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# Chapter 26

## Crimes of Commercial Sexual Acts

This guideline applies to offenders (nineteen years of age or older) who committed any offenses falling under the Act on the Punishment of Arrangement of Commercial Sex Acts, Article 18, paragraph 1, subparagraph 1 to 3, Article 19, paragraph 1 to 2, and the Act on Protection of Children and Youth Against Sex Offenses, Article 19, paragraph 1, and Article 14, paragraph 1 to 3, or Article 15, paragraph 1 to 3.

# PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

## 01 | SEXUAL TRAFFIC AGAINST PERSONS 19 YEARS OLD OR OLDER

### 1. COERCING TO ENGAGE IN THE CONDUCT OF SELLING SEX, ETC.

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Coercing to Engage in the Conduct of Selling Sex	4 mos. - 1 yr.	8 mos. - 2 yrs.	1 yrs. 6 mos. - 3 yrs.
2	Coercing to Engage in the Conduct of Selling Sex in Return for Taking Money, etc.	6 mos. - 1 yrs. 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"> <li>Cases where the extent of violence is extremely slight or deceptive means used is slight</li> <li>Cases where special consideration can be taken into account for engaging in the offense</li> </ul>	<ul style="list-style-type: none"> <li>Sadistic, perverse conduct or with an extreme level of sexual humiliation</li> <li>Cases where the offense caused significant physical or mental damage to the victim</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
	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> <li>Victim opposes punishment</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the same type under the Criminal Act (including sexual crimes)</li> </ul>



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Passive participation</li> <li>• Cases where the offense ended only with a demand or a promise or the actual gain is exceptionally insignificant (in case of receiving rewards of Type 2 offenses)</li> </ul>	<ul style="list-style-type: none"> <li>• Condemnable motives</li> <li>• Cases where the amount of money or valuables received is considerable (in cases of receiving rewards of Type 2 offenses)</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• Express sincere remorse</li> <li>• No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>• Abuse of relationship of trust</li> <li>• Repeated offenses of the different type under the Criminal Act, 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 includes sex crime, and applies when the criminal history is within ten years after completion of sentence)</li> </ul>

## 2. ARRANGING SEXUAL TRAFFIC, ETC.

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Arranging Sexual Traffic, etc.	- 6 mos.	4 mos. - 10 mos.	8 mos. - 1 yrs. 6 mos.
2	Arranging Sexual Traffic as a Profession or for Receiving Rewards	- 8 mos.	6 mos. - 1 yrs. 4 mos.	1 yr. - 3 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Cases where special consideration can be taken into account for engaging in the offense</li> <li>• Passive yielding to active demand</li> </ul>	<ul style="list-style-type: none"> <li>• Sadistic, perverse conduct or with an extreme level of sexual humiliation</li> <li>• Prolonged and organized commission of the crime</li> <li>• Cases where the physical or mental disability of the person selling was abused</li> <li>• Arranging sex traffic by advertising or using media with viral spreadability</li> <li>• Instigating the subordinate person to commit the offense</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• Those with hearing and speaking 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 (including sexual crime)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Passive participation</li> <li>• Cases where the offender engaged in sex traffic for a short period or actual gain is exceptionally insignificant (Type 2)</li> </ul>	<ul style="list-style-type: none"> <li>• Condemnable motives</li> <li>• Cases where the amount of profits is considerable (Type 2)</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• Express sincere remorse</li> <li>• No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>• Abuse of relationship of trust</li> <li>• Attempt to conceal the offense (Type 2)</li> <li>• Repeated offenses of the different type under the Criminal Act, 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 (including sex crimes and applies when the criminal history is within ten years after completion of sentence)</li> </ul>



