the victims.

## 2) Establishment of Facilities for Child/adolescent Victims

The Child/adolescent Protection Act includes regulations on counseling centers whose services include receiving of reports of sex crimes against children/adolescents, providing counseling, and relaying victims to hospitals and/or related facilities. Such centers include support centers for victims of prostitution, counseling and welfare centers for adolescents, rape crisis centers, and shelters for victims of sexual violence.

The act also features provisions regarding the operation of protective service providers able to perform receipt of reports of sex crimes targeting children/adolescents and provision of counseling services. Such providers include support facilities for adolescents, counseling and welfare centers for adolescents, shelters for adolescents, and protection and rehabilitation centers for adolescents.

In order to protect children and adolescents from sexual exploitation, protective service providers and counseling centers can offer programs designed to promote the protection, treatment, stable recovery, and return to society of child/adolescent victims; education and counseling programs for the parents/guardians of victims; education and counseling programs for child/adolescent offenders of sexual assault and their parents/guardians; and education to cultivate experts in the protection of children/adolescents from sex crimes.

## 3) Reporting of Sex Crimes Targeting Children/adolescents and Guidance/protection of Children/adolescents

The Child/adolescent Protection Act contains provisions on the receipt of reports of sex crimes against children/adolescents and the guidance and/or protection of children/adolescents. Anyone who comes to learn of the occurrence of a sex crime against a child/adolescent may report it to an investigative authority. Such reporting is mandatory for the heads and employees of facilities and organizations serving for children and adolescents, such as kindergartens. Unless it is otherwise

specified in other laws, any information that may identify the reporter should not be made available either online or offline and/or broadcast. A violator of this regulation is subject to a penalty of imprisonment of a maximum of one year or up to 5 million KRW in fines.

Organizations subject to this reporting obligation should include in their employee certification programs education on the prevention of sex crimes against children/adolescents and their reporting obligation. The Minister of Gender Equality and Family can dictate the provision of education related to the prevention of sex crimes and reporting obligation for the heads and employees of relevant organizations and facilities.

In the case of incest, part of the Act on Special Exemptions Concerning the Punishment etc. of Domestic Violence Crimes is applied mutatis mutandis in order to protect victims.

As for the guidance and protection of children/adolescents, they are subject to protection and rehabilitation rather than punishment. When a child/adolescent is found to be engaged in sex crimes, the prosecutor and/or the police should relay this fact to the parents/guardians of the child/adolescent unless there is a special reason for not doing so.

If considerable grounds exist for protective disposition of a child/adolescent in accordance with the Juvenile Act, the prosecutor can transfer the case to the juvenile division of the court of jurisdiction. If this is not plausible, the prosecutor should order the child/adolescent attend necessary education and/or counseling.

If a case is transferred as a result of the protective disposition of a child/adolescent, the judge in the court of jurisdiction can order either protective disposition in accordance with the Juveniles Act or protective disposition commissioned to an adolescent protection/rehabilitation center in accordance with the Juvenile Protection Act.

In the case of an offender aged 10 or older but younger than 14, an investigation

should be conducted without delay and the case should then be transferred to the juvenile division of the court of jurisdiction. With a sexual violence offender aged over 13 but under 16 transferred to the court of jurisdiction, the judge can order protective disposition.

The Child/adolescent Protection Act includes a number of provisions regarding petitions for protective disposition of a victimized child/adolescent. If continued exclusion of harm and protection appear necessary for the victim, the prosecutor can request the following orders from the court: probation against the offender; separation of the offender from the victim in their home and other locations; prohibition of the offender or the offender's agent from approaching within 100 meters of the victim's place of residence, school, etc.; prohibition of the offender from approaching the victim and/or the victim's parents/guardians by means of electronic communication devices or mail as defined by the Framework Act on Telecommunications; and/or other necessary measures required for the protection of the victim, such as the relaying of the victim to a protective facility (Article 41). The court should order protective disposition for victimized children/adolescents (Article 42).

However, the wording of these provisions needs to make clear regarding offenders for the following reasons: first, victimized children and adolescents should be subject to protection rather than to protective disposition; and second, most of the provisions are related to offenders.

## C. Related Policies

Policies are in place to provide supports for victims of sexual abuse and prostitution in order to protect children and adolescents from sexual abuse.

