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# Chapter 29

## Obstructing Another from Exercising One's Right

This guideline applies to adult offenders (nineteen years of age or older) who has committed any of the following offenses: Coercion (Criminal Act, Article 324, paragraph 1), Joint Coercion (Punishment of Violence Act, Article 2, paragraph 2), Coercive Conduct against Victims (Act on the Protection of Children and Youth Against Sex Offense, Article 16, Act on Special Cases Concerning the Punishment of Child Abuse Crimes, Article 60), Aggravated Obstruction (Criminal Act, Article 326), Special Coercion (Criminal Act, Article 324, paragraph 2), Repeated Commission of Coercion (Punishment of Violence Act, Article 2, paragraph 3), Repeated Commission of Special Coercion (Punishment of Violence Act, Article 3, paragraph 4), Obstructing Another from Exercising One's Right (Criminal Act 323), Forcible Taking (Criminal Act, Article 325, paragraph 1), *Quasi-Forcible Taking* (Criminal Act, Article 325, paragraph 2), Aggravated Obstruction (Criminal Act, Article 326), and Evasion of Execution (Criminal Act, Article 327).

## PART A – TYPES OF OFFENSES AND SENTENCING PERIODS

### 01 | COERCION

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	General Coercion	- 8 mos.	6 mos. - 1 yr.	10 mos. - 2 yrs.
2	Aggravated Special Coercion	4 mos. - 1 yr. 2 mos.	8 mos. - 2 yrs.	1 yr. 4 mos. - 3 yrs.
3	Repeated Commission of Coercion	6 mos. - 1 yr. 6 mos.	10 mos. - 3 yrs.	1 yr. 6 mos. - 4 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Cases where offense was committed with willful negligence</li> <li>• Cases where the extent of coercion is exceptionally insignificant</li> <li>• Considerations can be taken into account for engaging in the offense</li> <li>• Considerations can be taken into motives</li> </ul>	<ul style="list-style-type: none"> <li>• Active role in orchestrating the commission of the crime (excluding Type 3 or Type 2 offenses, whichever aggravated coercion applies)</li> <li>• Cases where offenders committed the crimes through the threat of collective force or by carrying a dangerous weapon</li> <li>• Cases where the crime was committed with no specific reason toward an indiscriminate (random) number of people</li> <li>• Condemnable motives</li> <li>• Cases where the extent of coercion is serious</li> <li>• Vulnerable 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 speaking impairments</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses of the same type under the Criminal Act (This excludes Type 3 offenses)</li> </ul>



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		<ul style="list-style-type: none"> <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> <li>• The victim opposes (This includes genuine efforts to reverse the harm)</li> </ul>	<ul style="list-style-type: none"> <li>• Cases where the offender, having a duty to report child abuse, committed a crime of child abuse as defined in Article 7 of the Act on Special Cases concerning the Punishment of Child Abuse Crimes</li> <li>• Habitual offenders (This only applies to habitual offenders subject to aggravated punishment under Article 6 of the Act on Special Cases concerning the Punishment, etc. of Child Abuse Crimes)</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Passive participation</li> </ul>	<ul style="list-style-type: none"> <li>• Two or more co-offenders</li> <li>• Premeditated crime</li> </ul>
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• Those with mental incapacity (cases where the offender can be held liable)</li> <li>• Expresses sincere remorse</li> <li>• No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>• The repeated offense of different types under the Criminal Act that do not constitute repeated offenses, the criminal history by the same type of offenses or by crime or 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)</li> </ul>

