

Promulgated on June 18, 2012, Effective on July 1, 2012

## 19 Crimes Related to Traffic Offenses

This guideline applies to adult offenders (nineteen years of age or older) who committed any offense of Death And Injury By Traffic Accident (Traffic Accidents Act Article 3, paragraph 1), Fleeing the Scene After Causing Death to the Victim by a Traffic Accident (or Death Of The Victim After The Accident-Causing Driver's Running Away) (Aggravated Punishment Act, Article 5-3, paragraph 1, subparagraph1), Fleeing After Causing Injury to the Victim By a Traffic Accident (or Injury of the Victim After the Accident-Causing Driver Flees the Scene) (Aggravated Punishment Act, Article 5-3, paragraph 1, subparagraph 2), Abandoning the Victim and Fleeing After Causing Death to the Victim By a Traffic Accident (or Death Of the Victim After the Accident-Causing Driver's Abandoning and Fleeing of the Scene) (Aggravated Punishment Act, Article 5-3, paragraph 2, subparagraph 1), Abandoning the Victim and Fleeing After Causing Injury To the Victim By a Traffic Accident (Aggravated Punishment Act, Article 5-3, paragraph 2, subparagraph 2), Death and Injury By Dangerous Driving (Aggravated Punishment Act, Article 5-11).

# I. TYPES OF OFFENSE AND SENTENCING PERIODS

## 01 | GENERAL TRAFFIC ACCIDENT

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Injury by Traffic Accident	- 6 months	4 months - 10 months	8 months - 1 yr 6 months
2	Death by Traffic Accident	4 months - 10 months	8 months - 1 yr 6 months	1 yr - 3 yrs

※ **Imprisonment or With or Without Prison Labor**

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>● Cases Where the Victim is Responsible for the Occurrence and the Extent of Damage</li> <li>● Slight Bodily Injury (Type 1)</li> <li>● Accident Caused While Operating a Bicycle</li> </ul>	<ul style="list-style-type: none"> <li>● Grievous Bodily Injury (Type 1)</li> <li>● Cases that Fall Under Certain Saving Clause of the Traffic Accident Act, Article 3, paragraph 2 that Embodies Heavy Illegality</li> </ul>
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>● Those with Hearing and Speaking Impairments</li> <li>● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable)</li> <li>● Offender Expresses Remorse and the Victim Opposes Punishment</li> </ul>	<ul style="list-style-type: none"> <li>● Repeated Offenses of Same Type under the Criminal Act</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>● Free-Rider by the Driver's Favor</li> </ul>	<ul style="list-style-type: none"> <li>● Serious Bodily Injuries Which Do Not Constitute Grievous Bodily Injury (Type 1)</li> <li>● Other Cases That Fall Under Saving Clause of Traffic Accident Act, Article 3, paragraph 2</li> </ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>● Rescuing the Victim After the Accident</li> <li>● Significant Amount of Money Deposited</li> <li>● Comprehensive Insurance Coverage</li> <li>● Expresses Genuine Remorse</li> <li>● No Prior Criminal History</li> </ul>	<ul style="list-style-type: none"> <li>● Concealing or Attempting to Conceal Evidence After the Crime</li> <li>● Repeated Offenses of Different Type under the Criminal Act, Criminal History of the Sam Type of Offense that Does Not Constitute Repeated Offenses under the Criminal Act</li> </ul>



## 02<sup>1</sup> FLEEING AFTER TRAFFIC ACCIDENT

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Fleeing After Causing Injury to the Victim by a Traffic Accident	6 months - 10 months	8 months - 1 yr 6 months	1 yr - 3 yrs
2	Abandoning the Victim and Fleeing After Causing Injury to the Victim by a Traffic Accident	1 yr 6 months - 2 yrs 6 months	2 yrs - 4 yrs	3 yrs - 5 yrs
3	Fleeing After Causing Death to the Victim by a Traffic Accident (Death of the Victim After the Accident-Causing Driver's Fleeing)	2 yrs 6 months - 4 yrs	3 yrs - 5 yrs	4 yrs - 6 yrs
4	Abandoning the Victim and Fleeing After Causing by a Traffic Accident (Death of the Victim After the Accident-Causing Driver's Abandoning and Fleeing)	3 yrs - 5 yrs	4 yrs - 6 yrs	5 yrs - 8 yrs

