



DYNAMIC
KOREA

WELCOME TO KOREA





Korean Criminal Justice System

Taewoo, Kim, Prosecutor
Criminal Legislation Division, Ministry of Justice
kimpros@spo.go.kr

법무부

Main goals of Criminal Procedure



Protection of Human Rights

Seeking the Justice



Two Legal Systems



Civil law system

- **Korea, German, Japan, France**
- **Active role of Judges in determining the facts**
- **Inquisitorial system, written argument**

Common law system

- **England, The United States of America**
- **Jury system**
- **Adversarial system, oral argument**

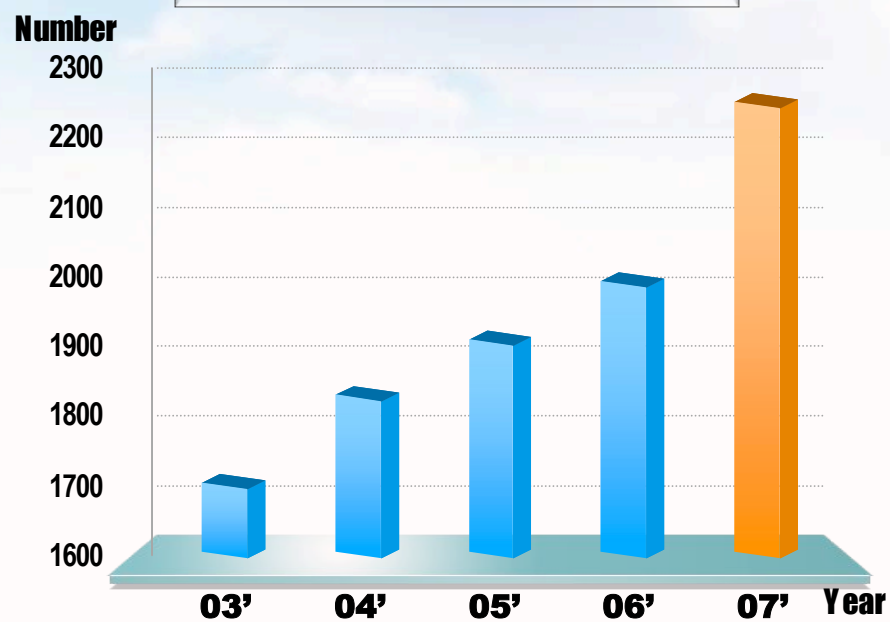
The Number of Judges and Prosecutors of Korea



