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Chapter 31

Destruction and Damage of Property

This guideline applies to adult offenders (nineteen years or older) who committed any offenses of Destruction and Damage, etc. of Property (Criminal Act, Article 366), Destruction of Structure for Public Use (Criminal Act, Article 367), Aggravated Destruction and Damage (Criminal Act, Article 368, paragraph 1), Causing Another's Bodily Injury by Destruction and Damage of Property, etc., Causing Another's Bodily Injury by Destruction and Damage of Property, etc. or by Destruction of Structure for Public Use, etc (Criminal Act, Article 368, paragraph 2, first part of the text), Causing Another's Death by Destruction and Damage of Property, etc., or by Destruction of Structure for Public Use, etc (Criminal Act, Article 368, paragraph 2, latter part of the text), Special Destruction and Damage, etc. of Property (Criminal Act, Article 369, paragraph 1), Special Destruction of Structure for Public Use, etc. (Criminal Act, Article 369, paragraph 2), Joint Destruction and Damage, etc. of Property (Punishment of Violence, etc. Act, Article 2, paragraph 2), Repeated Commission of Destruction and Damage, etc. of Property (Punishment of Violence, etc. Act, Article 2, paragraph 3), Repeated Commission of Special Destruction and Damage, etc. of Property (Punishment of Violence,

etc. Act, Article 3, paragraph 4), Crime of Infliction of Damage to Cultural Heritage, etc. (Cultural Heritage Protection Act, Article 92, paragraph 1, paragraph 2, paragraph 4, excluding stealing of cultural heritage, hereinafter as so applied), Crime of Special Infliction of Damage to Cultural Heritage, etc. (Cultural Heritage Protection Act, Article 93, paragraph 1), Causing Another's Bodily Injury by Special Infliction of Damage to Cultural Heritage, etc. (Cultural Heritage Protection Act, Article 93, paragraph 2), Causing Another's Death by Special Infliction of Damage to Cultural Heritage, etc. (Cultural Heritage Protection Act, Article 93, paragraph 2), and Destruction of Cultural Heritage Buildings (Cultural Heritage Protection Act, Article 94, excluding arson or inundation of cultural heritage buildings, hereinafter as so applied).

PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

01 | GENERAL STANDARDS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Destruction and Damage of Property	- 6 mos.	4 mos. - 10 mos.	8 mos. - 1 yr. 6 mos.
2	Destruction of Structure for Public Use	4 mos. - 1 yr.	8 mos. - 2 yrs.	1 yr. 6 mos. - 4 yrs.
3	Damage of Designated Cultural Heritage,	1 mos. - 2 yrs. 6 mos.	1 yr. 6 mos. - 3 yrs.	2 yrs. 6 mos. - 4 yrs.
4	Damage of State-Designated Cultural Heritage	1 yr. 6 mos. - 3 yrs.	2 yrs. - 4 yrs.	3 yrs. - 6 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 • Considerations can be taken into account for motives • Cases where offenses were committed with willful negligence of destruction and damage of property • Actual loss is insignificant • Cases where the offender did not intend to destruct or damage (state) designated cultural heritage from the beginning (Type 3, Type 4) 	<ul style="list-style-type: none"> • Active lead role in orchestrating the commission of the offense or committing the crime • Serious personal or social damages caused (Type 1, Type 2) • The offense committed toward an indiscriminate number of people or victims or repeatedly for a prolonged period of time • Condemnable motives • Endangering another's life or limb (Type 1, Type 2) • 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) 	<ul style="list-style-type: none"> • Repeated offenses of the same type under the Criminal Act

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
		<ul style="list-style-type: none"> • Voluntary surrender to investigative agencies or cases of whistleblowing • The victim opposes (This includes genuine efforts to reverse the harm), or considerable damages were recovered 	
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Passive participation 	<ul style="list-style-type: none"> • Two or more co-offenders • Destructing designated cultural heritage buildings under the Cultural Heritage Protection Act (Type 2) • Premeditated crime
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute repeated offenses, the criminal history of imprisonment 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)

- ▷ Apply the following classification in cases in which the crime of violence was committed while intoxicated by the use of alcohol or drugs (including cases of habitual crimes of extortion, repeated offense of extortion, special offense of extortion):
- ❶ Cases where the offender voluntarily induced intoxication by taking alcohol or drugs and where the offender intended or foresaw the crime or attempted to use the condition as a ground for exemption, intoxication is considered as a general aggravating factor even though the offender was in a state of diminished mental capacity at the time of the crime.
 - ❷ Even if the case does not fall within ❶, intoxication should not be considered a mitigating factor unless the offender's mental state at the time of the crime constitutes those with mental incapacity.

