

Reform of Juvenile Justice in Korea

- Protective Dispositions for Juvenile Offenders & Restorative Justice Programme

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My presentation will begin with brief overview on the trends of youth crime recent in Korea and the present youth justice system. And then I'll introduce the most recent reform of youth justice law and policy. Lastly, I will explain focused on the restorative justice programme in the new amended Korean Juvenile Act.

Like many other countries, South Korea has a current issue of ever increasing violence of juveniles, and thus there are both popular appeal for harsher punishment on young offenders and some policy efforts for implementing restorative justice programmes as a way of reforming youth justice system.

I. Recent Trends of Youth Crimes in South Korea

In contrast with the relatively stable rate of adult crime, youth crime rate has fluctuated considerably. Its recent rate gradually has been rising. In the year of 2000, according to the official criminal statistics, the number of youth offenders were 143,000, and it was decreased

to 67,000 in 2005, but in 2008 the number was 134,000 and in 2009, 64,000.

[Recent Trend of Juvenile Offence: 2000-2009]

(Supreme Prosecutor's Office, Crime Statistics, 2010)

Year	Number of Juvenile Offender	Ratio to previous year	Ratio to the total number of offenders
2000	143,643	+0.3%	6.8%
2001	130,983	-8.8	5.6
2002	115,423	-11.9	5.0
2003	96,085	-16.8	4.2
2004	72,770	-24.3	3.2
2005	67,478	-7.3	3.4
2006	69,211	+2.6	3.7
2007	88,104	+27.3	4.5
2008	134,992	+53.2	5.5
2009	113,022	-16.3	4.5

Regarding youth offenders of serious crimes (murder, rape, robbery and arson), its rate is relatively stable. However, the age group of serious youth offender is getting lower to the years of between 14 to 17.

In the year of 2000, the largest age groups committing serious crimes are 16-17, 18-19 and then 14-15. After 10 years, in 2009, the age group of 14-15 came to be the second largest youth group of serious crimes. So the problem of youth crime in Korea is lowering down the age of serious offender, rather than the increasing number of youth offenders.

[Juvenile offenders of murder, rape, robbery and arson by age]

(Supreme Prosecutor's Office, Crime Statistics, 2010)

Year	Total Number	Under 14	14-15	16-17	18-19
2000	3,762	40	719	1,576	1,427
2001	2,994	46	646	1,096	1,206
2002	2,323	34	459	939	891
2003	2,359	32	587	960	780
2004	1,708	7	362	661	678
2005	1,549	7	432	631	479
2006	1,857	20	516	765	556
2007	1,928	10	646	769	503
2008	3,016	18	975	1,209	814
2009	3,182	20	982	1,590	590

II. Korean Juvenile Justice System: Overview

1. Principles of juvenile justice

The Korean Juvenile Act declares that the purpose of juvenile justice is to ensure sound fostering of juveniles, by carrying out necessary measures for the environmental adjustment and character correction of juveniles delinquents, and by providing special measures regarding criminal and protective dispositions. (Article 1, Juvenile Act of 2007)

In order to thoroughly examine the character, personal records, family conditions, and other circumstances of the juvenile concerned, his/her guardian or reference witness, investigation of the juvenile case shall utilize medical science, psychology, pedagogy, sociology, and other expert knowledge. (Article 9, Juvenile Act of 2007)

Trials of juvenile criminal cases shall be conducted in a spirit of sympathy toward the juvenile. In such cases, particular emphasis should be placed on evaluation of the juvenile's physical and mental condition, character, career, family conditions and other circumstances. (Article 58, Juvenile Act of 2007)

2. Juvenile cases

The term 'juvenile' means a person who has not yet attained the age of 19. Children under 14 years of age at the time of conduct are exempt from criminal responsibility under the Criminal Code, although they can be subjected to the Juvenile Act.

(i) Juveniles who have committed crimes (criminal juvenile),

(ii) Juveniles who are 10 years of age or more but under 14 have committed crimes (law-breaking juvenile),

(iii) Juveniles who are 10 years of age or more and in view of their character or environment, may be prone to commit crimes (potential juvenile offenders),

[Flow chart of proceedings for Juvenile cases]

Criminal juveniles →Police →Referral to Public Prosecutor→Indictment →Criminal Court
→Imprisonment →Juvenile Prison
→Suspended Sentence/Execution with Probation →Probation Office

Law-breaking juveniles & Potential Juvenile Offenders →Police →Referral to Juvenile Division(Family & Youth Court) order
→Juvenile Training School
→Probationary supervision →Probation Office

3. Principle of the preferred discretion of the public prosecutor

The public prosecutor exercised primary discretion over the decision whether to prosecute juvenile criminals or for juvenile criminals to be treated of juvenile case. All cases involving juvenile criminals must be firstly sent to the public prosecutor. Before being filed in a juvenile court by the prosecutor, the case is a criminal case. The prosecutor has complete discretion not to prosecute and to decide which of the cases will go to trial in the criminal court or in the juvenile court.

If the juvenile's guilty is minor, and prosecution is not required by the public interest, the prosecutor may drop a case without consent of the judge. Public prosecutor may make decision whether to handle the juveniles within the discretionary range of conditional waiver and to release the juveniles.

Although the system of discretionary prosecution does have many benefits, these wide

powers of public prosecutors concerning juvenile delinquency or youth crime have been subject to criticism, because the prosecutor is doing the work of the judge and the institutional protection a trial gives the juvenile are not guaranteed.

4. Juvenile court

The Juvenile Department of the Family Court or the Juvenile Department of a district court has a jurisdiction over the juvenile cases. In cases where necessary to order protective disposition of a juvenile as a result of a trial, the judge of the youth court may impose the disposition. No indictment shall be instituted against a juvenile who has received protective disposition the same case, nor shall the case be transferred to the juvenile court.