## 02<sup>1</sup> OBSTRUCTING ANOTHER FROM EXERCISING RIGHTS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Obstruction of Exercising Rights	- 8 mos.	6 mos. - 1 yr.	10 mos. - 2 yrs. 6 mos.
2	Forcible Taking/ Aggravated Forcible Taking	4 mos. - 1 yr.	8 mos. - 1 yr. 6 mos.	1 yr. - 3 yrs.
3	Aggravated Obstruction of Exercising Rights	4 mos. - 1 yr. 2 mos.	8 mos. - 2 yrs.	1 yr. 4 mos. - 3 yrs.
4	Evasion of Execution	- 8 mos.	6 mos. - 1 yr.	8 mos. - 2 yrs.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Cases where offenses committed with willful negligence</li> <li>• Special considerations can be taken into account for engaging in the offense</li> <li>• Actual loss is insignificant</li> </ul>	<ul style="list-style-type: none"> <li>• Particularly malicious commission of the offense</li> <li>• Offenses caused significant damage to the victim</li> <li>• Instigating the subordinate person to commit the crime</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> <li>• The victim opposes (This includes genuine efforts to reverse the harm)</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses of the same type under the Criminal Act</li> </ul>
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Passive participation</li> <li>• Cases where the extent of violence or threat is exceptionally insignificant (Type 2)</li> </ul>	
	Actor/ Etc.	<ul style="list-style-type: none"> <li>• Those with mental incapacity (cases where the offender can be held liable)</li> <li>• Expresses sincere remorse</li> <li>• No prior criminal history</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses of the different type under the Criminal Act that do not constitute repeated offenses, the criminal history by the same type of offenses or by crime or 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)</li> </ul>



# DEFINITION OF OFFENSES

## 01 | COERCION

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

TYPE	ELEMENTS OF OFFENSE	APPLICABLE LAW
Type 1 General Coercion	Coercion	Criminal Act, Article 324, paragraph 1
	Joint coercion	Punishment of Violence Act, Article 2, paragraph 2, subparagraph 2
	Coercion on victims and others	Act on the Protection of Children and Youth Against Sex Offense, Article 16, and the Act on Special Cases Concerning the Punishment of Child Abuse Crimes, Article 60
Type 2 Aggravated Special Coercion	Aggravated coercion	Criminal Act, Article 326
	Special coercion	Criminal Act, Article 324, paragraph 2
Type 3 Repeated Commission of Coercion	Repeated commission of coercion	Punishment of Violence Act, Article 2, paragraph 3, subparagraph 2
	Repeated commission of special coercion	Punishment of Violence Act, Article 3, paragraph 4, subparagraph 2

※ Habitual offender of child abuse or the offender responsible for reporting child abuse cases (This applies to crimes that fall within each type of coercion)

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Cases where the offender habitually commits child abuse crimes stipulated in subparagraph 4 (b) through (m) of Article 2 of the Act on Special Cases Concerning the Punishment, Etc. of Child Abuse Crimes (This shall only apply to offenders stipulated in subparagraph of (b) or (c) subject to aggravated punishment under other statutes)	Act on Special Cases Concerning the Punishment of Child Abuse Crimes, Article 6

ELEMENTS OF THE OFFENSE	APPLICABLE LAW
Cases where the offender who has a duty to report child abuse under the subparagraph of Article 10 (2) commits a crime of child abuse against a child under his or her protection stipulated in subparagraph 4 (b) through (m) of Article 2 of the Act on Special Cases Concerning the Punishment, Etc. of Child Abuse Crimes (This shall only apply to offenders stipulated in subparagraph of (b) or (c) subject to aggravated punishment under other statutes)	Act on Special Cases Concerning the Punishment of Child Abuse Crimes, Article 7

## 02<sup>1</sup> OBSTRUCTING ANOTHER FROM EXERCISING THEIR RIGHTS

TYPE	ELEMENTS OF OFFENSE	APPLICABLE LAW
Type 1 Obstruction of Exercising Rights	Obstructing another from exercising their rights	Criminal Act, Article 323
Type 2 Forcible Taking/ <i>Quasi</i> -Forcible Taking	Forcible taking	Criminal Act, Article 325, paragraph 1
	<i>Quasi</i> -forcible taking	Criminal Act, Article 325, paragraph 2
Type 3 Aggravated Obstruction of Exercising Rights	Aggravated obstruction of exercising rights	Criminal Act, Article 326
Type 4 Forcible Evasion of Execution	Forcible evasion of execution	Criminal Act, Article 327

