

Promulgated on April 24, 2009, Effective on July 1, 2009

6 Crimes of Perjury

This guideline applies to adult offenders (nineteen years of age or older) who committed any offense of Perjury (Criminal Act, Article 152, paragraph 1), Malicious Perjury (Criminal Act, Article 152, paragraph 2), Statutory Perjury on Testimony and Appraisal (and the like) before the National Assembly (Aforementioned Act, Article 14, paragraph 1), Perjury under Patent Act (Aforementioned Act, Article 227, paragraph 1), Perjury under Utility Model Act (Aforementioned Act, Article 47, paragraph 1), Perjury under Design Protection Act (Aforementioned Act, Article 83, paragraph 1), or Perjury under Trademark Act (Aforementioned Act, Article 94, paragraph 1).

I. TYPES OF OFFENSE AND SENTENCING PERIODS

Type	Classification	Mitigated Sentencing Range	Standard Sentencing Range	Aggravated Sentencing Range
1	Perjury	- 10months	6months - 1yr 6months	10months - 3yrs
2	Malicious Perjury	6months - 1yr 6months	10months - 2yrs	1yr 6months - 4yrs

- ▷ Perjury under Patent Act, Utility Model Act, Design Protection Act, and Trademark Act falls within Type 1.
- ▷ Statutory Perjury on Testimony and Appraisal (and the like) before the National Assembly falls within Type 2.

Classification		Mitigating Factor	Aggravating Factor
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Non-premeditated Crime ● False Testimonies of Minor Issues with No Significance ● Participation Resulting From Outside Pressure or Threat by Another Person 	<ul style="list-style-type: none"> ● Acquired Financial Benefits in Exchange for the Commission of the Offense ● Perjury Affects the Arrest or Outcome of the Trial ● Instigating the Subordinate Person to Commit the Offense
	Actor /Etc.	<ul style="list-style-type: none"> ● Those with Hearing and Visual Impairments ● Those with Mental Incapacity ● Voluntary Surrender to Investigative Agencies or Confession 	<ul style="list-style-type: none"> ● Repeated Offenses of Same Offense under the Criminal Act (Including Destroying Evidence, Hiding Offenders, Making False Accusations, and the Like)
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> ● Willful Negligence ● Passive Participation ● Relevant Circumstances Indicate Extremely Unreliable Testimony ● False Testimony but Coincides with Objective Facts 	<ul style="list-style-type: none"> ● Multiple False Testimonies on Court Appearances for Court of the Same Tier ● Promises for Financial Benefit ● Instigating Perjury
	Actor /Etc.	<ul style="list-style-type: none"> ● Expresses Sincere Remorse ● Offender Expresses Remorse and the Victim Opposes Punishment (This Includes Genuine Efforts to Reverse Harm) ● No Prior Criminal History 	<ul style="list-style-type: none"> ● Repeated Offenses of Different Type under the Criminal Act or Criminal History of Same Type of Offenses that Does Not Constitute Repeated Offenses under the Criminal Act (Including Destroying Evidence, Hiding Offenders, Making False Accusations, and the Like)

[DEFINITION OF OFFENSES]

01 | TYPE 1 PERJURY

- This means where the witness lawfully makes a false statement under oath and such offense does not fall within Type 2.
- Perjury as prescribed in Patent Act, Utility Model Act, Design Protection Act, and Trademark Act falls within Type 1.

02 | TYPE 2 MALICIOUS PERJURY

- This means cases where the witness lawfully makes a false statement under oath in a criminal or a disciplinary proceeding for the purposes of inflicting harm to the defendant.
- Statutory Perjury as prescribed in Act on Testimony and Appraisal (and the like) before the National Assembly falls within Type 2.

[DEFINITION OF SENTENCING FACTORS]

01 | NON-PREMEDITATED CRIME

- This means cases where the offender did not make prior plans to commit the offense but made false testimony as a response to an unanticipated question from the judge or the adversary, and the like.

