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Chapter 8

Crimes of Abduction, Inducement, and Human Trafficking

This guideline applies to adult offenders (nineteen years of age or older) who committed any of the following offenses against a minor: Abduction/Inducement (Criminal Act, Article 287), Abduction or Inducement for the Purpose of Indecent Act, Sexual Intercourse, Marriage, or Profit-making (Criminal Act, Article 288, paragraph 1), Abduction or Inducement for the Purpose of Labor Exploitation, Sex Trafficking, Sexual Exploitation, or Acquisition of Organs (Criminal Act, Article 288, paragraph 2), Abduction or Inducement for the Purpose of Transporting the Person Out of the Republic of Korea or Transporting the Abducted or Induced Victim Out of the Republic of Korea (Criminal Act, Article 288, paragraph 3), Human Trafficking (Criminal Act, Article 289, paragraph 1), Trading another for the Purpose of Engaging in an Indecent Act, Sexual Intercourse, Marriage, or Profit-making, (Criminal Act, Article 289, paragraph 2), Trading another for the Purpose of Labor Exploitation, Sex Trafficking, Sexual Exploitation, or the Acquisition of Organs (Criminal Act, Article 289,

paragraph 3), Trading Another for the Purpose of Transporting the Person Out of the Republic of Korea or Transporting the Traded Victim Out of the Republic of Korea (Criminal Act, Article 289, paragraph 4), Inflicting or Causing Another's Bodily Injury while in Kidnapping, Abduction, Trafficking in Persons, Transportation (Criminal Act, Article 290), Causing Death of Another while in Kidnapping, Abduction, Trafficking in Persons, Transportation, etc. (Criminal Act, Article 291, paragraph 2), (Accepting, Harboring, etc. of Person Abducted, Induced, Trafficked, or Transported (Criminal Act, Article 292, paragraph 1), Recruits, Transfers or Delivers Another with the Intent of Abducting, Inducing, Trafficking or Transporting Another (Criminal Act, Article 292, paragraph 2), Coercion by Hostage (Criminal Act, Article 324-2), Injury by Hostage (Criminal Act, Article 324-3), Murder of Hostage (Criminal Act, Article 324-4), Robbery by Hostage (Criminal Act, Article 336), Bodily Injury resulting from Robbery by Hostage (Criminal Act, Article 337), Murder by Robbery by Hostage (Criminal Act, Article 338), Abducting or Inducing a Minor under Thirteen Years of Age for the Purpose of Gaining Any Goods or Interest on Property (Aggravated Punishment Act, Article 5-2, paragraph 1, subparagraph 1), Abducting or Inducing a Minor under Thirteen Years of Age for the Purpose of Killing (Aggravated Punishment Act, Article 5-2, paragraph 1, subparagraph 2), Gaining Any Goods After Abducting or Inducing a Minor under Thirteen Years of Age (Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 1), Inflicting Injuries on the Abducted or Induced Minor under Thirteen Years of Age (Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 3), and Causing Death to the Abducted or Induced Minor Under thirteen years of Age (Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 4).



PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | ABDUCTION, INDUCEMENT, OR HUMAN TRAFFICKING (INCLUDING CONCEALING, TRANSPORTING ABROAD, RECRUITING, AND DELIVERING)

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Abduction, Inducement, or Human Trafficking, etc.	6 mos. - 1 yr. 6 mos.	1 yr. - 2 yrs. 6 mos.	2 yrs. - 4 yrs.
2	Abduction or Inducement for the Purpose of Indecent Act, Sexual Intercourse, Marriage, or Profit-making	8 mos. - 2 yrs.	1 yr. - 3 yrs.	2 yrs. 6 mos. - 4 yrs. 6 mos.
3	Abduction or Inducement for the Purpose of Labor Exploitation, Sex Trafficking, Sexual Exploitation, Acquisition of Organs, or Transporting Abroad	1 yr. - 2 yrs. 6 mos.	1 yr. 6 mos. - 3 yrs. 6 mos.	3 yrs. - 6 yrs.
4	Abduction or Inducement of a Minor Under thirteen years of Age for Gaining Any Goods	2 yrs. 6 mos. - 5 yrs.	4 yrs. - 6 yrs.	5 yrs. - 8 yrs.
5	Abduction or Inducement of a Minor Under thirteen years of Age for the Purpose of Committing Murder	4 yrs. - 7 yrs.	6 yrs. - 9 yrs.	7 yrs. - 10 yrs.

