

Promulgated on February 4, 2013. Effective on July 1, 2013.

Chapter 23

Crimes of Arson

This guideline applies to adult offenders (nineteen years of age or older) who committed any offense of Setting Fire to a Present Dwelling Structure (Criminal Act, Article 164, paragraph 1), Setting Fire to a Present Dwelling Structure Resulting in Injury or Death (Criminal Act, Article 164, paragraph 2), Setting Fire to a Public Structure or the like (Criminal Act, Article 165), Setting Fire to a Building Structure, etc. Owned by Another (Criminal Act, Article 166, paragraph 1), Setting Fire to Goods in Another's Ownership (Criminal Act, Article 167, paragraph 1), Setting Fire to Building Structures Designated as Cultural Heritage (Cultural Heritage Protection Act, Article 94), Setting Fire to Seed-Collection Forests, etc. (Forest Resources Act, Article 71, paragraph 1), Setting Fire to a Forest, etc. of Another's Ownership (Forest Resources Act, Article 53, paragraph 1), and Setting Fire to a Forest as prescribed in the Aggravated Punishment Act (Aggravated Punishment Act, Article 9, paragraph 2, Forest Resources Act, Article 71, paragraph 1).

► Abbreviations

- Forest Resources Act: Act on Creation and Management of Forest Resources
- Aggravated Punishment Act: Act on Aggravated Punishment, etc. of Specific Crimes

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | GENERAL STANDARD

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Setting Fire to a Present Dwelling Structure	1 yr. 6 mos. - 3 yrs.	2 yrs. - 5 yrs.	4 yrs. - 7 yrs.
2	Setting Fire to a Building Structure, etc. Owned by Another	1 yr. - 2 yrs.	1 yr. 6 mos. - 3 yrs.	2 yrs. 6 mos. - 5 yrs.
3	Setting Fire to Goods in Another's Ownership	6 mos. - 1 yr.	10 mos. - 2 yrs.	1 yr. 6 mos. - 4 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 or motive Actual damage is slight 	<ul style="list-style-type: none"> Prolonged and repeated commission of the crime Resulted in multiples of victims, the extent of harm is serious or inflicting serious harm to the victim Condemnable motives Instigating the subordinate person to commit the offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Those with hearing and speaking 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 type under the Criminal Act



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> Offender's passive participation 	<ul style="list-style-type: none"> Premeditated crime Causing multiples of victims or the risk of inflicting serious harm to the victim is substantial (This excludes Type 3)
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> Efforts to prevent the spread of fire or damages Offender injured severely due to the fire Those with mental incapacity (cases where the offender can be held liable) Expresses sincere remorse No prior criminal history There are genuine efforts to reverse the harm 	<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 or by the crime of violence that does not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)

02¹ SETTING FIRE TO SPECIAL PROPERTIES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Setting Fire to a Cultural Heritage	2 yrs. 6 mos. - 4 yrs.	3 yrs. - 8 yrs.	6 yrs. - 12 yrs.
2	Setting Fire to a Forest	3 yrs. - 6 yrs.	5 yrs. - 9 yrs.	8 yrs. - 13 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 or motive • Actual damage is slight • Offender did not intend to set fire on special properties (Type 1) 	<ul style="list-style-type: none"> • Prolonged and repeated commission of the crime • Resulted in multiples of victims, the extent of harm is severe or inflicted serious harm to the victim • Crime against special property with high social, cultural, or economic value • Condemnable motives • Instigating the subordinate person to commit the offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Those with hearing and speaking 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 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 • Causing multiples of victims or the risk of inflicting serious harm to the victim is substantial
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Efforts to prevent the spread of fire or damages • Offender injured severely due to the fire • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history • There are genuine efforts to reverse the harm 	<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 or by the crime of violence that does not constitute a repeated offense under the Criminal Act (This applies when the criminal history is within ten years after completion of sentence)



03 | SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN INJURY OR DEATH

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Setting Fire to a Present Dwelling Structure Resulting in Injury or Death	2 yrs. 6 mos. - 5 yrs.	4 yrs. - 7 yrs.	6 yrs. - 11 yrs.
2	Setting Fire to a Present Dwelling Structure Resulting in Death (Without Intent to Commit Murder)	4 yr. - 9 yrs.	7 yrs. - 13 yrs.	10 yrs. - 17 yrs.
3	Setting Fire to a Present Dwelling Structure Resulting in Death (With Intent to Commit Murder)	9 yrs. - 13 yrs.	12 yrs. - 16 yrs.	More than 15 years, more than life imprisonment

▷ In case of Type 3, compare the maximum and minimum limit of the recommended sentencing range with the Homicide Crime and apply the sentencing range that is more severe.

