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Chapter 28

Crimes of Dealing with Stolen Property

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Acquiring, Taking Over, Transporting, Taking Custody of, or Aiding Stolen Property (Criminal Act, Article 362), Habitual Crimes (Criminal Act, Article 363), Repeated Offense of Stolen Property (Act on the Aggravated Punishment, etc. of Specific Crimes, Article 5-4, paragraph 5), or Dealing with Stolen Cultural Heritage (Cultural Heritage Protection Act, Article 92, paragraph 3, subparagraph 2 and 3).

PART A – TYPES OF OFFENSES AND SENTENCING PERIODS

01 | GENERAL STOLEN PROPERTY

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	General Stolen Property	4 mos. - 10 mos.	6 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs.
2	Special Stolen Property	1 yr. - 2 yrs.	1 yr. 6 mos. - 3 yrs.	2 yrs. - 4 yrs.

- ▷ If multiple numbers of offenses of stolen property constituting habitual crimes fall within other types of crimes, apply the sentencing range of the most severe offense of stolen property.
- ▷ However, the sentencing range for stolen property, which is calculated by assessing special sentencing factors of stolen property, is lower than that of the other stolen property crimes constituting habitual crimes, then the sentencing range for other stolen property crimes should apply.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Special consideration can be taken into account for engaging in the offense • Cases where offenses were committed with willful negligence of stolen property • Cases where the offender has a lineal blood relationship with the person who committed the crime (including the lineal blood relatives stipulated in the Criminal Act, Article 328, paragraph 1) or inevitably committed the crime due to the relationship • Cases where the offender did not intend to commit crime involving special stolen property 	<ul style="list-style-type: none"> • Offense committed with an organizational scheme • Actively provoking the person who committed the crime • Serious personal or social damages caused • Cases where the offense is involved with stolen cultural heritage (Type 2) • Stolen property of significant industrial technology or materials concerning trade secrets (Type 2) • Instigating the subordinate person to commit the offense



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		(Type 2)	
	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 or cases of whistleblowing • Cases where the victim is a lineal blood relative of the offender under Article 328-1 of the Criminal Act • The victim opposes punishment, or considerable damages were recovered 	<ul style="list-style-type: none"> • Repeated offenses of the same type under the Criminal Act that do not constitute a repeated offense under the aggravated punishment offenses under the Aggravated Punishment Act • Habitual offenders
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Offense committed for basic living expenses, hospital expenses and the like • Cases where the offender failed to consume or retain mosts of the profit from the crime • Passive participation 	<ul style="list-style-type: none"> • Deliberate concealment of profits gained from the offense
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender can be held liable) • Express sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Destroying evidence of attempting to conceal evidence after the commission of the offense • Repeated offenses of different type under the Criminal Act that do not constitute a repeated offense under the aggravated punishment act, criminal history by the same type of offenses 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 HABITUAL CRIMES RELATING TO STOLEN PROPERTY

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Habitual Crimes Relating to Stolen Property	1 yrs. - 2 yrs.	1 yr. 6 mos. - 3 yrs.	2 yrs. - 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 offenses • Cases where the offender has a lineal blood relationship with the person who committed the crime (including the lineal blood relatives stipulated in the Criminal Act, Article 328, paragraph 1) or inevitably committed the crime due to the relationship 	<ul style="list-style-type: none"> • Actively provoking the person who committed the crime or cases where the offense was repeatedly committed by a criminal organization • Cases where the offense committed against the special property (This does not apply to cases where the offense did not intend to deal with stolen special property from the beginning) • Instigating the subordinate person to commit the offense
	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 or cases of whistleblowing • Cases where the victim is a lineal blood relative of the offender under Article 328, paragraph 1 of the Criminal Act • The victim opposes punishment, or considerable damages were recovered 	



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none">• Cases where the offense was committed for the purpose of covering living costs or paying for medical costs• Cases where the offender did not spend most of the proceeds from the crime or retain them• Passive participation	<ul style="list-style-type: none">• Cases where the offender intentionally conceal the proceeds from the crime
	Actor/ Etc.	<ul style="list-style-type: none">• Those with mental incapacity (cases where the offender can be held liable)• Expresses sincere remorse	<ul style="list-style-type: none">• Destroying evidence or attempting to conceal evidence after the commission of the offense

DEFINITION OF OFFENSES

01 | GENERAL STOLEN PROPERTY

1. TYPE 1 — STOLEN GENERAL PROPERTY

- This applies to cases where the crime of stolen property does not fall within Type 2.

2. TYPE 2 — STOLEN SPECIAL PROPERTY

- This means cases of stolen property with high social, cultural, or economic values and one or more of the following factor applies:
 - Stolen property crimes as prescribed in the Cultural Heritage Protection Act, Article 92, paragraph 3, subparagraph 2 and 3
 - Cases where the value of the property has surged in a short period or is in scarcity
 - Stolen property of significant industrial technology or materials concerning trade secrets

02 | REPEATED CRIME OF DEALING WITH STOLEN PROPERTY

- This applies to crimes prescribed in the Specific Economic Crime Act, Article 5-4, paragraph 5.



DEFINITION OF SENTENCING FACTORS

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

- “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 | THE OFFENDER HAS A LINEAL BLOOD RELATIONSHIP WITH THE PERSON WHO COMMITTED THE CRIME (INCLUDING THE LINEAL BLOOD RELATIVES STIPULATED IN THE CRIMINAL ACT, ARTICLE 328, PARAGRAPH 1) AND INEVITABLY COMMITTED THE CRIME DUE TO THE RELATIONSHIP

- This indicates cases in which the offender has a lineal blood relationship or other special relationship with the person who committed the crime as stipulated in the Criminal Act, Article 328, paragraph 1 (a lineal blood relationship other than stipulated in the Criminal Act, Article 328, paragraph 1 or a *de facto* marriage, etc.) and the offender inevitably committed the crime of stolen property as the offender hardly refused the person’s request due to the personal relationship.