Among these policies, the formation of Sunflower Children's Centers and dedicated shelters for child and juvenile victims of sexual offense are worth particular attention.

Sunflower Children's Centers, which provide comprehensive support ranging

from counseling to medical and legal aid to children under 13 years of age and to those with mental disabilities, first opened in Seoul in 2004. They maintain eight offices nationwide as of 2012. They provided 23,187 extensions of medical, psychological and legal support to 3,211 victims in 2012 alone, including 5,030 cases of medical support, 2,739 parent-involved therapies, 4,294 cases legal supports, 10,485 counselings and 352 of social supports (Ministry of Gender Equality and Family, 2013:158-159).

In 2010, Sunflower Women and Children's Centers was established. They combine the functional features of Sunflower Children's Centers and One-stop Support Centers<sup>18)</sup> with an aim to improve emergency response and assistance to investigations. Starting with Sunflower Women and Children's Center Busan (opened on January 1, 2010), which consolidated the One-stop Support Center and Sunflower Children's Center in the Busan area, they consist of seven offices as of 2012.

Two dedicated shelters for child and juvenile victims of sexual abuse are currently in operation, charged with preventing secondary abuse of incest victims and providing one-stop services from protection and treatment to education and assistance for self-support until the victims reach the age of majority.

Policies and measures are also in place to stem the inflow of teenagers into prostitution and to protect juvenile victims. Education for teenage victims of prostitution, based on the Act on the Protection of Children and Juveniles from Sexual Abuse, is delivered by a central training center and ten local training centers designated in 2011 and distributed in diverse geographical areas. They include a training center for adolescent prostitution victims with mental disabilities. These centers organize training camps conducted over a period of six days, after which a range of support services including medical, legal and

18) One-stop Support Centers provide female victims of domestic/sexual violence or prostitution with comprehensive services from 24-hour emergency care to counseling and medical, legal and investigation assistance. First opened in Seoul (Police Hospital) in August 2005, there are 15 centers nationwide as of December 2012.



educational assistance for self-help is offered to meet the needs of individual beneficiaries. Visiting Case Management, a post-training follow-up program delivered in partnership with Youth Companions, has been extended to one year in order to help clients settle into society, protected by a range of safety measures in the local community (Ministry of Gender Equality and Family, 2013:171).

Online peer counseling has been provided on a trial basis since 2011, targeting adolescents creating chat rooms implicitly offering sex for money. Alerted to the fact that adolescent prostitution is often initiated through easily accessible online chat rooms, from July to December 2011, this program contacted 331 adolescents at risk for prostitution and transferred 8, 18 and 21 of them to emergency rescue, shelters and training programs respectively.

Cases are regularly reported in which runaway girls serve as procurers by enticing their friends into prostitution. The first preventive education program was delivered in 2011 to female inmates of Youth Detention Centers charged with brokering prostitution. A total of 51 girls have completed the program to date. Even after their release, they are transferred to protective facilities to be monitored consistently through case management in order to prevent a relapse back into criminal behavior.

## D. Evaluation

In regard to the use of shelters by child/adolescent victims of incest, while there is a need for support for schooling and protection differing from that of adult victims, some of those who are victimized by non-cohabiting cousins or more distant relatives or who are victimized by non-relatives and cannot return to their home are currently ineligible for the special support shelters. Consideration, therefore, needs to be taken to avenues to open special support shelters to all child and juvenile victims up to the age of 19, with educational exceptions allowing those over 19 to remain until they complete high school

(Korea Sexual Violence Relief Center, 2013:72).

It is a meaningful step forward in assisting the recovery of victims that the Child/adolescent Protection Act expands the scope of counseling/therapy providers for child/juvenile victims under the age of 19 from counseling facilities to counseling facilities or medical institutions specializing in sexual violence while stipulating that these providers should not reject requests for service without due cause.

## 5. Prevention of Child/juvenile Sexual Assaults

### A. Prevention of Sexual Assaults on Children and Teenagers Falls under the Act on the Prevention of Sexual Assault and Protection of Victims Thereof

Heads of government agencies, local municipalities, kindergartens, nurseries, schools and other relevant institutions are obligated to organize and deliver sex education and training to help prevent sexual offenses.