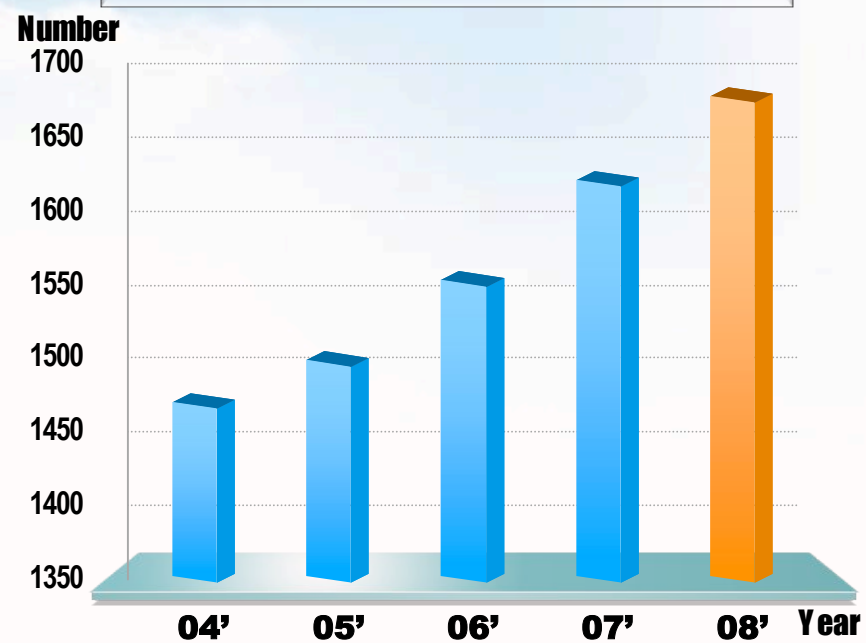
Judges : 2,246

Prosecutors : 1,676

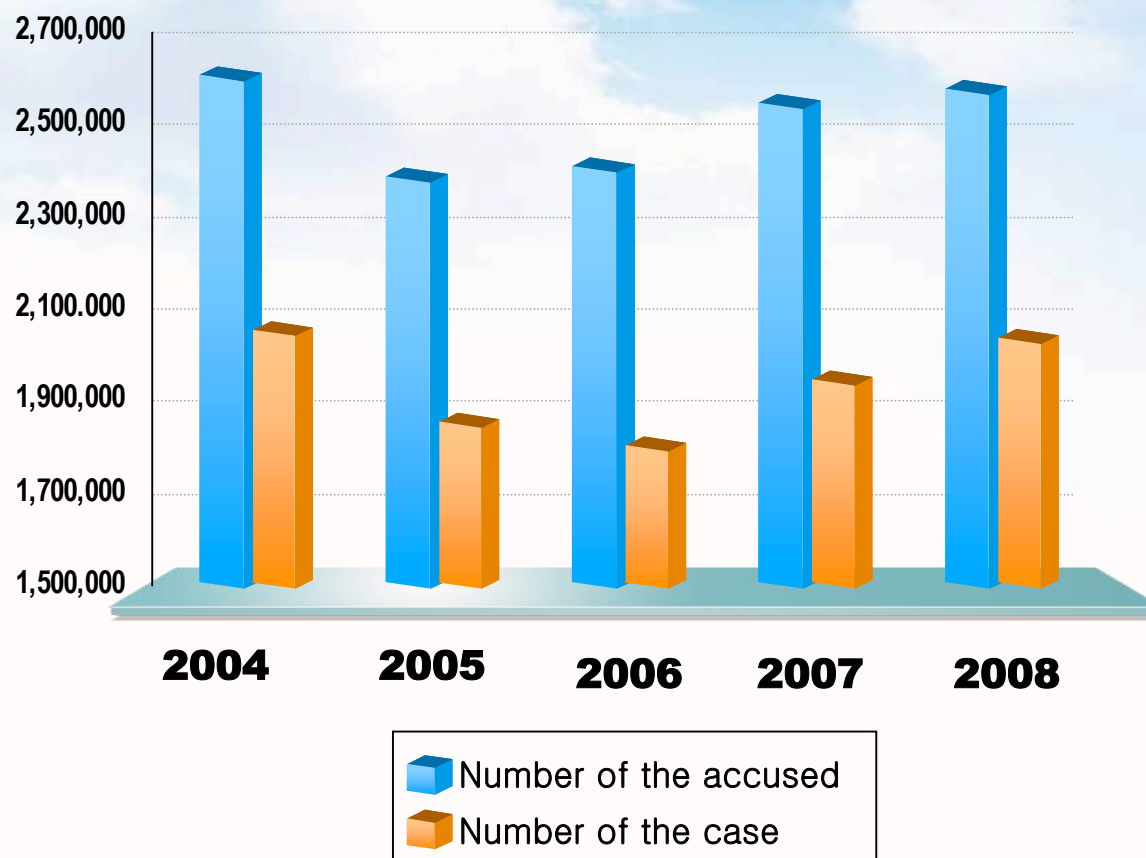
The Number of Judges



The Number of Prosecutors



Criminal Cases (during the past 5 years)



