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Chapter 22

Crimes of Extortion

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Extortion (Criminal Act, Article 350), Special Extortion (Criminal Act, Article 350-2), Habitual Extortion (Criminal Act, Article 351, Article 350), Habitual Special Extortion (Criminal Act, Article 351, Article 350-2), Extortion by Multiple Persons (Violence Punishment Act, Article 2, paragraph 2), Repeated Extortion (Violence Punishment Act, Article 2, paragraph 3), Repeated Special Extortion (Violence Punishment Act, Article 3, subparagraph 4), and Extortion under the Specific Economic Crimes Act (Specific Economic Crimes Act, Article 3, paragraph 1).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | GENERAL EXTORTION

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 30 Million Won	- 8 mos.	6 mos. - 1 yr.	10 mos. - 2 yrs. 6 mos.
2	More than 30 Million Won, less than 100 Million Won	4 mos. - 1 yr. 2 mos.	10 mos. - 2 yrs.	1 yr. 6 mos. - 3 yrs.
3	More than 100 Million Won, less than 500 Million Won	10 mos. - 3 yrs.	1 yr. 6 mos. - 4 yrs.	3 yrs. - 7 yrs.
4	More than 500 Million Won, less than 5 Billion Won	1 yr. 6 mos. - 4 yrs. 6 mos.	3 yrs. - 7 yrs.	5 yrs. - 9 yrs.
5	More than 5 Billion Won	3 yrs. - 7 yrs.	5 yrs. - 9 yrs.	7 yrs. - 11 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Extent of the offense is slight Special considerations can be taken into account for engaging in the offense Extortion committed to exercise a right 	<ul style="list-style-type: none"> Offender took active role in organizing the commission of the crime Offense against multiple unspecified victims or for a continued and repeated offense Usage of malicious methods to commit a crime Offense caused significant damage to the victim Offense committed toward vulnerable victims Instigating the subordinate person to commit the offense
Special Sentencing	Actor /Etc.	<ul style="list-style-type: none"> Those with hearing and visual impairments 	<ul style="list-style-type: none"> Repeated offenses of the same type under the Criminal Act



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Determinant		<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender cannot be held liable) • Voluntary surrender to investigative agencies or whistleblowers • Victim opposes punishing the offender, and damage reversed substantially 	
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offense committed for basic living expenses or medical expenses • Cases where the offender failed to consume or retain most of the profit from the crime • Offender's passive participation 	<ul style="list-style-type: none"> • Two or more co-offenders • Premeditated crime • Condemnable motives • Deliberate concealing of profits made from the offense
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) • Expresses sincere remorse • No prior criminal history • Genuine efforts to reverse the harm caused 	<ul style="list-style-type: none"> • Destroying evidence or attempting to conceal evidence after the commission of the offense • Repeated offenses of the different type under the Criminal Act 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)

▷ Apply the following classification in cases in which a crime of violence was committed while intoxicated by the use of alcohol or drugs (including cases of habitual crimes of extortion, repeated offense of extortion, and special offense of extortion):

- 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 even though the offender was in a state of diminished mental capacity at the time of the crime.
- ② Even if the cases do not fall within ①, intoxication should not be considered as a mitigating factor unless the offender's mental state at the time of the crime constitutes as *Those with Mental Incapacity*

02¹ HABITUAL EXTORTION, REPEATED EXTORTION, AND SPECIAL EXTORTION

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Habitual Extortion, Special Extortion	6 mos. - 2 yrs.	10 mos. - 3 yrs.	2 yrs. - 5 yrs.
2	Repeated Extortion, Habitual Special Extortion	10 mos. - 2 yrs. 6 mos.	1 yr. 4 mos. - 4 yrs.	3 yrs. - 6 yrs.
3	Repeated Special Extortion	1 yr. 6 mos. - 3 yrs.	2 yrs. - 5 yrs.	4 yrs. - 7 yrs.

- ▷ The sentencing range is based on the recommended penalty range for each type. But the sentencing range shall reflect only the common sentencing factors between the general extortion type of the same amount of gain and each larger type and compare the maximum and minimum limits of the sentencing range of and apply the more severe sentencing range.