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

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Motive for committing an offense can be taken into special consideration • Victim released to a safe location voluntarily • Cases where the offense is 	<ul style="list-style-type: none"> • Victim under thirteen years of age (This excludes Type 4 or Type 5) or is physically or mentally impaired • Offense committed with an organized scheme

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		<p>related to accepting, concealing, recruiting, transporting, delivering another</p> <ul style="list-style-type: none"> • Cases where the offender is the victim's non-custody parent or relative and other extenuation circumstance possible to take into account 	<ul style="list-style-type: none"> • Carrying dangerous objects such as deadly weapons • Offense committed in a specially protected area (for victims under thirteen years of age) • 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 or whistleblowing • Offender expresses remorse, and the victim opposes punishment 	<ul style="list-style-type: none"> • Repeated offenses of the same offense under the Criminal Act that do not constitute a repeated offense under the Special Violent Crime Act • Cases where the offender is a person who has the duty to report any child abuse cases under the Act on Special Cases Concerning Punishment, etc. of Child Abuse Crime, Article 7 • Habitual offenders (limited to cases of aggravated punishment under the Act on Special Cases Concerning Punishment, etc. of Child Abuse Crime, Article 6)
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offender's passive participation 	<ul style="list-style-type: none"> • Offense committed by causing diminished physical or mental capacity to the victim • Two or more co-offenders
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • A significant amount of money was deposited with the depository • 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) • Harm was caused in the course of reaching an agreement



02¹ ABDUCTION, INDUCEMENT, OR HUMAN TRAFFICKING RESULTING IN BODILY HARM

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Inflicting Bodily Injuries on the Abducted Victim, etc.	1 yr. - 3 yrs.	2 yrs. - 4 yrs.	3 yrs. - 6 yrs.
2	Causing Bodily Injuries on the Abducted Victim, etc.	1 yr. 6 mos. - 3 yrs. 6 mos.	3 yrs. - 5 yrs.	4 yrs. - 7 yrs.
3	Causing Bodily Injuries on the Abducted or Induced Minor Under thirteen years of Age, etc./Injury by Hostage or Murder of Hostage/Injury or Death by Robbery by Hostage	2 yrs. 6 mos. - 5 yrs.	4 yrs. - 7 yrs.	5 yrs. - 9 yrs.

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

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Motive for committing an offense can be taken into special consideration Victim released to a safe location voluntarily Minor bodily injury 	<ul style="list-style-type: none"> Victim is under thirteen years of age or is physically or mentally impaired Abduction, inducement, trafficking, or transporting with the purpose of condemnable motives Offense committed with an organized scheme Cases resulting in serious bodily harm Carrying dangerous objects such as deadly weapons Offense committed in a specially protected area (for victims under thirteen years of age) Instigating the subordinate person to commit the offense

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
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 or whistleblowing • Offender expresses remorse, and the victim opposes punishment 	<ul style="list-style-type: none"> • Repeated offenses of the same offense under the Criminal Act that do not constitute a repeated offense under the Special Violent Crime Act • Cases where the offender is a person who has the duty to report any child abuse cases under the Act on Special Cases Concerning Punishment, etc. of Child Abuse Crime, Article 7 • Habitual offenders (This is limited to cases of aggravated punishment under the Act on Special Cases Concerning Punishment, etc. of Child Abuse Crime, Article 6)
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offender's passive participation 	<ul style="list-style-type: none"> • Offense committed by causing diminished physical or mental capacity to the victim • Two or more co-offenders
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • A significant amount of money was deposited with the depository • 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) • Harm was caused in the course of reaching an agreement



03 | DEMANDING OR ACQUIRING RANSOM AS A RESULT OF ABDUCTION OR INDUCEMENT

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Coercion by Hostage/Robbery by Hostage	2 yrs. - 3 yrs. 6 mos.	2 yrs. 6 mos. - 5 yrs.	3 yrs. 6 mos. - 7 yrs.
2	Demanding for Property Against a Minor under thirteen years of Age	4 yrs. - 7 yrs.	5 yrs. - 8 yrs.	7 yrs. - 11 yr.
3	Acquiring Property from a Minor under thirteen years of Age	6 yrs. - 9 yrs.	8 yrs. - 12 yrs.	10 yrs. - 15 yrs.