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 or motive • Minor bodily injury (Type 1) • Offender’s conduct is not the direct cause of death (Type 2) • Willful negligence of murder (Type 3) 	<ul style="list-style-type: none"> • Prolonged and repeated commission of the crime • Resulted in multiples of victims, the extent of harm is severe or inflicted serious harm to the victim (The latter is applied to Type 1 only) • Usage of cruel methods to commit a crime • Offense committed against vulnerable victims • Condemnable motives • Instigating the subordinate person to commit the offense
Special Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Those with hearing and speaking 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 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 • Causing multiples of victims or the risk of inflicting serious harm to the victim is substantial
General Sentencing Determinant	Actor /Etc.	<ul style="list-style-type: none"> • Efforts to prevent the spread of fire or damages • Offender was injured severely due to the fire • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history • Victim opposes punishment (This includes genuine efforts to reverse the harm) 	<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 or by the crime of violence that does 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 | APPLICABLE SCOPE

(1) TYPE 1 — SETTING FIRE TO A PRESENT DWELLING STRUCTURE, SETTING FIRE TO A PUBLIC STRUCTURE, ETC.

- This means offenses with the following statutory elements of the offense under the applicable law (This applies to all offenses).

ELEMENTS OF OFFENSE	APPLICABLE LAW
An Offense of Setting Fire to (Presently Residing, Presently Existing) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines	Criminal Act, Article 164, paragraph 1
An Offense of Setting Fire to (Official Business, Public Interest) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines	Criminal Act, Article 165

(2) TYPE 2 — SETTING FIRE TO A STRUCTURE, ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW
General Offense of Setting Fire to Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mine An Offense of Setting Fire to (Presently Residing, Presently Existing) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines	Criminal Act, Article 166, paragraph 1

(3) TYPE 3 — SETTING FIRE TO GENERAL GOODS

ELEMENTS OF OFFENSE	APPLICABLE LAW
Offense of Setting Fire to General Goods	Criminal Act, Article 167, paragraph 1

02¹ SETTING FIRE TO SPECIAL PROPERTIES

(1) TYPE 1 — SETTING FIRE TO A CULTURAL HERITAGE

ELEMENTS OF OFFENSE	APPLICABLE LAW
Setting Fire to a Structure that is Designated as or Provisionally Designated as a Cultural Heritage	Cultural Heritage Protection Act, Article 94

(2) TYPE 2 — SETTING FIRE TO A FOREST

ELEMENTS OF OFFENSE	APPLICABLE LAW
Setting Fire to a Seed-Collection Forest, an Seed Production Stand or an Experimental Forest	Forest Resources Act, Article 71, paragraph 1
Setting Fire to a Forest, or Others that is under Another Person's Ownership	Forest Protection Act, Article 53, paragraph 1
Setting Fire to a Forest under the Aggravated Punishment Act	Aggravated Punishment Act, Article 9, paragraph 2, and Forest Resources Act, Article 71, paragraph 1

03¹ SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN INJURY OR DEATH (WITH INTENT TO COMMIT MURDER)

(1) TYPE 1 — SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN INJURY

ELEMENTS OF OFFENSE	APPLICABLE LAW
An Offense of Setting Fire to (Presently Residing, Presently Existing) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines Resulting in Injury	Criminal Act, Article 164, paragraph 2, First Part of the Text



(2) TYPE 2 — SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN DEATH (WITHOUT THE INTENT TO COMMIT HOMICIDE)

ELEMENTS OF OFFENSE	APPLICABLE LAW
An Offense of Setting Fire to (Presently Residing, Presently Existing) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines Resulting in Death	Criminal Act, Article 164, paragraph 2, Latter Part of the Text

(3) TYPE 3 — SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN DEATH (WITH THE INTENT TO COMMIT HOMICIDE)

ELEMENTS OF OFFENSE	APPLICABLE LAW
An Offense of Setting Fire to (Presently Residing, Presently Existing) Structural Building, Train, Electric Car, Automobile, Ship, Aircraft, or Mines Resulting in Death	Criminal Act, Article 164, paragraph 2, Latter Part of the Text

DEFINITION OF SENTENCING FACTORS

▶ GENERAL PRINCIPLES

01 | SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN THE OFFENSE OR ITS MOTIVE

- This applies to cases with one or more of the following factors.
 - 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 participate in the commission of the crime
 - When the offense was provoked by unreasonable treatment or was committed by the victim or other persons related to the victim
 - Other cases with comparable factors

02 | ACTUAL DAMAGE IS SLIGHT

- This indicates cases in which one or more of the following factors apply:
 - The actual extent of harm is very slight due to extinguishing the fire in the beginning stages
 - The economic value of the damaged goods is slight
 - Other cases with comparable factors

03 | SUBSTANTIAL PORTION OF THE DAMAGE REVERSED

- This means more than $\frac{2}{3}$ of the caused damage has been reversed or is certain to be reversed.



