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Chapter 1

Crimes of Homicide

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Murder (Criminal Act, Article 250, paragraph 1), Murder of an Ascendant (Criminal Act, Article 250, paragraph 2), Rape and Murder (Criminal Act, Article 301-2 and Sexual Crime Act, Article 9, paragraph 1 and Children-Juvenile Sexual Crime Act, Article 10, paragraph 1), Murder by Robbery (Criminal Act, Article 338), Hostage Murder in a Hostage Taking (Criminal Act, Article 324-4), Murder of Minor by Abduction or Inducement (Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 2), Retaliatory Murder (Aggravated Punishment Act, Article 5-9, paragraph 1) or Attempts of each of the abovementioned crimes (Criminal Act, Article 254, Article 324-5 and 342, Sexual Crime Act, Article 15, and the Aggravated Punishment Act, Article 5-2, paragraph 6).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

OFFENSE TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Murder with Extenuating Motive	3 yrs. - 5 yrs.	4 yrs. - 6 yrs.	5 yrs. - 8 yrs.
2	Murder with General Motive	7 yrs. - 12 yrs.	10 yrs. - 16 yrs.	15 yrs. or more, life imprisonment or more
3	Murder with Condemnable Motive	10 yrs. - 16 yrs.	15 yrs. - 20 yrs.	18 yrs. or more, life imprisonment or more
4	Murder in Combination with Other Serious Crimes	17 yrs. - 22 yrs.	20 yrs. or more, life imprisonment	25 yrs. or more, life imprisonment or more
5	Murder by Extreme Neglect for Human Life	20 yrs. - 25 yrs.	23 yrs. or more, life imprisonment	Life imprisonment or more

* To determine the recommended sentencing range for the *Attempt of Murder* offense, apply $\frac{2}{3}$ reduction to the maximum sentencing range and $\frac{1}{3}$ reduction to the minimum sentencing range. However, 'life imprisonment' shall be reduced to 20 yrs. or more, 'life imprisonment or more' shall be reduced to 20 yrs. or more, life imprisonment.

CLASSIFICATION			MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	General Application	<ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in the offense • Use of excessive self-defense • Willful negligence to commit murder • (Strong) provocation by the victim 	<ul style="list-style-type: none"> • Premeditated crime • Vulnerable victims • Damaging the physical remains of the body of the deceased victim • Usage of cruel methods to commit the crime • Cases where the victim is an ascendant of the offender • Abduction or inducement with a condemnable purpose (Type 4) • Cases where the offender also committed rape with the crime of robbery (Type 4) • Instigating the subordinate person to commit the crime
Special Sentencing Determinant	Conduct	Attempt	<ul style="list-style-type: none"> • Minor bodily injuries (includes cases without bodily injuries) 	<ul style="list-style-type: none"> • Serious bodily injuries
Special Sentencing Determinant	Actor/etc.		<ul style="list-style-type: none"> • Those with hearing and visuals impairments • Those with mental incapacity (cases where the offender cannot be held liable) • Voluntary surrender to investigative agencies • Offender expresses remorse, and the victim opposes punishment (This includes genuine efforts to reverse the harm) 	<ul style="list-style-type: none"> • Absence of remorse (excludes cases where the offender is merely pleading not guilty) • Special violent crimes (This applies to repeated offenses)
General Sentencing Determinant	Conduct		<ul style="list-style-type: none"> • Offender's passive participation in the committed crime • (Typical) provocation by the victim 	<ul style="list-style-type: none"> • Abandoning the physical remains of the body of the deceased victim

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Actor/etc.	<ul style="list-style-type: none"> • Rescuing or transferring the victim to the hospital after committing the crime • A significant amount of money was deposited with the depository • Those with reduced mental capacity (These are cases where the offender can be held liable. but does not apply to Type 4 category crimes of murder after committing rape/sexual penetration/indecent acts by compulsion, murder after abduction or inducement against the minor, or murder after taking hostage) • Sincere remorse for committing the crime 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute a repeated offense under the Special Violent Crime Act, the criminal history of imprisonment by the same type of offenses, or by a crime of violence that does not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)

* For cases of committing Murder after Rape/Sexual Penetration/Murder After Indecent Acts by Compulsion under the influence of alcohol or other drugs, sentencing criteria described in the Sentencing Guideline on Crimes of Sexual Assault (as amended and effective on July 15, 2010) shall be applied.