## 02<sup>1</sup> SEXUAL TRAFFIC AGAINST PERSONS UNDER 19 YEARS OF AGE

### 1. ACT OF SOLICITING SEX OF CHILDREN OR JUVENILES

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Act of Soliciting Sex of Children or Juveniles	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"> <li>Special considerations can be taken into account for engaging in the offense</li> </ul>	<ul style="list-style-type: none"> <li>Sadistic, perverse conduct, or extreme level of sexual humiliation</li> <li>Cases where the offense caused significant physical or psychological harm against children or juveniles</li> <li>Offender abused children or juveniles physical or mentally</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Those with hearing and speaking impairments</li> <li>Those with mental incapacity (cases where the offender cannot be held liable)</li> <li>Voluntary surrender to investigative agencies or cases of whistleblowing</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the same type of crime under the Criminal Act (This includes sex crime, and applies when the criminal history is within three years after completion of a suspension of the sentence)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Passive participation</li> <li>Actively enticing to engage in sexual traffic</li> </ul>	<ul style="list-style-type: none"> <li>Obtaining rewards by fraud</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Express sincere remorse</li> <li>No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>Abuse relationships of trust</li> <li>Criminal history of the same type of offense or repeated offense of different type (This applies when the criminal history is over three years, but within ten years after imposing a suspension of the sentence or a sentence more severe. In this case, sexual crimes are included.)</li> </ul>

## 2. COERCING TO BECOME THE COUNTERPART IN BUYING SEX OF CHILDREN OR JUVENILE

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Coercing to Become the Counterpart in Buying Sex of Children or Juvenile	2 yrs. 6 mos. - 5 yrs.	3 yrs. 6 mos. - 7 yrs.	5 yrs. - 8 yrs.
2	Coercing to Become the Counterpart in Buying Sex in Return for Receiving Rewards	3 yrs. 6 mos. - 6 yrs.	4 yrs. 6 mos. - 8 yrs.	6 yrs. - 10 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Special considerations can be taken into account for engaging in the offense</li> </ul>	<ul style="list-style-type: none"> <li>Sadistic, perverse conduct or extreme level of sexual humiliation</li> <li>Cases where the offense caused significant physical or psychological harm to subject children or youth</li> <li>Offender abused physical or mental disability of subject children or youth</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Those with hearing and speaking impairments</li> <li>Those with mental incapacity (cases where the offender cannot be held liable)</li> <li>Voluntary surrender to investigative agencies or cases of whistleblowing</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the same type under the Criminal Act (including sex crime)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Passive participation</li> <li>Cases where the offense ended only with demand or a promise or the actual gain is exceptionally insignificant (in case of receiving rewards of Type 2 offenses)</li> </ul>	<ul style="list-style-type: none"> <li>Condemnable motives</li> <li>Cases where the amount of money or valuables received considerable (in cases of receiving rewards of Type 2 offenses)</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Express sincere remorse</li> <li>No prior criminal history</li> <li>Victim oppose punishment</li> </ul>	<ul style="list-style-type: none"> <li>Abuse of relationship of trust</li> <li>Repeated offenses of the different type under the Criminal Act,</li> </ul>

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
			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 includes sex crimes and applies when the criminal history is within ten years after completion of sentence)

### 3. ARRANGEMENT OF SEXUAL TRAFFIC TO CHILDREN OR JUVENILES

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Enticing or Coercing to Become the Counterpart in the Act of Buying Sex/ Soliciting for, Enticing or Coercing to Engage in the Act of Buying Sex as a Profession/ Providing Places for or Arranging Act of Buying Sex, or Providing Information on Arranging Sexual Traffic on Information Network System	- 10 mos.	8 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs.
2	Soliciting for or Enticing to Engage in Buying Sex as a Profession	2 yrs. 6 mos. - 5 yrs.	3 yrs. 6 mos. - 7 yrs.	5 yrs. - 8 yrs.
3	Providing a Place for or Arranging Act of Buying Sex, or Providing Information on the Arrangement of the Purchase through Information and Communication Network	3 yrs. 6 mos. - 6 yrs.	4 yrs. 6 mos. - 8 yrs.	6 yrs. - 10 yrs.

- ▷ Soliciting for, enticing, or coercing children or juveniles to engage in buying sex falls within Type 1. However, the maximum or the minimum sentencing range should be decreased up to  $\frac{2}{3}$ .

