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Chapter 10

Crimes of Larceny

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Larceny (Criminal Act, Article 329), Larceny with Intrusion upon Habitation at Nighttime (Criminal Act, Article 330), Special Larceny (Criminal Act, Article 331), Habitual Crimes (Criminal Act, Article 332, Article 329 through 331), Repeated Larceny (Aggravated Punishment Act, Article 5-4, paragraph 2, paragraph 5, paragraph 6), Larceny of Forest Products and the Like (Act on Development and Management of Forest Resource, Article 73, paragraph 1 and paragraph 3, Forest Protection Act, Article 54, paragraph 1, and Aggravated Punishment Act, Article 9, paragraph 1), Larceny of Asset Pertaining to a Forest Culture (Act on Forest Culture and Recreation, Article 35, paragraph 2), and Larceny of Cultural Property (Cultural Property Protection Act, Article 92, paragraph 1 and 2), and Stealing Oil from Oil Pipelines Using Facilities (Oil Pipeline Safety Control Act, Article 13-2, paragraph 1).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01¹ LARCENY OF GENERAL PROPERTY

B	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Larceny of Unattended Property	- 6 mos.	4 mos. - 8 mos.	6 mos. - 1 yr.
2	General Larceny	4 mos. - 10 mos.	6 mos. - 1 yr. 6 mos.	10 mos. - 2 yrs.
3	Larceny Against Personal Belongings	6 mos. - 1 yr.	8 mos. - 2 yrs.	1 yr. - 3 yrs.
4	Larceny Accompanied by Intrusion	8 mos. - 1 yr. 6 mos.	1 yr. - 2 yrs. 6 mos.	1 yr. 6 mos. - 4 yrs.

* If multiple numbers of larceny crimes constituting habitual larceny each fall under other types of crimes, then apply the most severe offense of larceny as the sentencing range.

* However, if the sentencing range for larceny as calculated by assessing the special sentencing factors of larceny is lower than that of the special sentencing factors of the other larceny crimes constituting habitual larceny crime, then the sentencing range for the other larceny crime should be used as the base sentence.



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 • Poverty crimes • Intrusion upon places other than indoors of a dwelling (Type 4) 	<ul style="list-style-type: none"> • Carrying a deadly weapon, intrusion upon habitation, building, or other similar structures by destroying security devices (Type 4) • Offense committed with an organized scheme (excluding habitual offenders) • Cases where the offense repeatedly committed through special methods, tools, or organization (in case of the habitual offender) • Serious personal or social harm caused, and harm not reversed • 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 	<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 Aggravated Punishment Act • Habitual offender
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offender's passive participation 	<ul style="list-style-type: none"> • Two or more co-offenders involved • Cases falling within the Act on Forest Culture and Recreation, Article 35, paragraph 2, and the Forest Protection Act, Article 54, paragraph 1
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • A substantial portion of the damages was reversed • 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 LARCENY OF SPECIAL PROPERTY

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Valuable Property	1 yr. - 2 yrs. 6 mos.	1 yr. 6 mos. - 3 yrs.	2 yrs. 6 mos. - 4 yrs.
2	Extremely Valuable Property	1 yr. 6 mos. - 3 yrs.	2 yrs. - 4 yrs.	3 yrs. - 6 yrs.

* If several multiple offenses constituting habitual crimes fall within other types of crimes, apply the sentencing range of the most severe larceny offense.

* However, the sentencing range for larceny, which is calculated by assessing the special sentencing factors of larceny, is lower than that of the other larceny crimes constituting habitual crimes, then the sentencing range for the other larceny crime should be applied.