The obligation of providing sex education and sexual abuse prevention education has been intensified, and new provisions have been added regarding building educational infrastructure. The scope of obligated providers of the education has been broadened to include heads of public organizations, while the scope of trainees has also been expanded from adolescents to all citizens. Citizens who are not required to receive this education may now participate in training offered by sexual abuse prevention education providers. To ensure the delivery of education, obligated providers must report the outcome to the Minister for Gender Equality and Family. The Minister is responsible to foster professional instructors specializing in sex and sexual abuse education, develop and disseminate education programs for each lifecycle phase; and establish and operate sexual abuse preventive education providers. The work of these providers may be

outsourced (Korea Sexual Violence Relief Center, 2013:74-75).

The Sexual Violence Victim Protection Act currently stipulates a new responsibility of the Minister of Gender Equality and Family to produce and disseminate promotional videos on the prevention of sexual violence. The Child/adolescent Protection Act indeed requires the Minister of Gender Equality and Family to create promotional videos on the prevention of sexual assault on children and adolescents and treatment and rehabilitation of victims and distribute it to broadcasters, while authorizing the Minister to request its terrestrial airing and allowing enterprises to autonomously produce and air relevant campaigns. This revision, therefore, is in line with relevant provisions in the latter act (Korea Sexual Violence Relief Center, 2013:75-76).

## B. Prevention of Sexual Assault on Children and Adolescents under the Child/adolescent Protection Act

The Minister of Gender Equality and Family is required to produce promotional videos on the prevention of sexual assaults on children and adolescents and treatment and rehabilitation of victims, and to distribute them to broadcasters. It is authorized to request their airing on each channel as part of the quota for public-service campaigns.

As for the creation and operation of institutions specializing in sex education for children and adolescents, the government and local municipalities are authorized to create such institutions or outsource relevant operations to professional bodies in order to promote sound sexual values among children and adolescents and prevent sexual assault.

## C. Related Policies

Public awareness programs and preventive education on sexual violence on

children are on expanding. First of all, the Day for the Elimination of Violence against Children marked its sixth anniversary in 2012. Initiated in February 2007 in commemoration of the first anniversary of the Yongsan sexual assault and murder case, the campaign aims to heighten social awareness of children's safety and stimulate a nationwide movement combatting child sexual abuse (Ministry of Gender Equality and Family, 2013:157).

In line with the emerging gender-sensitive integrated human rights education on human rights, there has been increasing need for holistic education comprising sex education, sexual abuse and harassment, prostitution and domestic violence. As a result, the Gender-sensitive Integrated Human Rights Education in School program has been delivered to elementary school students in four provinces (Gyeonggi, Chungcheongnam, Jeollabuk and Gyeongsangbuk) in 2012. Education on sexuality and human rights has also been delivered to elementary school children in four metropolitan cities/provinces (Daejeon, Incheon, Gyeonggi and Gyeongsangnam), while developing manuals for children/adolescents with vision, hearing or mental impairments.

Community Solidarity for the Safety of Women and Children is a public-private partnership of local governments, medical, educational and police/judicial institutions and organizations supporting abused women and children. It aims to help prevent crimes against women and children and provide victims with timely protection and support by networking local related organizations. It was launched in 2010 in 244 metropolitan or lower-level local governments nationwide, with a total of 193 supporting municipal ordinances in effect as of the end of 2012.

The Children's Safety Map program<sup>19)</sup> aims to help establish a social safety net for children by bringing together the human and material infrastructure for children's safety in the local community. As of the end of 2012, 83.3% (4,892)

19) With a focus on the elementary school(s) in a district/area, Children's Safety Map shows human/material infrastructure concerning child sexual abuse and other relevant information such as redevelopment/demolition areas, areas with CCTV installations, Safety Houses and counseling centers, located around homes and schools.

of all elementary schools (5,872) have produced such a map.

## D. Evaluation

There have been revisions of the Act on the Punishment of Sex Crimes and Protection of Victims Thereof to reinforce preventive education and mandate the production and dissemination of promotional videos on preventing sexual abuse.