03 | CASES WHERE THE OFFENDER INTENTIONALLY COMMITTED A CRIME THAT DEALS WITH STOLEN SPECIAL PROPERTY FROM THE OUTSET OF THE OFFENSE (TYPE 2)

- This indicates cases in which the offender was not aware that the stolen property is classified into special property from the outset of the crime, and later realized that it was a special property during the commission of the crime.

04 | THE OFFENDER HAS A LINEAL BLOOD RELATIONSHIP WITH THE PERSON COMMITTING THE CRIME AS STIPULATED IN THE CRIMINAL ACT, ARTICLE 328, PARAGRAPH 1

- This indicates cases in which the offender and the person who committed the crime has a lineal blood relationship as stipulated in the Criminal Act, Article 328, paragraph 1 (lineal blood relatives, the spouse, relatives living together, family members living together or their spouse), therefor punishment shall be remitted in accordance with the Criminal Act, Article 365, paragraph 2. However, when the offender not only has a lineal blood relationship with the person but also inevitably committed the crime due to the lineal blood relationship (including relatives prescribed in the Criminal Act, Article 327, paragraph 1), the special mitigating factors apply to cases where the offender has a special personal relationship with the person who committed the crime and not the sentencing factors (including relatives prescribed in the Criminal Act, Article 328, paragraph 1).

05 | OFFENSES COMMITTED WITH AN ORGANIZED SCHEME

- This indicates cases in which multiple offenders engage in the commission of the offense to deal with stolen property in an organized scheme involving agreeing to the crime in advance, allocating tasks, and executing the commission accordingly.



06 | ACTIVE PROVOCATION OF THE PERSON WHO COMMITTED THE CRIME

- This indicates cases in which the person who commits the crime is actively induced to engage in the commission of the offense by notifying the possibility of success in selling stolen property in advance, through advertising on the internet, distribution of business cards, or suggestion of payment. However, this sentencing factor does not apply to cases where the crime of instigating the person to commit the offense is established, and when the sentencing guidelines on the multiple offenses apply.

07 | SERIOUS PERSONAL OR SOCIAL HARM

- “Serious personal damages” means cases with one or more of the following factors:
 - Cases where the offender has harmed the victim significantly (taken into account the victim’s subjective value of the stolen item and derivative damage overall) by stealing expensive antiques, precious jewelry, large amounts of stocks or cash, or other similar goods
 - Other cases with comparable factors
- “Serious social damage” means cases with one or more of the following factors:
 - Cases that do not fall within the crime of stolen special property but the offense caused significant social damage
 - Other cases with comparable factors

08 | CASES WHERE THE STOLEN PROPERTY IS STATE-DESIGNATED CULTURAL HERITAGE (TYPE 2)

- This indicates cases in which stolen property is state-designated cultural heritage under the Cultural Heritage Protection Act, Article 92, paragraph 1.

09 | CASES WHERE STOLEN PROPERTY IS A SIGNIFICANT INDUSTRIAL TECHNOLOGY OR MATERIALS CONCERNING TRADE SECRETS

- This means the stolen property is a significant technology crucial enough to change the course of a company's future, or the dynamics of the relevant industry.

10 | 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.

11 | DELIBERATE CONCEALMENT OF PROFITS GAINED FROM THE OFFENSE

- Deliberate concealing of profits gained from the offense to avoid claim for damages or execution of monetary penalty.



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

- 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

- 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 these sentencing guidelines.

02 | DETERMINING THE BASE OFFENSE

- The “base offense” indicates the most severe offense that result after the selection of penalty and 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 provided in this guideline, then 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"> • Actively provoking the person who committed the crime or the offense committed with an organizational scheme • Repeated commission of a crime • Repeated offenses of the same type under the Criminal Act (This applies when the criminal history is within five years after suspending of the sentence or three or more criminal history on fine) • Serious personal or social damages caused • Absence of efforts to reverse damages 	<ul style="list-style-type: none"> • Special consideration can be taken into account for engaging in the offense • The offender attempted to thwart the accomplice’s commission of the crime • Cases where the offender has lineal blood relationship with the person who committed the crime including the lineal blood relatives stipulated in the Criminal Act, Article 328, paragraph 1 and inevitably committed the crime due to the relationship • Voluntary surrender to investigative agencies or internal whistleblowing • No prior criminal history • Victim opposes punishment or a substantial portion of harm was reversed
General Consideration Factor	<ul style="list-style-type: none"> • 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 • A criminal history of the same offense or two or more criminal records on the suspension of the sentence or greater offense • Lack of social ties • Absence of sincere remorse 	<ul style="list-style-type: none"> • Offense committed for basic living expenses, hospital expenses and the like • Cases where the offender failed to consume or retain most of the profit from the crime • A significant amount of money was deposited and a portion of the damage was reversed • No criminal history of the suspension of the sentence or imposing of other sentences more severe • Strongly-established social ties • Expresses sincere remorse • Cases of elderly offenders • 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 dependant 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, 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, and multiple convictions, comprehensively



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 only two or more primary affirmative factors exist or when the primary affirmative factors outnumber the major adverse factor by two or more, suspension of the sentence 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.