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Extent of the offense is slight • Special considerations can be taken into account for engaging in the offense • Extortion committed to exercise right (limited to special extortion) 	<ul style="list-style-type: none"> • Offender took active role in organizing the commission of the crime • Offense against multiple unspecified victims or for a continued and repeated offense • Offense caused significant damage to the victim • Offense committed toward vulnerable victims • 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 whistleblowers • Victim opposes punishing the offender, and damage reversed substantially 	
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offense committed for basic living expenses or medical expenses • Cases where the offender failed to consume or retain most of the profit from the crime • Offender's passive participation 	<ul style="list-style-type: none"> • Premeditated crime • Condemnable motives • Deliberate concealing of profits made from the offense
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) • Expresses sincere remorse • No prior criminal history • Genuine efforts to reverse the harm caused 	<ul style="list-style-type: none"> • Destroying evidence or attempting to conceal evidence after the commission of the offense • Repeated offenses of the different type under the Criminal Act 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 | GENERAL EXTORTION

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

ELEMENTS OF OFFENSE	APPLICABLE LAW
<ul style="list-style-type: none"> • Extortion 	<ul style="list-style-type: none"> • Criminal Act, Article 350
<ul style="list-style-type: none"> • Extortion by Multiple Offenders 	<ul style="list-style-type: none"> • Violence Punishment Act, Article 2, paragraph 2, subparagraph 3
<ul style="list-style-type: none"> • Extortion Under Specific Economic Crimes Act 	<ul style="list-style-type: none"> • Specific Economic Crimes Act, Article 3, paragraph 1

(1) TYPE 1

- Type 1 means cases where the amount of profit involved is less than 30 million won. “Profit” means property or financial gain that the offender or the third party through the assistance of the offender has acquired by the commission of the offense (This definition applies throughout this guideline).

(2) TYPE 2

- This indicates cases in which the amount of profit involved by extortion 30 million won or more but is less than 100 million won.

(3) TYPE 3

- This indicates cases in which the amount of profit involved by extortion is 100 million won or more but is less than 500 million won.

(4) TYPE 4

- This indicates cases in which the amount of profit involved by extortion is 500 million won or more but is less than 5 billion won.



(5) TYPE 5

- This indicates cases in which the amount of profit involved by extortion is 5 billion won or more.

02 | HABITUAL EXTORTION, REPEATED EXTORTION, AND SPECIAL EXTORTION

CLASSIFICATION	ELEMENTS OF OFFENSE	APPLICABLE LAW
Type 1 Habitual Extortion, Special Extortion	Habitual Extortion	Criminal Act, Article 351, Article 350
	Special Extortion	Criminal Act, Article 350-2
Type 2 Habitual Special Extortion, Repeated Extortion	Repeated Extortion	Violence Punishment Act, Article 2, paragraph 3, subparagraph 3
	Habitual Special Extortion	Criminal Act, Article 351, Article 350-2
Type 3 Repeated Special Extortion	Repeated Special Extortion	Violence Punishment Act, Article 3, paragraph 4, subparagraph 3

DEFINITION OF SENTENCING FACTORS

01 | THE EXTENT OF EXTORTION IS SLIGHT

- This means one or more of the following factors apply:
 - The extent of violence and intimidation is slight
 - The extent of harm is slight (This excludes cases where the offender pretended to be a gangster or commits an offense against a very vulnerable victim)
 - Cases where the victim was not seriously intimidated by the offender's violence and intimidation
 - Other cases with comparable factors

02 | SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING OR PARTICIPATING IN THE OFFENSE

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

03 | EXTORTION COMMITTED TO EXERCISE RIGHT

- This indicates cases in which one or more of the following factors apply:
 - The offender used violence or intimidation to collect the debt (This excludes cases where the offender used violence or intimidation through a professional debt-collecting agency, cases in which the offender made a specific threat concerning the victim's family and their safety, or the offender committed violence at the victim's house or workplace.)



- Cases in which the means and methods to exercise a right are not permissible under the social norm
- Other cases with comparable factors

04¹ MALICIOUS METHOD OF CRIME

- This indicates cases in which one or more of the following factors apply:
 - Cases where the offense was committed by using the offender's malicious background or experience or pretending that the offender has such background or experience
 - Cases where the offender made specific threats concerning the victim's family and their safety
 - Cases where the offender committed violence at the victim's house or workplace
 - The offender committed a crime by using the status of the public official or association with an organization such as media with social influence
 - Other cases with comparable factors

05¹ INFLECTING SERIOUS HARM TO THE VICTIM

- This indicates cases in which one or more of the following factors apply:
 - Financial or management crisis of the company as a result of the offense
 - Collapse of company's stock due to damaged reputation as a result of the offense
 - Multiple bankruptcies were induced as a result of the offense
 - Victim losses nearly all assets due to the offense
 - Other cases with comparable factors

06 | VULNERABLE VICTIMS

- “Vulnerable victims” means cases where the victim was especially vulnerable due to reduced physical or mental capacity, or age at the time of the crime and the offender was already aware of or possibly aware of the victim’s such circumstances.

