

Trends & Policies in Criminology and Justice

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Establishing Guidelines for Determining Parentage of Children Born Through Assisted Reproductive Technologies in Preparation for Future Societies

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Keywords

Assisted Reproductive Technology (ART), Mother and Child Health Act, Non-marital Childbirth, Surrogacy



Summary

- In response to the rapid development and increased use of Assisted Reproductive Technology (ART), this study aims to refine the criteria for determining the parentage of children born through such methods. The study conducted analyses of domestic case law and legal interpretation, legislation in five foreign countries (Germany, France, UK, US, and Japan), official documents from the HCCH (Hague Conference on Private International Law) Parentage/Surrogacy Project, text mining analysis of 2,309 media articles, and a perception survey of 3,000 general public members.
- Consequently, this study proposes a legislative bill to establish criteria for determining the parentage of children born via ART and presents foundational data for ensuring child welfare and policies addressing low birth rates.

1 Background and Research Objectives

- With rapid advancements in medical and scientific technology, various ART methods have been developed, and modes of pregnancy and childbirth have expanded into much more diverse and complex forms. In response to the increased use of ART, countries such as the UK, the US, and Japan have enacted and are implementing independent legislation to clearly determine the parentage of children born through these methods.
- South Korea is also seeing a steady increase in ART usage due to continuing demographic changes, such as the rising infertile population, the aging average age of childbirth, and the expanded use of fertility treatments. These changes reflect a trend toward the diversification of family formation and parentage determination, going beyond simple medical advancement.
- However, the lack of legal standards clearly regulating parentage for ART-born children in Korea leads to recurring instability in the legal status of both parents and children. Despite the spread of diverse forms such as surrogacy, donors, and non-marital childbirth in reality, the absence of a systematic legal framework forces reliance on interpretive theories and individual case laws.
- Therefore, this study aims to comprehensively review domestic and international legislative trends and social perceptions to establish criteria for determining the parentage of ART-born children stably at an appropriate time and to suggest legislative directions to support this.

2 Key Findings

- **Review of Domestic Trends Related to ART and Parentage of Children Born Through It**
 - (Introduction and Review of Relevant Interpretations and Rulings) Review of representative rulings, such as the non-acceptance of birth registration listing the intended mother (not the surrogate) as the mother (Seoul Family Court Decision 2018Beu1, decided May 9, 2018), and cases contesting the parentage of children born via Artificial Insemination by Donor (AID) (Supreme Court en banc Decision 2016Meu2510, decided Oct. 23, 2019).
- **Analysis of International Trends for Refining Parentage of ART-born Children**
 - (Review of Foreign Legislation) Examination of legal systems in five countries that have

recently refined ART legislation or are actively implementing relevant regulations, serving as subjects for comparative legal review.

[Table 1] Relevant Laws by Classification

Classification	Relevant Laws
Germany	Embryo Protection Act (<i>Embryonenschutzgesetz</i>)
France	Law No. 2021-1017 of August 2, 2021 regarding bioethics (<i>LOI n° 2021-1017 du 2 août 2021 relative à la bioéthique</i>)
UK	Human Fertilisation and Embryology Act
USA	Uniform Parentage Act (UPA)
Japan	Act on Special Provisions of the Civil Code Concerning the Parentage of Children Born through Assisted Reproductive Technologies, etc. (生殖補助医療の提供等及びこれにより出生した子の親子関係に関する民法の特例に関する法律)

