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Chapter 13

Crimes of Obstructing Performance of Official Duties

This guideline applies to adult offenders (offenders aged 19 or older) who committed any offenses of Obstruction of Official Duties (Criminal Act, Article 136, paragraph 1), Coercion of Duties (Criminal Act, Article 136, paragraph 2), Obstruction of Official Duties by Deceptive Means (Criminal Act, Article 137), Invalidation or Destruction of Objects for Public Use (Criminal Act, Article 141, paragraph 1, paragraph 2), or Extraordinary Cases Involving Obstruction of Official Duties and Extraordinary Cases Involving Obstruction of Official Duties Resulting in Bodily Injury or Death (Criminal Act, Article 144, paragraph 1, paragraph 2).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01¹ OBSTRUCTION OF OFFICIAL DUTIES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Obstruction of Performance of Official Duties/Coercion of duties	- 8 mos.	6 mos. - 1 yr. 4 mos.	1 yr. - 4 yrs.
2	Obstruction of Performance of Official Duties by Deceptive Means	4 mos. - 10 mos.	8 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Extent of violence, threat, or deceptive means used is slight • Motive for committing offense can be taken into consideration 	<ul style="list-style-type: none"> • Condemnable motive • Demonstrating the organization’s power or the power of the multitude; otherwise, offense committed while carrying a dangerous object (Type 1) • Serious bodily injuries (Type 1) • Offense committed against numerous public officials (Type 1) • Significant obstruction of official duties • Repeated crimes that do not constitute concurrent crimes • 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 	<ul style="list-style-type: none"> • Repeated offenses of the same type under the Criminal Act

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		<ul style="list-style-type: none"> Offender expresses remorse, and the victim opposes punishment (Type 1, cases with serious bodily injury) 	
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offender's passive participation 	<ul style="list-style-type: none"> Premeditated crime Cases resulting in less serious bodily injuries (Type 1)
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Those with mental incapacity (these are cases where the offender can be held liable) No prior criminal history Offender expresses remorse, and the victim opposes punishment (Type 1, cases with non-serious bodily injury) 	<ul style="list-style-type: none"> 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 (This applies when the criminal history is within ten years after completion of sentence)

* Apply the following classification in cases in which sexual offenses were committed while intoxicated by the use of alcohol or drugs (including cases of invalidation or destruction of objects used for public purposes, extraordinary cases involving obstruction of official duties resulting in bodily injuries or death):

① Cases in which the offender voluntarily induced intoxication by taking alcohol or drugs and where the offender intended or foresaw the crime or attempted to use the condition as a ground for exemption, intoxication is considered as a general aggravating factor regardless of the fact that the offender was in a state of diminished mental capacity at the time of the crime. ② Cases in which the offender had no intention of committing the offense or could not foresee the commission of such offense, but past behavior reveals the possibility of harm caused to others while under the influence of high levels of alcohol or drugs, intoxication shall not be considered as a mitigating factor regardless offender was in a state of diminished mental capacity at the time of the crime. ③ Even if the cases do not fall within ①, ②, intoxication should not be taken into account as a mitigating factor unless the offender's mental state at the time of the crime constitutes Those with Mental Incapacity.

02 | INVALIDATION OR DESTRUCTION OF OBJECTS USED FOR PUBLIC PURPOSES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Invalidation of Objects Used for Public Purpose	- 8 mos.	6 mos. - 1 yr. 6 mos.	1 yr. - 4 yrs.
2	Destruction of Objects Used for Public Purpose	6 mos. - 1 yr. 6 mos.	10 mos. - 2 yrs. 6 mos.	2 yrs. - 5 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Value of the invalidated or destroyed object is insignificant • Motive for committing offense can be taken into consideration 	<ul style="list-style-type: none"> • Condemnable motive • Demonstrating the organization's power or leveraging through the power of multitudes; otherwise, offense committed while carrying a dangerous object • Serious bodily injuries • Repeated crimes that do not constitute as concurrent crimes • 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 (cases with serious bodily injury) 	<ul style="list-style-type: none"> • Repeated offenses of the same type under the Criminal Act
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offender's passive participation 	<ul style="list-style-type: none"> • Premeditated crime • Cases resulting in less serious bodily injuries
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Offender expresses remorse, and the victim opposes punishment (cases with non-serious bodily injury) • Invalidated or destroyed object recovered • Those with mental incapacity (These are cases where the offender can be held liable) • No prior criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act, the criminal history of imprisonment 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 | EXTRAORDINARY CASES INVOLVING OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN BODILY INJURIES OR DEATH