## DEFINITION OF SENTENCING FACTORS

### 01 | COERCION

#### 1. THE EXTENT OF COERCION IS SLIGHT

- This means one or more of the following factors apply:
  - The extent of violence or threat is slight
  - The extent of harm is slight (This excludes cases where the offender commits an offense against a very vulnerable victim)
  - Other cases with comparable factors

#### 2. 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 participate in the commission of the crime
  - Other cases with comparable factors

#### 3. CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR MOTIVES

- This indicates cases in which one or more of the following factors apply:
  - The offender committed the offense as a means of exercising the offender’s rights
  - Other cases with comparable factors

#### 4. CASES WHERE SPECIAL COERCION APPLIES.

- This indicates cases in which special coercion (Type 2), prescribed in Article 324 of the Criminal Act, applies.

## 5. CONDEMNABLE MOTIVES

- This means cases with one or more of the following factors:
  - Offense was committed out of retaliation, grievance, or hatred against the victim
  - Cases where the Act on Protection of Children and Youth Against Sex Offense, Article 16, or the Act on Special Cases Concerning the Punishment of Child Abuse Crimes, Article 60 is applicable
  - Offense was committed for the purpose of the offender's sexual pleasure or caused sexual humiliation to the victim
  - Coercing a contract to kill for economic gain
  - Motive derived from the pleasure of committing the crime itself
  - Other cases with comparable factors

## 6. THE EXTENT OF COERCION WAS SERIOUS

- This means one or more of the following factors apply:
  - The extent of violence or threat was exceptionally serious
  - Cases where the offense caused the victim extreme physical or mental pain in terms of reasons for and duration of the time of coercion
  - Other cases with comparable factors

## 7. VULNERABLE VICTIMS

- This indicates 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 such circumstances.


# 02<sup>1</sup> OBSTRUCTING ANOTHER FROM EXERCISING RIGHTS, ETC.

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## 1. ACTUAL DAMAGE IS SLIGHT

- This indicates cases in which one or more of the following factors apply:
  - Cases where actual damage caused by the offense is insignificantly less than the equivalent value of the damaged property, taking into account the existing business relation or the contractual relation between the offender and the victim, or where the actual damage is slight (Type 1, Type 2)



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- Cases where acts of concealing properties or falsely paying off debts, for example, when the possibility of enforcing those properties is low or the collateral value of that property is low, has little effect on the amount of the claim that the creditor can actually be reimbursed (Type 4)
  - Other cases with comparable factors

## **2. PARTICULARLY MALICIOUS COMMISSION OF THE OFFENSE**

- This indicates cases in which one or more following factors apply:
  - Means and methods for the commission of the offense were meticulously done in advance
  - The offender used highly intelligent schemes to commit the offense
  - The offender used judicial proceedings to avoid forcible evasion of execution
  - Other cases with comparable factors

## **3. INFLICTING SERIOUS DAMAGE TO THE VICTIM**

- This indicates cases in which one or more following factors apply:
  - Damage caused by the offense is large and severe, such as a large scale of economic losses or a large number of victims
  - Offense caused the victim to face financial difficulties in livelihood or business as the victim was not reimbursed all or a large portion of debts (Type 1, Type 3)
  - Other cases with comparable factors

## ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

### 01 | DETERMINING THE SENTENCING RANGE

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- 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

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- 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 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

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- 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

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- 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

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- 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