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

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Motive for committing an offense can be taken into special consideration Victim released to a safe location voluntarily 	<ul style="list-style-type: none"> Victim under thirteen years of age (exclude Type 2 and Type 3 offenses) or is physically or mentally impaired Offense committed with an organized scheme Carrying dangerous objects such as deadly weapons Offense committed in a specially protected area (for victims under thirteen years of age) Demanding or receiving excessive amount of ransom 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, or whistleblowing 	<ul style="list-style-type: none"> Repeated offenses of the same offense under the Criminal Act that do not constitute a repeated offense under the Special Violent Crime Act Cases where the offender is a person who has the duty to report any child abuse cases under the Act on Special Cases Concerning

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		<ul style="list-style-type: none"> • Offender expresses remorse, and the victim opposes punishment 	<p>Punishment, etc. of Child Abuse Crime, Article 7</p> <ul style="list-style-type: none"> • Habitual offenders (limited to cases of aggravated punishment under the Act on Special Cases Concerning Punishment, etc. of Child Abuse Crime, Article 6)
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offender's passive participation 	<ul style="list-style-type: none"> • Offense committed by causing diminished physical or mental capacity to the victim • Two or more co-offenders
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • A significant amount of money was deposited with the depository • 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) • Harm was caused in the course of reaching an agreement



04¹ ABDUCTION, INDUCEMENT, OR HUMAN TRAFFICKING RESULTING IN DEATH

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Resulting in Death of the Abducted Victim, etc.	2 yrs. 6 mos. - 5 yrs.	4 yrs. - 7 yrs.	6 yrs. - 9 yrs.
2	Abduction or Inducement Resulting in Death of a Minor Under thirteen years of Age/Hostage Taking Resulting in Death of a Minor Under thirteen years of Age	6 yrs. - 11 yr.	9 yrs. - 13 yrs.	More than 11 years imprisonment or life imprisonment

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

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Motive for committing an offense can be taken into special consideration Offender's conduct was not a direct cause of death 	<ul style="list-style-type: none"> Victim under thirteen years of age (This excludes Type 2 offense of death of the minor under thirteen years of age resulting from abduction or inducement) Abduction, inducement, trade, or transport for the condemnable purpose Instigating the subordinate person to commit the offense Divide roles in the commission of the offense in an organized way
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) or consent of the victim with mental capacity 	<ul style="list-style-type: none"> Absence of remorse (excludes cases where the offender is merely pleading not guilty) Repeated offenses of the same offense under the Criminal Act that do not constitute a repeated offense under the Special Violent Crime Act

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offender’s passive participation 	<ul style="list-style-type: none"> • More than two co-offenders
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 • 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)

DEFINITION OF OFFENSES

01 | CASES OF COMMISSION OF ABDUCTION, INDUCEMENT, OR HUMAN TRAFFICKING ONLY

(1) TYPE 1— ABDUCTION, INDUCEMENT, HUMAN TRAFFICKING OR OTHER SIMILAR OFFENSES

* This refers to the offenses with the following elements as prescribed under the applicable law (The same applies hereinafter).

ELEMENTS OF OFFENSE	APPLICABLE LAW
Abduction or inducement of a minor	Criminal Act, Article 287
Human trafficking	Criminal Act, Article 289, Paragraph 1
Accepting or concealing victim of abduction, inducement, trade, or transport under the Criminal Act, Article 287 through 289	Criminal Act, Article 292, Paragraph 1
Recruit, transport or deliver another with the intent to commit any of the crimes of Article 287 through 289	Criminal Act, Article 292, Paragraph 2

(2) TYPE 2 — ABDUCTION, INDUCEMENT OR HUMAN TRAFFICKING FOR THE PURPOSE OF INDECENT ACT, SEXUAL INTERCOURSE, MARRIAGE, OR PROFIT-MAKING

ELEMENTS OF OFFENSE	APPLICABLE LAW
Abduction or inducement for the purpose of indecent act, sexual intercourse, marriage, or profit making	Criminal Act, Article 288, paragraph 1
Human trafficking for the purpose of the indecent act, sexual intercourse, marriage, or profit making	Criminal Act, Article 289, paragraph 2

(3) TYPE 3 — ABDUCTION, INDUCEMENT, OR HUMAN TRAFFICKING FOR THE PURPOSE OF LABOR EXPLOITATIONS, SEXUAL TRAFFICKING, SEXUAL EXPLOITATION OR THE ACQUISITION OF ORGANS, OR TRANSPORTING ANOTHER OUT OF THE REPUBLIC OF KOREA

