

Promulgated on February 4, 2013, Effective on July 1, 2013

22 Crimes of Extortion

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Extortion (Criminal Act, Article 350), Habitual Extortion (Criminal Act, Article 351, Limited to Habitual Crimes of Article 350), Habitual Extortion (Violent Punishment Act, Article 2, paragraph 1, subparagraph 3), Extortion by Multiple Persons (Violence Punishment Act, Article 2, paragraph 2), Repeated Extortion (Violence Punishment Act, Article 2, paragraph 3), Special Extortion (Violence Punishment Act, Article 3, paragraph 1), Habitual Special Extortion (Violence Punishment Act, Article 3, paragraph 3, subparagraph 3), Repeated Special Extortion (Violence Punishment Act, Article 3, subparagraph 4), Extortion under Specific Economic Crimes Act (Specific Economic Crimes Act, Article 3, paragraph 1).

I. TYPES OF OFFENSE AND SENTENCING PERIODS

01 | GENERAL EXTORTION

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Less than 30 Million Won	- 8 months	6 months - 1yr	10 months - 2 yrs 6 months
2	More than 30 Million Won, Less than 100 Million Won	4 months - 1yr 2 months	10 months - 2 yrs	1 yr 6 months - 3 yrs
3	More than 100 Million Won, Less than 500 Million Won	10 months - 3 yrs	1 yr 6 months - 4 yrs	3 yrs - 7 yrs
4	More than 500 Million Won, Less than 5 Billion Won	1 yr 6 months - 4 yrs 6 months	3 yrs - 7 yrs	5 yrs - 9 yrs
5	More than 5 Billion Won	3 yrs - 7 yrs	5 yrs - 9 yrs	7 yrs - 11 yrs

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Extent of the Offense is Slight ● Special Considerations can be Taken into Account for Engaging in Offense ● Extortion Committed to Exercise Right 	<ul style="list-style-type: none"> ● Active Role in Organizing the Commission of the Crime ● Offense Against Unspecified Multiple Victims or for Continued and Repeated Offense ● Usage of Malicious Methods to Commit Crime ● Offense Caused Significant Damage to the Victim ● Offense Committed Toward Vulnerable Victims ● Instigating the Subordinate Person to Commit the Offense



Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Those with Hearing and Visual Impairments ● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable) ● Voluntary Surrender to Investigative Agencies or Whistle Blowers ● Victim Opposes Punishing Offender and Damage Reversed Substantially 	<ul style="list-style-type: none"> ● Repeated Offenses of the Same Type under the Criminal Act
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Offense Committed for Basic Living Expenses or Medical Expenses ● Cases Where the Offender Failed to Consume or Retain Most of the Profit from the Crime ● Passive Participation 	<ul style="list-style-type: none"> ● Two or More Co-Offenders ● Premeditated Crime ● Condemnable Motives ● Deliberate Concealing of Profits Made from the Offense
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Those with Mental Incapacity (These Are Cases Where the Offender Can be Held Liable) ● Expresses Sincere Remorse ● No Prior Criminal History ● Genuine Efforts to Reverse Harm Caused 	<ul style="list-style-type: none"> ● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense ● Repeated Offenses of Different Type under the Criminal Act that Does Not Constitute Repeated Offenses under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence)

▷ Apply the following classification in cases where crime of violence was committed while intoxicated by the use of alcohol or drugs (including cases of Habitual Crimes of Extortion, Repeated Offense of Extortion, Special Offense of Extortion):

- ① Cases where the offender voluntarily induced intoxication by taking alcohol or drugs and where the offender intended or foresaw the crime or attempted to use the condition as a ground for exemption, intoxication is considered as a general aggravating factor regardless of the fact that the offender was in a state of diminished mental capacity at the time of the crime.
- ② Even if the cases do not fall within ①, intoxication should not be taken into account as a mitigating factor unless the offender's mental state at the time of the crime constitutes Those with Mental Incapacity.

02¹ HABITUAL EXTORTION, REPEATED EXTORTION, SPECIAL EXTORTION

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Habitual Extortion, Repeated Extortion, Special Extortion	1 yr 6 months - 3 yrs	2 yrs - 5 yrs	4 yrs - 7 yrs
2	Habitual Special Extortion, Repeated Special Extortion	2 yrs 6 months - 5 yrs	4 yrs - 7 yrs	6 yrs - 9 yrs

▷ When the profit from the offense under Type 1 or Type 2 is 500 million won or more and thus falls under Type 4 or Type 5 of General Extortion, compare the maximum and minimum limits of the sentencing range and apply the more severe sentencing range.



Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Extent of the Offense is Slight ● Special Considerations can be Taken into Account for Engaging in Offense ● Extortion Committed to Exercise Right (Limited to Special Extortion) 	<ul style="list-style-type: none"> ● Active Role in Organizing the Commission of the Crime ● Offense Against Unspecified Multiple Victims or for Continued and Repeated Offense ● Offense Caused Significant Damage to the Victim ● Offense Committed Toward Vulnerable Victims ● Instigating the Subordinate Person to Commit the Offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Those with Hearing and Visual Impairments ● Those with Mental Incapacity (Cases Where the Offender Cannot be Held Liable) ● Voluntary Surrender to Investigative Agencies or Whistle Blowers ● Victim Opposes Punishing Offender and Damage Reversed Substantially 	
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Offense Committed for Basic Living Expenses or Medical Expenses ● Cases Where the Offender Failed to Consume or Retain Most of the Profit from the Crime ● Passive Participation 	<ul style="list-style-type: none"> ● Premeditated Crime ● Condemnable Motives ● Deliberate Concealing of Profits Made from the Offense
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> ● Those with Mental Incapacity (These Are Cases Where the Offender Can be Held Liable) ● Expresses Sincere Remorse ● No Prior Criminal History ● Genuine Efforts to Reverse Harm Caused 	<ul style="list-style-type: none"> ● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense ● Repeated Offenses of Different Type under the Criminal Act that Does Not Constitute Repeated Offenses under the Criminal Act (This Applies When the Criminal History is Within Ten Years After Completion of Sentence)

[DEFINITION OF OFFENSES]

01 | GENERAL EXTORTION

1. TYPE 1

- Type 1 means cases where the amount of profit involved is less than 30 million won. “Profit” means property or financial gain that the offender or the third party through the assistance of the offender has acquired by the commission of the offense (This definition applies throughout the guideline).

2. TYPE 2

- This means cases where the amount of profit involved by extortion 30 million won or more but is less than 100 million won.

3. TYPE 3

- This means cases where the amount of profit involved by extortion is 100 million won or more but is less than 500 million won.

4. TYPE 4

- This means cases where the amount of profit involved by extortion is 500 million won or more but is less than 5 billion won.

5. TYPE 5

- This means cases where the amount of profit involved by extortion is 5 billion won or more.

※ This means offenses with following elements of offenses as prescribed in the applicable law (applies to all offenses).

Elements of Offense	Applicable Law
Extortion	Criminal Act, Article 350
Extortion by Multiple Offenders	Violence Punishment Act, Article 2, paragraph 2
Extortion Under Specific Economic Crimes Act	Specific Economic Crimes Act, Article 3, paragraph 1

02¹ HABITUAL EXTORTION, REPEATED EXTORTION, SPECIAL EXTORTION

Classification	Elements of Offense	Applicable Law
Type 1 Habitual Extortion, Repeated Extortion, Special Extortion	Habitual Extortion	Criminal Act, Article 351, Violence Punishment Act, Article 2, paragraph 1, subparagraph 3
	Repeated Extortion	Violence Punishment Act Article 2, paragraph 3
	Special Extortion	Violence Punishment Act, Article 3, paragraph 1
Type 2 Habitual Special Extortion, Repeated Special Extortion	Habitual Special Extortion	Violence Punishment Act, Article 3, paragraph 3, subparagraph 3
	Repeated Special Extortion	Violence Punishment Act, Article 3, paragraph 4

[DEFINITION OF SENTENCING FACTORS]

01 | EXTENT OF EXTORTION IS SLIGHT

- This means one or more of the following factors apply:
 - Extent of violence and intimidation is slight
 - Extent of harm is slight (This excludes cases where the offender pretended to be a gangster, or commits an offense against a very vulnerable victim)
 - Cases where the victim was not seriously intimidated by the offender's violence and intimidation; or
 - Other cases with comparable factors.

02 | SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING OR PARTICIPATING IN OFFENSE

- This means cases where one or more of the following factors apply:
 - Participation in the crime was forced by another person or resulted from threats (This excludes cases where Criminal Act, Article 12 is applicable);
 - When the offender merely agreed to participate in the crime but did not lead or actually participate in the commission of the crime; or
 - Other cases with comparable factors.

03 | EXTORTION COMMITTED TO EXERCISE RIGHT

- This means cases where one or more of the following factors apply:
 - The offender used violence or intimidation to collect debt (This excludes cases where the offender used professional debt-collecting agency by use of violence or intimidation, where the offender made specific threat concerning the victim's family and their safety, where the offender committed violence at the victim's house or workplace;
 - Cases where the means taken to exercise right is not permissible under social norm; or
 - Other cases with comparable factors.



04 | MALICIOUS METHOD OF CRIME

- This means cases where one or more of the following factors apply:
 - Cases where the offense was committed through the use of the offender’s malicious background or experience or pretending that the offender has such background or experience;
 - Cases where the offender made specific threat concerning the victim’s family and their safety;
 - Cases where the offender committed violence at the victim’s house or workplace;
 - Cases where the offender committed a crime by using the status of public official or the status of organization with social influence such as the media; and
 - Other cases with comparable factors.