[Table 2] Introduction to the HCCH Parentage / Surrogacy Project

Classification	Relevant Meetings and Documents
2011 ~ 2015	<ul style="list-style-type: none"> • 2011: Preliminary Note on the Private International Law Issues Surrounding the Status of Children • 2012: Preliminary Report on the Issues Arising from International Surrogacy Arrangements • 2014: The Desirability and Feasibility of Further Work on the Parentage / Surrogacy Project • 2014: A Study of Legal Parentage and the Issues Arising from International Surrogacy Arrangements • 2015: The Parentage / Surrogacy Project: An Update
2016 ~ 2022 Experts' Group	<ul style="list-style-type: none"> • 2016: Background Note for the Meeting of the Experts' Group on Parentage / Surrogacy • 1st Meeting: Report of the 2016 Meeting of the Experts' Group on Parentage / Surrogacy • 2nd Meeting: Report of the 2017 Meeting of the Experts' Group on Parentage / Surrogacy • 3rd Meeting: Report of the 2018-1 Meeting of the Experts' Group on Parentage / Surrogacy • 4th Meeting: Report of the 2018-2 Meeting of the Experts' Group on Parentage / Surrogacy • 5th Meeting: Report of the 2019-1 Meeting of the Experts' Group on Parentage / Surrogacy • 6th Meeting: Report of the 2019-2 Meeting of the Experts' Group on Parentage / Surrogacy • 7th Meeting: Report of the 2020 Meeting of the Experts' Group on Parentage / Surrogacy • 8th Meeting: Report of the 2021-1 Meeting of the Experts' Group on Parentage / Surrogacy

Classification	Relevant Meetings and Documents
2016 ~ 2022 Experts' Group	<ul style="list-style-type: none"> • 9th Meeting: Report of the July 2021 Meeting of the Experts' Group on Parentage / Surrogacy • 10th Meeting: Report of the November 2021 Meeting of the Experts' Group on Parentage / Surrogacy • 11th Meeting: Report of the March/April 2022 Meeting of the Experts' Group on Parentage / Surrogacy • 2022: Final Report of the Experts' Group on Parentage / Surrogacy
2023 ~ Present Working Group	<ul style="list-style-type: none"> • 1st Meeting: Report of the First Meeting of the Working Group on Parentage / Surrogacy • 2nd Meeting: Report of the Second Meeting of the Working Group on Parentage / Surrogacy

○ Analysis of Social Trends Related to Assisted Reproductive Technology (ART)

- (Analysis of News Topics Related to ART) To systematically analyze the social discourse and legal issues surrounding ART, text mining techniques were utilized on 2,309 articles from major domestic daily newspapers published between 1990 and 2024.
- (Perception Survey of 3,000 Individuals on ART) A survey was conducted targeting 3,000 adult men and women aged 16 to 69 to investigate public perception regarding criteria for determining the parentage of children born via ART and to identify the social consensus for refining relevant policies.

3 Policy Recommendations

○ Proposal of legislative bills establishing criteria for determining the parentage of children born through Assisted Reproductive Technology (ART)

- (Legislative Forms) i) Draft Basic Act on Assisted Reproduction ii) Draft Act on Artificial Insemination and In Vitro Fertilization, etc., iii) Draft Act on Childbirth via Surrogacy, etc.
- (Draft Basic Act on Assisted Reproduction, etc.) Presentation of a legislative bill prescribing key matters to be included in a basic law, such as basic definitions regarding artificial insemination and in vitro fertilization performed through ART.
- (Draft Act on Artificial Insemination and In Vitro Fertilization, etc.) Presentation of a legislative bill prescribing key matters to be included, such as requirements for donors and

recipients, and the parentage of children born through these methods.

- (Draft Act on Childbirth via Surrogacy, etc.) Presentation of a legislative bill prescribing key matters to be included, such as the parentage of children born through valid surrogacy agreements.

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Expected Policy Effects

- Realization of child welfare by refining the parentage relations of children born through ART.
- Contribution as foundational data for national policies addressing low birth rates.
- Reflection of advancing medical and scientific technologies and the social perception of the general public.