ELEMENTS OF OFFENSE	APPLICABLE LAW
Abduction or inducement for the purpose of labor exploitations, sexual trafficking, sexual exploitation, or acquisition of organs	Criminal Act, Article 288, paragraph 2
Abduction or inducement for the purpose of transporting abroad	Criminal Act, Article 288, paragraph 3
Transporting the abducted or induced victim abroad	Criminal Act, Article 288, paragraph 3
Human trafficking for the purpose of labor exploitations, sexual trafficking, sexual exploitation, or acquisition of organs	Criminal Act, Article 289, paragraph 3
Human trafficking for the purpose of transporting the victim abroad	Criminal Act, Article 289, paragraph 4
Transporting purchased person abroad	Criminal Act, Article 289, paragraph 4

(4) TYPE 4 — ABDUCTION OR INDUCEMENT OF MINOR UNDER 13 YEARS OF AGE FOR THE PURPOSE OF ACQUISITION OF ANY GOODS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Abduction or inducement of a minor under thirteen years of age for the purpose of gaining wealth or benefits of property	Aggravated Punishment Act, Article 5-2, paragraph 1, subparagraph 1

(5) TYPE 5 — ABDUCTION OR INDUCEMENT OF MINOR UNDER 13 YEARS OF AGE FOR MURDER

ELEMENTS OF OFFENSE	APPLICABLE LAW
Abduction or inducement of a minor under thirteen years of age for the purpose of committing a murder	Aggravated Punishment Act, Article 5-2, paragraph 1, subparagraph 2

02¹ BODILY INJURIES ON VICTIM CAUSED BY ABDUCTION, INDUCEMENT, OR HUMAN TRAFFICKING

(1) TYPE 1 — CAUSING BODILY INJURIES ON THE ABDUCTED VICTIM, ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Causing bodily injuries on the victim who was abducted, induced, trafficked, or transported	Criminal Act, Article 290, paragraph 2

(2) TYPE 2 — INFLICTING BODILY INJURIES ON THE ABDUCTED VICTIM, ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW
Inflicting bodily injuries on the victim of who was abducted, induced, trafficked, or transported	Criminal Act, Article 290, paragraph 1

(3) TYPE 3 — INFLICTING BODILY INJURIES ON THE ABDUCTED OR INDUCED VICTIM UNDER 13 YEARS OF AGE/INJURY BY HOSTAGE/INJURY BY COMMITTING ROBBERY BY HOSTAGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Abduction or inducement resulting in a bodily assault, bodily injuries, abandonment, or a cruel act	Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 3
Injury caused by hostage	Criminal Act, Article 324-3
Injury caused by committing robbery by hostage	Criminal Act, Article 337

03 | ABDUCTION OR INDUCEMENT FOLLOWED BY DEMAND OR ACQUISITION OF ANY GOODS

(1) TYPE 1 — COERCION BY HOSTAGE/ROBBERY BY HOSTAGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Coercion by hostage	Criminal Act, Article 324-2
Robbery by hostage	Criminal Act, Article 336

(2) TYPE 2 — DEMANDING good, etc. AGAINST A MINOR UNDER 13 YEARS OF AGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Demanding goods or benefits of property against a minor under thirteen years of age	Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 1

(3) TYPE 3 — ACQUIRING GOODS, etc. FROM A MINOR UNDER 13 YEARS OF AGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Acquiring goods or benefits of property from a minor under thirteen years of age	Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 1

04 | ABDUCTION, INDUCEMENT OR HUMAN TRAFFICKING RESULTING IN DEATH

(1) TYPE 1 — DEATH OF THE ABDUCTED VICTIM

ELEMENTS OF OFFENSE	APPLICABLE LAW
Causing death of a victim of abduction, inducement, trade, transportation	Criminal Act, Article 291, paragraph 2

(2) TYPE 2 — DEATH CAUSED BY ABDUCTION OR INDUCEMENT /DEATH BY TAKING HOSTAGE/DEATH CAUSED BY ROBBERY COMMITTED BY TAKING HOSTAGE OF A MINOR UNDER 13 YEARS OF AGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Causing death of a minor under thirteen years of age through abduction or inducement	Aggravated Punishment Act, Article 5-2, paragraph 2, subparagraph 4
Death caused by hostage	Criminal Act, Article 324-4
Death caused by robbery and hostage	Criminal Act, Article 338

* The following applies to special violent crime (repeated offenses). (The same applies to offenses falling within Type 1 through Type 4.)

