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# Chapter 7

## Crimes of False Accusation

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of False Accusation (Criminal Act, Article 156), or the offense of False Accusation as prescribed in the Aggravated Punishment Act (Aggravated Punishment Act, Article 14).

## PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Standard False Accusation	- 1 yr.	6 mos. - 2 yrs.	1 yr. - 4 yrs.
2	False Accusation under the Aggravated Punishment Act	1 yr. - 3 yrs.	2 yrs. - 4 yrs.	3 yrs. - 6 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Participation resulting from outside pressure or threat by another person</li> <li>• Consent by the falsely accused</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated charges, but not a concurrent offender</li> <li>• Causes serious harm</li> <li>• Instigating the subordinate person to commit the offense</li> </ul>
Special Sentencing Determinant	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 confession</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses of the same offense under the Criminal Act (including destroying evidence, hiding offenders, perjury, and the like)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Offender's passive participation</li> <li>• Motive or participation in crime can be taken into special consideration</li> </ul>	<ul style="list-style-type: none"> <li>• Multiple incidents of falsifying facts</li> </ul>
General Sentencing Determinant	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 types of repeated offenses under the Criminal Act that do not constitute as a repeated offense under the Criminal Act or the criminal history of the same type of offense does not constitute a repeated offense under the Criminal Act (including destroying evidence, hiding offenders, perjury, and the like)</li> </ul>

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## DEFINITION OF OFFENSES

### 01<sup>1</sup> TYPE 1 — STANDARD FALSE ACCUSATION

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- This means where the offender reported false information to a government office or a public officer with the purpose to have a criminal measure or disciplinary action imposed on another person as prescribed in the Criminal Act, Article 156, and which does not fall within Type 2.

### 02<sup>1</sup> TYPE 2 — FALSE ACCUSATION PRESCRIBED IN THE AGGRAVATED PUNISHMENT ACT

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- This indicates cases in which the false accusation, prescribed in the Aggravated Punishment Act, falls within the Criminal Act, Article 156.

## DEFINITION OF SENTENCING FACTORS

### 01 | CONSENT BY THE FALSELY ACCUSED

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- This indicates cases in which the offender reported false information after requested by or permission from the falsely accused.

### 02 | CAUSED SERIOUS HARM

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- This means cases with one or more of the following factors:
  - The offense caused the falsely accused to be arrested, convicted, or subject to a disciplinary action
  - The offense causes the accused to be subject to investigation or questioning for a substantial amount of time
  - Other cases with comparable factors

### 03 | VOLUNTARY SURRENDER TO INVESTIGATIVE AGENCIES OR GIVES CONFESSION

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- Voluntary surrender to investigative agencies can be initiated at any time, but confessions must be made prior to the judgment of the criminal case or the decision of the disciplinary action is becomes final.

### 04 | OFFENDER'S PASSIVE PARTICIPATION

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- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.

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## 05 | MOTIVE OR PARTICIPATION IN CRIME CAN BE TAKEN INTO SPECIAL CONSIDERATION

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- This applies to cases with one or more of the following factors:
  - When the offender was inflicted harm and those falsely accused or others associated with the falsely accused made fraudulent allegations that describe the harm beyond exaggeration
  - Other considerations that can be taken into account that led to the accusation

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## 06 | MULTIPLE INCIDENTS OF FALSIFYING FACTS

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- This indicates cases in which the offender reported several incidents of false information that could suffice as grounds for criminal convictions or disciplinary actions.

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## 07 | EXPRESSES SINCERE REMORSE

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- 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 as a special mitigating factor.

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

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- This indicates cases in which the offender expresses sincere remorse with genuine efforts, and the falsely accused acknowledges this and objects to punishing the offender.
- This includes cases in which deposits are made in a considerable amount of money comparable to reaching an agreement with the falsely accused as a result of the offender's genuine efforts to reverse the harm.

## 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 these sentencing guidelines.

### 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"> <li>• A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years, or imposing fines more than three times) exists</li> <li>• Caused serious harm</li> </ul>	<ul style="list-style-type: none"> <li>• Offender expresses remorse, and the victim opposes punishment (includes genuine efforts to reverse the harm)</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>• Two or more criminal history on the suspension of sentence or for a greater offense</li> <li>• Active participation as an accomplice</li> <li>• Destroying evidence or attempting to conceal evidence after the commission of the offense</li> <li>• Lack of social ties</li> <li>• Absence of efforts to reverse the harm</li> </ul>	<ul style="list-style-type: none"> <li>• Offender's passive participation as an accomplice</li> <li>• Strongly established social ties</li> <li>• No criminal history of the suspension of a sentence or imposing of more severe sentences</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>

## DEFINITIONS OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the consideration factors for suspension of 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 involving the suspension of sentence, the prior criminal history is calculated from the date the defendant's suspension of the sentence was affirmed up to the date of the commission of the offense. In cases imposing imprisonment, prior criminal history is calculated 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 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 factor by two or more, suspension of the sentence is recommended.
  - 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.