DEFINITION OF OFFENSES

01 | TYPE 1 – MURDER WITH EXTENUATING MOTIVE

Type 1 includes murders committed with motives that can be considered as extenuating circumstances, with one or more of the following factors:

- Murder with Causes Attributable to the Victim
 - Where the offender or the offender's relative has received physical or mental harm (such as domestic violence, sexual assault, or others) consistently from the victim over an extended period of time.
 - Where the offender or the offender's relative has received a series of actual death threats from the victim (In this case, excessive use of self-defense is not considered as a special mitigating factor).
- Murder of a Family Member While in the Mental State that Clearly Lacks Capacity to Make Judgment
- Other Cases with Comparable Factors

02 | TYPE 2 – MURDER WITH GENERAL MOTIVE

Type 2 includes murders with general motives with one or more of the following factors or murders that do not fall into the Type 1, 3, 4, or 5 categories:

- Murder Committed Out of Resentment
 - Murder committed out of resentment in response to a partner's demand to end their relationship.
 - Murder committed out of grudge due to the perception that the offender was ignored or despised by the victim.
 - Murder of a verbal dispute or a physical encounter.
- Murder Committed as a Result of Domestic Grievances
 - Murder of a marriage partner due to delusional infidelity.
 - Murder of a marriage partner due to accumulated grievance toward the victim.

- Murder Committed Out of Resentment in Debtor and Creditor Relations
 - Murder committed due to the victim's refusal to pay the debt.
 - Murder committed due to the victim's demands to pay the debt.
- Other Cases with Comparable Factors

03 | TYPE 3 – MURDER WITH CONDEMNABLE MOTIVES

Type 3 includes murders with an exceptionally high degree of condemnation in regard to motives for committing the crime with one or more of the following factors:

- Retaliatory Murder as Prescribed in the Aggravated Punishment Act (Aggravated Punishment Act, Article 5-9, paragraph 1)
 - Murder committed with the intention of retaliating against accusations, complaints, statements, testimonies, or submission of materials.
 - Murder committed with intent to prevent or nullify accusations, complaints, statements, testimonies, or submission of materials, or to fabricate statements, testimonies, or submitted materials.
- Murder Committed with Motives Pertaining to Money, Adultery, or Organizational Benefits
 - Murder committed out of greed (such as murder to obtain an inheritance or the proceeds of an insurance policy, and the like).
 - Contract murder committed for the purpose of gaining economic benefit.
 - Murder of a marriage partner for the purpose of maintaining an adulterous relationship.
 - Murder committed as a result of rivalry between criminal organizations.
- Murder Committed in the Commission of Other Crimes or to Prevent Disclosure of the Committed Crime
 - Murder committed in the commission of other offenses (murder of prison guard for fleeing or murder of bodyguard to abduct a particular individual).
 - Murder committed due to fear of disclosing the committed crime or the victim reporting the offense.