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>● Cases Where the Victim is Responsible for the Occurrence and the Extent of Damage</li> <li>● Special Considerations Can Be Taken Into Account for Engaging or Participating in Offense</li> <li>● Slight Bodily Injury (Type 1)</li> </ul>	<ul style="list-style-type: none"> <li>● Grievous Bodily Injury or Substantial Risk to the Victim's Life Occurred Due to Fleeing of the Accident (Type 1)</li> <li>● Cases that Fall Under Certain Saving Clause of the Traffic Accident Act, Article 3, paragraph 2 that Embodies Heavy Illegality</li> </ul>
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>● Those with Hearing and Speaking Impairments</li> <li>● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable)</li> <li>● Voluntary Surrender to Investigative Agencies</li> <li>● Offender Expresses Remorse and the Victim Opposes Punishment</li> </ul>	<ul style="list-style-type: none"> <li>● Repeated Offenses of Same Type under the Criminal Act</li> </ul>
General Sentencing Determinant	Conduct		<ul style="list-style-type: none"> <li>● Premeditated Crime</li> <li>● Causing Multiples of Victims or the Risk of Inflicting Serious Harm to the Victim is Substantial</li> </ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>● Significant Amount of Money Deposited</li> <li>● Comprehensive Insurance Coverage</li> <li>● Expresses Genuine Remorse</li> <li>● No Prior Criminal History</li> </ul>	<ul style="list-style-type: none"> <li>● Repeated Offenses of Different Type under the Criminal Act, Criminal History of the Sam Type of Offense that Does Not Constitute Repeated Offenses under the Criminal Act</li> </ul>



## [ DEFINITION OF OFFENSES ]

### 01<sup>1</sup> GENERAL TRAFFIC ACCIDENTS

#### 1. TYPE 1 INJURY BY TRAFFIC ACCIDENT

- This means offenses with following statutory elements of the offense under the applicable law (Hereinafter as so applied).

Elements of Offense	Applicable Law
When a Driver of a Vehicle Causes Injury to the Victim by Traffic Accident Due to Negligence or Gross Negligence Committed Under Duty	Traffic Accident Act, Article 3, paragraph 1
When a Driver of a Vehicle Causes Injury to the Victim by Traffic Accident While Driving a Car Under the Condition Difficult to Drive Normally Due to the Influence of Drinking or Drugs	Aggravated Punishment Act, Article 5-11

#### 2. TYPE 2 DEATH BY TRAFFIC ACCIDENT

Elements of Offense	Applicable Law
When a Driver of a Vehicle Causes Death to the Victim by Traffic Accident Due to Negligence or Gross Negligence Committed Under Duty	Traffic Accident Act, Article 3, paragraph 1
When a Driver of a Vehicle Causes Death to the Victim by Traffic Accident While Driving a Car Under the Condition Difficult to Drive Normally Due to the Influence of Drinking or Drugs	Aggravated Punishment Act, Article 5-11

## 02<sup>1</sup> GENERAL TRAFFIC ACCIDENTS

### 1. TYPE 1 FLEEING AFTER CAUSING INJURY TO THE VICTIM

Elements of Offense	Applicable Law
When the Offender of Injury by Traffic Flees	Aggravated Punishment Act, Article 5-3, paragraph 1, subparagraph 2

### 2. TYPE 2 ABANDONING THE VICTIM AND FLEEING AFTER CAUSING INJURY TO THE VICTIM

Elements of Offense	Applicable Law
When the Offender of Injury by Traffic Accident Moves the Victim from the Scene of the Accident for Abandonment and Runs Away	Aggravated Punishment Act, Article 5-3, paragraph 2, subparagraph 2

### 3. TYPE 3 FLEEING AFTER CAUSING DEATH TO THE VICTIM OR DEATH RESULTS TO THE VICTIM AFTER THE ACCIDENT-CAUSING DRIVER FLEES

Elements of Offense	Applicable Law
When the Accident Causing Driver Runs Away After the Death of the Victim or Death Results to the Victim After the Accident-Causing Driver Flees	Aggravated Punishment Act, Article 5-3, paragraph 1, subparagraph 1

### 4. TYPE 4 ABANDONING THE VICTIM AND FLEEING AFTER CAUSING DEATH TO THE VICTIM OR DEATH RESULTS TO THE VICTIM AFTER THE ACCIDENT-CAUSING DRIVER ABANDONS AND FLEES

