

# Protection of sexually abused children in the criminal investigation process and its improvement

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## 1. Research Background and Objectives

The number of reported cases of sexual abuse of children has been increasing recently, stirring serious public concern. Compounding the gravity of the crime itself, the perceptions and attitudes of law enforcement authorities faced by victims during the process of investigation and prosecution together with legal and institutional obstacles subject abused children to a secondary victimization (Han In-seop, 1994; Jang Pil-hwa et al., 2003).

Sexually assaulted children tend to suffer more severe physical and psychological damage than do adult victims and experience greater difficulties in reporting the incident. The long and complicated process of investigation at times obscures the child's memory of the event and extends the psychological agony of the victimized child and family (Ceci and Bruck, 1993; Howe, Courage, and Bryant-Brown, 1993; Chi and Ceci, 1987; Loftus, Miller, and Burns, 1978). Investigations which fail to take into account the unique circumstances of children may gravely infringe upon the human rights of the victim and in some cases may even jeopardize the reliability of the child's statements.

The Act on the Punishment of Sexual Crimes and Protection of Victims Thereof (Confidentiality of the identity and privacy of the victim (Article 21), Designation of exclusive investigators for victims of sexual assault (Clause 2 of Article 21), Video recording et al (Clause 3 of Article 21), Closed court hearing (Article 22), Expert consultation (Clause 2 of Article 22), Accompaniment by one that the victim trusts (Clause 3 of Article 22), Collecting statements from the witness through a relay device such as video (Clause 4 of Article 22), Special request for preservation of evidence (Clause 6 of Article 22)) have been enacted or amended in order to minimize any secondary victimization of sexually molested children during the process of criminal investigation. Despite such efforts, however, victims and their families continue to complain of a number of concerns related to legal procedures.

This research will examine and suggest improvements and solutions to the operational status of and issues with the legal procedures that have been designed to protect victimized children.

## 2. Research Methods

### A. Analysis of cases reported to support organizations for victims of juvenile sexual abuse

Cases reported to the Seoul *Hae-ba-ra-gi* Children's Center, an organization assisting child victims of sexual assault, were analyzed in order to explore how child-victim protection systems are being operated throughout the process of criminal investigation. Samples were collected from the cases reported from 2007 through July 2008 whose investigations or trials have been concluded or remain ongoing. Certain cases reported in 2006 with criminal investigations concluded after 2007 were also included. A total of 54 cases were analyzed.

Through meetings with legal support staff at the center, a list of questions was created regarding the protective measures in place for child victims of sexual abuse during the criminal investigation process. While generally referring to the trial-monitoring checklist designed to prevent secondary victimization during criminal investigations published by the legal support team of the Korea Sexual Violence Relief Center (2003), the questions also pursued more general information related to the case and the victim (type of assault, age of victim, age of offender, difficulties experienced with reporting to police, and more). The criminal investigation process was segmented into police investigation, investigation by prosecutors prior to trial, and court proceedings. The following queries were checked in regards to the legal officials: their level of kindness and commitment to the investigation of the case, level of understanding of the victimized child, level of compliance with the regulations on confidentiality, specialized investigators for victims of sexual violence, video recording, accompaniment of the child by a trusted individual, special requests for preservation of evidence, closed trials, expert consultation, and collection of statements from the witness through video relay.

### B. Analysis of records compiled by law enforcement authorities

An attempt was made to analyze both police and prosecutorial investigations along with trial procedures by making use of documents maintained by law enforcement authorities. However, data collection was impossible due to either a lack of systematic record-keeping by relevant authorities or their refusal to release such records. This paper is simply able to summarize certain data offered by the National Police Agency.

### C. Expert workshop

A related-expert workshop was organized by gathering police officers, prosecutors, and judges. Their opinions on the operation and improvement of the system are reflected in the suggestions section of this paper.