- Murder Committed for an Unspecified Reason Against Indiscriminate (Random) Number of People, or to Fulfill the Offender's Desire to Kill Another Individual
- Other Cases with Comparable Factors

04 | TYPE 4 – MURDER COMMITTED IN COMBINATION WITH ADDITIONAL SERIOUS OFFENSES

Type 4 includes murders committed in combination with additional serious crimes with one or more of the following factors:

- Rape and Murder/Imitative Rape and Murder/Indecent Acts by Impulsion and Murder (Criminal Act, Article 301-2, Sexual Crime Act, Article 9, paragraph 1, Children-Juvenile Sexual Crime Act, Article 10, paragraph 1)
- Minor Abduction or Inducement Murders (Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 2)
- Hostage Murder in a Hostage Taking (Criminal Act, Article 324-4)
- Murder Committed in the Commission of a Robbery (Criminal Act, Article 338)

05 | TYPE 5 – MURDER COMMITTED BY EXTREME NEGLIGENCE FOR HUMAN LIFE

Type 5 includes murders that reflect the offender's extreme tendency towards neglect for human life with one or more of the following factors:

- Multiple Killings of Indiscriminate Targets that Victimized Two or More People
- Murder Committed Against Two or More People Out of Pure Desire to Kill
- Other Cases with Comparable Factors

DEFINITION OF SENTENCING FACTORS

01 | SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN THE OFFENSE

- “Special considerations can be taken into account for engaging in the offense” means 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 the 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.
 - Other cases with comparable factors.

02 | PROVOCATION BY THE VICTIM

- “Provocation by the victim” means there are certain causes attributable to the victim as well as the offender at the time the crime was committed.
- Nonetheless, this is limited to cases that fall outside the use of excessive self-defense. When the long-existing causes attributable to the victim, such as cases of domestic violence where the victim has been inflicted for an extended period of time exists, and this has been taken into account in classifying the offense, then this factor should be precluded from the adjustment considerations.

03 | PREMEDITATED CRIME

- “Premeditated crime” means cases with one or more of the following factors:
 - Advance preparation and possession of the crime weapon
 - Planned conspiracy
 - Inducement of victim
 - Preparing to destruct evidence

- Prior planning of a flight plan
- Other cases with comparable factors

04¹ VULNERABLE VICTIMS

- “Vulnerable victims” means cases where when the crime was committed, and due to the victim’s reduced physical or mental capacity or age, the offender was already aware of or possibly aware of the victim’s circumstances.
- In case the committed crime was Murder of a Minor by Abduction or Inducement (Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 2), this factor applies when the victim was younger than thirteen years of age or physically or mentally disabled and the offender was already aware or possibly aware of the victim’s circumstances.

05¹ MURDER COMMITTED WITH CRUEL CONDUCTS

- “Cruel method of the crime” means cases where the victim has been killed by extreme physical or mental pain in terms of the degree and duration of the pain, including the following:
 - Murder committed through arson
 - Murder committed by the use of explosives
 - Cases where bodily harm was deliberately inflicted upon the victim prior to killing
 - Cases where the murder was committed by stabbing or striking vital points of the victim dozens of times by using a knife or other lethal weapons
 - Other cases with comparable factors

06 | ABDUCTION OR INDUCEMENT WITH A CONDEMNABLE PURPOSE

- “Abduction or inducement with a condemnable purpose” means cases where the purpose of abduction or inducement is one or more of the following:
 - Cases where the purpose was to commit murder
 - Cases where the purpose was to take property
 - Cases where the purpose was to engage in indecent acts, sexual intercourse, or for profit-making
 - Cases where the purpose is to exploit labor, engage in the sex trade or sexual exploitation, or to harvest internal organs of another
 - Cases where the purpose is to engage in overseas trafficking

07 | MINOR BODILY INJURIES (THIS INCLUDES CASES WITHOUT BODILY INJURY)

- “Minor bodily injuries” means cases where the inflicted injury requires less than two weeks of medical care, and the injury affects relatively limited bodily parts, which does not disrupt the day-to-day activities of the victim and does not require medical intervention such as surgical stitches and the like.
- This includes cases where the offense did not result in any bodily injury.

08 | SERIOUS BODILY INJURIES

- “Serious bodily injuries” means cases with after-effects causing impairment, severe disability resulting from the offense, injuries inflicted on vulnerable body parts, or further anticipated bodily injuries.