02 | FALSE TESTIMONIES OF MINOR ISSUES WITH NO SIGNIFICANCE

- This means cases where the content of the false testimony relates only to secondary or minor issues and does not have any relevance to facts required to be proven or the nature of the litigation, and is not applicable to the following cases:
 - When the false testimony is the only evidence offered by the party.
 - When the false testimony is a significant method of proof offered as proof by the party

03 | PERJURY AFFECTS ARREST OR OUTCOME OF THE TRIAL RESULTS

- This means cases where the false testimony causes an arrest of the party or affects the verdict or imposing of sentence in a criminal procedure. This also means cases where the testimony affects the verdict or determination of partial issues of facts in a civil litigation.

04 | VOLUNTARY SURRENDER TO INVESTIGATIVE AGENCIES OR CONFESSION

- Voluntary surrender to investigative agencies can be initiated any time, but for confessions the following time limit applies:
 - Perjury as prescribed in Criminal Act: confession must be prior to the entering of the judgment of the trial or the final decision of the disciplinary action.
 - Statutory Perjury as prescribed in Act on Testimony and Appraisal (and the like) before the National Assembly: confession must be prior to crime detection and prior

to the conclusion of the deliberation, audits, or investigation before the National Assembly.

- Perjury as prescribed in Patent Act: prior to the entering of the judgment for the case.
- Perjury as prescribed in Utility Model Act: prior to entering of the judgment for the case.
- Perjury as prescribed in Design Protection Act: prior to the decisions to issue or refuse design registration, petitions for unexamined design registration decisions, or affirming of final decisions.
- Perjury under Trademark Act: prior to the decision to issue or refusal of trademark registration or issuing of final decisions or affirming of final decisions.

05 | WILLFUL NEGLIGENCE

- This means cases where the offender was aware of the fact that the testimony could contradict his or her memory while giving testimony, nonetheless answered conclusively without fully understanding the question or while unable to recollect precisely the subject matter of the question.

06 | 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.

07 | RELEVANT CIRCUMSTANCES INDICATE EXTREMELY UNRELIABLE TESTIMONY

- This means cases where taken into account the relevant circumstances such as the witness's academic background, age, testimony's content, party's relationship, the witness's testimony indicates a extremely unreliable testimony.

08 | MULTIPLE FALSE TESTIMONIES ON COURT APPEARANCES FOR COURTS OF THE SAME TIER

- This means cases while under the effect of an oath taken on the first court hearing date, the offender gives a series of false testimonies extended over several trial dates after being summoned several times in the course of a legal proceeding in the court of the same tier.

09 | SINCERE REMORSE

- This means cases where the offender admits the commission of the crime and expresses sincere regret for the conduct.
- However, this excludes cases where confession is considered as a special mitigation factor.

[ASSESSING PRINCIPLES APPLICABLE TO THE SENTENCING FACTORS]

01¹ DETERMINING APPROPRIATE SENTENCING RANGE

- In determining the appropriate sentencing range, the judge must only consider the special sentencing determinants.
- 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.
 - 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.

02¹ 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

- 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.
- ② 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

- For purposes of calculating sentencing range for multi-count conviction cases, the judge shall apply the following 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>Primary Consideration Factor</p>	<ul style="list-style-type: none"> ● Acquired Financial Benefits in Exchange for the Commission of the Offense ● Criminal History of the Same Offense (Imposing of Suspension of Sentence or More Severe Punishment Within Five Years; or More Than Three Incidents of Fines) ● Offense Committed with the Purpose of Inflicting Harm ● Perjury Affects the Arrest or Outcome of the Trial 	<ul style="list-style-type: none"> ● Passive Participation ● Non-premeditated Crime ● Expresses Penitence (Including Voluntary Surrender or Confessions, and the Like) ● No Prior Criminal History
<p>General Consideration Factor</p>	<ul style="list-style-type: none"> ● Prior Criminal History of Suspension of Sentence for Two or More Incidents ● Concealing Evidence or Attempts to Conceal After the Commission of the Offense ● Lack of Social Ties ● Instigating Perjury 	<ul style="list-style-type: none"> ● No Criminal History of Suspension of Sentence or Imposing of Other Sentences More Severe ● Offender Expresses Remorse and the Victim Opposes Punishment (This Includes Genuine Efforts to Reverse Harm) ● Cases of Physically-ill Offenders ● Cases where the Arrest of the Offender would Cause Severe Hardship to the Offender's Dependent Family Member ● Cases of Old-age Offenders

[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 CONSIDERATION FACTORS FOR SUSPENSION OF SENTENCE]

- 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.