2

Study on the Punishment of Juvenile Crime and the Introduction of Disposition and Sentencing Guidelines(I): Focusing on Juvenile Protective Dispositions

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Keywords

Juvenile Justice, Juvenile Protection Disposition, Juvenile Act, Juvenile Crime, Necessity of Protection



Summary

- This study proposes rational and objective standards for juvenile protection dispositions based on a comparative analysis of the current status of such dispositions, results from expert perception surveys, and foreign standards for handling juvenile cases.
- This study suggests factors for consideration in juvenile protection dispositions that must be judged differently from adults, eligibility criteria for each specific type of protection disposition, and legislative improvement measures to establish standards for protection dispositions.

1

Background and Research Objectives

- While discussions on strict responses to juvenile crime are actively underway, there is a relative lack of systematic interest and specific guidelines regarding the standards and procedures for handling juvenile crime.
- Although juvenile protection dispositions aim for sound growth and the prevention of recidivism, there is an absence of clear guidelines to comprehensively consider the

characteristics of delinquent juveniles, their family environment, and the protective capacity of guardians. There is a high risk of disparities in dispositions due to subjective judgments or regional practices at the police, prosecution, and court stages. In particular, it is pointed out that despite the increasing trend of protection dispositions for "criminal minors"¹⁾ (under 14) and "juveniles prone to crime"²⁾, there is a lack of guidelines to balance the consideration of recidivism risk and victim protection.

- To establish objective and rational standards for juvenile protection dispositions by comparing and analyzing the disposition criteria of domestic and foreign juvenile justice systems, this study closely examines the practical operation of domestic juvenile protection dispositions and reviews cases in major countries such as the U.S., the U.K., and Japan. Based on this, it presents measures for legal and institutional improvement to promote harmony between the sound growth of juveniles and social safety.

2

Key Findings

○ Current Status of Juvenile Protection Dispositions

- Status of Juvenile Delinquency Occurrence and Protection Dispositions
 - Continuous decrease in the number of juvenile offenders over the past 20 years
 - Increase in the proportion of protection dispositions for "criminal minors" (under 14) and "juveniles prone to crime"
 - Shift in crime types: Increase in digital sex crimes and sexual violence crimes
- Status of Investigation, Transfer, Indictment, and Trial
 - Police Stage: Decrease in transfer rates and rates of transfer with opinion for detention
 - Prosecution Stage: Decrease in indictment rates
 - Court Stage: Increase in transfer rates to the Juvenile Department

○ Analysis of Standards for Juvenile Protection Dispositions

- Analysis of Juvenile Case Handling Standards in Investigation and Trial Practice
 - Police Stage: Preparation of juvenile environment investigation reports, use of 'Delinquency Prediction Tables,' and deliberation by the Guidance Examination Committee

1) In South Korea, "Criminal Minors" (Chokbeop-sonyeon) refer to juvenile offenders aged 10 to under 14. Under the Criminal Act and the Juvenile Act, they are deemed to be under the age of criminal responsibility and are therefore exempt from criminal punishment.

2) "Juveniles Prone to Crime" (Ubeom-sonyeon) refer to juveniles aged 10 or older who have not necessarily committed a penal offense but are deemed to possess a high likelihood of committing a crime in the future based on their character or environment. This concept aligns with "Status Offenders" or "Pre-delinquent juveniles" in Anglo-American criminology.

- Prosecution Stage: Pre-decision investigation, decisions on conditional suspension of indictment
- Court Stage: Entrustment to the Juvenile Classification Review Board, decisions on protection dispositions based on investigation data

- Lack of clear guidelines for judgments based on the "necessity of protection disposition" under Article 32 (1) of the Juvenile Act

○ Trends and Issues in Juvenile Protection Case Handling Procedures

- Absence of guidelines at the investigation stage; reliance on judges' experience and discretion at the trial stage
- Increasing trend of juvenile offender transfers by police and courts; decrease in criminal punishment rates
- Priority on Protection Dispositions: Desirable for the sound growth of juveniles, but concerns exist regarding insufficient educational effects and social stigma in the absence of clear standards
- Need for objective and rational disposition standards to achieve the goals of Article 1 of the Juvenile Act; emphasis on ensuring the best interests of the juvenile