09 | OFFENDER EXPRESSES REMORSE, AND THE VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE THE HARM)

- This indicates cases in which the offender expresses sincere remorse, and the family member of the deceased victim or the victim (for cases of attempted murder) acknowledges this and objects to punishing the offender.
- This includes cases where deposits are made in a considerable amount of money comparable to reaching an agreement with the family of the deceased or the victim as a result of the offender's genuine efforts to reverse the harm.

10 | ABSENCE OF REMORSE (THIS EXCLUDES CASES WHERE THE OFFENDER MERELY DENIES THE OFFENSE)

- This means cases in which the offender admits to committing the crime shows no sign of guilt or remorse but tries to justify the conduct. This factor should be distinguished from merely denying the offense.

11 | OFFENDER'S PASSIVE PARTICIPATION IN THE COMMITTED OFFENSE

- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.
- However, this does not apply to cases in which the offender had an active role in committing the offense by causing another person to commit murder.

12 | THOSE WITH REDUCED MENTAL CAPACITY (CASES WHERE THE OFFENDER CAN BE HELD LIABLE)

- This indicates cases in which the reduced mental capacity is caused by alcohol, substances, or the like.

- However, this does not apply to Category Type 4 offenses set forth in this guideline, which includes Offense of Rape and Murder/Imitative Rape and Murder/Indecent Acts by Compulsion and Murder, Minor Abduction or Inducement and Murder, and Hostage Murder in a Hostage Taking.

13¹ CRIMINAL HISTORY OF THE SAME OFFENSE

- This means cases of criminal history for murder, murder of an ascendant and attempt of the ascendant, retaliatory murder under the Aggravated Punishment Act, sexual assault, crimes of robbery, and crimes of abduction and inducement as set forth in this guideline.

ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

01¹ DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, the court must consider only the special sentencing determinants.
- However, in cases involving more than two special sentencing determinants, the applicable sentencing range is adjusted after assessing the factors as set forth below:
 - ① The same number of conduct factors shall be considered with greater significance than the actor or other factors. However, the victim or the victim's family member opposing the punishment of the offender can match the conduct determinant.
 - ② The same number of conduct factors reciprocally, or the actor, or other factors reciprocally shall be treated as the same.
 - ③ If the sentencing range applicable cannot be determined by the aforementioned principles in ① and ②, the court is to decide the sentencing range by a comprehensive comparison and assessment based on the principles set forth in ① and ②.
- After an assessment, if a greater number of aggravating factors than the mitigating factors exist, then the aggravating zone is recommended when determining the sentencing range. If a greater number of mitigating factors exist, then a mitigating sentencing range is recommended. For other cases, the standard sentencing range is recommended.

02¹ DETERMINING THE SENTENCE APPLICABLE

- When determining the sentence, the court shall consider the special and general sentencing determinants that are within the sentencing range assessed according to 1 above comprehensively.
- In cases in which the maximum of the sentencing range exceeds twenty-five years, the court may impose life imprisonment.

GENERAL APPLICATION PRINCIPLES

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① When only two or more special aggravating factors apply, or the special sentencing determinant outnumber the special mitigating determinants by two or more, then increase the maximum level of the recommended sentencing range up to $\frac{1}{2}$.
- ② When only two or more special mitigating factors apply, or the special sentencing determinant outnumber the special aggravating determinants by two or more, then reduce the minimum level of the recommended sentencing range down to $\frac{1}{2}$.

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

- When the sentencing range under this guideline conflicts with the range determined according to the aggravation and mitigation of the applicable law, the sentencing range prescribed by the applicable law shall govern.

03 | APPLICATION OF STATUTORY MITIGATING FACTORS AS DISCRETIONARY

- When the court declines to apply a permissive mitigating factor under applicable law as listed in this guideline's sentencing table, the factor shall be treated as a discretionary mitigating factor.

