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Chapter 4

Crimes of Robbery

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Robbery (Criminal Act, Article 333), Special Robbery (Criminal Act, Article 334), *Quasi*-robbery, *Quasi*-special Robbery (Criminal Act, Article 335), Robbery Resulting in Bodily Injury (Criminal Act, Article 337), Robbery Resulting in Death (Criminal Act, Article 338), Habitual Robbery, etc. (Criminal Act, Article 341), Habitual Robbery and the Like as prescribed in the Aggravated Punishment Act (Aggravated Punishment Act, Article 5-4, paragraph 3), Cumulative Robbery and the like (Aggravated Punishment Act, Article 5-4, paragraph 5), or Repeated Offense of Robbery Resulting in Bodily Injury (Aggravated Punishment Act, Article 5-5).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | GENERAL APPLICABLE PRINCIPLES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Standard Robbery	1 yr. 6 mos. - 3 yrs.	2 yrs. - 4 yrs.	3 yrs. - 6 yrs.
2	Special Robbery	2 yrs. 6 mos. - 4 yrs.	3 yrs. - 6 yrs.	5 yrs. - 8 yrs.

* When the offense falls within *Repeated Crimes* as set forth in the Special Violent Crimes Act, increase the minimum and maximum sentencing range each by multiplying 1.5.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Special considerations can be taken into account for engaging in the offense • Use of force or threat to evade arrest 	<ul style="list-style-type: none"> • Five or more co-offenders involved (Type 2) • Offense against a financial institution • Vulnerable victims • Use of firearms (Type 2) • 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 • Offender expresses remorse, and the victim opposes punishment 	
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Intent to steal an insignificant amount of money or the like • Use of slight degree of force and threat • Poverty crime • Offender's passive participation • Mere carrying of a deadly weapon (Type 2) 	<ul style="list-style-type: none"> • Premeditated crime • Condemnable motives
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • A significant amount of money was deposited with the depository • Those with mental incapacity (these are cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Different types of repeated offenses under the Criminal Act that do not constitute as a repeated offense under the Aggravated Punishment Act or the Special Violent Crime Act, and the criminal history of imprisonment by the same type of offense, or a crime of violence that do not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)

02¹ CASES RESULTING IN BODILY INJURY

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Standard Robbery	2 yrs. - 4 yrs.	3 yrs. - 7 yrs.	5 yrs. - 8 yrs.
2	Special Robbery	3 yrs. - 6 yrs.	4 yrs. - 7 yrs.	6 yrs. - 10 yrs.

* When the offense causes bodily injury as a result of habitual robbery or *Repeated Crimes of Robbery Causing Bodily Injuries* as set forth in the Aggravated Punishment Act, the offense falls within *Habitual and Repeated Robbery* offense.

* When the offense falls within *Repeated Crimes* as set forth in the Special Violent Crimes Act, increase the minimum and maximum sentencing range each by multiplying 1.5.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Minor bodily injuries or bodily injuries resulting from negligence • Special considerations can be taken into account for engaging in the offense • Bodily injuries resulting from a base offense of attempt • Use of force or threat to evade arrest 	<ul style="list-style-type: none"> • Five or more co-offenders involved (Type 2) • Offense against a financial institution • Vulnerable victims • Serious bodily injuries • Use of firearms (Type 2) • 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 • Offender expresses remorse, and the victim opposes punishment 	
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Intent to steal an insignificant amount of money or the like • Use of slight degree of force or threat • Poverty crimes • Offender's passive participation • Mere carrying of a deadly weapon (Type 2) 	<ul style="list-style-type: none"> • Premeditated crime • Condemnable motives
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • A significant amount of money was deposited with the depository • Those with mental incapacity (These are cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Different types of repeated offenses under the Criminal Act that do not constitute as a repeated offense under the Aggravated Punishment Act or the Special Violent Crime Act, and the criminal history of imprisonment by the same type of offense, or a crime of violence that do not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)

03¹ CASES RESULTING IN DEATH

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Robbery Resulting in Death	6 yrs. - 11 yrs.	9 yrs. - 13 yrs.	More than 11 years or life imprisonment

* When the offense falls within *Repeated Crimes* as set forth in the Special Violent Crimes Act, increase the minimum and maximum sentencing range each by multiplying 1.5.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offender's conduct was not the direct cause of death 	<ul style="list-style-type: none"> 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 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)
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offender's passive participation 	<ul style="list-style-type: none"> Offense of special robbery
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Rescuing or transferring the victim to the hospital after committing the offense A significant amount of money was deposited with the depository Those with mental incapacity (These are cases where the offender can be held liable) Expresses sincere remorse 	<ul style="list-style-type: none"> Different types of repeated offenses under the Criminal Act that do not constitute as a repeated offense under the Aggravated Punishment Act or the Special Violent Crime Act, and the criminal history of imprisonment by the same type of offense, or a crime of violence that do not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)



04¹ HABITUAL, REPEATED OFFENSES OF ROBBERY

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Habitual, Repeated Offenses of Robbery	5 yrs. - 8 yrs.	6 yrs. - 10 yrs.	8 yrs. - 12 yrs.