Elements of Offense	Applicable Law
When the Accident Causing Driver Moves the Deceased Victim from the Scene of the Accident for Abandonment and Flees or When the Victim Dies After the Accident Causing Driver Moves the Victim from the Scene of the Accident then Abandons and Flees	Aggravated Punishment Act, Article 5-3, paragraph 2, subparagraph 1



## [ DEFINITION OF SENTENCING FACTORS ]

### 01 | GENERAL TRAFFIC ACCIDENTS

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#### **1. CASES WHERE THE VICTIM IS ALSO RESPONSIBLE FOR THE OCCURRENCE AND THE EXTENT OF DAMAGE**

- This applies to cases with one or more of the following factors:
  - Cases where it cannot be generally expected that the general driver could have foreseen such jaywalking by taken into conditions such as traffic condition, the surrounding situation, the time of the accident or others.
  - Cases where the victim's negligence such as traffic signal violation is partially contributed to the occurrence of the accident.
  - Other cases with comparable factors.

#### **2. VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE HARM)**

- This means cases where the offender expresses signs of remorse and the family member of the deceased victim or the victim acknowledges this and objects punishing the offender.
- This includes cases where the offender fail to reach an agreement with the family of the deceased or the victim, so deposits are made in a considerable amount of money comparable to reaching of an agreement with the family of the deceased or the victim as a result of the offender's genuine efforts to reverse harm.

#### **3. MINOR BODILY INJURIES (TYPE 1)**

- This means cases where the inflicted injury requires less than two weeks of medical care, affecting relatively limited bodily parts, which does not disrupt day-to-day activities of the victim, and does not require medical intervention such as surgical stitches and the like.

**4. GRIEVOUS BODILY INJURIES (TYPE 1)**

- Cases where the bodily injuries of the victim caused danger to life or caused disability, incurable disease, or a disease that is difficult to cure.

**5. CASES THAT FALL UNDER CERTAIN SAVING CLAUSE OF THE TRAFFIC ACCIDENT ACT, ARTICLE 3, PARAGRAPH 2 THAT EMBODIES HEAVY ILLEGALITY**

- This means cases where one or more following factors apply. However, for cases of *Fleeing Without Taking Measures Prescribed in Article 54, Paragraph 1 of the Road Traffic Act or Fleeing After Abandoning the Victim* are excluded.
  - Cases which fall under Traffic Accident Act, Article 3, paragraph 2, subparagraph 8 or Aggravated Punishment Act, Article 5-11.
  - Cases where there was refusal to take the Breathalyzer Test.
  - Cases which fall under more than two cases of the Saving Clause.
  - Other cases with comparable factors.
- ※ In this case, the offense shall not be considered as a multi-count conviction, but shall be regarded as a single-count conviction that is a factor for the adjusting sentencing range.

**6. SERIOUS BODILY INJURIES WHICH DO NOT CONSTITUTE AS A GRIEVOUS BODILY INJURY (TYPE 1)**

- This means where the recovery from the inflicted injury requires more than 4 to 5 weeks of medical care in general, including cases with after-effects causing impairment, severe disability resulting from the offense, injuries inflicted to vulnerable body parts or further anticipated bodily injuries.

**7. OTHER CASES THAT FALL UNDER SAVING CLAUSE OF THE TRAFFIC ACT, ARTICLE 3, PARAGRAPH 2**

- This means cases that fall under one of the cases in Saving Clause of Traffic Accident Act, Article 3, paragraph 2 excluding *Fleeing Without Taking Measures Prescribed in Article 54, Paragraph 1 of the Road Traffic Act or Fleeing After Abandoning the Victim* and *Refusal to Take the Breathalyzer Test*, and subparagraph 8.





※ In this case, the offense shall not be considered as a multi-count conviction, but shall be regarded as a single-count conviction that is a factor for the adjusting sentencing range.

## **8. CRIMINAL HISTORY OF THE SAME TYPE**

- This means criminal history of traffic accident offense as set forth in the sentencing guideline.
- However, when the cases fall under Traffic Accident Act, Article 3, paragraph 2 of the Saving Clause, subparagraph 8 or Aggravated Punishment Act, Article 5-11, or when there is *Refusal to Take the Breathalyzer Test*, Criminal History Of Drunk-Driving (including refusal to take the breathalyzer test) under the *Road Traffic Act* shall be considered as a same type of offense.