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 • Lack of intention to steal the special property 	<ul style="list-style-type: none"> • Carrying a deadly weapon • Instigating the subordinate person to commit the offense • Cases where the offense repeatedly committed through special methods, tools, or organization (in case of habitual offender)
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 	<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 Aggravated Punishment Act • Habitual offenders
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offender's passive participation 	<ul style="list-style-type: none"> • Two or more co-offenders involved
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • A substantial portion of the damages was reversed • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute a repeated offense under the Aggravated Punishment Act, the criminal history by the same type of offenses 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)

03 | LARCENY UNDER ACT ON THE AGGRAVATED PUNISHMENT, ETC. OF SPECIFIC CRIMES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	General Habitual or Repeated Larceny	1 yr. - 2 yrs. - 6 mos.	1 yr. 6 mos. - 3 yrs.	2 yrs. 6 mos. - 4 yrs.
2	Joint Habitual or Repeated Larceny	1 yr. 6 mos. - 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"> • Special considerations can be taken into account for engaging in the offense 	<ul style="list-style-type: none"> • Repeated offenses by the use of special methods, devices, or organizations • Larceny of special property (excluding cases where the offender did not intend larceny of special property) • 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"> • Poverty crimes • Insignificant damage • Offender’s passive participation 	<ul style="list-style-type: none"> • Carrying a deadly weapon • Two or more co-offenders involved • Intrusion upon a habitation or intrusion after destroying security devices
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • A substantial portion of the damages was reversed • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse 	

DEFINITION OF OFFENSES

01 | LARCENY OF GENERAL PROPERTY

(1) TYPE 1 — LARCENY OF UNATTENDED PROPERTY

- This indicates cases in which the risk of inflicting bodily injuries to the victim is slight, the extent of the offender's occupying the property is either loose or weak, the value of the property is insignificant, the extent of interfering with the occupying of the property is slight, and one of the following factors apply:
 - Occupying an unattended object outdoors
 - Occupying a product on display
 - Other cases with comparable factors

(2) TYPE 2 — GENERAL LARCENY

- This applies to cases where larceny does not fall within Type 1, 3, or 4.

(3) TYPE 3 — LARCENY OF PERSONAL BELONGINGS

- This means cases of larceny of property, which is occupied within another person's body, and one or more of the following factors apply:
 - Cases of larceny are committed by snatching another person's personal belongings (commonly known as 'snatching')
 - Cases of larceny are committed by stealing another person's personal belongings in a public place without them knowing the fact (commonly known as 'pickpocketing')
 - Cases of larceny committed by stealing from a drunken person unconscious in the street
 - Other cases with comparable factors

(4) TYPE 4 — LARCENY ACCOMPANIED BY INTRUSION

- This means cases of larceny by way of intruding on another person's dwelling, managed residence, structure, ship, or occupied room.



- * For cases where the offense is not committed at nighttime, the offense would constitute a concurrent crime of intrusion upon habitation and larceny. However, a offense shall be classified as Larceny Accompanied by Intrusion and will not be treated as a multiple offense under the sentencing guideline.

02¹ LARCENY OF SPECIAL PROPERTY

(1) TYPE 1 — VALUABLE PROPERTY

- This means cases of larceny where the stolen goods are placed with high social, cultural, and economic value, then the following applies:
 - Larceny as prescribed in the Cultural Property Protection Act, Article 92, paragraph 2
 - Larceny of forest products under the Act on Aggravated Punishment, etc. of Specific Crimes, Article 9, paragraph 1, subparagraph 2
 - Larceny of oil contained in an oil pipeline under the Oil Pipeline Safety Control Act, Article 13-2, paragraph 1
 - Larceny of cash, marketable securities, or precious jewelry held by a financial institution (financial institution stipulated in the Specific Economic Crime Act, Article 2, paragraph 1)
 - Cases where the value of the property has surged in a short period of time or is in scarcity
 - Larceny of significant industrial technology or materials concerning trade secrets

(2) TYPE 2 — EXTREMELY VALUABLE PROPERTY

- This means cases of larceny where the stolen goods are extremely high in social, cultural, and economic value, then the following applies:
 - Larceny as prescribed in the Cultural Property Protection Act, Article 92, paragraph 1
 - Larceny of forest products that fall within the Aggravated Punishment Act, Article 9, paragraph 1, subparagraph 1
 - Cases in which the stolen property is industrial technology crucial enough to change a company's future to progress or fail, or to change the dynamics of the relevant industry