### 01 | COERCION

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>• Cases where the offender committed the offense by showing the power of an organization or multitude or by carrying dangerous articles</li> <li>• Condemnable motives</li> <li>• Cases where the extent of coercion is serious</li> <li>• Vulnerable victim</li> <li>• Commission of the offense prolonged for an extended duration</li> <li>• Cases where the offender is the person who has a duty to report child abuse cases under the Act on Special Cases Concerning the Punishment, etc. of Child Abuse Crimes, Article 7</li> <li>• Repeated offenses of the same type under the Criminal Act (This applies when the criminal history is within five years after suspending the sentence or three or more criminal history on fine)</li> </ul>	<ul style="list-style-type: none"> <li>• Cases where offenses committed with willful negligence</li> <li>• Special consideration can be taken into account for engaging in the offense or motives</li> <li>• Cases where the extent of coercion is exceptionally insignificant</li> <li>• Victim opposes punishment (This includes genuine efforts to recover damages)</li> <li>• The offender attempted to thwart the accomplice's commission of the crime</li> <li>• No prior criminal history</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• Two or more criminal history on the suspension of the sentence or for a greater offense</li> <li>• Lack of social ties</li> <li>• Drug or alcohol addiction</li> <li>• Absence of sincere remorse</li> <li>• Premeditated crime</li> <li>• Cases where the crime was committed with no specific reason toward an indiscriminate (random) number of people</li> <li>• Active participation as an accomplice</li> </ul>	<ul style="list-style-type: none"> <li>• Strongly-established social ties</li> <li>• Accidental crime</li> <li>• Voluntary surrender to investigative agencies or internal whistleblowing</li> <li>• Expresses sincere remorse</li> <li>• A significant amount of money was deposited</li> <li>• No criminal history of the suspension of the sentence or imposing of other sentences more severe</li> </ul>



CLASSIFICATION	ADVERSE	AFFIRMATIVE
	<ul style="list-style-type: none"> <li>• Destroying evidence or attempting to conceal evidence after the commission of the offense</li> <li>• No genuine effort to reverse the harm</li> </ul>	<ul style="list-style-type: none"> <li>• Cases of elderly offenders</li> <li>• Cases of physically ill offenders</li> <li>• Passive participation as an accomplice</li> <li>• Rescuing or transferring the victim to the hospital after committing the offense</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender's dependant family member</li> </ul>


## 02<sup>1</sup> OBSTRUCTING ANOTHER FROM EXERCISING HIS/HER RIGHTS, ETC.

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Consideration Factor	<ul style="list-style-type: none"> <li>• Particularly malicious commission of the offense</li> <li>• Offenses caused significant damage to the victim</li> <li>• Criminal history of the same offense (imposing a suspension of the sentence or more severe punishment within five years; or more than three incidents of fines)</li> </ul>	<ul style="list-style-type: none"> <li>• Cases where offenses committed with willful negligence</li> <li>• Special consideration can be taken into account for engaging in the offense</li> <li>• Actual loss is insignificant</li> <li>• Victim opposes punishment (This includes genuine efforts to recover damages)</li> <li>• No prior criminal history</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• Two or more criminal history on the suspension of the sentence or for a greater offense</li> <li>• Lack of social ties</li> <li>• Drug or alcohol addiction</li> <li>• Absence of sincere remorse</li> <li>• Premeditated crime</li> <li>• Active participation as an accomplice</li> <li>• Destroying evidence or attempting</li> </ul>	<ul style="list-style-type: none"> <li>• Strongly-established social ties</li> <li>• Voluntary surrender to investigative agencies or internal whistleblowing</li> <li>• Expresses sincere remorse</li> <li>• A significant amount of money was deposited</li> <li>• No criminal history of the suspension of the sentence or imposing of other sentences more severe</li> <li>• Cases of elderly offenders</li> <li>• Cases of physically ill offenders</li> </ul>

CLASSIFICATION	ADVERSE	AFFIRMATIVE
	<p>to conceal evidence after the commission of the offense</p> <ul style="list-style-type: none"> <li>• No genuine effort to reverse the harm</li> </ul>	<ul style="list-style-type: none"> <li>• Passive participation as an accomplice</li> <li>• Rescuing or transferring the victim to the hospital after committing the offense</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender's dependant family member</li> </ul>



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## 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.

## 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.