## **02<sup>1</sup> FLEEING AFTER THE OCCURRENCE OF THE TRAFFIC ACCIDENT**

### **1. SPECIAL CONSIDERATION CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN OFFENSE (TYPE 1)**

- This applies to cases with one or more of the following factors:
  - Cases where the necessity of rescuing the victim was objectively slight according to the details and situations of the accident, the extent of the external injury, the age of the victim and the pain and appeal of medical treatment by the victim.
  - Other cases with comparable factors.

### **2. GRIEVOUS BODILY INJURIES OR SERIOUS DANGER TO THE VICTIM'S LIFE CAUSED BY THE DRIVER'S FLEEING (TYPE 1, 2)**

- This applies to cases with one or more of the following factors:
  - Cases where the bodily injuries of the victim caused danger to life or caused disability, incurable diseases or disease that is difficult to cure (Type 1, 2).
  - When the offender ran away leaving the victim fallen on the road with heavy traffic and therefore causing serious danger to the victim's life (Type 1).
  - Other cases with comparable factors.

## [ ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS ]

### 01 | DETERMINING APPROPRIATE SENTENCING RANGE

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- In determining the appropriate sentencing range, the judge must only consider the special sentencing determinants.
- However, in cases involving more than two special sentencing determinant, the applicable sentencing range is adjusted after assessing the factors as set forth below:
  - ① The same number of conduct factor shall be considered with greater significance than the actor/etc. factor. However, this shall be assessed equally to the victim or the family member of the deceased victim's objection to the punishment.
  - ② Each factor within the relevant categories of conduct or actor/etc. factors should be treated as equal.
  - ③ If the applicable sentencing range is unable to be determined by the aforementioned principles ①, ②, the judge is to decide the applicable sentencing range through a comprehensive comparison and assessment based on the principles set forth in ①, ②.
- It is recommended that when the assessment reveals greater aggravating factors to select the aggravated zone, the mitigating factors is greater to select the mitigating zone, and the same number of aggravating factors and mitigating factors to select the standard zone as a sentencing range.

### 02 | DETERMINING THE APPLICABLE SENTENCE

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- The judge should select the proper point within the sentencing range as assessed in accordance with the above principles, along with the special sentencing determinant and general sentencing determinant taken together.



## [ GENERAL APPLICATION PRINCIPLES ]

### 01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

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- ① In cases where the aggravating factor is selected and the assessment of the special sentencing determinant reveals only two or more special aggravating factors or the special sentencing determinant outnumbers the special mitigating determinant by two or more, then the sentencing range should be increased up to 1/2 from the maximum level. If this results in a maximum level that exceeds twenty-five years, then the judge may impose a life imprisonment.
- ① For cases where the mitigating factor is selected as a result of assessment of the special sentencing determinant, and there are two or more special mitigating determinant or the special mitigating determinant outnumbers the special aggravating determinant by two or more, the sentencing range should be decreased up to 1/2 from the minimum level.

### 02 | RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE GUIDELINES AND APPLICABLE SENTENCING RANGE BY LAW

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When the sentencing range under this guideline conflicts with the range drawn in accordance with the aggravation and mitigation of applicable law, the sentencing range prescribed by applicable law governs.

### 03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

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When the judge declines to apply the optional mitigation factor under the applicable law as listed in the sentencing table of this guideline, this shall be considered as the discretion for mitigation.

## [ GUIDELINE ON MULTI-COUNT CONVICTIONS ]

### 01 | APPLICABLE SCOPE

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- This part on multi-count convictions applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act as set forth in this sentencing guideline. However, in cases of this article's concurrent crimes where offenses that fall within and outside of the sentencing guidelines are involved, the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

### 02 | DETERMINING BASE OFFENSE

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- The “base offense” means the most severe offense that results after the selection of penalty and statutory aggravation and mitigation as prescribed in Criminal Act, Article 50. However, in cases where the maximum sentencing range is lower than that of the maximum sentencing range of the other counts as provided in this guideline, then such other count becomes the base offense.