ELEMENTS OF OFFENSE	APPLICABLE LAW
An offender, being sentenced for the offense of a special violent crime as prescribed under the Special Violent Crime Act, repeats the commission of abduction or inducement crime as prescribed in the Act, Article 2, paragraph 1, subparagraph 2 within three years upon the completion of sentence, or upon the exemption from the sentence.	Special Violent Crime Act, Article 3

* The following applies to cases where the offender is the person who has the duty to report any child abuse cases or habitual offenders of child abuse (The same applies to offenses falling within Type 1 through Type 3).

ELEMENTS OF OFFENSE	APPLICABLE LAW
The offender habitually commits child abuse as stipulated in Article 2, paragraph 4 (e) through (m) (This is limited to habitual offenders falling within (e) and subject to aggravated punishment under other statutes) of the Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes.	Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes, Article 6
An offender is a person who has a duty to report child abuse cases under the subparagraphs of Article 10, paragraph 2, and commits a crime of child abuse as stipulated in Article 2, paragraph 4 (e) through (m) (This is limited to habitual offenders falling within (e) and subject to aggravated punishment under other statutes) of the same Act against a child under his or her protection.	Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes, Article 7

DEFINITION OF SENTENCING FACTORS

01 | MOTIVES FOR COMMITTING THE OFFENSE CAN BE TAKEN INTO SPECIAL CONSIDERATION

- 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 applies)
 - When the offender merely agreed to participate in the crime but did not lead or actually participated in the commission of the crime
 - Other cases with comparable factors

02 | CASES WHERE THE OFFENDER IS THE VICTIM'S NON-CUSTODIAL PARENT OR RELATIVE AND OTHER EXTENUATING CIRCUMSTANCE CAN BE TAKEN INTO ACCOUNT

- This refers to cases where the non-custodial, biological parent takes the child-victim wishing to meet the child.

03 | VICTIMS WITH THE MENTAL CAPACITY TO MAKE DECISIONS EXPRESSES CONSENT

- This means cases in which the victim who has the mental capacity to make decisions, expressed consent, or the legal representative of the victim's protection rights were infringed.

04 | OFFENSES COMMITTED WITH AN ORGANIZED SCHEME

- This refers to cases where multiple offenders engage in the commission of the offense for the purpose of abduction or inducement in an organized scheme

(this does not need to suffice as a criminal organization) involving agreeing to the commission of the crime in advance, allocating respective tasks, and executing the commission accordingly.

05 | OFFENSE COMMITTED IN A SPECIALLY PROTECTED AREA (APPLIES TO VICTIMS UNDER THIRTEEN YEARS OF AGE)

- This indicates cases in which the offender induces or attempts to induce the victim from areas that are specially protected for children under thirteen years of age. This applies to schools (including school grounds and buildings), nurseries, orphanages, kindergartens, other educational facilities, places nearby the facilities, streets leading to the facilities, stairways, elevators in apartment complexes, and the like.

06 | OFFENDER'S PASSIVE PARTICIPATION

- This indicates cases in which the nature of participation in the commission of the crime was passive or the offender had a limited role in relation to the commission of the crime.
- However, this does not apply in cases in which the offender had an active role in the commission of the crime and caused another person to commit a crime.

07 | OFFENSES COMMITTED BY CAUSING DIMINISHED PHYSICAL OR MENTAL CAPACITY TO THE VICTIM

- This indicates cases in which the reduced mental capacity is caused by the use of alcohol, substances, or the like with the purpose of diminishing the victim's perception and control for the commission of the offense.

08 | TWO OR MORE CO-OFFENDERS

- This indicates cases in which two or more offenders were involved in the commission of the offense but did not suffice to fall within *Offenses Committed with Organized Schemes*.

09 | 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.

10 | HARM WAS CAUSED IN THE COURSE OF REACHING AN AGREEMENT WITH THE VICTIM

- This indicates cases in which the offender consistently harassed, publicized, or threatened to publicize the criminal facts or used other comparable means to force the victim to settle while trying to reach an agreement.

11 | MINOR BODILY INJURIES

- “Minor bodily injuries” means cases where 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.