○ Analysis of Foreign Juvenile Justice Procedures

- Characteristics of Juvenile Case Handling in Foreign Countries
 - Integrated operation of protection disposition and criminal punishment procedures
 - Utilization of diversion at early stages: Resolving issues through community-based treatment instead of judicial proceedings
 - Consideration of offense gravity: Screening subjects for exclusion and reinforcing procedural legitimacy
 - Minimization of discretion: Existence of judgment standards considering aggravating factors, mitigating factors, and vulnerability factors

○ Results of Analysis on Experts' Experience and Perception of Juvenile Protection Disposition Standards

- Experts recognize changes in juvenile delinquency trends (younger age of offenders, increase in digital sex crimes, etc.) and cite delays in processing and lack of consistency as issues
- Pointed out the need for manuals or guidelines, noting that the "necessity of protection" standard is unclear and decisions rely heavily on judicial discretion

- Raised issues that Dispositions No. 6–10 are perceived as custodial treatments, and disposition decisions vary based on judges' judgment and regional circumstances
- Highlighted that juvenile justice experts undervalue each other's expertise and hold differing views on "juveniles prone to crime" and entrustment to the Juvenile Classification Review Board
- Presented demands for clarity and fairness in disposition standards and procedures, alongside the need to strengthen victims' rights to participate and receive information

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Policy Recommendations

○ Establishing Rational and Objective Standards for Juvenile Protection Dispositions

- Need for continuous evaluation of whether the juvenile protection disposition aligns with the best interests of the juvenile.
- Need to clearly recognize the difference between criminal punishment, where the judgment of facts regarding the offender is central, and protection dispositions, where the judgment of the offender's possibility of reformation is central; consideration is needed on how to appropriately balance the gravity of the offense with the possibility of reformation.
- Need for clear standards regarding the factor of the juvenile's age within the juvenile justice system.
- Factors for Consideration in Juvenile Protection Dispositions Distinct from Adult Crimes

○ Assessment of the protective environment based on the juvenile's intent.

- The protective capacity of guardians must be judged more delicately.
- Custodial dispositions must be implemented as a minimum necessity only for those who absolutely require them.
- In cases of institutional treatment (Dispositions No. 6–10) premised on the restriction of liberty, the reasons must be recorded in the written decision to leave a ground for the ruling and to reflect it in the future execution of the disposition.
- Matters regarding entrustment criteria and reasons for extension for the Juvenile Classification Review Board must be specified in law to ensure it operates restrictively only for necessary subjects.

○ Introduction of Eligibility Criteria for Individual Types of Juvenile Protection Dispositions

- Apply to first-time or minor offenders, targeting cases where both the juvenile and the guardian can gain a sense of responsibility or seriousness.
- Entrustment to care commissioners should operate centered on subjects who have guardians with the will to protect but cannot provide care for long hours due to economic difficulties, etc.
- Entrustment to Youth Recovery Support Facilities is implemented when there is no supporting family or when the guardian's role cannot be expected due to notification, etc.
- Lecture orders (No. 2) should be implemented by distinguishing venues—Juvenile Delinquency Prevention Centers, Probation Offices, private institutions, counseling centers—based on types, centering on subjects who can gain the will to reform through law education or counseling.
- Community service orders (No. 3) are implemented for subjects of high school age or older who can understand the value of labor and social responsibility.
- Probation (No. 4 & 5) should be set by distinguishing between short-term and long-term subjects; Entrustment to child welfare facilities (No. 6) should be distinguished from No. 1 dispositions and applied to juveniles who have committed serious crimes amidst a loss of family protective power, and who are likely to flee or have difficulty obeying rules in a free environment.
- Entrustment to hospitals/sanitariums (No. 7) should distinguish between subjects to be accommodated in hospitals/sanitariums and those for the Daejeon Medical Juvenile Reformatory; Transfer to Juvenile Reformatory (No. 8, 9, & 10) should also be distinguished by type.

