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Much Needed Reformation in South Korea's Juvenile Act

By: *William Kim*



On December 26, 2019, in Guri, South Korea, a fifth-grade student stabbed a fellow schoolmate to death.[1] The student was reportedly enraged by the victim's verbal assault on her family.[2] Yet, in stark contrast to South Korea's Criminal Act, which mandates a minimum punishment of at least five years in prison for a homicide case[3], the defendant was sentenced to be transferred to the Juvenile Reformatory for a long-term period.[4] Under the Juvenile Act, children aged 10 to 14 are exempt from criminal punishment, and they must be tried under protection by the Juvenile Department.[5] Because the defendant was a fifth-grade child, aged between 10 to 13, she was protected from criminal charges under the Juvenile Act.[6] Naturally, public denunciation and calls for amending the law ensued.[7] Ultimately, however, there were no consequential changes to the Juvenile Act, and the problematic clause, which exempts criminal punishment for children aged 10 to 14, remains good law.[8]

Unfortunately, this is not an anomalous case. Statistics show that the number of juvenile crimes is on the rise, especially among ex-convicts.[9] As a result, a growing number of people are calling for the age for juveniles tried under legal protection to be reduced from 14 to 13 years old.[10] However, despite the upward trend in juvenile crimes, there are voices calling for a more qualified solution than simply lowering the age for juvenile protection. First off, there is the argument that only one percent of all juvenile crimes are felonies.[11] Therefore, enabling the government to charge the other ninety-nine percent of juveniles criminally would be more societally costly than beneficial.[12] Secondly, statistics indicate that crimes committed by juveniles between the ages of 10 to 14 comprise only one percent of all the crimes committed by juveniles of differing ages.[13]

Admittedly, the absolute percentage of felonies and crimes committed by juveniles between the ages of 10 to 14 is low compared to other age groups. However, as stated above, statistics indicate that the number of juvenile crimes is on the rise. Even worse, it is apparent that an increasing number of juveniles are becoming aware of the Juvenile Act and abusing it to their advantage. For example, on August 9th, 2020, police investigated a chain of robberies from a vehicle parked in an underground parking lot of an apartment complex in Uijeongbu, Gyonggi Province.[14] After investigating and tracking down the clues, the police found that the suspects were two middle school students aged 14 and 15 who lived nearby.[15] After their arrest, the teenagers had a brazen attitude stating, "Oh well, it's not like we're going to be punished severely anyway." [16] Crimes like this indicate that young people are aware of the level of punishment for

juvenile offenders released from information released on the Internet or through sharing information among themselves and often ridicule investigative agencies even after being caught.[17]

Such attitude is perhaps a logical byproduct of South Korea's long history of trouble with the Juvenile Act. For example, in 2010, sixteen high school students in Daejeon sexually assaulted a mentally disabled teenager over the course of a few weeks.[18] The perpetrators were simply sent back to their parents, given a year of probation and a period of re-education.[19] With no criminal record, one of the defendants enrolled in a prestigious university with his teacher recommending him as a model student.[20] Similarly, in 2017, a gory photo of a kneeling 14-year-old girl covered in blood that appeared on Facebook went viral.[21] One of the perpetrators sent the photo to an acquaintance, callously asking whether she would go to jail for the crime.[22] Despite such horrific cases, however, the government could not make any legislative progress with respect to this issue. Consequently, people's frustration with the government's inability to resolve the issue is certainly a sympathetic one, and their calls for tougher punishment for young offenders are understandable [23]