12 | CASES RESULTING IN SERIOUS BODILY HARM

- This means cases one or more of the following factors apply:

- Cases of assault, bodily injury, and death: where the recovery from the inflicted injury requires more than 4 to 5 weeks of medical care in general, including cases with after-effects causing impairment, severe disability resulting from the offense, injuries inflicted on vulnerable body parts or further anticipated bodily injuries, using torture, or other comparable cases
- Cases of confinement: where the confinement extends for more than ten days
- Cases of abandonment: where the victim is abandoned at a place of poor or dangerous conditions or the offender abandons the victim in a secluded area
- Cases of cruel treatment: where the offender sexually abused or forced labor on the victim, deprived the victim of sleep or food for more than twenty-four hours, or other comparable cases

13¹ OFFENDER'S CONDUCT WAS NOT THE DIRECT CAUSE OF DEATH

- This indicates cases in which intervening unforeseen causes by the offender existed at the time of the commission of the offense and, therefore, the offender cannot be held liable for the direct cause of the death.

14¹ ABDUCTION, INDUCEMENT, TRAFFICKING, OR TRANSPORTING WITH THE PURPOSE OF CONDEMNABLE MOTIVES

- This indicates cases in which one or more of the following purposes of abduction, inducement, or transportation apply:
 - The offense was committed for the purpose of murder
 - The offense committed for the purpose of obtaining financial benefit by the ransom
 - The offense was committed for the purpose of indecent conduct, sexual intercourse, marriage, or profit-making
 - The offense was committed for the purpose of labor exploitation, sexual trafficking, sexual exploitation, or the acquisition of organs
 - The offense was committed for the purpose of engaging in overseas trafficking

15¹ 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 of the deceased victim acknowledges this and objects to punishing the offender.
- This includes cases in which a considerable amount of money is deposited with the depository that is comparable to reaching an agreement with the family of the deceased victim as a result of the offender's genuine efforts to reverse the harm.

16¹ ABSENCE OF REMORSE (THIS EXCLUDES CASES WHERE THE OFFENDER 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 criminal conduct. This should be distinguished from merely denying the commission of 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 THE SUSPENDING OF A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
<p>Primary Consideration Factor</p>	<ul style="list-style-type: none"> • Organized schemes, premeditation, or professional skills employed in the commission of the offense • Repeated crimes • Victim under thirteen years of age or is physically or mentally impaired • A criminal history of the same offense (imposing of suspension of a sentence or more severe punishment within ten years) exists • Carrying dangerous objects such as deadly weapons • Abduction, inducement, or overseas trafficking with a condemnable purpose • Offense committed in a specially protected area (for victims under thirteen years of age) • Caused serious bodily harm • Cases where the offender is the person who has a duty to report child abuse commits a crime of child abuse against a child under his or her protection 	<ul style="list-style-type: none"> • Motive for committing the offense can be taken into particular consideration • Cases where the offender is the victim’s non-custodial parent or relative and other extenuation circumstance can be taken into account • Offender attempted to thwart the accomplice’s commission of the crime • Victim released to a safe location voluntarily • No prior criminal history • Offender expresses remorse, and the victim opposes punishment (This includes genuine efforts to reverse the harm) • Minor bodily injuries
<p>General Consideration Factor</p>	<ul style="list-style-type: none"> • Two or more criminal history on the suspension of a sentence or for a greater offense • Lack of social ties • Offenses committed by causing diminished physical or mental capacity to the victim • Drug or alcohol addiction • Absence of remorse • Active participation as an accomplice • Destroying evidence or attempting to conceal evidence after the commission of the offense 	<ul style="list-style-type: none"> • No criminal history of the same offense and no criminal history of the suspension of a sentence or imposing of more severe sentences • Strongly established social ties • Non-premeditated crimes • Offender engages only in accepting, concealing, recruiting, or delivering • Voluntary surrender to investigative agencies or whistleblowing • Expresses sincere remorse • Cases of elderly offenders

CLASSIFICATION	ADVERSE	AFFIRMATIVE
		<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 • A significant amount of money was deposited with the depository • 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, the prior criminal history is calculated from the final date the sentence was completed until the date the offense was committed.

- Organized Schemes, Premeditation, or Professional Skills Employed in the Commission of the Offense

This means cases with one or more of the following factors:

- Offense was committed with the purpose of committing abduction or inducement (this does not need to suffice to the level of a criminal organization), agreeing to the crime in advance, allocating tasks, and executing the commission accordingly
 - Offender used a professional device or skills
 - Offender used a highly intelligent scheme
 - Offender created and utilized new and unknown skills of crime
 - Other cases of comparable factors
- Repeated Crimes
 - 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.

- Non-premeditated Crimes

- This indicates cases in which the offender did not make prior plans to induce the victim through means such as causing diminished physical or mental capacity. This is also applicable to cases where the offense from contacting the victim for purposes other than that of the intent to commit 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 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.