○ Legislative Refinement for Setting Standards on Juvenile Protection Dispositions

- Add consideration factors to Article 32 (1) of the Juvenile Act to read: "If, as a result of the hearing, considering the juvenile's delinquency and possibility of recidivism, the guardian's protective capacity and will to protect, and the protective environment, it is deemed necessary to impose a protection disposition..."
- Establish a new provision in Article 32 (8) of the Juvenile Act stating: "When imposing dispositions No. 6 through No. 10, the judge must state the reasons in the written decision."
- To ensure the effectiveness of juvenile protection dispositions, change the term for transfer to a short-term Juvenile Reformatory (No. 9) from 6 months to 1 year to distinguish it from Disposition No. 6, and add long-term probation.

- Prepare legal grounds for police investigative authority and admonition with conditional guidance.
- Strengthen the victim's right to participate and the duty of notification in juvenile justice procedures.

○ Institutional Improvements for Establishing Standards on Juvenile Protection Dispositions

- Compile juvenile statistics from the police, prosecution, courts, and correctional entrustment agencies into a database so that juvenile case precedents can be managed systematically.
- Expand entrustment agencies and infrastructure for Dispositions No. 1, No. 6, No. 7, etc.
- Introduce a specialized juvenile judge system and increase the number of specialized investigators to ensure consistent dispositions.
- Establish specialized juvenile courts composed of juvenile justice experts.
- Establish a system where disposition decisions are made through a consultative body gathering experts who investigated the juvenile, rather than by a judge alone.

[Table 1] Proposed Eligibility Criteria by Type of Juvenile Protection Disposition

No.	Category	Details		Eligibility Criteria
No. 1	Custody Transfer	Entrustment to Guardian	Will to Protect: Yes Protective Capacity: Yes	<ul style="list-style-type: none"> • Cases where the mere experience of entering the juvenile justice process raises a sense of responsibility or seriousness for both the guardian and the juvenile • Cases where an environment is established in which the guardian can stably prevent re-delinquency upon the child's return home • Cases where the guardian has the will to complete the Special Guardian Education Order • (Exclude) Cases where the guardian has a history of child abuse or domestic violence
	No Custody Transfer	Entrustment to Care Commissioner	Will to Protect: Yes Protective Capacity: No	<ul style="list-style-type: none"> • Cases where a guardian exists and has the will to protect, but is in an environment making long-term care or support difficult due to economic hardship, or where neglect occurs due to long working hours • Single-parent, grandparent-headed, or multicultural families that have the will to raise the child but face difficulties in performing family roles • Cases where there is no family, but the juvenile can live independently and having a supporter or mentor to act as a guardian is sufficient to provide an opportunity for improvement

2. Study on the Punishment of Juvenile Crime and the Introduction of Disposition and Sentencing Guidelines(I): Focusing on Juvenile Protective Dispositions