	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Particular Obstruction of Official Duties Resulting in Bodily Injuries	1 yr. 6 mos. - 3 yrs.	2 yrs. - 4 yrs.	3 yrs. - 7 yrs.
2	Particular Obstruction of Official Duties Resulting in Death	3 yrs. - 6 yrs.	5 yrs. - 8 yrs.	7 yrs. - 10 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Motive for committing offense can be taken into consideration • Offender's conduct was not the direct cause of death (Type 2) 	<ul style="list-style-type: none"> • Condemnable motive • Serious bodily injuries (Type1) • Offense committed against numerous public officials • Significant obstruction of official duties • Repeated crimes that do not constitute as concurrent crimes • 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 (This includes genuine efforts to reverse the harm) 	<ul style="list-style-type: none"> • Repeated offenses of the same type under the Criminal Act
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offender's passive participation 	<ul style="list-style-type: none"> • Cases where the base offense (obstruction of official duties) was premeditated
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Rescuing or transferring the victim to the hospital after committing the offense • Those with mental incapacity (These are cases where the offender can be held liable) • No prior criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act, the criminal history of imprisonment 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)

DEFINITION OF OFFENSES

01¹ OBSTRUCTION OF OFFICIAL DUTIES

(1) TYPE 1 — OBSTRUCTION OF OFFICIAL DUTIES

* 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
Use of force or threat against a public official engaged in performing public duties	Criminal Act, Article 136, paragraph 1
Use of force or threat against a public official for the purposes of coercing or obstructing certain acts; otherwise, to force a resignation from a particular position	Criminal Act, Article 136, paragraph 2
Commission of crimes above by demonstrating the organization's power or leveraging through the power of multitudes; otherwise, offense committed while carrying a dangerous object	Criminal Act, Article 144, paragraph 1

(2) TYPE 2 — OBSTRUCTION OF OFFICIAL DUTIES BY DECEPTIVE MEANS

ELEMENTS OF CRIME	APPLICABLE LAW
Obstruction of the official duties by the use of deceptive schemes	Criminal Act, Article 137

02 | INVALIDATION OR DESTRUCTION OF OBJECTS USED FOR PUBLIC PURPOSES

(1) TYPE 1 — INVALIDATION OF OBJECTS USED FOR PUBLIC PURPOSES

Elements of Crime	Applicable Law
Damaging, concealing, or other similar conduct is performed on documents or goods; electronic records include electromagnetic records; and other similar items used in public offices	Criminal Act, Article 141, paragraph 1
Commission of crimes above by demonstrating the organization's power or leveraging through the power of multitudes; otherwise, offense committed while carrying a dangerous object	Criminal Act, Article 144, paragraph 1

(2) TYPE 2 — DESTRUCTION OF OBJECTS USED FOR PUBLIC PURPOSES

ELEMENTS OF CRIME	APPLICABLE LAW
Destroying structures, ships, trains, or airplanes used in public office	Criminal Act, Article 141, paragraph 2
Commission of crimes above by demonstrating the organization's power or leveraging through the power of multitudes; otherwise, offense committed while carrying a dangerous object	Criminal Act, Article 144, paragraph 1

03 | PARTICULAR OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN BODILY INJURIES OR DEATH

(1) TYPE 1 — EXTRAORDINARY OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN BODILY INJURIES

ELEMENTS OF CRIME	APPLICABLE LAW
Offenders of extraordinary obstruction of official duties, extraordinary cases of invalidation or destruction of objects used for public purposes causes bodily injuries to a public official	Criminal Act, Article 144, paragraph 2

(2) TYPE 2 — EXTRAORDINARY OBSTRUCTION OF OFFICIAL DUTIES RESULTING IN DEATH

ELEMENTS OF CRIME	APPLICABLE LAW
Offenders of extraordinary obstruction of official duties, extraordinary cases of invalidation or destruction of objects used for public purposes causes death to a public official	Criminal Act, Article 144, paragraph 2

DEFINITION OF SENTENCING FACTORS

01 | MOTIVE FOR COMMITTING OFFENSE CAN BE TAKEN INTO CONSIDERATION

- This indicates one or more of the following factors apply:
 - Excessive or improper methods for performing duties resulted
 - Crime was committed in the course of exercising or asserting justifiable rights
 - Other similar grounds exists

02 | SERIOUS BODILY INJURIES RESULTED

- This indicates cases in which 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 injuries inflicted to vulnerable body parts, or further bodily injuries is anticipated.