How to appoint Judges and Prosecutors

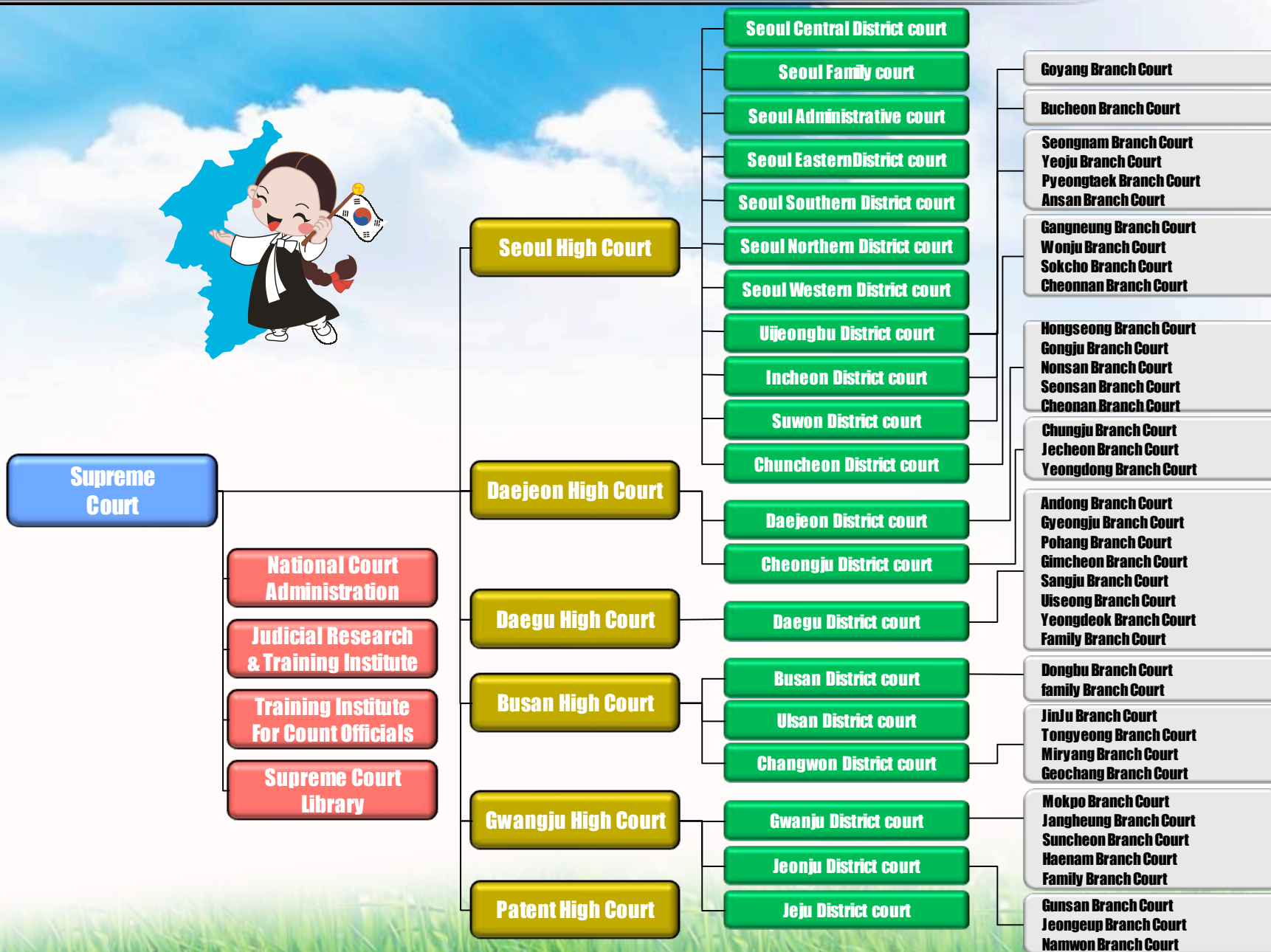


Passing the bar exam

**the two-year training course in
The Judicial Research & Training Institute**

Careful verification process

Organization Of Courts

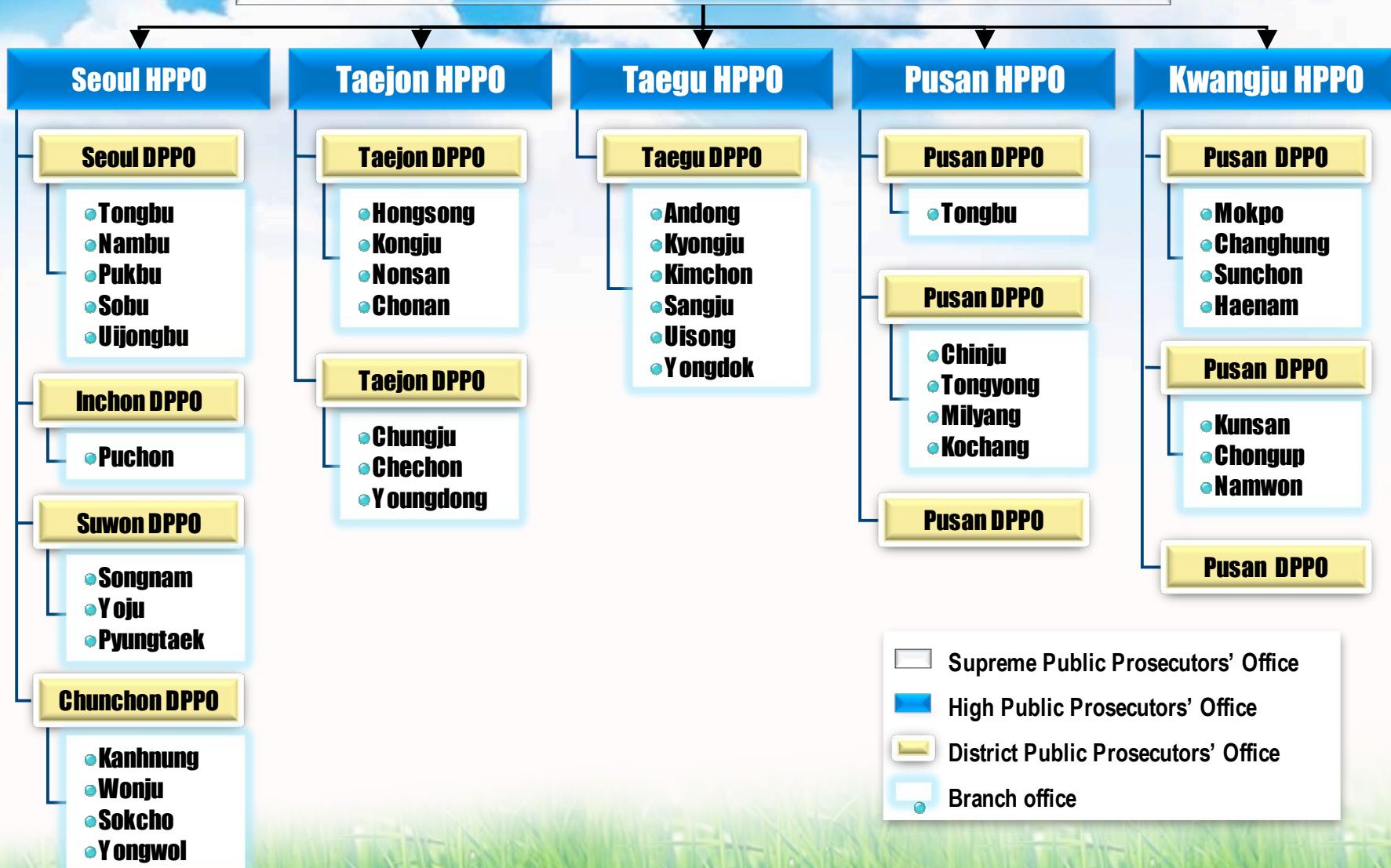


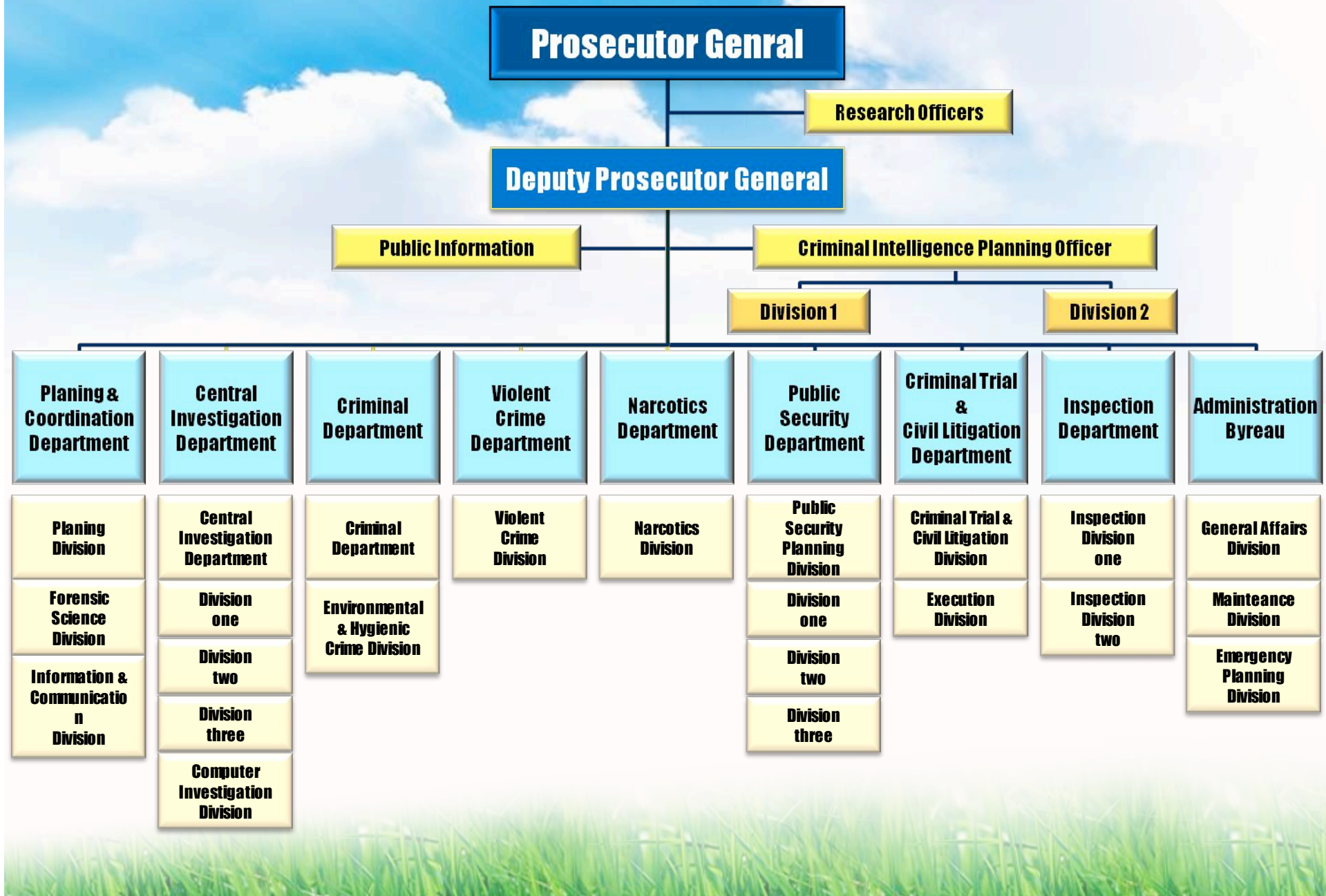


Organization Of Prosecutors' Office



Supreme Public Prosecutors' Office





Chief Public Prosecutor



Deputy Chief Public Prosecutor

Public Prosecutors

Administration

General Affairs Division

Case Division

Civil Litigation Division

Maintenance Division

1. Supervising DPO
2. Handling cases appealed to HC
3. Represent Govt. in civil case
4. Review the case of non-prosecution

Chief Public Prosecutor

1st Deputy Chief public Prosecutor



2nd Deputy Chief public Prosecutor



3rd Deputy Chief public Prosecutor



The Constitutional Court



- **Established in 1988, 9 Justices**
