

Implementing Deposition System in Korean Criminal Procedures

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Abstract : The amendment to Article 312(1) of the Criminal Procedure Act in January 2022 marked a paradigm shift in South Korean criminal proceedings by equalizing the evidentiary status of prosecutor-prepared interrogation records with those prepared by judicial police officers. This fundamental change has effectively dismantled the traditionally privileged status of prosecutorial interrogation records in Korea's criminal justice system. Consequently, accomplice statements and similar interrogatory evidence can now only be admitted through in-court testimony, significantly elevating the importance of courtroom testimony in criminal proceedings. However, the heightened reliance on courtroom testimony has exposed critical procedural vulnerabilities. Witnesses frequently forget crucial details, recant previous statements, or commit perjury, leading to protracted trials, escalating litigation costs, and compromised fact-finding processes. Current remedial mechanisms - including evidence preservation, investigator testimony, and pre-testimony witness interviews- remain predominantly under prosecutorial control, failing to adequately safeguard defendants' rights to fair trial and effective counsel. This paper advocates for the strategic adoption of the deposition system, drawing from U.S. adversarial legal traditions. While this system enables parties to conduct sworn witness examinations and create admissible pre-trial testimony records, its implementation must be carefully calibrated to align with Korea's legal framework, historical context, and judicial practices. Within the broader evidence disclosure framework, we propose establishing clear parameters for deposition functionality while preserving the principles of public trials and courtroom-centered adjudication. To ensure procedural integrity and balanced participation rights, we recommend implementing comprehensive safeguards, including judicial authorization requirements, mandatory video recording, pre-deposition training protocols, and robust post-deposition sanctions. These measures aim to enhance the discovery of substantive truth while maintaining procedural fairness.

Keywords : criminal procedure, deposition system, evidentiary capacity, courtroom testimony, judicial reform

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