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Special considerations can be taken into account for engaging in the offense</li> </ul>	<ul style="list-style-type: none"> <li>Sadistic, perverse conduct or extreme level of sexual humiliation</li> <li>Prolonged and organized commission of the crime</li> <li>Offender abused physical or mental disability of subject children or youth</li> <li>Arranging sex traffic through advertising or other media with rapid propagation ability</li> <li>Instigating the subordinate person to commit the offense</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Those with hearing and speaking impairments</li> <li>Those with mental incapacity (cases where the offender cannot be held liable)</li> <li>Voluntary surrender to investigative agencies or cases of whistleblowing</li> </ul>	<ul style="list-style-type: none"> <li>Repeated offenses of the same type under the Criminal Act (This includes sex crimes)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>Passive participation</li> <li>Operate the business for a short period or actual gain is exceptionally insignificant (in case of engaging in sexual traffic as a profession or business)</li> </ul>	<ul style="list-style-type: none"> <li>Condemnable motives</li> <li>Cases where the amount of profits is considerable (in case of engaging in sexual traffic as a profession or business)</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>Express sincere remorse</li> <li>No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>Abuse of relationship of trust</li> <li>Attempt to conceal the offense (in case of engaging in sexual traffic as a profession or business)</li> <li>Repeated offenses of the different type under the Criminal Act, 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 includes sex crimes and applies when the criminal history is within ten years after completion of sentence)</li> </ul>





## DEFINITION OF OFFENSES

### 01 | OFFENSE OF SEXUAL TRAFFIC AGAINST THOSE AGED 19 OR OLDER

#### 1. COERCING TO SELL SEX

##### (1) TYPE 1

- Type 1 means offenses with the following statutory elements of the offense under the applicable laws (This applies to all offenses)

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Having another person engage in the conduct of selling sex by force or by threatening	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 18, paragraph 1, subparagraph 1
Having a person who sells sex to engage in such acts by putting the person in harm by a deceptive scheme or by other means	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 18, paragraph 1, subparagraph 2
Having another person to engage in selling sex by taking advantage of their status to protect and guard the victim	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 18, paragraph 1, subparagraph 3

##### (2) TYPE 2

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
An offender who committed an offense referred to in Article 18, paragraph 1 (including those who have attempted to commit an offense) and has received, demanded or promised a reward wholly or partially thereof	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 18, paragraph 2, subparagraph 1
A juvenile, a person having no or weak ability to make discernment or decisions, or a person with serious disabilities engage in the conduct of selling sex by a deceptive scheme or by force	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 18, paragraph 2, subparagraph 2

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Committing an offense referred to in paragraph 1 as a member of an organization or a gang referred to in Article 18 of the Punishment of Violence Act	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 18, paragraph 2, subparagraph 3

## 2. ARRANGEMENT OF SEXUAL TRAFFIC

### (1) TYPE 1

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Engage in the conduct of arranging sexual traffic, and others	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 19, paragraph 1, subparagraph 1
Recruit persons to engage in the conduct of selling sex	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 19, paragraph 1, subparagraph 2
Acted as a broker or arranged a job for another person to have such person engage in the conduct of selling sex	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 19, paragraph 1, subparagraph 3

### (2) TYPE 2

ELEMENTS OF CRIME	APPLICABLE LAW
Engage in the conduct of arranging sexual traffic, etc. as a profession	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 19, paragraph 2, subparagraph 1
Receive a reward in return for recruiting persons to sell sex	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 19, paragraph 2, subparagraph 2
Receive a reward in return for brokering or arranging jobs for other persons to sell sex	Act on the Punishment of Arrangement of Commercial Sex Acts, Article 19, paragraph 2, subparagraph 3



## 02<sup>1</sup> SEXUAL TRAFFIC AGAINST THOSE UNDER 19

### 1. BUYING SEX OF CHILD OR YOUTH

ELEMENTS OF CRIME	APPLICABLE LAW
Buying sex of child or youth	Act on the Protection of Children and Youth Against Sex Offense, Article 13, paragraph 1

### 2. COERCE A CHILD OR YOUTH TO BECOME THE COUNTERPART IN BUYING SEX

#### (1) TYPE 1

ELEMENTS OF CRIME	APPLICABLE LAW
Compel a child or youth to become the counterpart in buying sex of a child or youth by threat or assault	Act on the Protection of Children and Youth Against Sex Offense, Article 14, paragraph 1, subparagraph 1
Compel a child or youth to become the counterpart in buying sex of a child or youth by placing them into a troubling situation by means of advanced payment or other debt, or by a deceptive scheme or force	Act on the Protection of Children and Youth Against Sex Offense, Article 14, paragraph 1, subparagraph 2
Compel a child or youth to become the counterpart in buying sex of a child or youth by taking advantage of the child's or youth's status under the offender's protection or supervision	Act on the Protection of Children and Youth Against Sex Offense, Article 14, paragraph 1, subparagraph 3