No.	Category	Details		Eligibility Criteria
No. 1	Custody Transfer	Entrustment to Youth Recovery Support Facility	Will to Protect: No Protective Capacity: No	<ul style="list-style-type: none"> • Cases where there is no supporting family, or the guardian's role cannot be expected due to notification (by the guardian), etc. • Juveniles prone to crime who need to sever ties with delinquency due to sexual misconduct or frequent minor delinquency • Cases requiring protection due to exposure to prostitution, etc., but having no other criminal record • Cases where the juvenile became a victim of sex trafficking due to limited intellectual ability • Juveniles who entered the judicial system through notification of delinquency from a past childcare facility • Cases requiring temporary severance from non-material addictions such as gambling, internet games, cryptocurrency, etc.
No.2	Law Education	Juvenile Delinquency Prevention Center		<ul style="list-style-type: none"> • Young age and minor delinquency • Law education by delinquency type, such as violence, theft, traffic safety, etc.
		Probation Office		<ul style="list-style-type: none"> • Older age and deepened delinquency • Related law education such as sexual violence prevention education, law-abiding driving education, etc.
		Private Institution		<ul style="list-style-type: none"> • When specialized education by delinquency type according to the juvenile's characteristics is needed • Blue Tree Foundation (school violence prevention), Seoul Youth Dream Center/Youth Happiness Foundation (violence prevention), Tacteen Naeil (sexual violence prevention), etc.
	Counseling	Counseling Center / Psychiatry		<ul style="list-style-type: none"> • Juveniles requiring counseling for substance abuse, drug/ gambling addiction, sexual misconduct, etc.
No. 3	Community Service		<ul style="list-style-type: none"> • Juveniles of high school age or older • Juveniles idling without belonging (not in school or work) • Juveniles needing to learn the value of labor, social responsibility, and community spirit • Juveniles who committed property crimes such as voice phishing, fraud, gambling crimes, etc. 	
No. 4	Short-term Probation		<ul style="list-style-type: none"> • First-time offenders and juveniles who committed minor crimes • Subjects whose entrustment to child welfare facilities has ended 	
No. 5	Long-term Probation		<ul style="list-style-type: none"> • Juveniles with deepened delinquency or high risk of recidivism • Subjects whose transfer to a Juvenile Reformatory has ended • Prohibition on repeated dispositions (3 or more times) 	
No. 6	Entrustment to Child Welfare Facility		<ul style="list-style-type: none"> • Juveniles who have lost family protective power and committed serious crimes • Juveniles likely to flee or unable to obey rules in a free environment (Distinguished from No. 1) 	
No. 7	Hospital / Sanitarium		<ul style="list-style-type: none"> • Juveniles who committed minor crimes but have mental illness • Juveniles requiring professional psychiatric treatment • Cases where support for the guardian's parenting capacity is needed 	

No.	Category	Details	Eligibility Criteria
No. 7		Daejeon Medical Juvenile Reformatory	<ul style="list-style-type: none"> Juveniles who committed serious crimes and have mental illness Juveniles at risk of self-harm or suicide
No. 8		(+ Short-term Probation)	<ul style="list-style-type: none"> Juveniles needing an opportunity for reflection and alertness through a period of 'shock incarceration' (Exclude) Experience with prior entrustment to detention facilities (No. 6-10), those entrusted to the Juvenile Classification Review Board
No. 9		(+ Long-term Probation)	<ul style="list-style-type: none"> Juveniles who committed serious crimes but for whom there is an expectation of correction
No. 10		(+ Long-term Probation)	<ul style="list-style-type: none"> Juveniles who committed serious crimes, where delinquency is habitual and the risk of recidivism is high

4 Expected Policy Effects

○ Securing Consistency in Dispositions

- Secure objectivity and consistency in handling juvenile cases by mitigating subjective judgments and regional practices through the sharing of new standards for protection dispositions, and by applying standardized factors such as the possibility of recidivism, the guardian's protective capacity, and the protective environment.

○ Prevention of Recidivism and Strengthening Social Safety

- Strengthen social safety by blocking the link of crime early—preventing juvenile crime from evolving into adult crime—through customized dispositions that comprehensively consider the stage of delinquency, family environment, and mental health.

○ Utilization in Enactment and Amendment of Laws and Guidelines Related to Juvenile Justice

- Utilize the presented disposition standards and directions for legal amendment (e.g., specifying factors in Article 32 of the Juvenile Act, mandatory recording of reasons for Dispositions No. 6–10) as practical reference materials during the enactment and amendment of the Juvenile Act, investigation guidelines, and court administrative rules. In particular, serve as an opportunity to revitalize specific grounds and policy discussions at the legislative stage, such as the 'new establishment of transfer to Short-term Juvenile Reformatory (No. 9)' and the 'introduction of long-term probation.'