However, if a first-time juvenile commits a crime with the intention of abusing the Juvenile Act, but successfully rehabilitates, can such a process be labeled as an abuse? For instance, statistics indicate that among juveniles, the percentage of first-time offenders has been gradually decreasing, whereas the percentage of repeat offenders has been increasing.[24] Almost half of the juvenile offenders had psychiatric disorders, including alcohol use disorder, bipolar disorder, antisocial personality disorder, and attention-deficit disorder.[25] If such is the case, lowering the protection age for juveniles from 14 to 13 would most likely not resolve the issue. If anything, adopting such a measure would do no more than provide psychological comfort to the masses with no practical remedy to redress the actual problem. Therefore, a much needed solution to this problem would require individualization of cases involving different rehabilitation and treatment methods unique to each juvenile.[26] From there, the judiciary should be granted the authority to determine the potential for recidivism for each defendant and maximize the utilization of resources in rehabilitation for the juveniles who delineate a high chance of reintegration into the society.[27]

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[1] Ick-Jin Jeon, *Girl Held For Murder, But By Law Punishment Will Be Light*, Korea JoongAng Daily (Dec. 31, 2019), <https://koreajoongangdaily.joins.com/2019/12/31/socialAffairs/Girl-held-for-murder-but-by-law-punishment-will-be-light/3072082.html>.

[2] *Id.*

[3] Criminal Act, 2013 (Act No. 11731/2013) (S. Kor.).

[4] *동급생 친구 흉기로 살해한 여초등생 10호 처분*, DongA.com (Feb. 11, 2020), <https://www.donga.com/news/Society/article/all/20200211/99634951/1>.

[5] Juvenile Act, 2015 (Act No. 13524/2015) (S. Kor.).

[6] Jeon, *supra* note 1.

[7] *Id.*

[8] Juvenile Act, 2015 (Act No. 13524/2015) (S. Kor.).

[9] Kim Se-Jeong, *Debate Heats up Over Juvenile Law*, Korea Times (Sept. 6, 2016), https://www.koreatimes.co.kr/www/nation/2018/11/251_236092.html.

[10] 이연아, *교육부 축법소년 13세 미만으로 하향 조정 발표*, YTN (Jan. 15, 2020), https://www.ytn.co.kr/_ln/0103_202001151958472818.

[11] 김정필, *축법소년 논란 “국가, 피해자 보호의무” vs “소년사건 흉악범죄 1% 불과”*, 한겨레 (Jan. 5, 2020), https://www.hani.co.kr/arti/society/society_general/923163.html.

[12] *Id.*

[13] 이유진, *교육부발 ‘축법소년’ 연령 하향 논란... 정말 엄벌만이 답일까요?*, 한겨레 (Jan. 26, 2020), <https://www.hani.co.kr/arti/society/schooling/925709.html>.

[14] Haydn An, *A Growing Number of Korean Teenagers are no Longer Afraid of Breaking the Law and Many Call for the Revision of the “Juvenile Law”*, Allkpop (Sept. 30, 2020), <https://www.allkpop.com/article/2020/09/a-growing-number-of-korean-teenagers-are-no-longer-afraid-of-breaking-the-law-and-many-call-for-the-revision-of-the-juvenile-law>.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Jieun Choi, *Crime and Punishment of Juvenile Delinquency*, Korea Exposé (Sept. 5, 2017), <https://koreaexpose.com/juvenile-delinquency-underage-criminials/>.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] Eun-Ji Bahk, *Gov't to Lower Age of Criminal-Responsibility to 13 From 14*, Korea Times (Jan. 16, 2020), http://www.koreatimes.co.kr/www/nation/2020/12/181_282033.html.

[24] Yooli Lim, Eun-Jin Park & Bongseog Kim, *Psychiatric Disorders and Recidivism Among Korean Adolescents on Probation or Parole*, 15(6) *Psychiatry Investig.* 561-567 (2018).

[25] *Id.*

[26] 이진혁, *소년법 연령 하향 “효과 없다” vs “재범률 올라 강력 처벌해야”*, 파이낸셜뉴스 (Nov. 9, 2017), <https://www.fnnews.com/news/201711091429330191>.

[27] 최원훈, *촉법소년들은 ‘소년법을 악용’한다?*, OhmyNews (Oct. 15, 2020), http://www.ohmynews.com/NWS_Web/View/at_pg.aspx?CNTN_CD=A0002658671.