

Promulgated on April 24, 2009. Effective on July 1, 2009.  
Amended on April 10, 2017. Effective on May 15, 2017.

# Chapter 6

## Crimes of Perjury and Destruction of Evidence

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 the Patent Act (Aforementioned Act, Article 227, paragraph 1), Perjury under the Utility Model Act (Aforementioned Act, Article 47, paragraph 1), Perjury under the Design Protection Act (Aforementioned Act, Article 83, paragraph 1), or Perjury under the Trademark Act (Aforementioned Act, Article 94, paragraph 1), Destruction of Evidence (Criminal Act, Article 155, paragraph 1), Harbor a Witness (Criminal Act, Article 155, paragraph 2), and Destruction of Evidence for Malicious Perjury (Criminal Act, Article 155, paragraph 3).

## PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

### 01 | PERJURY

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Perjury	- 10 mos.	6 mos. - 1 yr. 6 mos.	10 mos. - 3 yrs.
2	Malicious Perjury	6 mos. - 1 yr. 6 mos.	10 mos. - 2 yrs.	1 yr. 6 mos. - 4 yrs.

\* Perjury under the 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"> <li>• Non-premeditated crime</li> <li>• False testimonies of minor issues with no significance</li> <li>• Participation resulting from outside pressure or threat by another person</li> </ul>	<ul style="list-style-type: none"> <li>• Acquired financial benefits in exchange for the commission of the offense</li> <li>• Perjury affects the arrest or outcome of the trial</li> <li>• Instigating the subordinate person to commit the offense</li> </ul>
	Actor /Etc.	<ul style="list-style-type: none"> <li>• Those with hearing and visual impairments</li> <li>• Those with mental incapacity</li> <li>• Voluntary surrender to investigative agencies or gives confession</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses of the same type under the Criminal Act (including destroying evidence, hiding offenders, making false accusations, and the like)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Willful negligence</li> <li>• Offender’s passive participation</li> <li>• Relevant circumstances indicate extremely unreliable testimony</li> <li>• False testimony but coincides with objective facts</li> </ul>	<ul style="list-style-type: none"> <li>• Multiple false testimonies were given during court appearances in the court of the same tier</li> <li>• Promises for financial benefit</li> <li>• Instigating perjury</li> </ul>



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
	Actor /Etc.	<ul style="list-style-type: none"> <li>Expresses sincere remorse</li> <li>Offender expresses remorse, and the victim opposes punishment (This includes genuine efforts to reverse the harm)</li> <li>No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>Different type 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 (including destroying evidence, hiding offenders, making false accusations, and the like)</li> </ul>

## 02<sup>1</sup> DESTRUCTION OF EVIDENCE, HARBORING A WITNESS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Destruction of Evidence, Harboring a Witness	- 10 mos.	6 mos. - 1 yr. 6 mos.	10 mos. - 3 yrs.
2	Malicious Destruction of Evidence, Harboring a Witness	6 mos. - 1 yr. 6 mos.	10 mos. - 2 yrs.	1 yr. 6 mos. - 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Destruction of evidence relates only to secondary or minor issues and does not have any relevance to the facts</li> <li>• Motive or participation in crime can be taken into special consideration</li> </ul>	<ul style="list-style-type: none"> <li>• Acquired financial benefits in exchange for the commission of the offense</li> <li>• Particularly malicious commission of the offense</li> <li>• Destruction of evidence, and others affects the arrest or outcome of the trial</li> <li>• Instigating the subordinate person to commit the offense</li> </ul>
	Actor /Etc.	<ul style="list-style-type: none"> <li>• Those with hearing and visual impairments</li> <li>• Those with mental incapacity (cases where the offender cannot be held liable)</li> <li>• Voluntary surrender to investigative agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses of the same offense under the Criminal Act (including destroying evidence, hiding offenders, making false accusations, and the like)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Offender's passive participation</li> <li>• Cases where destroyed evidence is restored</li> </ul>	<ul style="list-style-type: none"> <li>• Promise for financial benefit</li> <li>• Instigating destruction of evidence, etc.</li> <li>• Destroy multiple evidence or destroy evidence for prolonged period</li> </ul>
	Actor /Etc.	<ul style="list-style-type: none"> <li>• Those with mental incapacity (cases where the offender can be held liable)</li> <li>• Offender expresses sincere remorse</li> <li>• No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>• Different type 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 (including destroying evidence, hiding offenders, making false accusations, and the like)</li> </ul>