* When the offense falls within Repeated Crimes as set forth in the Special Violent Crimes Act, increase the minimum and maximum sentencing range each by multiplying 1.5.

* However, this does not apply to cases where the offense falls within the Repeated Crimes of Robbery Causing Bodily Injuries as set forth in the Aggravated Punishment Act, Article 5-5, which prescribes aggravated punishment for the offense.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Special considerations can be taken into account for engaging in the offense Use of force or threat to evade arrest 	<ul style="list-style-type: none"> Five or more co-offenders involved Offense against a financial institution Committed more than five times of the same offense (habitual robbery) Serious bodily injuries (repeated crime of robbery prescribed in the Criminal Act) Use of firearms 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 Offender expresses remorse, and the victim opposes punishment 	
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Intent to steal insignificant amount of money or the like Bodily injuries resulting from a base offense of attempt Offender's passive participation 	<ul style="list-style-type: none"> Premeditated crime Condemnable motives Offense of special robbery

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • A significant amount of money was deposited with the depository • Those with mental incapacity (These are cases where the offender can be held liable) • Expresses sincere remorse 	<ul style="list-style-type: none"> • Different types of repeated offenses under the Criminal Act that do not constitute as a repeated offense under the Aggravated Punishment Act or the Special Violent Crime Act, and the criminal history of imprisonment by the same type of offense, or a crime of violence that do not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence) (habitual robbery)



DEFINITION OF OFFENSES

01 | GENERAL STANDARD

(1) TYPE 1 — STANDARD ROBBERY

- Standard Robbery means offenses with the following statutory elements of the offense under the applicable laws (The same applies hereinafter).

ELEMENTS OF OFFENSE	APPLICABLE LAW
<ul style="list-style-type: none"> • Robbery 	Criminal Act, Article 333
<ul style="list-style-type: none"> • <i>Quasi</i>-Robbery (Robbery involved with the use of force or resisting to return the property, evading arrest, and destroying traces of the crime) 	Criminal Act, Article 335

(2) TYPE 2 — SPECIAL ROBBERY

ELEMENTS OF OFFENSE	APPLICABLE LAW
<ul style="list-style-type: none"> • Robbery/<i>Quasi</i>-robbery after intrusion into habitation at nighttime 	Criminal Act, Article 334, paragraph 1, Article 335
<ul style="list-style-type: none"> • Robbery/<i>Quasi</i>-robbery by carrying a deadly weapon, robbery/<i>Quasi</i>-robbery committed by two or more persons 	Criminal Act, Article 334, paragraph 2, Article 335

* The following offense constitutes *repeated crimes* as prescribed in the Special Violent Crime Act (This applies to all offenses).

ELEMENTS OF OFFENSE	APPLICABLE LAW
<ul style="list-style-type: none"> • An offender, after sentenced for the offense of a special violent crime as prescribed in the Special Violent Crime Act, repeats the commission of a robbery as prescribed in the Act, Article 2, paragraph 1, subparagraph 5, within three years upon the completion of sentence, or upon the exemption from sentence. 	Special Violent Crime Act, Article 3

02¹ CASES RESULTING IN BODILY INJURY

(1) TYPE 1 — STANDARD ROBBERY

ELEMENTS OF OFFENSE	APPLICABLE LAW
<ul style="list-style-type: none"> Bodily injury caused as a result of robbery/<i>quasi</i>-robbery (including attempts thereof) 	Criminal Act, Article 337

(2) TYPE 2 — SPECIAL ROBBERY

ELEMENTS OF OFFENSE	APPLICABLE LAW
<ul style="list-style-type: none"> Bodily injury caused as a result of special robbery/<i>quasi</i>-special robbery (including attempts thereof) 	Criminal Act, Article 337

03¹ CASES RESULTING IN DEATH

ELEMENTS OF OFFENSE	APPLICABLE LAW
<ul style="list-style-type: none"> Death as a result of robbery/<i>quasi</i>-robbery/special robbery/<i>quasi</i>-special robbery (including attempts thereof) 	Criminal Act, Article 338

04¹ HABITUAL · REPEATED OFFENSES OF ROBBERY

ELEMENTS OF OFFENSE	APPLICABLE LAW
<ul style="list-style-type: none"> Habitual commission of robbery or special robbery 	Criminal Act, Article 341
<ul style="list-style-type: none"> Habitual commission of robbery or special robbery (including attempts thereof) 	Aggravated Punishment Act, Article 5-4, paragraph 3
<ul style="list-style-type: none"> Commission of a robbery or special robbery (and the like) with a criminal record of prior sentencing of imprisonment for three or more offenses prescribed in the Criminal Act, from Article 333 up to 336, and Article 340 (including attempts respectively) 	Aggravated Punishment Act, Article 5-4, paragraph 5
<ul style="list-style-type: none"> An offender, after sentenced for the offense of the crime under the Criminal Act, Article 337 (including attempts thereof), repeats the commission of such offense within three years within three years upon the completion of sentence or upon the exemption from a sentence. 	Aggravated Punishment Act, Article 5-5