03 | CONDEMNABLE MOTIVE

- This means cases with one or more of the following factors:
 - The obstruction of official duties in regard to the extent and duration causing inconvenience or interruptions to official duties is significant
 - Offense committed against the public officer who was performing an urgent mission to save lives, extinguish fires, investigate crimes, maintain security, etc.
 - Other cases with comparable factors

04 | SIGNIFICANT OBSTRUCTION OF OFFICIAL DUTIES

- This means cases with one or more of the following factors:
 - Offense committed out of retaliation, grievance or hatred
 - Offense committed to harass the victim
 - Offense committed without any special reason or enjoyed the crime itself
 - Other cases with comparable factors

05 | REPEATED CRIMES THAT DO NOT CONSTITUTE AS CONCURRENT CRIMES

- This means the offender has three or more incidents of imposing fines or more severe punishments regarding the same type of offense; this is calculated within three years from the time of the commission of the offense.

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

07 | PREMEDITATED CRIME

- This means cases with one or more of the following factors:
 - Preparation and possession of the crime weapon
 - Planned conspiracy
 - Inducement of victim
 - Preparation of destruction of evidence
 - Prior planning of a flight plan

- Offense committed covering a part of his or her body to avoid identification
(However, excluding cases there is no intention of committing a crime
- Other cases with comparable factors

08 | VALUE OF THE INVALIDATED OR DESTROYED OBJECT IS INSIGNIFICANT

- This indicates cases in which the social and economic value of the invalidated or destructed object is insignificant so that the cost for repair or reversing the harm is relatively small.

09 | OFFENDER'S CONDUCT WAS NOT THE DIRECT CAUSE OF DEATH

- This indicates cases in which intervening causes unforeseen 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.

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

- The judge should select the proper point within the sentencing range as assessed under the above principles, along with the special sentencing determinant and general sentencing determinant taken together.

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 other count 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.

PART B — GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Condemnable motive • Demonstrating the organization’s power or the power of the multitude; otherwise, offense committed while carrying a dangerous object • Significant obstruction of official duties • Premeditated or repeated crimes • Cases resulting in serious bodily injuries or death • 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 	<ul style="list-style-type: none"> • Extent of violence, threat, or deceptive means used is slight • Motive for committing offense can be taken into consideration. • Efforts to obstruct or confront the accomplice’s commission of the offense • No prior criminal history • Expresses penitence (including voluntary surrender or confessions, whistleblowing, and the like)
General Consideration Factor	<ul style="list-style-type: none"> • Two or more criminal history on the suspension of 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 • Absence of efforts to reverse the harm 	<ul style="list-style-type: none"> • Strongly established social ties • Voluntary surrender to investigative agencies • Expresses sincere remorse • No criminal history of the suspension of sentence or imposing of other sentences more severe • 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

DEFINITION OF FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In cases in which the factors to consider in suspending a sentence and the sentencing factors are identical, refer to the definitions set forth in the *Definition of Sentencing Factors*.
- Determining Criminal History
 - Prior criminal history is calculated as follows: In cases that involve a suspension of the sentence, the prior criminal history is calculated from the date the defendant's suspension of the sentence was affirmed until the date of the commission of the offense. In cases that impose imprisonment, the prior criminal history is calculated from the final date the sentence was completed until the date the offense was committed.

ASSESSING PRINCIPLES APPLICABLE TO THE FACTORS TO CONSIDER IN SUSPENDING A SENTENCE

- In deciding whether the suspension of a sentence is appropriate in cases in which imprisonment is imposed, the court should give the primary consideration factor greater importance than the general consideration factors. The following principles should be considered:
 - ① In cases in which only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factors by two or more, it is recommended to suspend the sentence.
 - ② In cases in which two or more primary adverse factors exist or when the primary adverse factors outnumber the primary affirmative factor by two or more, imprisonment is recommended.
 - ③ In cases in which ① or ② apply, but the difference between the number of general adverse (affirmative) factors and general affirmative (adverse) factors is greater than the difference between the number of primary affirmative (adverse) factors and primary adverse (affirmative) factors, or in cases other than ① or ②, the court shall decide whether to suspend the sentence after comparing and assessing the factors listed under the suspension of sentence section comprehensively.