#### (2) TYPE 2

ELEMENTS OF CRIME	APPLICABLE LAW
Commit an offense prescribed in paragraph 1, subparagraph 1 through 3 receives all or part of the consideration therefore, or demands or promises such consideration, the offender shall be punished by imprisonment with labor for a limited term of at least seven years	Act on the Protection of Children and Youth Against Sex Offense, Article 14, paragraph 2

### 3. ARRANGEMENT OF SEXUAL TRAFFIC TO CHILD OR YOUTH

#### (1) TYPE 1

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Enticing or soliciting a child or youth to become the counterpart in buying sex of a child or youth	Act on the Protection of Children and Youth Against Sex Offense, Article 14, paragraph 3
Providing a place for buying sex of a child or youth as a profession	Act on the Protection of Children and Youth Against Sex Offense, Article 15, paragraph 2, subparagraph 1
Providing a place for buying sex of a child or youth as a profession or promise it for business purpose	Act on the Protection of Children and Youth Against Sex Offense, Article 15, paragraph 2, subparagraph 2, 4
Arranging to buy sex of a child or youth or provide information on the arrangement of the purchase through an information and communications network or promise it for business purpose	Act on the Protection of Children and Youth Against Sex Offense, Article 15, paragraph 2, subparagraph 3, subparagraph 4
Enticing, soliciting, or coercing any third person to buy sex of a child or youth	Act on the Protection of Children and Youth Against Sex Offense, Article 15, paragraph 3

#### (2) TYPE 2

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Enticing, soliciting, or coercing any third person to buy sex of a child or youth for business purpose	Act on the Protection of Children and Youth Against Sex Offense, Article 14, paragraph 1, subparagraph 4

#### (3) TYPE 3

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Providing a place for buying sex of a child or youth as a profession	Act on the Protection of Children and Youth Against Sex Offense, Article 15, paragraph 1, subparagraph 1
Arranging to buy sex of a child or youth or provide information on the arrangement thereof through an information and communications network as a profession	Act on the Protection of Children and Youth Against Sex Offense, Article 15, paragraph 1, subparagraph 2



ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Providing capital, land, or a building knowing that it will be used for crimes referred to in subparagraph 1 or 2	Act on the Protection of Children and Youth Against Sex Offense, Article 15, paragraph 1, subparagraph 3
Helping a business or providing a place to buy sex of a child or youth, or arranging to hire a child or youth as a business	Act on the Protection of Children and Youth Against Sex Offense, Article 15, paragraph 1, subparagraph 4

## DEFINITION OF SENTENCING FACTORS

### 01 | SPECIAL CONSIDERATION CAN BE TAKEN INTO ACCOUNT FOR ENGAGING IN THE OFFENSE

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- “Special considerations can be taken into account for engaging in the offense” 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)
  - 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

### 02 | OFFENDER EXPRESSES REMORSE, AND THE VICTIM OPPOSES PUNISHMENT

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- This indicates cases in which the offender expresses sincere remorse with genuine efforts to reach an agreement with the victim; The offender pays proper compensation for the damage caused in which the victim acknowledges this and expresses objection to punishing the offender with a clear understanding of the legal and social implications of such objections.
- However, this should not apply in the following cases:
  - In cases in which the offender actually forced or deceived the victim into expressing objection for punishment since the victim is not stating the intent freely
  - In cases in which the victim is a minor, disabled, or a blood relative of the offender, and no generally accepted grounds can be found in the victim or the legal representative’s objections for punishment
- This indicates cases in which the victim is a minor, disabled, or a blood relative of the offender and the like. In such cases, the objections for punishment can only be possible after thorough and careful examination of the victim or the legal representative’s ability to fully understand the meaning, implications and



effect of such objections according to the victim's age, mental capacity, and intelligence, and whether the objection genuinely represents the victim's intention.