### 3. Results

#### A. Analysis of cases reported to support organizations for victims of juvenile sexual abuse

##### a. General data on victims and offenders

A total of 54 cases were analyzed and found that the victim was male in only one case. Given that one case involving a male child is reported to the organization for every nine cases involving a female child (2007 Seoul *Hae-ba-ra-gi* Children's Center Report), it is safe to assume that the majority of cases reported to the police must relate to a female victim.

The types of violence include three cases of armed and/or gang rape (5.6%), 16 cases of rape (29.6%), two cases of rape when the victim was mentally and/or physically incapacitated (3.7%), 25 cases of forced harassment (46.3%), and eight cases of sexual harassment (14.8%). 28 children (51.9%) experienced a single assault, while 26 children (48.2%) were subjected to repeated violence.

The average age of the victims, excluding two mentally challenged children aged 13 or older, was 9.13 (ages 3-13) years old. Thirteen children (24.1%) were of pre-school age, twelve (22.2%) of 7-9 years of age, and 29 (53.7%) of ten years of age or older. The mode was twelve years old (13 children). It is notable that more than half of the victims were ten years old or older, showing that children in that age bracket were most vulnerable to sexual violence.

Every alleged offender, where identified, was male. The average age was 36.88 years (range 12-69): twelve were juveniles (22.2%), 13 were men in their 20s (20.1%), three in their 30s (5.6%), six in their 40s (11.1%), eight in their 50s (14.8%), and ten in their 60s (18.5%). There were three offenders (5.6%) who were adults but with ages remaining undocumented. Of the cases with identified alleged offenders, twelve cases (22.2%) involved family members or relatives including fathers and grandfathers, 23 (42.3%) involved acquaintances including private tutors or school bus drivers, and 19 (35.2%) were strangers. As for employment status, 30 offenders (55.6%) were employed, 14 (25.9%) unemployed, and ten (18.5%) were of unknown status.

Regarding the legal proceedings, eleven cases (20.4%) remained in the process of police investigation, four cases (7.4%) were in prosecutorial investigation prior to trial, 16 cases (29.6%) were in trial or had been concluded after a trial, 14 cases (25.9%) were in the process of the first appeal or had been concluded after the first appeal, and six cases (11.1%) were making their final appeal or had been concluded subsequent to the final appeal. In

the three remaining cases, charges had been withdrawn for one, a second was unidentifiable after being sent to the Family Court, and the third resulted in a non-indictment.

Trial had been concluded in a total of 19 cases (35.2%): probation was ordered in nine cases, medical treatment in one case, and jail sentences had been passed down in twelve, with the strictest punishment being life imprisonment. In 29 cases the alleged offenders were investigated while under detention while 18 remained at liberty during the process.

## **B. General analysis**

### **a. Duration of investigation and trial**

In two cases police investigation was resumed upon the arrest of the offender over one year from the date the crime was reported these were excluded from the analysis. The period of time elapsing from the initial reporting of the case to the police until the case's arrival at the prosecutors' office was discernable in a total of 28 cases and averaged 64.5 days (9-226 days). In 26 cases the time spent in investigation prior to trial was identifiable, requiring 36.4 days on average (standard deviation = 29.40 days 6-123 days). In 34 cases, the time elapsed from reporting of the case to the police until the opening of the trial could be measured. This showed an average of 103.2 days (standard deviation = 75.5 days 22-248 days).

Among the 30 cases in which the duration of the trial could be measured, the average figure was 76.9 days (standard deviation = 65.5 days 13-263 days). There were a total of two cases that were identified with time elapsed from reporting of the case to a ruling of the trial. The average time transpiring from the reporting of the case to the police until a ruling was 187 days (standard deviation=122.2 days; 36-460 days). In a total of 13 cases, the first appeal was concluded in an average of 61.7 days (standard deviation = 61.7 days 7-146 days). Three cases progressed as far as the final appeal and required 379, 431, and 441 days. In most cases excluding those characterized by undeniable physical evidence or an offender's confession, extended and arduous trials were the rule, a pattern which places the victimized children and their guardians under extreme stress.