- **Jurisdiction**
 - **Constitutionality of statutes**
 - **Impeachment on high-ranking public officials**
 - **Dissolution of a Political Party**
 - **Competence Dispute**
 - **Constitutional Complaint**
 - **Violation of basic constitutional right on Criminal Procedure ex. Warrant, right to counsel...**

The Role of Prosecutors



Direct and Supervise Investigation

Protector of Public Interests; Human rights Agency

Decision maker whether to indict

Maintenance of Indictment

Direct and Supervise the Execution of Judgments



Independence of prosecutors



- 1. Position is secured**
- 2. Individual public prosecutor qualifies as an independent office**
- 3. Relation between MOJ and public prosecutors**
 - ✓ **General instruction by the Minister**
 - ✓ **The Minister cannot instruct a prosecutor on an individual case; however he may direct the Prosecutor-General, but this happened once.**

Why do the public prosecutors involve in the investigation?

Reasons for public prosecutors' investigative authority

Generally

- Determine disposition after careful screening (avoid prosecution with insufficient evidence)
- Legal expertise (e.g. avoid long detention)

Reasons relevant to corruption offences, etc.

- Independence of their status
- Expertise in examining financial evidence
- Close cooperation with related agencies



The Role of Judges



Issuing warrants

Fact finding in court
no jury system, civil law system

Sentencing
low not-guilty rate (less than 1%)



The Korean Criminal Procedure



- **Investigation**

- **Arrest/Search/seizure**

- **Prosecution**

- **Typical Trial Procedure**
- **Summary procedure**

- **Non Prosecution**

- **Not guilty**
- **Suspension of prosecution**

- **Judgment**

- **Appeal proceedings**

- **Execution of Judgments**



Who has the investigative authority?