07 | SUBSTANTIAL REVERSE OF HARM

- Cases in which more than $\frac{2}{3}$ of the total damage is reversed or is certain to be reversed.

08 | 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 in cases in which the offender had an active role in the commission of the offense by causing another person to commit the offense.

09 | 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
 - Other cases with comparable factors



10¹ CONDEMNABLE MOTIVES

- This means cases with one or more of the following factors:
 - Offense committed for illegal use such as gambling
 - Offense committed as a means to execute other crimes
 - Extortion of property committed to retaliate or harass the victim
 - Extortion of the opponent's property to maintain dominance in power among gangster groups
 - Other cases with comparable factors

11¹ DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE

- This means profits gained from the offense were deliberately concealed by the offender, thereby causing delayed damage recovery or absence of recovery.

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.
 - 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 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 | DETERMINING THE SENTENCE OF AN OFFENDER CONVICTED OF MULTIPLE OFFENSES OF THE SAME TYPE

- To calculate the sentence of an offender convicted of multiple offenses of the same extortion crime, the court shall apply the following principles:
 - ① In setting the sentencing range, determine the total amount of profit gained from extortion and select the sentencing range by considering all relevant factors.
 - ② However, after the total summation, when the applicable offense type is one level higher than the most severe single offense, then a reduction of $\frac{1}{3}$ is made to the minimum sentencing range. When the applicable offense type is two or more levels higher than the most severe single offense, a reduction



of $\frac{1}{2}$ is made to the minimum sentencing range by applying the minimum sentencing range of the most severe single offense.

04 | DETERMINING THE SENTENCE OF AN OFFENDER CONVICTED OF MULTIPLE OFFENSES OF THE DIFFERENT TYPE

- To calculate the sentence of an offender convicted of multiple offenses of the different type that is not treated as a single offense under this guideline, the court shall apply the following principles:
 - ① In setting 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) sum of $\frac{1}{3}$ of the maximum sentencing range of the remaining count 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.
- However, in cases in which an offender convicted of multiple offenses of bribery of the same type, first set the sentencing range for multiple conviction of the same offense, and then use the resulted point range to calculate the sentencing range for multiple conviction of different offenses.

PART B — GUIDELINE ON SUSPENDING A SENTENCE

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> • Crime against unspecified multiples of victims or prolonged and repeated commission of the crime • Malicious method of the crime • A criminal history of the same offense (imposing suspension of a sentence or a more severe punishment, or three or more incidences of the fine within five years) exists • Vulnerable victims • No agreement was reached with the victim • Offense resulted in serious harm to the victim 	<ul style="list-style-type: none"> • Extent of extortion offense is slight • Special considerations can be taken into account for engaging or participating in the offense • Voluntary surrender to investigative agencies or whistleblowing of internal corruption • Offender prevented or blocked the commission of the crime by the accomplice • Significant portion of the damage is reversed • Victim opposes offender’s punishment • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Two or more criminal history on the suspension of sentence or for a greater offense • Condemnable motives • Lack of social ties • Drug or alcohol addiction • Absence of remorse • Premeditated crime • Active participation as an accomplice • Deliberate concealment of profits gained from the offense • 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"> • Offense committed for basic living expenses or medical treatment expenses • Strongly established social ties • Expresses sincere remorse • A significant amount of money was deposited, a portion of the damage was reversed, or genuine efforts to reverse the harm • No criminal history of the suspension of sentence or imposing of other sentences more severe • Special considerations can be taken into account for engaging or participating in the offense • Cases of elderly offenders • Cases of physically ill offenders • Cases where the offender failed to



CLASSIFICATION	ADVERSE	AFFIRMATIVE
		<p>consume or retain most of the profit from the crime</p> <ul style="list-style-type: none">• Offender's passive participation as an accomplice• 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, prior criminal history is calculated from the final date of the completion of 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 ply, 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.