### **b. Attitudes of law enforcement authorities**

For this analysis, questions were posed to guardians of victimized children regarding the level of kindness demonstrated by the officers, those officers' commitment to the investigation, the provision of relevant information, and their understanding of the needs of the child. Table 1 is the summary of the analysis.

**Table 1. Analysis of technical statistics on the attitudes of law enforcement authorities**

	Police				Prosecutors				Court officials			Attorneys for offender
	Kindness	Commitment to investigation	Understanding of the child	Provision of information	Kindness	Commitment to investigation	Understanding of the child	Provision of information	Kindness	Commitment to investigation	Understanding of the child	Provision of information
Num. of responses	52	52	49	52	36	36	31	38	31	31	31	31
Average	3.1	3.3	3.2	1.6	2.9	3.1	3.5	1.2	3.5	3.5	1.3	2.4
Standard deviation	0.9	1.1	1.2	0.6	1.1	0.9	0.9	0.4	0.9	0.8	0.6	1.2

As shown in the table, court officials received the highest score for level of kindness, while prosecutors ranked lowest. In terms of commitment to the investigation, prosecutors were viewed as more committed to investigating the case than were police. The police, prosecutors, and the court all received below two points for provision of information. In particular, the guardians lodged serious complaints against the prosecutors, who earned the lowest score in that category. In the majority of cases in which clear evidence could be obtained, prosecutors failed to provide guardians with information about ongoing investigations and trials. While all three legal authorities obtained higher than average scores in their understanding of the needs of the child, the prosecutors and the court received slightly higher scores than did the police. Although it is encouraging to view the positive evaluations in this category, it may be prudent to interpret the results with a degree of caution given the fact that in many cases the guardians also lack understanding of the needs of sexually molested children. To a question asking to what degree the defendant's attorney seemed to understand the needs of the child, the guardians assigned an average of 2.4 points.

### C. Analysis of the execution of measures designed to protect sexually molested children during legal procedures

#### a. Confidentiality of the identity and the privacy of the victim

The analysis revealed that all three legal authorities failed to protect the privacy of the victim. The most common violation in the process of police investigation was the revelation of

personal information related to the alleged victim, such as address and telephone number, exposing victims and their families to coercion and/or efforts at persuasion on the part of the defendant for the victim to drop the case. Requests by victimized children and their families for protection were rarely accepted.

The confidentiality rule was often disregarded during the prosecutorial investigation, violations which most frequently occurred when the investigation was carried out in open offices where unrelated staff members were present, rather than in a separate investigation room.

In some cases, the incident became known at the victim's school when the defendant's attorney called the victim's peers as witnesses. There were also cases in which a verdict was released to the media without the consent of the victim, resulting in severe psychological stress to both the child and the parents.

## **b. Designation of dedicated investigators for victims of sexual assault**

Although it was found that both the police and prosecutors retain designated investigators for sexual assault cases, even among those who made statements to police officers and/or prosecutors, few were aware if the investigators were designated officials for juvenile victims of sexual violence. For this reason, it was difficult to determine the precise operational status of the designated investigators system. Several sub-questions were posed to the guardians in order to compensate for this issue.

As for the police, a total of 22 officers (47.8%) introduced themselves as a designated investigator however, twelve guardians (24.5%) believed the investigators assigned had not appeared to understand the needs of the child. As to a question asking whether the investigators used words and expressions appropriate for a child, eleven respondents (22.5%) answered negatively. Ten people (20.4%) reported use of inappropriate investigation techniques and eleven (22.5%) claimed the investigators involved had behaved in a way that seemed unsuitable for a designated investigator.

