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# Chapter 12

## Crimes Related to Private Documents

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Forgery and Alteration of Private Documents, and Other Similar Documents (Criminal Act, Article 231), Making Falsified Official Documents and Other Similar Documents for Employment Purposes (Criminal Act, Article 232), Forging and Altering Private Electronic Records (Criminal Act, Article 232-2), Making False Medical Certificates and Other Similar Documents (Criminal Act, Article 233), or Uttering of Documents Thereof (Criminal Act, Article 234).

## PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

### 01 | FORGERY, ALTERATION, AND SIMILAR CONDUCTS OF PRIVATE DOCUMENTS

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Forgery, Alteration, and Similar Conducts of Private Documents	- 1 yr.	6 mos. - 2 yrs.	1 yr. - 3 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>The motive or other matters for engaging in the offense can be taken into consideration</li> <li>No social damage caused due to incomplete commission of the offense's purpose</li> </ul>	<ul style="list-style-type: none"> <li>Cases where the offender is a central figure, executive, professional technician, or a person directly in charge of brokering and conveying to persons in positions mentioned</li> <li>Forgery and altering multiple documents repeatedly</li> <li>Serious social and economic harm resulted from the offense</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 (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 type under the Criminal Act (includes crimes related to public documents)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Offender's passive participation</li> <li>Compared to the entire document, only small parts of the document were altered</li> <li>Offense failed to cause social</li> </ul>	<ul style="list-style-type: none"> <li>Offender made requests to professionals engaging in forgery or brokers of such activities</li> <li>Those who committed forgery or altering of documents also utters</li> </ul>



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		damage, or the social and economic harm caused is insignificant	<p>the falsified documents</p> <ul style="list-style-type: none"><li>• Forgery or alteration of important documents with high public confidence such as direct legal documents (documents containing the direct representation of the legal act in question) or documents for submission of evidence (However, offenses that caused serious social and economic damages are excluded)</li><li>• Use of professional forgery or altering devices (such as color printers, scanners, and other similar devices)</li></ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"><li>• Expresses sincere remorse</li><li>• No prior criminal history</li></ul>	<ul style="list-style-type: none"><li>• Different types of repeated offenses under the Criminal Act or crimes of violence that do not constitute a repeated offense under the Criminal Act (includes crimes related to public documents)</li></ul>

## 02<sup>1</sup> MAKING FALSE MEDICAL CERTIFICATED AND OTHER

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Passive Motive	- 8 mos.	4 mos. - 10 mos.	8 mos. - 1 yr. 6 mos.
2	Active Motive	6 mos. - 1 yr. 6 mos.	8 mos. - 2 yrs.	1 yr. 6 mos. - 2 yrs. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• The motive or other matters for engaging in the offense can be taken into consideration</li> <li>• Offense failed to cause social damage, or the social and economic harm caused are insignificant</li> </ul>	<ul style="list-style-type: none"> <li>• Serious social and economic harm resulted from the offense</li> <li>• Involves commercial or organizational schemes</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 (cases where the offender cannot be held liable)</li> <li>• Voluntary surrender to investigative agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Criminal history of the same type of offense (within five years) (includes crimes related to public documents)</li> <li>• Deliberate concealment of profits gained from the offense or obstructing recovery of damages</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Offender's passive participation</li> </ul>	<ul style="list-style-type: none"> <li>• A person who falsifies the medical records also commits the offense of uttering the document</li> </ul>
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> <li>• No prior criminal history</li> <li>• Expresses sincere remorse</li> </ul>	<ul style="list-style-type: none"> <li>• Different types of repeated offenses under the Criminal Act or the criminal history of the same type of offense does not constitute a repeated offense under the Criminal Act (includes crimes related to public documents)</li> </ul>



# DEFINITION OF OFFENSES

## 01 | FORGERY, ALTERATION, AND THE LIKE OF PRIVATE DOCUMENTS

\* This means offenses with the following elements of crime as prescribe in the applicable law (This applies to all offenses).

ELEMENTS OF CRIME	APPLICABLE LAW
Forging and altering private documents and uttering the documents thereof	Criminal Act, Article 231, Article 234
Making of falsified private documents and other similar documents for employment purposes and uttering the documents thereof	Criminal Act, Article 232, Article 234
Forging and altering of private electronic records and uttering documents thereof	Criminal Act, Article 232-2, Article 234

## 02 | MAKING FALSE MEDICAL CERTIFICATE AND OTHER SIMILAR DOCUMENTS

ELEMENTS OF CRIME	APPLICABLE LAW
Making false medical certificates and uttering of the document thereof	Criminal Act, Article 233, Article 234

(1) TYPE 1 PASSIVE (CASES THAT DO NOT FALL UNDER TYPE 2, BUT INVOLVES ILLEGAL ACTS COMMITTED OUT OF PASSIVE MOTIVES SUCH AS JOB-RELATED CONVENIENCE OF THE OFFENDER OR OTHERS, EXPEDIENT PERFORMANCE OF DUTIES, AND OTHERS).