02¹ REPEATED COMMISSION OF OR SPECIAL DESTRUCTION AND DAMAGE OF PROPERTY

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Repeated Commission of or Special Destruction and Damage of Property	- 8 mos.	6 mos. - 1 yr. 2 mos.	8 mos. - 2 yrs.
2	Repeated Commission of Special Destruction and Damage of Property	6 mos. - 1 yr. 6 mos.	10 mos. - 2 yrs. 6 mos.	1 yr. 6 mos. - 4 yrs.
3	Special Damage of Cultural Heritage	1 mos. - 3 yrs.	2 yrs. - 4 yrs.	3 yrs. - 7 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 • Considerations can be taken into account for motives • Actual loss is insignificant • Cases where the offender did not intend to destruct or damage (state) designated cultural heritage from the beginning (Type 3) 	<ul style="list-style-type: none"> • Active lead role in orchestrating the commission of the offense or committing the crime • Serious personal or social damages caused (Type 1, Type 2) • The offense committed toward an indiscriminate number of people or victims or repeatedly for a prolonged period of time • Condemnable motives • 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 • The victim opposes (This includes genuine efforts to reverse the harm), or considerable damages were recovered 	

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct	<ul style="list-style-type: none"> • Passive participation 	<ul style="list-style-type: none"> • Destruction and damage of state-designated cultural heritage (Type 3) • Premeditated crime
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute repeated offenses, the criminal history of imprisonment 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)

03 | OFFENSES RESULTING IN BODILY INJURIES OR DEATH

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Causing Bodily Injury through Destruction and Damage of Property, etc. or Destruction of Structure for Public Use, etc.	6 mos. - 1 yr. 6 mos.	10 mos. - 2 yrs. 6 mos.	1 yr. 6 mos. - 4 yrs. 6 mos.
2	Causing Death through Destruction and Damage of Property, etc. or Destruction of Structure for Public Use, etc.	1 yr. 6 mos. - 3 yrs.	2 yrs. - 5 yrs.	4 yrs. - 7 yrs.
3	Causing Bodily Injury through Special Infliction of Damage to Cultural Heritage, etc.	2 yrs. 6mos. - 4 yrs.	3 yrs. - 6 yrs.	5 yrs. - 8 yrs.
4	Causing Death through Special Infliction of Damage to Cultural Heritage, etc.	3 yrs. - 6 yrs.	5 yrs. - 8 yrs.	7 yrs. - 10 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 • Consideration can be taken into account for motives • Minor bodily injuries (Type 1, Type 3) • Bodily injuries resulted from the base offense of attempt (Type 1, Type 3) • The offender's conduct was not the direct cause of death (Type 2, Type 4) 	<ul style="list-style-type: none"> • Cases where the offender committed the offense by showing the power of an organization or multitude or by carrying dangerous articles • Active lead role in orchestrating the commission of the offense or committing the crime • The offense committed toward an indiscriminate number of people or victims or repeatedly for a prolonged period of time • Serious bodily injuries (Type 1, Type 3) • Condemnable motives • 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 • The victim opposes (This includes genuine efforts to reverse the harm) 	<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"> • Passive participation 	<ul style="list-style-type: none"> • Premeditated crime • Two or more co-offenders (Type 1, Type 2)
	Actor/ Etc.	<ul style="list-style-type: none"> • Those with mental incapacity (cases where the offender can be held liable) • Expresses sincere remorse • No prior criminal history 	<ul style="list-style-type: none"> • Repeated offenses of the different type under the Criminal Act that do not constitute repeated offenses, the criminal history of imprisonment 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)

DEFINITION OF OFFENSES

01 | GENERAL STANDARDS

1. TYPE 1 — DESTRUCTION AND DAMAGE, ETC. OF PROPERTY

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

ELEMENTS OF CRIME	APPLICABLE LAW
Destruction and damage of property (spoil utility of the property, documents, or special media records by damaging or concealing it or using other methods)	Criminal Act, Article 366
Endanger another's life or limb by offenses of destruction and damages of property	Criminal Act, Article 368, paragraph 1
A joint commission of destruction and damage of property	Punishment of Violence Act, Article 2, paragraph 2

2. TYPE 2 — DESTRUCTION OF STRUCTURE FOR PUBLIC USE

ELEMENTS OF CRIME	APPLICABLE LAW
Destruction of structure for public use	Criminal Act, Article 367
Endanger another's life or limb by destroying a structure for public use	Criminal Act, Article 368, paragraph 1
Destroying structures which are designated or provisionally designated cultural heritage or structures for the protection of designated or provisionally designated cultural heritage (excluding arson or inundation)	Cultural Heritage Protection Act, Article 94

3. TYPE 3 — CAUSE DAMAGE TO DESIGNATED CULTURAL HERITAGE

ELEMENTS OF CRIME	APPLICABLE LAW
Cause damage to designated cultural heritage (excluding state-designated cultural heritage), provisionally designated cultural heritage (excluding buildings), or ordinary movable cultural heritage (excluding stealing)	Cultural Heritage Protection Act, Article 92, paragraph 2