Four out of twelve respondents (33.3%) reported that they had been informed that their investigators were specially designated officers for sexually abused children. Five guardians (41.7%) doubted whether their investigators had understood the needs of the child, while three (25.0%) thought the investigators' words and expressions were poorly matched with the child's level of understanding. In addition, five guardians (41.7%) believed the investigation techniques had seemed inappropriate and another five cases (41.7%) reported behavior unsuitable for a designated investigator.

Happily, over half the respondents replied their investigators had seemed to understand and take into account the needs of the child. All in all, the police received higher scores than the prosecutors.

### **c. Video recording**

#### **i. Statement collection by the police**

In all the cases that underwent police investigation (N= 49, 100%), statements were collected from the victimized children and were videotaped in a private room with a guardian's consent. The investigation was conducted in a single session in 40 of 48 cases (83.3%) but was repeated in eight cases due to the child's difficulty making a statement. The statement-collection proceeded in a separate room at the pertinent police station in 44 of 48 cases (91.7%) and at the Children's Center in the remaining four cases accompanied by a child psychologist.

Furthermore, in 41 cases (85.4%), a police report was being typed while the child was making a statement, which interrupted the process periodically and caused a resultant delay. Reportedly, when statements are made at a police station, it is a common practice for a police report to be produced during the interview. Child psychologists assisted police investigations in five cases.

None of the guardians were aware that they were entitled to request copies of the police report and videotaped materials. In some cases, the police discouraged such requests on the grounds of the complicated nature of the process.

#### **ii. Statement collection by prosecutors**

A total of 13 cases (34.2%) underwent prosecutorial investigations. In eight of these cases (61.5%), the prosecutor failed to videotape the process and the alleged victims were questioned in an open office with other staff members present while their statements were simultaneously being typed. Reporting on this practice, every guardian confessed to experiencing distress.

In five of the 13 cases (38.5%), the children were allowed to make statements in a private investigation room and all guardians reported feeling relatively comfortable. In all interviews taking place in a video-recording room, the children were accompanied by someone they trusted. Among three of the five victims that were interviewed in a private room (60%), typing was used to produce the prosecutor's report. In nine of eleven cases with

accompanied typing (81.8%), respondents complained that the typing had fragmented the interview process.

Child psychologists assisted the process in two cases (15.4%). There were few cases in which either copies of the prosecutor's report and/or video-taped materials had been requested or such requests had been accepted. As with the police investigations, the guardians were unaware of their right to request a copy.

#### **d. Closed court hearings**

In eight cases, the victims appeared in court as a witness one was obliged to return to court as many as three times. All children were allowed a closed hearing in which both the defendant and the audience were required to absent the court room. As there was no secluded location in which the children could await being called, however, they were in constant fear of encountering members of the defendant's retinue.

Among cases in which guardians were called as a witness, a closed court hearing was conducted in four cases upon the guardian's request. In one case dealing with incest by a father, a closed hearing was instigated at the judge's discretion.

Meanwhile, due to the ambiguity of the provision, the degree of closure of "closed hearings" may vary depending on its interpretation. Based on this finding, it is recommended that guardians also be entitled to this right to allow a heightened perception of security when they stand in court as a witness.

#### **e. Expert consultation**

Including those called by the police in response to a prosecutorial order and those contacted by the prosecutor during pre-trial investigations, experts were consulted in a total of five cases (1.9%). The court referred to expert opinions in seven cases (18.0%), three times upon request by the court itself.

Considerable expertise is called for in assessing the impact of an incident on a child, the treatment required, and the reliability of the child's statements. It is encouraging that the incidence of expert opinions being sought by law enforcement authorities is on the rise, although it appears to remain insufficient.

#### **f. Accompaniment of the victim by a trusted individual**

In ever case that included police and/or prosecutorial investigation, guardians were informed that the victimized child could be accompanied in the interview by someone they



trusted. With the exception of a single case in which the child did not wish such accompaniment, the children in all other cases were accompanied by their guardians.