05 | INFLICTING SERIOUS HARM TO THE VICTIM

- This means cases where one or more of the following factors apply:
 - Financial or management crisis of the company as a result of the offense;
 - Collapse of company’s stock due to damaged reputation as a result of the offense;
 - Multiple bankruptcies induced as a result of the offense;
 - Victim losses nearly all assets due to the offense; or
 - Other cases with comparable factors

06 | VULNERABLE VICTIMS

- “Vulnerable victims” means cases where the victim was especially vulnerable due to reduced physical or mental capacity or age at the time of the crime and the offender was already aware of or possibly aware of the victim’s such circumstances.

07 | SUBSTANTIAL REVERSE OF HARM

- Cases where more than 2/3 of the total damage is reversed or is certain to be reversed.

08 | PASSIVE PARTICIPATION

- This means cases where the nature of participation in the commission of the offense was passive or the offender had a limited role.
- However, this is not applicable in cases where the offender had an active role in the commission of the offense by causing another person to commit the offense.

09 | PREMEDITATED CRIME

- This means cases with one or more of the following factors:
 - Advance preparation and possession of the crime weapon;
 - Planned conspiracy;
 - Inducement of victim;
 - Preparation of destruction of evidence;
 - Prior planning of a flight plan; or
 - Other cases with comparable factors.

10 | CONDEMNABLE MOTIVES

- This means cases with one or more of the following factors:
 - Offense committed for illegal use such as gambling;
 - Offense committed to provide means to execute other crimes;
 - Extortion of property committed to retaliate or harass the victim;
 - Extortion of the opponent's property to maintain dominance in power among gangster groups; or
 - Other cases with comparable factors.

11 | DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE

- This means profits gained from the offense was deliberately concealed by the offender thereby causing delayed damage recovery or absence of recovery.



[ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS]

01 | DETERMINING APPROPRIATE SENTENCING RANGE

- 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

- 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]

01¹ SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- 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.
- 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.

02¹ RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE GUIDELINES AND APPLICABLE SENTENCING RANGE BY LAW

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.

03¹ APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

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

- 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

- 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 OF MULTI-COUNT CONVICTION OF THE SAME OFFENSE

- For purposes of calculating sentencing range for multi-count conviction cases among the offenses of extortion, the judge shall apply the following :
 - ① In setting sentencing range, take into account the total amount of profit accepted and select the appropriate sentencing range by considering all relevant factors.
 - ② However, as a result of total summation, if the applicable offense type is one level higher than the most severe single offense among the multi-count, then reduction of 1/3 is made to the minimum sentencing range. If the applicable offense type is two or more levels higher than the most severe single offense among the multi-count, then reduction of 1/2 is made to the minimum sentencing range by applying the minimum sentencing range of the most severe single offense among the multi-count.

04¹ CALCULATING SENTENCING RANGE OF MULTI-COUNT CONVICTION OF DIFFERENT OFFENSE

- 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.
- However, when the multi-count conviction is composed of two or more offense of extortion and other different offenses, first set the sentencing range for multi-count conviction of the same offense and then use the resulted point range to calculate the sentencing range for multi-count conviction with different offenses.



II. GUIDELINE ON SUSPENSION OF SENTENCE

Classification	Adverse	Affirmative
<p style="text-align: center;">Primary Consideration Factor</p>	<ul style="list-style-type: none"> ● Crime Against Unspecified Multiples of Victims or Prolonged and Repeated Commission of the Crime ● Malicious Method of the Crime ● Criminal History of the Same Offense (Imposing of Suspension of Sentence or More Severe Punishment, or Three or More Incidences of Fine Within Five Years) ● Vulnerable Victims ● No Agreement Reached with the Victim ● Offense Resulted in Serious Harm to the Victim 	<ul style="list-style-type: none"> ● Extent of Extortion Offense is Slight ● Special Considerations Can be Taken into Account for Engaging or Participating in Offense ● Voluntary Surrender to Investigative Agencies or Whistle-Blowing of the Internal Corruption ● Offender Prevented or Blocked the Commission of the Crime by the Accomplice ● Significant Portion of Damage is Reversed ● Victim Opposes Offender's Punishment ● No Prior Criminal History
<p style="text-align: center;">General Consideration Factor</p>	<ul style="list-style-type: none"> ● Two or More Criminal History on Suspension of Sentence or for a Greater Offense ● Condemnable Motives ● Lack of Social Ties ● Drug or Alcohol Addiction ● Absence of Remorse ● Premeditated Crime ● Active Participation as an Accomplice ● Deliberate Concealment of Profits Gained from the Offense ● Destroying Evidence or Attempting to Conceal Evidence After Commission of the Offense ● Absence of Efforts to Reverse Harm 	<ul style="list-style-type: none"> ● Offense Committed for Basic Living Expenses or Medical Treatment Expenses ● Strongly-Established Social Ties ● Expresses Sincere Remorse ● Significant Amount of Money Deposited, Portion of Damage Reversed, Genuine Efforts to Reverse Harm ● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe ● Special Considerations Can be Taken into Account for Engaging or participating in Offense ● Cases of Old-Aged Offenders ● Cases of Physically-ill Offenders ● Cases Where the Offender Failed to Consume or Retain Most of the Profit from the Crime ● Passive Participation As an Accomplice ● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender's Dependent Family Member

[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.