The scope of obligated providers of education has been broadened to include heads of public organizations and that of target trainees has also been expanded from adolescents to all citizens. The Minister of Gender Equality and Family is responsible for training professional instructors specializing in sex education and sexual abuse; developing and disseminating education programs for each life cycle phase; and establishing and operating preventive education providers.

The child/adolescent protection act had required the Minister of Gender Equality and Family to produce promotional videos on the prevention of sexual assault on children and adolescents and the treatment and rehabilitation of victims. It was ordered to distribute these to broadcasters and the Minister was authorized to both request their terrestrial airing and allow broadcasting businesses to voluntarily produce and air relevant campaigns. This revision, therefore, is in line with relevant provisions of this act. These campaigns would be more effective if they were aired at peak times with higher viewer ratings instead of in off-peak hours.

Extended or newly added provisions regarding the prevention of sexual abuse would help prevent sexual assaults on children/adolescents, leading to stronger protection of children and adolescents from sexual abuse.

In order to develop and disseminate customized programs, it will be necessary to devise short- to long-term plans for preventive education and profile in detail the characteristics of sex offenders and develop professionals in a systematic manner.



## IV

# Legal and Institutional Progress and Issues

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## 1. Progress

### A. Rapid Legal Progress in Legislation of Punishment for Child Sexual Abuse

The swiftest development has so far been taking place in the sphere of laws and policies on the punishment of sexual abuse. Regular progress has been made, in particular on stricter punishment and stronger anti-recidivism measures on child sexual offenders, as well as increasing the number of Sunflower Children's Centers focusing on psychological, medical and legal support for children under 13.

With the recurrent sex offenses against children, a national consensus on the need for more robust countermeasures has led to a consistent expansion of relevant policies. Along with intensified punishments, the legislation of the elements of quasi-rape, the elimination of the condition of offenses being subject to complaint and the exclusion of reduced punishment for those under the influence of alcohol, all possible measures including online disclosure and postal notification of personal information, electronic monitoring devices and chemical castration are increasingly being institutionalized and enhanced. In the meantime, the introduction of comprehensive plans for child protection and a range of 'guardian' programs has led to the development of a child safety support system.

### B. Increasing Infrastructure for the Support of Sexually Abused Children/adolescents

In regards to supporting the victims of sexual abuse, legal streamlining has been taking place in the establishment of counseling centers, support facilities, One-stop Support Centers, Sunflower Children's Centers and Sunflower Centers for Women and Children, along with the establishment of comprehensive support organizations capable of providing emergency relief and treatment alongside counseling services. Facilities for specific target groups, such as special support shelters for incest



victims, counseling and protection facilities for sexual abuse victims with disabilities and emergency relief centers for female immigrants, would allow the provision of more tailored services. Service users could get easy access to one-stop support facilities. In the case of children, unifying the testimony channel for legal support would be greatly helpful in protecting and supporting victims.

## 2. Issues

### A. Legislation and Policies Showing an Apparent Increasing Bias

Though the notion of protecting children and adolescents from sexual abuse includes both the issues of sexual assault and prostitution, the recent increase in sex offenses against children and the ensuing institutional responses have resulted in the policies related to child sexual abuse witnessing the most rapid progress. Stricter punishment is among the measures that can reap tangible results at relatively low cost. However, intensifying legal penalties alone is insufficient to guarantee punishment. The focus needs to be on ensuring increased implementation of the punishment.

The issue of adolescent prostitution is complicated by the fact that adolescents can easily sell themselves online, as well as by emerging issues such as peer-pimps and runaway families. All of these call for a swift and organized response with punishment and protection, but policies are lagging behind.

The focus on child sexual abuse also means that the issue of adult sexual abuse is relatively under-addressed. While it would be heartening to see the response to sexual abuse of children expand in scope to include adult cases, the latter deserve equal attention and the related policies would need to go hand in hand.

## B. Preventive Policies Lacking Uniformity

Compared to punishment and protection, preventive policy efforts are yet to be actualized. Education and awareness campaigns are key policy measures for the prevention of sexual abuse. The Sexual Victim Protection Act provides for mandatory education for adolescents and adults. Although education is indeed being delivered, there is room for additional refinement. In addition, while the law imposes responsibilities on leaders of state agencies, municipal governments and other public organizations, sexual abuse prevention education remains in the beginning stages and thus requires development. Mid to long-term plans are necessary if the education is to be sustentative and systematic.