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

01 | APPLICABLE SCOPE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act involve an offense set forth in the sentencing guidelines, as well as an offense the sentencing guidelines do not cover, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

02 | DETERMINING THE BASE OFFENSE

- The “base offense” indicates the most severe offense that results after selecting the penalty and determining the statutory aggravation and mitigation. However, in cases in which the maximum sentencing range is lower than that of the maximum sentencing range of the above offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

03 | CALCULATING THE SENTENCING RANGE

- To calculate the sentence of an offender convicted of multiple offenses that is not treated as a single offense under this guideline, the court shall apply the following principles
 - ① In setting the 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 $\frac{1}{2}$ of the maximum sentencing range of the second count.

- ② In setting sentencing range for an offender convicted of three or more offenses, the sentencing range should be the total sum of the following: (1) of the maximum sentencing range of the base offense, sum of $\frac{1}{2}$ of the maximum sentencing range of the offense with the highest sentencing range, and (2) $\frac{1}{3}$ of the maximum sentencing range of the remaining offense with the second-highest sentencing range.
- ③ For cases in which the minimum sentencing range of the other offense is higher than that of the base offense, the minimum sentencing range resulting from the multiple offense should be the minimum sentencing range of the other offense.

PART B — GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION		ADVERSE	AFFIRMATIVE
Primary Consideration Factor	Risk of Recidivism, etc.	<ul style="list-style-type: none"> • Premeditated crime • Use of cruel methods to commit the crime • Condemnable motives • Criminal history of the same offense (for suspension of a sentence or imposing of a more severe sentence within ten years) 	<ul style="list-style-type: none"> • Offender attempted to thwart the accomplice's commission of the crime • The crime's motive can be taken into consideration in particular • Voluntary abandonment • (Strong) provocation by the victim • No prior criminal history
	Other Factors	<ul style="list-style-type: none"> • Serious bodily injury • No restoration of caused harm 	<ul style="list-style-type: none"> • Minor bodily injury (includes cases without bodily injury) • Offender expresses remorse, and the victim opposes punishment (includes genuine efforts to reverse the harm)
General Consideration Factor	Risk of Recidivism, etc.	<ul style="list-style-type: none"> • Two or more criminal record on suspension of a sentence or greater offense • Lack of social ties • Drug or alcohol addiction • Carrying of a dangerous weapon • Absence of remorse • No acquaintance with the victim 	<ul style="list-style-type: none"> • Strongly established social ties • Voluntary surrender to investigative agencies • Expresses sincere remorse • No criminal history of the suspension of a sentence or imposing of more severe sentences • Cases of elderly offenders • (Average) provocation by the victim
	Other Factors	<ul style="list-style-type: none"> • Active participation as an accomplice • Destroying evidence or attempting to conceal evidence after the commission of the offense 	<ul style="list-style-type: none"> • Offender's passive participation as an accomplice • Rescuing or transferring the victim to the hospital after committing the offense • Cases of physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member

DEFINITIONS OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the factors to consider in suspending a sentence 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 that involve a suspension of the sentence, the prior criminal history is calculated from the date the defendant's suspension of the sentence was affirmed until the date of the commission of the offense. In cases that impose imprisonment, prior criminal history is calculated from the final date the sentence was completed until the date the offense was committed.

ASSESSING PRINCIPLES APPLICABLE TO THE FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In deciding whether it is appropriate to suspend a sentence in cases in which imprisonment is imposed, the court should give the primary consideration factor greater importance than the general consideration factors. The following principles should be considered:
 - ① In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factors by two or more, it is recommended to suspend the sentence.
 - ② In cases in which two or more primary adverse factors exist or when the primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
 - ③ In cases in which ① or ② apply, but if the difference between the number of general adverse (affirmative) factors and general affirmative (adverse) factors is greater than the difference between the number of primary affirmative (adverse) factors and primary adverse (affirmative) factors, or in cases other than ① or ②, the court shall decide whether to suspend the sentence after comparing and assessing the factors listed under the suspension of sentence section comprehensively.