- Cases where the offender committed illegal acts simply for the convenience of performing one’s duty. This includes cases where the offender falsifies medical certificates and inserts such documents when inadvertently omitting or misplacing the original medical certificates while asserting insurance claims.

- Cases where the offender, for convenience, issues medical certificates based on photographs, images, phone calls, or other similar methods, even though there was a need to examine the patient in-person, or arbitrarily makes entries for a patient or insurance claimant's medical certificates due to the time-consumed for the process.
- (2) TYPE 2 ACTIVE MOTIVE (ACTS WITH AN ACTIVE MOTIVE TO OBTAIN PERSONAL OR THIRD PARTY'S BENEFITS OTHERWISE SOCIAL OR ECONOMIC STATUS)**
- Cases where the purpose involves insurance frauds, evading military service, certifying an unqualified person as disabled, issuing benefits to long-term patients, and other similar incidents.

## DEFINITION OF SENTENCING FACTORS

### 01 | THE MOTIVE OR OTHER MATTERS FOR ENGAGING IN THE OFFENSE CAN BE TAKEN INTO 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 is applicable)
  - The offender merely agreed to participate in the crime but did not lead in committing the crime or actually participate
  - Crime committed by mere curiosity or ostentation
  - The motive for the crime was to obtain illegal benefits or solely for the purpose of other minor benefits
  - Other cases with comparable factors

### 02 | NO SOCIAL DAMAGE RESULTED DUE TO FAILURE TO COMPLETE THE PURPOSE OF THE OFFENSE

- This indicates cases in which the offender could not complete the purpose of the offense and possible social and economic damages that could have resulted from the offense did not occur.

### 03 | CASES WHERE THE OFFENDER IS A CENTRAL FIGURE, EXECUTIVE, PROFESSIONAL TECHNICIAN, OR A PERSON DIRECTLY IN CHARGE OF BROKERING AND CONVEYING TO PERSONS IN POSITIONS MENTIONED

- This indicates cases in which the offender holds a vital position in the criminal organization such as an actual central figure, executive, professional technician that engages in forgery and falsification, and executives of middle rank or higher in charge of the brokering or conveying the documents.

## 04 | SERIOUS SOCIAL AND ECONOMIC HARM RESULTING FROM THE OFFENSE

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- This indicates cases in which the crime has caused enormous economic losses; the offender acquired large amounts of benefit, numerous victims to the offense; and other similar consequences causing a social and economic disturbance as well as serious and severe damages resulted from the offense.

## 05 | 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.
- 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.

## 06 | COMPARED TO THE DOCUMENT, ONLY SMALL PARTS OF THE DOCUMENT WAS ALTERED

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- This means the part of the document that was altered did not involve affecting significant legal relations (For example, simple alteration of date irrelevant to the lapse of a right).



## 07 | OFFENDER MADE REQUESTS TO PROFESSIONALS ENGAGING IN FORGERY OR BROKERS OF SUCH ACTIVITIES

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- This means the offender, who is not a professional forger or involved in such organizations, has made requests of forgery or falsifying documents to a professional forger, broker, or a member of an organization engaged in forgery (For example, this includes requesting forgery or falsification to a professional forger or a broker of such criminal organization through the use of internet websites).

## 08 | FORGERY OR ALTERATION OF DOCUMENTS WITH HIGH PUBLIC CONFIDENCE SUCH AS DOCUMENTS CONTAINING A DIRECT REPRESENTATION OF THE LEGAL ACT IN QUESTION OR SUBMISSION OF DOCUMENTARY EVIDENCE (HOWEVER, OFFENSES THAT CAUSED SERIOUS SOCIAL AND ECONOMIC DAMAGES ARE EXCLUDED)

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- This means the document subjected to the forgery or falsification has high public confidence in the society or certifies important legal relations or facts, including direct legal documents by which the legal act in question was directly rendered, documents for submission of evidence, and the like (However, if applicable to cases that caused serious social and economic damage, this is not considered as a general sentencing factor).

## 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 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 where the minimum sentencing range of the 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 count.
  - \* When the offender forges or alters official documents or falsifies medical certificates and commits offenses of uttering documents, the offense is not to be treated as multiple offenses but only a sentencing factor.

## 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 more than three incidents of fines) exists</li> <li>• Serious social and economic harm resulted from the offense</li> <li>• Commercial or organizational crime</li> </ul>	<ul style="list-style-type: none"> <li>• The motive or other matters for engaging in the offense can be taken into consideration</li> <li>• Expresses penitence (including voluntary surrender or confessions, whistleblowing, 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 remorse</li> <li>• Absence of efforts to reverse the harm</li> <li>• Instigating the subordinate person to commit the offense</li> </ul>	<ul style="list-style-type: none"> <li>• Offense failed to cause social damage, or the social and economic harm caused are insignificant</li> <li>• Offender's passive participation as an accomplice</li> <li>• Strongly established social ties</li> <li>• No criminal history of the suspension of sentence or imposing of other sentences more severe</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> <li>• Expresses sincere remorse</li> </ul>

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## 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
  - 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.