03¹ LARCENY OF HABITUAL AND REPEATED PROPERTY

(1) TYPE 1 — JOINT HABITUAL OR REPEATED LARCENY

- Cases under the Aggravated Punishment Act, Article 5-4, paragraph 2
- Cases under the Aggravated Punishment Act, Article 5-4, paragraph 5, subparagraph 1

(2) TYPE 2 — HABITUAL OR REPEATED LARCENY

- Cases under the Aggravated Punishment Act, Article 5-4, paragraph 6



DEFINITION OF SENTENCING FACTORS

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

02 | POVERTY CRIMES

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

03 | INTRUSION UPON PLACES OTHER THAN INDOORS OF A DWELLING (TYPE 4)

- This means cases among Type 4 (Larceny Accompanied by Intrusion) where the larceny is committed after intruding places other than 'indoors of a dwelling (This is where the victim resides continuously and repetitively on a daily basis and strangers unassociated to the victim or the family of the victim cannot easily enter).'

04 | OFFENSES COMMITTED WITH AN ORGANIZED SCHEME

- This indicates cases in which multiple offenders engage in the commission of the offense for the purpose of larceny in an organized scheme involving agreeing to the crime in advance, allocating tasks, and executing the commission accordingly.

05 | SERIOUS PERSONAL OR SOCIAL HARM CAUSED AND HARM NOT REVERSED

- “Serious personal damages” means cases with one or more of the following factors:
 - Cases where the offender has harmed the victim significantly (taken into account the victim’s subjective value of the stolen item and derivative damage overall) by stealing expensive antiques, precious jewelry, large amounts of stocks or cash, or other similar goods
 - Other cases with comparable factors
- “Serious social damage” means cases with one or more of the following factors:
 - Cases that do not fall within larceny of a special property, but the offense caused significant social damage
 - Other cases with comparable factors

06 | 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.

07 | 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 fall under the *Offenses Committed with Organized Schemes*.

08 | CASES FALLING WITHIN THE ACT ON FOREST CULTURE AND RECREATION, ARTICLE 35, PARAGRAPH 2, AND THE FOREST PROTECTION ACT, ARTICLE 54, PARAGRAPH 1

- Larceny of Designated Forest Cultural Asset
- Larceny of nurse-trees or larceny of products in the forest protection areas

09 | LACK OF INTENTION TO STEAL A SPECIAL PROPERTY

- This refers to cases where the offender stole a special property in a location where such property is not usually found after not becoming aware of it or without the intention of stealing the special property but commits the offense coincidentally.

10 | REPEATED OFFENSES BY THE USE OF SPECIAL METHODS, DEVICES, OR ORGANIZATIONS

- This indicates cases in which the offense applicable to one or more of the following factors has been executed repetitively:
 - Cases where the offender used a certain method or technology rather than cases of simply taking advantage of careless surveillance, or other similar methods, regarding searching, occupying, or transporting the stolen goods
 - Cases where devices have been employed for stealing goods that are generally unmovable
 - The offense committed with the intent to commit larceny (This does not need to suffice to the level of a criminal organization), agreeing to the crime in advance, allocating the tasks, and executing the commission accordingly

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 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.



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 determinant 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"> • An organized or professional crime • Repeated offenses • Carrying a deadly weapon, intrusion upon habitation, a building nighttime, or other similar structures by destroying security devices at nighttime • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment within five years more than three incidents of fines) exists • Serious personal or social damages caused • Absence of efforts to reverse damages 	<ul style="list-style-type: none"> • Efforts to obstruct or confront the accomplice's commission of the offense • Motive for committing offense can be taken into special consideration • Poverty crimes • No prior criminal history • Offender expresses remorse, and the victim opposes punishment (This includes the offender's genuine efforts to reverse the harm)
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 • Lack of social ties • 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"> • Insignificant damage • No prior criminal history of the suspension of a sentence or punishment more severe • Strongly established social ties • Voluntary surrender to investigative agencies • Expresses sincere remorse • Cases of elderly offenders • Offender's passive participation as an accomplice • 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.
- Repeated Crimes
 - This indicates cases in which the court determines that the offender has committed similar offenses repeatedly by considering the substance of the offense, the criminal history, multiple offenses, and the like comprehensively.

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.