DEFINITION OF SENTENCING FACTORS

01 | GENERAL APPLICABLE PRINCIPLES

(1) SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN THE OFFENSE

- This 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

(2) USE OF FORCE OR THREAT TO EVADE ARREST

- This indicates cases in which the offender uses force or threat, but without the use of dangerous weapons or carrying thereof, to evade being arrested.

(3) FIVE OR MORE CO-OFFENDERS INVOLVED

- This indicates cases in which five or more offenders were involved in the commission of the robbery.

(4) VULNERABLE VICTIMS

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

(5) OFFENDER EXPRESSES REMORSE, AND THE VICTIM OPPOSES PUNISHMENT

- This indicates cases in which the offender expresses sincere remorse and the victim acknowledges this and expresses objection to punishing the offender.
- However, this should not apply to cases in which the offender nearly forced the victim or deceived the victim to object to being punished.

(6) USE OF SLIGHT DEGREE OF FORCE AND THREAT

- This indicates cases in which the degree of force and threat used in the crime is heavier than that of extortion but slighter than that of general robbery cases.

(7) POVERTY CRIMES

- This indicates cases in which one or more of the following factors apply:
 - Offense committed to escape from the offender's impoverished circumstances
 - Offense committed to pay for hospital expenses or school tuitions and the like
 - Other cases with comparable factors

(8) OFFENDER'S PASSIVE PARTICIPATION

- 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 in cases in which the offender had an active role in the commission of the offense by causing another person to commit the offense.

(9) 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
 - Other cases with comparable factors

(10) CONDEMNABLE MOTIVES

- This means cases with one or more of the following factors:
 - Offense committed out of retaliation, grievance, or hatred
 - Motive derived from the pleasure of committing the crime itself
 - Other cases with comparable factors



(11) A SIGNIFICANT AMOUNT OF MONEY WAS DEPOSITED WITH THE DEPOSITORY

- This indicates cases in which the offender deposited a significant amount of money with the depository after a failed attempt to reach an agreement with the victim in a genuine effort to restore the inflicted harm.

02¹ CASES RESULTING IN INJURY

(1) MINOR BODILY INJURIES

- This indicates cases in which the inflicted injury requires less than two weeks of medical care, affecting 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.

(2) SERIOUS BODILY INJURIES

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

03¹ CASES RESULTING IN DEATH

(1) 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 acknowledges this and objects to punishing the offender.
- This includes cases in which genuine efforts to make a settlement with the deceased victim's family failed, but the offender deposited a considerable amount of money with the depository.

(2) ABSENCE OF REMORSE (THIS EXCLUDES CASES WHERE THE OFFENDER MERELY DENIES THE CRIMINAL CONDUCT)

- This indicates cases in which the offender admits to committing the crime yet does not express any sign of guilt or remorse but rather justifies the offense conduct. This should be distinguished from merely denying the criminal conduct.



ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

01 | 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.

02 | DETERMINING THE SENTENCE APPLICABLE

- In determining the sentence, the court should consider comprehensively both the general and special sentencing determinants that are within the sentencing range as assessed under above 1.
- 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 $\frac{1}{2}$. In cases in which the maximum of the sentencing range exceeds twenty-five years, the court may impose life imprisonment.
- 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 other 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 offenses, 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 offense.

- ② In setting the 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	<ul style="list-style-type: none"> • A criminal history of the same offense (imposing of suspension of a sentence or more severe punishment within five years) exists • Vulnerable victims • Use of dangerous objects • Serious bodily injury 	<ul style="list-style-type: none"> • Offender attempted to thwart the accomplice’s commission of the crime • Bodily injuries resulting from a base offense of attempt • Offender expresses remorse, and the victim opposes punishment (includes genuine efforts to reverse the harm) • Use of force or threat to evade arrest • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Two or more criminal history on the suspension of a sentence or for a greater offense • Premeditated crime • Active participation as an accomplice • Destroying evidence or attempting to conceal evidence after the commission of the offense • Lack of social ties • Drug or alcohol addiction • Absence of remorse • Absence of efforts to reverse the harm 	<ul style="list-style-type: none"> • Offender’s passive participation as an accomplice • 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 physically ill offenders • Cases where the arrest of the offender would cause severe hardship to the offender’s dependent family member • Cases of elderly offenders

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, the 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 the suspension of a sentence is appropriate 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 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.