In future studies, a qualitative analysis may be called for to examine whether the person who accompanied the victim fulfilled the expected role of support or rather actually impeded the process of investigation.

#### **g. Interview of the witness through a relay device such as video**

In the eleven cases in which the victim was called as a witness, a video-relaying device was used in only one case (9.1%). Although all courts are equipped with such a device, in the majority of cases guardians were not informed of this fact or their requests were denied.

#### **h. Special requests for preservation of evidence**

It was found that special requests for the preservation of evidence had never been submitted as of the time of this research. None of the guardians were aware of this provision. Reportedly, even some police officers and prosecutors were ignorant of it.

### **4. Recommendations**

First, experts must be more actively involved in the investigation process. In particular, proper investigative techniques are essential in cases such as juvenile sexual abuse in which a child's statements may be the sole evidence due to a lack of witnesses and/or physical evidence. A profound investigation into and understanding of the developmental characteristics, language, memory, suggestibility, and after-effects of the incident on the child is called for, along with legal expertise. In this regard, close cooperation with relevant experts such as child psychologists, pediatricians, psychiatrists, and social workers specialized in childhood issues is considered essential, especially in the early stages of the development of the designated investigator system.

As few experts trained to assist the criminal investigation of juvenile sexual abuse cases are available, however, the cultivation of such experts must be undertaken, together with the continuing education and supervision of designated investigators.

In 2007, the National Police Agency commissioned the Korean Psychological Association to conduct research into establishing procedures for the analysis of the behaviors and statements of sexually abused children and for the participation of child psychologists in police investigations. The agency is planning to implement the system based on the results. Policy support as well as the participation of specialists is imperative for these efforts to bear fruit. Equally

essential is the education of legal officers in awareness of the value of this participation.

Second, more detailed conditions should be placed on the accompaniment of a minor by a trusted companion. Otherwise, a risk exists that although the child may trust that individual, that individual may actually share an interest with the alleged offender, have a clear intention to obscure the incident, or in the case of a female child accompanied by a father, may impose a hesitancy to reveal the truth in his presence. A staff member of the Children's Center may be present when the child lacks guardians. In such a case, however, the person may not be considered to be in a true position of trust with the child.

This accompaniment by a trusted individual is essential for the protection of the child. However, it is also critical to determine whether or not the child actually fully trusts that person or whether a possibility exists that the companion in question may intimidate the child. In addition, investigators should be trained to understand and prevent the various affects that this may have on the investigation.

Third, the efficiency of police in the investigation should be reviewed. The current investigative policy by the police requires female officers to question victims of sexual violence. Given that the gender of a police officer is no guarantee of expertise in sexual violence matters, however, investigators should be assigned based on their qualifications rather than their gender.

In the bulk of cases, the collection of statements was conducted by the Women and Juveniles Bureau, while the actual investigation of the case was carried out by the Bureau of Criminal Affairs. For this reason, the overall process of investigation could become scattered and, in some cases, guardians have experienced confusion regarding the identity of their point of contact with police. Furthermore, although statement collection in the majority of juvenile sexual violence cases is currently being conducted at the One-stop Center at the National Police Agency, local police forces have been required to reinvestigate certain cases due to a lack of expertise on the part of the investigators at the center who failed to collect necessary information. This "dual system" must be reviewed and reformed if needed. While it might be efficient in terms of improving the expertise of the investigators, it could impede a seamless investigative process.

Finally, video-recording should be allowed to replace a written record in cases of juvenile sexual abuse. According to the results of this research, a significant number of investigators were making use of both video-recording and a written record, the typing of which reportedly hampered the investigation process. Typing of a written record during an interview with a victimized child interrupts the flow of the interview, divides the child's attention, and pro-

longs the interview period. Reviewing a victim's statement on video may be a more tedious process than reading a written document, but given that the child's nonverbal clues such as facial expressions, vocal tones, and body language are also highly significant, regulations need to be revised to allow video-recording to replace a written record.

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