04¹ RESULTED IN MULTIPLES OF VICTIMS, THE EXTENT OF HARM IS SERIOUS OR INFLICTING SERIOUS HARM TO THE VICTIM

- This indicates cases in which one or more of the following factors apply:
 - Caused damage to nearby buildings (multiplex houses, apartment complexes, etc.)
 - Caused extensive amount of economic damage to the victim
 - Majority of the victim's property was lost
 - Other cases with comparable factors

05¹ CONDEMNABLE MOTIVES

- This means cases with one or more of the following factors:
 - Offense committed out of retaliation, grievance or hatred
 - Offense committed to conceal another offense
 - Offense committed to gain economic benefits such as earning insurance compensation
 - Offense committed as a way of using force while ignoring due process prescribed under the law, including cases of setting fire to houses or business of the occupants who oppose urban renewal projects
 - Offense committed to divergent religious facilities due to religious beliefs
 - Other cases with comparable factors

06¹ 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.

07 | CAUSING MULTIPLES OF VICTIMS OR RISK OF INFLICTING SERIOUS HARM TO THE VICTIM IS SUBSTANTIAL (THIS EXCLUDES TYPE 3)

- Setting fire to multiplex houses, apartment complexes, shopping centers, gas stations, and causing multiples of victims or the risk of inflicting serious harm to the victim is substantial.

▶ SETTING FIRE TO SPECIAL PROPERTIES

01 | OFFENDER DID NOT INTEND TO SET FIRE ON SPECIAL PROPERTIES (TYPE 1)

- This indicates cases in which the offender set fire on certain buildings without the intent to burn buildings designated under the Cultural Heritage Protection Act, Article 94.

02 | CRIME AGAINST SPECIAL PROPERTY WITH HIGH SOCIAL, CULTURAL, OR ECONOMIC VALUE

- This means cases of setting fire to properties with high social, cultural, economic value and properties that are virtually irreparable after the destruction by fire, and with one or more of the following factors:
 - Setting fire to a structure that is designated or provisionally designated as cultural heritage such as a national treasure
 - Setting fire to a forest or natural monuments in forest gene protection zones of a national park
 - Other cases with comparable factors

▶ SETTING FIRE TO A PRESENT DWELLING STRUCTURE RESULTING IN INJURY OR DEATH

01 | MINOR BODILY INJURY (TYPE 1)

- “Minor bodily injuries” means cases where the inflicted injury requires less than two weeks of medical care, affecting relatively limited bodily parts, which does not disrupt the day-to-day activities of the victim, and does not require medical intervention such as surgical stitches and the like.

02 | OFFENDER’S CONDUCT IS NOT THE DIRECT CAUSE OF DEATH (TYPE 2)

- Other causes attributable to the victim’s death exist in that the offender’s conduct is not the direct cause of the victim’s death.

03 | SERIOUS BODILY INJURY (TYPE 1)

- “Serious bodily injuries” means cases where the recovery from the inflicted injury requires more than 4 to 5 weeks of medical care in general, including cases with after-effects causing impairment, severe disabilities resulting from the offense, injuries inflicted to vulnerable body parts or further anticipated bodily injuries.

04 | CRUEL METHOD OF THE CRIME

- “Cruel method of the crime” means cases where the victim has been harmed by extreme physical or mental pain in terms of the degree and duration of the pain.



05 | VULNERABLE VICTIMS

- “Vulnerable victims” means cases in which 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 family such circumstances.

06 | VICTIM OPPOSES PUNISHMENT (THIS INCLUDES GENUINE EFFORTS TO REVERSE THE HARM)

- This indicates cases in which the offender expresses remorse for committing the crime, and the member of the deceased victim’s family or the victim acknowledges this and objects to punishing the offender.
- This includes cases in which the offender deposited a considerable amount of money to reach an agreement with the family of the deceased or the victim as a genuine effort to reverse the harm.

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.
- In cases in which the maximum of the sentencing range exceeds twenty-five years, the court may impose life imprisonment.



GENERAL APPLICATION PRINCIPLES

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

- ① When only two or more special aggravating factors apply, or the special sentencing determinant outnumber the special mitigating determinants by two or more, then increase the maximum level of the recommended sentencing range up to $\frac{1}{2}$.
- 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 SENTENCE OF A MULTIPLE OFFENDER

- 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.

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- 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"> • Prolonged and repeated commission of the crime • Resulted in multiples of victims, the extent of harm is severe or inflicting serious harm to the victim • Crime against special property with high social, cultural, or economic value • Condemnable motives • Criminal history of the same offense (suspension of sentence or more severe punishment within five years) • Serious bodily injury • Vulnerable victims 	<ul style="list-style-type: none"> • Special considerations can be taken into account for engaging or participating in the offense • Actual damage is slight • Voluntary surrender to the investigative agencies • Victim opposes punishment or the harm is significantly reversed • Minor bodily injury • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Causing multiples of victims or risk of inflicting serious harm to the victim is substantial • 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 • Premeditated crime • Active participation as an accomplice • Deliberate concealment of profits gained from the offense • Absence of efforts to reverse the harm 	<ul style="list-style-type: none"> • Strongly established social ties • Efforts to prevent the spread of fire • Offender is severely injured due to fire (However, 'cases of physically ill offenders' does not apply) • Offense committed accidentally • Expresses sincere remorse • No criminal history of the suspension of sentence or imposing of other sentences more severe • Cases of elderly offenders • Cases of physically ill offenders • 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 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 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.