## DEFINITION OF OFFENSES

### 01 | PERJURY

#### (1) 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 the Patent Act, Utility Model Act, Design Protection Act, and Trademark Act falls within Type 1.

#### (2) TYPE 2 – MALICIOUS PERJURY

- This indicates cases in which 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 the Act on Testimony and Appraisal (and the like) before the National Assembly falls within Type 2.

### 02 | DESTRUCTION OF EVIDENCE, HIDING A WITNESS

#### (1) TYPE 1 – DESTRUCTION OF EVIDENCE, HIDING A WITNESS

- This indicates cases in which the offender destructs, conceals, forges, or alters the evidence in a criminal or disciplinary case against another or uses the forged or altered evidence under the Criminal Act, Article 155, paragraph 1.
- This indicates cases in which the offender harbors a witness or causes the witness not to testify in a criminal or disciplinary case against another, under the Criminal Act, Article 155, paragraph 2.

#### (2) TYPE 2 – MALICIOUS DESTRUCTION OF EVIDENCE, HIDING A WITNESS

- This indicates cases in which a person who, for the purpose of causing injury to an accused, or a criminal or disciplinary suspect, commits the crimes under the Criminal Act, Article 155, paragraph 3.

## DEFINITION OF SENTENCING FACTORS

### 01 | PERJURY

#### (1) NON-PREMEDITATED CRIME

- This indicates cases in which 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.

#### (2) FALSE TESTIMONIES OF MINOR ISSUES WITH NO SIGNIFICANCE

- This indicates cases in which 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 evidence offered as proof by the party

#### (3) PERJURY AFFECTS ARREST OR OUTCOME OF THE TRIAL RESULTS

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

#### (4) 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 the 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 the 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 the Patent Act: prior to the entering of the judgment for the case.
- Perjury as prescribed in the Utility Model Act: prior to entering of the judgment for the case.
- Perjury as prescribed in the 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 the Trademark Act: prior to the decision to issue or refusal of trademark registration or issuing of final decisions or affirming of final decisions.

#### **(5) WILLFUL NEGLIGENCE**

- This indicates cases in which 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.

#### **(6) 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 is not applicable in cases in which the offender had an active role in the commission of the offense by causing another person to commit the offense.

#### **(7) RELEVANT CIRCUMSTANCES INDICATE EXTREMELY UNRELIABLE TESTIMONY**

- This means cases that were taken into account the relevant circumstances such as the witness's academic background, age, testimony's content, party's relationship, and the witness's testimony reveals an extremely unreliable testimony.

#### **(8) MULTIPLE FALSE TESTIMONIES BY THE OFFENDER IN MULTIPLE COURT APPEARANCES OF THE SAME TIER COURT**

- Multiple false testimonies were given during court appearances in the court 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.

#### **(9) SINCERE REMORSE**

- This indicates cases in which the offender admits the commission of the crime and expresses sincere regret for the conduct.
- However, this excludes cases where confession is considered a special mitigating factor.