5. Protective Disposition for juvenile offenders by Juvenile Court (Article 32&33, Juvenile Act of 2007)

There are 10 protective dispositions for youth offenders which are available to the youth court.

Number	Disposition	Conditions	Period
1	consign a juvenile concerned of the care and custody of his/her guardian or any person who can provide protection for the juvenile in substitution for the guardian		6 month
2	order to attend a lecture	imposed on juveniles of 12 years of age or over only	100 hours. max.
3	community service order	imposed on juveniles of 14 years of age or over only	200 hours. max.
4	place a juvenile concerned under the short-term probation of a probation officer	may receive alternative education, or counseling, proper guidance and education for juveniles under the Treatment of Protected Juveniles Act with a three month period	1 year
5	place a juvenile concerned under the long-term probation of a probation officer		2 year

		at the same time; may be restricted to going out in a specific time zone, such as night or such, as matters to be observed by a person under probation within a one-year period.	
6	entrust a juvenile concerned for the care and custody to a child welfare institution under the Child Welfare Act or other juvenile protection institution		6 month
7	entrust a juvenile concerned to a hospital, a sanatorium or a juvenile medical care and protection institution under the Treatment of Protected Juveniles Act		6 month
8	transfer a juvenile to the Juvenile Reformatory within one month		
9	transfer a juvenile to the Juvenile Reformatory for a short-term		6 month. max
10	transfer a juvenile to the Juvenile Reformatory for a long-term	imposed on juveniles of 12 years of age or over only	2 years. Max.

III. Reform of Juvenile Justice

Most recent reform of Juvenile justice system has been implemented by the Amendment Juvenile Act of 2007.

1. Right to make statement of victim

The 2007 Act recognizes victim's right to make statement in trial. A judge of the juvenile court shall, when a victim or his/her legal representative, a counsel and family members apply for a statement of opinion, give an opportunity to state his/her opinion on the date of a trial.(Article 25-2, Juvenile Act of 2007)

2. Additional disposition pursuant to probation

A judge of the juvenile court may, if judged necessary in consideration of family circumstances or such, order the parents or guardian to receive a special education program for the protection of juveniles conducted at the Juvenile Reformatory, Juvenile Classification Review Board or Probation Office or such. (Article 32-2, Juvenile Act of 2007)

3. Request for investigation

The court may consign that the investigator of the juvenile case, investigate necessary matters related to criminal cases involving a juvenile. (Article 56, Juvenile Act of 2007)

4. Investigation prior to prosecutor's decision

If it is deemed necessary to decide to impose a disposition, such as transfer to the juvenile court, prosecution, suspension of prosecution for a case involving suspected juvenile offenders, a public prosecutor also may require the head of a probation office, a juvenile classification review board or a juvenile reformatory to investigate morals, career, living environment of a suspected person or other necessary matters. A public prosecutor shall decide to impose a disposition most suitable for education and improvement of a juvenile suspect by referring to the results of the investigation. (Article 49-2, Juvenile Act of 2007)

5. Recommendation towards reconciliation

A judge of the youth court may recommend a juvenile to reconciliation with a victim, such as compensation for loss or so. In cases where a juvenile has compromised with a victim

according to the recommendation for a reconciliation, the judge may take this into consideration when deciding the protective disposition. (Article 25-3, Juvenile Act of 2007)

IV. Restorative Justice and Youth Justice Reform: Recommendation of reconciliation

In recent years, the possibilities and potential of adopting the idea of restorative justice have been under active discussion in Korea.

The Korean Juvenile Act of 2007 demonstrates significant improvement in relation to restorative justice. The most noticeable provision is "the recommendation towards reconciliation" , which just mentioned.

This enables a judge to advise the youth offender to reconcile with his victim, the result of which can be considered in judge's decision of protective disposition. By doing so, it can be said that the idea of restorative justice has already been partially introduced. However due to general ignorance towards the practical methods of restorative justice in Korean society, very little is known of the actual practice of restorative justice on how it should be practiced in the specific environment of Korean juvenile justice, and on what kind of practical effect it would bring to youth crimes in Korea.

Thus many academics, lawyers and practitioners still have some doubts on restorative justice programmes, on whether the recommendation towards reconciliation could be an ideal model of restorative justice. Its effectiveness in regard of the narrowness of application range by authority of the judge of Youth Court, and the legal effect of the reconciliation are also in questions.

In fact, the reconciliation system under current Juvenile Act still remains at its very early, introductory stage, a stage of manifesto without concrete manuscript of procedure or

infrastructure. Because restorative justice is closer to a matter of a practice, rather than that of a system, the introduction of its theory or idea cannot itself assure a practical success.

As many countries have currently institutionalized restorative justice into their legal systems, the focus of research is now shifting towards the question of whether restorative justice is operating successfully in practice, on "what elements in particular bring restorative practice to success."

In this aspect, according to the research of KIC in 2011, the recommendation of the reconciliation under the Juvenile Act should not be enforced in the form of current criminal mediation. Current criminal mediation practices are based on an instant settlement-driven method, and basically begin with practical interests of reducing the burdens of civil dispute cases. Moreover, it is rather foreign to the restorative justice principles, as criminal mediation mainly focuses at reaching settlement of compensation for damage by supporting advisors or legal practitioners instead of professional mediators. It is also a serious problem that the problem-solving method remains at the level of private conflict mediation instead of being treated in relation to public level of social conflict.

And after all, without securing substantial and proper facilities and well-trained experts on such restorative justice programmes, the newly introduced programmes may not be implemented as planned by legislation.