### 03 | CALCULATING SENTENCING RANGE

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- For purposes of calculating sentencing range for multi-count conviction cases with the different offense, the judge shall apply the following principles unless the offenses are deemed as a single offense under the sentencing guideline:
  - ① In setting sentencing range for an offender convicted of two counts, the sentencing range should be the total sum of the maximum sentencing range of the base offense and the 1/2 of the maximum sentencing range of the second count.
  - ② In setting sentencing range for an offender convicted of three or more counts, the sentencing range should be the total sum of the following: (1) maximum sentencing range of the base offense, (2) 1/2 of the maximum sentencing range of the count with the highest sentencing range, and (3) 1/3 of the maximum sentencing range of the remaining count with the second highest sentencing range.
  - ③ For cases where the minimum sentencing range of the other count is higher than that of the base offense, the minimum sentencing range resulting from the multi-count offense should be the minimum sentencing range of the other count.



## II. GUIDELINE ON SUSPENSION OF SENTENCE

Classification	Adverse	Affirmative
<p style="text-align: center;"><b>Primary Consideration Factor</b></p>	<ul style="list-style-type: none"> <li>● Resulting in Death · Grievous Injuries or Causing Serious Danger to the Victim’s Life by Fleeing</li> <li>● Abandoning the Victim and Fleeing After the Occurrence of the Traffic Accident</li> <li>● Cases that Fall Under Certain Saving Clause of the Traffic Accident Act, Article 3, paragraph 2 that Embodies Heavy Illegality</li> <li>● Criminal History of the Same Offense (Suspension of Sentence or More Severe Punishment Within Five Years; or More than Three Incidents of Fines)</li> </ul>	<ul style="list-style-type: none"> <li>● Cases Where the Victim is Also Substantially Responsible for the Occurrence of the Accident or the Extent of Damage</li> <li>● Slight Bodily Injuries</li> <li>● Accident Caused by Operating a Bicycle (Limited to Cases of General Accidents)</li> <li>● Victim Opposes Punishment</li> <li>● No Prior Criminal History</li> </ul>
<p style="text-align: center;"><b>General Consideration Factor</b></p>	<ul style="list-style-type: none"> <li>● Two or More Criminal History on Suspension of Sentence or for a Greater Offense</li> <li>● Other Cases that Fall Under the Traffic Accident Act, Article 3, paragraph 2 Saving Clause</li> <li>● Lack of Social Ties</li> <li>● Drug or Alcohol Addiction</li> <li>● Absence of Efforts to Reverse Harm</li> <li>● Absence of Remorse</li> </ul>	<ul style="list-style-type: none"> <li>● Strongly-Established Social Ties</li> <li>● Voluntary Surrender to Investigative Agencies (Crimes of Fleeing the Traffic Accident Scene)</li> <li>● Expresses Sincere Remorse</li> <li>● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe</li> <li>● Cases of Old-Aged Offenders</li> <li>● Cases of Physically-ill Offenders</li> <li>● Passive Participation As an Accomplice</li> <li>● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender’s Dependent Family Member</li> <li>● Comprehensive Vehicle Insurance Coverage</li> <li>● Significant Amount of Money Deposited</li> <li>● Actively Rescuing or Transferring the Victim to the Hospital (Limited to Cases of General Traffic Accidents)</li> </ul>

## [ DEFINITIONS OF CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE ]

- In cases where the consideration factors for suspension of sentence of sentencing and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.
  
- Determining Criminal History
  - Prior criminal history is calculated as follows: In cases involving suspension of sentence, calculate from the date the defendant’s suspension of sentence was affirmed up to the date of the commission of the offense. In cases imposing imprisonment, calculate from the final date of the completion of the sentence up to the date of the commission of the offense.



## [ ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS ]

- For cases where the imposing penalty is imprisonment, in deciding whether the suspension of sentence is appropriate, the primary consideration factor should be taken into account with greater importance than the general consideration factors. This is further specified as follows:
  - ① In cases where only two or more primary affirmative factors exist or when primary affirmative factors outnumber the major adverse factor by two or more, suspension of sentence is recommended.
  - ② In cases where two or more primary adverse factors exist or when primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
  - ③ In cases other than ①, ②, or even if cases of ①, ②, if the difference between the number of general adverse(affirmative) factors and general affirmative (adverse) factors is greater than that of adverse and affirmative factors of the primary consideration, then the judge shall decide whether to suspend the sentencing after assessing and comprehensively taking into account the factors listed under the suspension of sentence section.