POLICE



District Police

PROSECUTORS



District PPOs

**NO ANTI-CORRUPTION COMMISSION TYPE AUTHORITY
SPECIALIZED DEPARTMENTS FOR ECONOMIC AND CYBER
CRIMES EXIST IN THE POLICE/PPOS**

Investigation by the public prosecutors



Two types of investigation conducted by public prosecutors:

1. Supplementary

police act as the primary investigators

2. Independent

public prosecutors initiate and conduct investigations



Independent investigation by public prosecutors



1. Investigation totally by prosecutors and assistant officers (no involvement of the police)
2. Mostly by specialized departments at the district offices
3. Mainly for corruption involving politicians, high-ranking public officials, etc. and large-scale complicated economic crimes
4. Considerable level of cooperation with Tax Agency, FIU
 - ★ freezing and confiscation of crime instrumentalities and proceeds is available. (UNCAC STANDARD)

Warrant

- Arrest/seizure/search/detention
 - Detention period – Police : 10 days , Prosecutor : 20 days
- Need Warrant issued by judge

Exception

- Flagrant offender arrest
 - On the spot or right after the offence
- Emergency arrest
 - At least for a maximum period of three years of imprisonment
 - Great urgency a warrant cannot be obtained beforehand from a judge
 - Permission from prosecutors immediately



Electronic recording of Interrogations



To prevent coerced confession

Real time
Monitoring
& recording



Different view
point

Investigation Room



● **Monopolization of Prosecution**

- No grand jury, No private or police prosecution,
- No preliminary hearing conducted by the Judge

● **Summary procedure**

- crimes of a less serious nature, which can be sentenced to a fine

● **Typical trial procedure**

- crimes of a serious nature, which can be sentenced to an imprisonment

Non-Prosecution



- **Not-guilty**

- an absence of a convicting fact, insufficient evidence

- **Suspend a case**

- Criminal has run away

- **Suspension of indictment**

- crimes of a not serious nature, first offense, juvenile, etc

- **Expiration of prosecution limitation periods**

Trial Procedure



1.Filing an Information

2.Setting a Trial Date

3.Opening Proceedings

4.Examination of evidence

5.The Interrogation of the Accused

6.Closing Arguments

7.Determining the sentence

8.Appeals/Retrial



Basic Trial Principle



● **Presumption of Innocence**

- beyond a reasonable doubt
- cf) preponderance of evidence in civil case
- prosecutor bears the burden of proof

● **Speedy and Public Trials**

- except sex abuse case

● **Right to counsel**

- public defender system
 - imprisonment of three years or more
 - detained, deaf, mute, 70 yrs or more, suspected of mental disorder

● **Right to remain silence**

Evidentiary Rules

● Hearsay Evidence

- Exception
 - Consent
 - Under very rigid conditions concerning necessity and credibility

● Confession

- Voluntariness
- If confession is the only evidence, then no conviction

● Exclusionary Rule

- Evidence obtained in violation of a Constitutional right can not be used against the accused at trial



● Kinds of Punishment

1. Death

2. Imprisonment with or without labor/ for life or for a predetermined term

● **Suspend the imprisonment sentence with community service, probation or attendance centers orders**

3. Fine (no restitution, no suspending)

4. Penal detention

5. Minor fine

● **Each Crime has the range of Punishment**



Reform Of Criminal Justice System



- **The Judiciary Reform Committee**
(2003.10.28)

- **Increasing the Number of Lawyers**

- ✓ Law school bill passed in 2007, will be enacted in 2009

- **Participation of public in the decision making process in investigation or sentencing**

- ✓ Jury system

● **Checks and Balances in the Power of Prosecution**

- Increasing the Police Authority
- Special Prosecutor System

● **Prolong the Period of Detention**

● **Electronic Summary Trial System**

● **Anti-Corruption measures**

- Criminalizing “obstruction of justice”
- Appealing against rejection of detention warrant

Jury System



- **Participation of public in the decision making process at court**
- **Introduced in 2008**
- **The verdict of jury is not legally binding**
- **Only in original Jurisdiction**



Electronic summary Trial system



- **Processing Information electronically through internet**
- **In summary trial with consent of the accused**
- **SMS notification of the sentence**
- **Pay a fine through a bank account**



Any questions?



THANK YOU FOR YOUR ATTENTION !

For further inquiries:

Taewoo, Kim

kimpros@spo.go.kr