ELEMENTS OF CRIME	APPLICABLE LAW
Caused damage to, steal, or conceals designated cultural heritage (excluding state-designated cultural heritage), provisionally designated cultural heritage (excluding buildings), ordinary movable cultural heritage, or impairs the utility thereof by any other means before concealment	Cultural Heritage Protection Act, Article 92, paragraph 4

4. TYPE 4 — INFLECTION OF DAMAGE TO STATE-DESIGNATED CULTURAL HERITAGE

ELEMENTS OF CRIME	APPLICABLE LAW
Cause damage, etc. to state-designated cultural heritage (excluding larceny)	Cultural Heritage Protection Act, Article 92, paragraph 1
Cause damage to, steal, or conceals state-designated cultural heritage or impairs the utility thereof by any other means before conceal	Cultural Heritage Protection Act, Article 92, paragraph 4

02 | REPEATED COMMISSION OF OR SPECIAL DESTRUCTION AND DAMAGE

1. TYPE 1 — REPEATED COMMISSION OF OR SPECIAL DESTRUCTION AND DAMAGE, ETC. OF PROPERTY

ELEMENTS OF CRIME	APPLICABLE LAW
Special destruction and damage of property	Criminal Act, Article 369, paragraph 1
Repeated commission of destruction and damage, etc. of property	Punishment of Violence Act, Article 2, paragraph 3

2. TYPE 2 — REPEATED COMMISSION OF SPECIAL DESTRUCTION AND DAMAGE OF PROPERTY

ELEMENTS OF CRIME	APPLICABLE LAW
Repeated commission of special destruction and damage, etc. of property	Punishment of Violence Act, Article 3, paragraph 4
Destruction of special structure for public use	Criminal Act, Article 369, paragraph 2

3. TYPE 3 — SPECIAL DAMAGE OF CULTURAL HERITAGE

ELEMENTS OF CRIME	APPLICABLE LAW
Special damage, etc. of designated cultural heritage, provisionally designated cultural heritage, ordinary movable cultural heritage	Cultural Heritage Protection Act, Article 93, paragraph 1

03¹ OFFENSE RESULTED IN BODILY INJURIES OR DEATH**1. TYPE 1 — CAUSING BODILY INJURIES THROUGH DESTRUCTION AND DAMAGE OF PROPERTY OR DESTRUCTION OF STRUCTURES FOR PUBLIC USE**

ELEMENTS OF CRIME	APPLICABLE LAW
Inflict bodily injury upon to another through destruction and damage, etc. of property or destruction of structures for public use	Criminal Act, Article 368, paragraph 2, first part

2. TYPE 2 — CAUSING DEATH THROUGH DESTRUCTION AND DAMAGE OF PROPERTY BY DESTRUCTION OF STRUCTURE FOR PUBLIC USE

ELEMENTS OF CRIME	APPLICABLE LAW
Causing another's death by destruction and damage of property, or by destruction of structure for public use, etc.	Criminal Act, Article 368, paragraph 2, last part

3. TYPE 3 — CAUSING BODILY INJURIES THROUGH SPECIAL DAMAGE OF CULTURAL HERITAGE

ELEMENTS OF CRIME	APPLICABLE LAW
Causing an injury to a person who manages or protects designated cultural heritage or provisionally designated cultural heritage through special damage, etc. of cultural heritage	Cultural Heritage Protection Act, Article 93, paragraph 2, first part

4. TYPE 4 — CAUSE DEATH THROUGH SPECIAL DAMAGE OF CULTURAL HERITAGE

ELEMENTS OF CRIME	APPLICABLE LAW
Causing death to a person who manages or protects designated cultural heritage or provisionally designated cultural heritage through special damage, etc. of cultural heritage	Cultural Heritage Protection Act, Article 93, paragraph 2, last part

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

02 | CONDEMNABLE MOTIVES

- This means one or more following factors apply:
 - Offenses were committed as a means of exercising rights
 - Cases where the victim is also primarily responsible for the crime
 - Other cases with comparable factors

03 | ACTUAL LOSS IS INSIGNIFICANT

- This means one or more the following factors apply:
 - Cases where actual harm is exceptionally insignificant, so that little or no cost is required to repair or reverse the harm
 - Cases in which the economic value of the commodity is insignificantly small
 - Cases where no actual physical damage was inflicted on the commodity, however, the victim has temporal difficulties in using it only due to emotional problems
 - Other cases with comparable factors

04¹ LACK OF INTENTION TO DESTROY AND DAMAGE (THE STATE) DESIGNATED CULTURAL HERITAGE FROM THE BEGINNING

- This indicates cases in which the offender destroyed or damaged a state-designated cultural heritage or a designated cultural heritage under the Cultural Heritage Protection Act, Article 92, paragraph 1 and paragraph 2 in a location where such cultural heritage is not usually found. After not becoming aware of it or without intention to destroy and damage the cultural heritage, through coincidence, commits the offense.