## **02<sup>1</sup> DESTRUCTION EVIDENCE · HIDING A WITNESS**

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#### **(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
  - When the offense is committed from an intimate personal relationship, such as de facto marriage, lover, or friend, with the original criminal, where the offender could not refuse the original criminal's active demand
  - Other cases with comparable factors

#### **(2) PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE**

- This indicates cases in which one or more following factors apply:
  - The means and methods for the commission of the offense were meticulously done in advance.
  - There were multiple persons involved in an organized manner for the purpose of committing the offense, or when the offense was committed through the use of professional devices or technologies, the offender played an active leading role in planning and orchestrating the commission of the offense
  - Other cases with comparable factors





### **(3) DESTRUCTION OF EVIDENCE, ETC. AFFECTS THE ARREST OR OUTCOME OF THE TRIAL**

- This indicates cases in which destruction of evidence affects the verdict of guilty or not guilty or imposing a sentence in a criminal procedure. This also means cases where the destruction of evidence affects the decision or determination of disciplinary action against another.

### **(4) 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 is not applicable in cases in which the offender had an active role in the commission of the offense by causing another person to commit the crime.

### **(5) DESTROYED EVIDENCE IS RESTORED**

- This indicates cases in which the destroyed evidence is restored; thereby, the destruction of evidence does not affect the finding of substantial truth.

## ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

### 01 | DETERMINING THE SENTENCING RANGE

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- 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.
  - 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

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- 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.



## 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 other offense as set forth in this guideline, the offense resulting in the concurrent crime becomes the base offense.

### 03 | CALCULATING THE SENTENCE OF A MULTIPLE OFFENDER

- 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

### 01 | PERJURY

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>• Acquired financial benefits in exchange for the commission of the offense</li> <li>• A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years; or more than three incidents of fines) exists</li> <li>• Offense committed with the purpose of inflicting harm perjury affects the arrest or</li> <li>• Outcome of the trial</li> </ul>	<ul style="list-style-type: none"> <li>• Offender’s passive participation</li> <li>• Non-premeditated crime</li> <li>• Expresses penitence (including voluntary surrender or confessions, and the like)</li> <li>• No prior criminal history</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• Prior criminal history of the suspension of a sentence for two or more incidents</li> <li>• Concealing evidence or attempts to conceal after the commission of the offense</li> <li>• Lack of social ties</li> <li>• Instigating perjury</li> </ul>	<ul style="list-style-type: none"> <li>• No criminal history of the suspension of a sentence or imposing of other sentences more severe</li> <li>• Offender expresses remorse, and the victim opposes punishment (This includes genuine efforts to reverse the harm)</li> <li>• Cases of physically ill offenders</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender’s dependent family member</li> <li>• Cases of elderly offenders</li> </ul>



## 02<sup>1</sup> DESTRUCTION OF EVIDENCE, HIDING A WITNESS

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>• Acquired financial benefits in exchange for the commission of the offense</li> <li>• Particularly malicious commission of the offense</li> <li>• A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years; or more than three incidents of fines) exists</li> <li>• Cases where the offence committed for the purpose of inflicting injury into another</li> <li>• Destruction of evidence, etc. Affects outcomes of the criminal trial results or decision of disciplinary action</li> </ul>	<ul style="list-style-type: none"> <li>• Motive or participation in crime can be taken into special consideration</li> <li>• Destruction of evidence, etc. of minor issues with no significance</li> <li>• Sincere repentance (voluntary surrender or confession, etc.)</li> <li>• No prior criminal history</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• Acquired financial benefits in exchange for the commission of the offense</li> <li>• Two or more criminal history on the suspension of a sentence or for a greater offense</li> <li>• Destroying evidence or attempting to conceal evidence after the commission of the offense</li> <li>• Destroy multiple evidence or destroy evidence for prolonged period</li> <li>• Lack of social ties</li> <li>• Instigating destruction of evidence</li> </ul>	<ul style="list-style-type: none"> <li>• No criminal history of suspending of a sentence or imposing of other sentence more severe</li> <li>• Cases where destroyed evidence is restored</li> <li>• Strongly established social ties</li> <li>• Offender's passive participation as an accomplice</li> <li>• Cases of elderly offenders</li> <li>• Cases of physically ill offenders</li> <li>• Cases where the arrest of offenders would cause severe hardship to the offender's dependent family member</li> </ul>

## DEFINITION 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.