### 03 | SADISTIC AND PERVERSE CONDUCTS

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- This indicates cases in which one or more of the following factors apply and the resulting harm or bodily injury is considerably severe:
  - Conducts that cause prolonged immobility to the victim by use of means such as tying
  - Conducts that inflicts bodily harm to the victim's body by use of instruments such as cigarette butt, needle, club, and the like
  - Conducts that inserts substances into the sexual organs of the victim
  - In case of forcing sexual intercourse with the multiple persons
  - Other conducts with other comparable factors

### 04 | OFFENSE CAUSED SIGNIFICANT PHYSICAL OR PSYCHOLOGICAL HARM TO VICTIM OR SUBJECT CHILDREN OR JUVENILE

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- This indicates cases in which conducts that caused severe harm to the victim or subject child or youth, such as pregnancy, sexually transmitted disease, mental disability, or other comparable harms.

### 05 | CONDEMNABLE MOTIVES

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- This means with one or more of the following factors:
  - Offenses committed for the purpose of preventing victim's report of another crime that the offender committed
  - Offenses committed out of retaliation, grievance, or hatred
  - Other cases with comparable factors

## 06 | ARRANGEMENT OF SEXUAL TRAFFIC BY ADVERTISEMENT OR OTHER MEDIA WITH RAPID PROPAGATION ABILITY

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- This means to use media with the ability to rapidly disseminate to unspecified or large numbers, such as the internet (including SNS or Social Network Services).

## 07 | ATTEMPT TO CONCEAL THE OFFENSE

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- This means that the offender actively attempted to conceal the offense by presenting another fake tenant or owner by name only.





## 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

- When determining the sentence, the court shall consider the special and general sentencing determinants that are within the sentencing range assessed according to 1 above comprehensively.

## GENERAL APPLICATION PRINCIPLES

### 01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

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- 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 RANGE BY LAW

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- 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

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- 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 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"> <li>• Sadistic, perverse conduct or with an extreme level of sexual humiliation</li> <li>• An offense committed for a prolonged period or in an organized manner</li> <li>• Repeated crimes (in case of buying sex of a child or youth)</li> <li>• Cases where the offense caused significant physical or psychological harm to subject children or youth</li> <li>• Cases where the offense caused substantial physical or psychological harm to subject children or juvenile</li> <li>• Arranging sex traffic by advertising or other media with rapid propagation ability</li> <li>• Repeated offenses of the same type under the Criminal Act (This includes sex crimes, this applies when the criminal history is within ten years after imposing a suspension of the sentence or sentence more severe)</li> </ul>	<ul style="list-style-type: none"> <li>• Cases where the offender passively responded to active demand and resulted in committing arrangement of sexual traffic</li> <li>• Cases where the extent of violence are extremely slight or deceptive means used is slight (excluding offenses committed against those under 19 years of age)</li> <li>• The offender attempted to thwart the accomplice’s commission of the crime</li> <li>• Victim opposes punishment (This applies to the offense of coercing those aged 19 years or older into selling sex)</li> <li>• No prior criminal history</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• Two or more criminal records on the suspension of the sentence or greater offense</li> <li>• Lack of social ties</li> <li>• Drug or alcohol addiction</li> <li>• Absence of remorse</li> <li>• Active participation as an accomplice</li> <li>• Destroying evidence or attempting to conceal evidence after the commission of the offense</li> </ul>	<ul style="list-style-type: none"> <li>• An offense was caused by active enticement</li> <li>• No criminal history of the suspension of the sentence or imposing of other sentences more severe</li> <li>• Strong social ties</li> <li>• Voluntary surrender to investigative agencies</li> <li>• Express sincere remorse</li> <li>• Passive participation</li> <li>• Cases of elderly offenders</li> <li>• Victim opposes punishment (This applies to the offense of coercing children or youth to become the counterpart in buying sex, etc.)</li> </ul>

## 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, the prior criminal history is calculated from the final date the sentence was completed until the date the offense was committed.
- Repeated Crimes
  - This indicates cases in which the court determines that the offender has committed similar offenses repeatedly by considering the substance of the offense, the criminal history, multiple convictions, and the like comprehensively.
  - However, this does not apply to cases in which multiple conducts of sexual intercourse constitute a single offense.



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

- In deciding whether it is appropriate to suspend a sentence 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 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.