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

- This indicates cases in which the offender expresses sincere remorse and the member of the deceased victim or the victim acknowledges this and objects to publishing the offender.
- This includes cases where deposits are made on a considerable amount of money comparable to reaching an agreement with the family of the deceased victim or the victim as a result of the offender's genuine efforts to reverse the harm.

06¹ SERIOUS PERSONAL OR SOCIAL HARM CAUSED

- “Serious personal damages” means cases with one or more of the following factors:
 - Cases in which 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 larceny of the special property but the offense caused significant social damage
 - Other cases with comparable factors

07 | CONDEMNABLE MOTIVES

- This means cases with one or more of the following factors:
 - Offenses were committed indiscriminately without specific reasons.
 - Motives derived from the pleasure of committing the crime itself.
 - Offenses were committed out of retaliation, grievance, or hatred.
 - Offenses were committed to conceal another offense.
 - Offenses were committed to divergent religious facilities due to religious beliefs.
 - Other cases with comparable factors.

08 | PASSIVE PARTICIPATION

- This indicates cases in which the nature of participation in the commission of the offense was passive or the offender had a limited role.
- However, this is not applicable in cases in which the offender had an active role in the commission of the offense by causing another person to commit the offense.

09 | DESTRUCTION OF DESIGNATED CULTURAL HERITAGE BUILDING UNDER WAS CULTURAL HERITAGE PROTECTION ACT

- This indicates cases in which the offender destroyed structures that are designated or provisionally designated cultural heritage or structures for the protection of designated or provisionally designated cultural heritage under the Cultural Heritage Protection Act, Article 94.

10 | PREMEDITATED CRIME

- This means cases with one or more of the following factors:

- Advance preparation and possession of the crime weapon
- Planned conspiracy
- Inducement of victim
- Preparation of destruction of evidence
- Prior planning of a flight plan
- Other cases with comparable factors

11¹ MINOR BODILY INJURIES

- Minor bodily injuries mean 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.

12¹ OFFENDER'S CONDUCT WAS NOT A DIRECT CAUSE OF DEATH

- This indicates cases in which intervening causes unforeseen by the offender existed at the time of the commission of the offense and, therefore, the offender cannot be held liable for the direct cause of the death.

13¹ SERIOUS BODILY INJURIES

- Serious bodily injuries mean cases where after-effect causes impairment, severe disability resulting from the offense, or injuries inflicted to vulnerable body parts or further anticipated bodily injuries.

ASSESSING PRINCIPLES APPLICABLE TO SENTENCING FACTORS

01¹ 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.

02¹ DETERMINING THE SENTENCE APPLICABLE

- In determining the sentence, the court should consider comprehensively both the general and special sentencing determinants that are within the sentencing range as assessed under above 1.

GENERAL APPLICATION PRINCIPLES

01 | SPECIAL ADJUSTMENTS TO THE SENTENCING RANGE

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

02 | RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE GUIDELINES AND THE APPLICABLE 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 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"> • Cases where the offender committed the offense by showing the power of an organization or multitude or by carrying dangerous articles • Condemnable motives • Serious personal or social harm caused by destruction and damage • The offense resulted in serious bodily injuries or death • The criminal history of the same offense (imposing of suspension of the sentence or more severe punishment within five years or more than three incidents of fines) • Cases where the crime was committed with no specific reason toward an indiscriminate (random) number of people 	<ul style="list-style-type: none"> • Special consideration can be taken into account for engaging in the offense or motives • The offender attempted to thwart the accomplice’s commission of the crime • Actual loss caused by destruction and damage of the property is insignificant (excluding cases where the offense resulted in death) • Minor bodily injuries • The offender’s conduct was not the direct cause of death or a serious bodily injuries • Victim opposes punishment (includes genuine efforts to recover damages) or considerable damages were recovered • No prior criminal history
General Consideration Factor	<ul style="list-style-type: none"> • Two or more criminal history on the suspension of the sentence or for a greater offense • Lack of social ties • Drug or alcohol addiction • Absence of sincere remorse • Premeditated crime • Active lead role in the commission of the offense as an accomplice • Destroying evidence or attempting to conceal evidence after the commission of the offense • No genuine effort to reverse the harm 	<ul style="list-style-type: none"> • Strongly-established social ties • Accidental crime • Voluntary surrender to investigative agencies • Expresses sincere remorse • A significant amount of money was deposited • No criminal history of the suspension of the sentence or imposing of other sentences more severe • Cases of elderly offenders • Cases of physically ill offenders • Passive participation as an accomplice • Rescuing or transferring the victim to the hospital after committing the offense • 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.

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.