## C. An Overhaul of Infrastructure for Supporting Victims is Urgently Needed

Creating various service providers such as counseling centers, shelters, integrated support centers, etc. is necessary in order to improve victims' access to support services. At issue, however, is the apparent overlap in their roles.

Instead of devising effective policy measures for addressing blind spots, functional overlaps, service quality and other questions inherent to infrastructural conditions of counseling centers, it seems that infrastructural issues have been strategically avoided by the means of creating new service providers as a response to rising public sentiment against sexual abuse. Careful consideration is needed in a more balanced form of infrastructure development while heightening the quality of services provided by the current array of players (Hwang Jeong-im et al., 2011:69).



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# V

## Conclusion

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## 1. Need for Proactive State Intervention

A serious consideration needs to be taken into the fact that child/adolescent sexual assaults often take place in a series. Special attention needs to be paid to the increasing domestic abuse faced by teenage girls, which in turn leads to a growing number of runaways making them vulnerable to prostitution and sexual abuse. Gathering facts and investigating the root causes of increasing domestic violence against young girls would be conducive for devising alternative policy responses from a gender-sensitive perspective.

The current situation, under which the number of younger victims, especially elementary school students, is ever expanding and prostitution and pimping through the internet and sexual offenses against runaway girls are increasingly prevalent. This calls for proactive state intervention for protecting adolescents, particularly girls, from sexual crimes and providing a stronger safety net comprising counseling and expanded access to education programs.

Experience reveals that neglected children from the marginalized fringes of society are most likely to be victimized. More stringent police surveillance and stronger support for these isolated children are necessary to reduce this blind spot (Yoon Deuk-kyoung, 2013:77).

## 2. Countermeasures Against Secondary Abuse

There have been a number of cases in which a lack of professionalism and human rights sensitivity among judicial system personnel resulted in secondary victimization over the course of criminal procedures: the suicide of a sexual abuse victim who left a note that she had been verbally humiliated by the judge<sup>20)</sup>; the victim in the so-called Jo Doo-soon case who eventually received

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20) *Sexual Abuse Victim Kills Herself: Alleged Humiliation by Judge and Pressure to*

compensation from the government after undergoing four interrogation sessions by the investigative authorities shortly after surgery<sup>21)</sup>; the victims of the Miryang sexual assault case, also compensated by the government for being verbally insulted by police officers<sup>22)</sup>; the Cheongju case of a sexual offense against a disabled child, in which the court ordered probation at the initial trial on the grounds that “it is inevitable that the victim will be placed back under the care of the offenders”<sup>23)</sup>; and the leakage of a victim’s personal information to the offender during the process of photocopying court records (Lee Gyeong-hwan, 2011:28-32). Similar cases of secondary abuse by the judicial and investigation authorities make headlines with unfortunate frequency.

Victims of secondary abuse need to be better assisted in claiming state compensation from the government, while at the same time preventive measures should be put in place.

### 3. Need for Accurate Statistics on Child/juvenile Sexual Crimes

It is necessary to compile accurate statistics on sexual crimes. The judiciary maintains official statistics, but these only barely reflect reality due to the considerable number of hidden crimes. An exact precise tally of sexual crimes can only be estimated based on those actually reported. Meticulous fact-finding is necessary regarding the relationship between reporting rates and the actual number of offences. A relevant official national statistics database should be established with urgency. Dedicated human and financial resources and mid- to long-term plans focused on this goal are, of course, necessary.

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*Settle*, Hankook Daily, June 10, 2011.

21) October 26, 2011, Seoul Central District Court, Ruling No.

22) June 12, 2008, Supreme Court, Ruling No.

23) Cheongju District Court, Ruling No. 2008.

In regard to the ongoing increase in the number of sexual crimes as indicated by police/prosecution statistics, it should be made clear that these figures are based purely on cases actually reported. The growing number of reported cases may be a spontaneous recurrence, or it may be a reflection of an improved awareness and willingness among victims to report. Simply stating sexual crimes are on the rise without including this stipulation is misleading and fuels public anxiety while over-stimulating public sentiment for stronger punishment. To avoid this, factual and accurate information needs to be provided (Yoon Deuk-kyoung, 2013:79).





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