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# **Chapter 35**

## **Crimes Related to Death and Injury by Negligence**

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses of Death by Negligence (Criminal Law, Article 267), Death and Injury by Occupational or Gross Negligence (Criminal Law, Article 268), and the Violation of Occupational Safety and Health Act (Occupational Safety and Health Act, Article 66-2).

## PART A — TYPES OF OFFENSES AND SENTENCING PERIODS

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Death by Negligence	- 8 mos.	6 mos. - 1 yr.	8 mos. - 2 yrs.
2	Injury by Occupational or Gross Negligence	- 6 mos.	4 mos. - 10 mos.	8 mos. - 2 yrs.
3	Death by Occupational or Gross Negligence	4 mos. - 10 mos.	8 mos. - 2 yrs.	1 yr. - 3 yrs.
4	Violation of Occupational Safety and Health Act	4 mos. - 10 mos.	6 mos. - 1 yr. 6 mos.	10 mos. - 3 yrs. 6 mos.

※ Imprisonment, with or without prison labor

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Determinant	Conduct	<ul style="list-style-type: none"> <li>• Cases where the victim is also primarily responsible for the accident or extent of the damage</li> <li>• Special considerations can be taken into account for circumstances of the accident</li> <li>• Cases with minor bodily injuries (Type 2)</li> </ul>	<ul style="list-style-type: none"> <li>• Cases with serious bodily injuries (Type 2)</li> <li>• Cases where the degree of violation of the duty of care or duty of occupational safety and health measures is grave</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 liable)</li> <li>• The offender expresses remorse, and the victim opposes punishment (This includes genuine efforts to reverse the harm)</li> </ul>	<ul style="list-style-type: none"> <li>• Repeated offenses under the Criminal Act</li> </ul>



CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Determinant	Conduct		<ul style="list-style-type: none"><li>• Serious bodily injuries which do not constitute as a grievous injury (Type 2)</li></ul>
	Actor/ Etc.	<ul style="list-style-type: none"><li>• A significant amount of money was deposited</li><li>• Registered insurance</li><li>• Expresses sincere remorse</li><li>• No prior criminal history</li></ul>	<ul style="list-style-type: none"><li>• Had not taken care measures after the accident</li><li>• Destroying evidence or attempting to conceal evidence after the commission of the offense</li><li>• A prior criminal history of the same offense which does not fall within the repeated offenses under the Criminal Act and records of disciplinary action against violation of the same offense exists</li></ul>

## DEFINITION OF OFFENSES

TYPE	ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCING RANGE BY LAW
Type 1 Death by Negligence	A Person who Causes the Death of Another by Negligence	Criminal Law, Article 267	Imprisonment Not Exceeding 2 Years or Fine Not Exceeding 7 Million Won
Type 2 Injury by Occupational or Gross Negligence	A Person who Causes the Injury of Another by Occupational or Gross Negligence	Criminal Law, Article 268	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 20 Million Won
Type 3 Death by Occupational or Gross Negligence	A Person who Causes the Death of Another by Occupational or Gross Negligence	Criminal Law, Article 268	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 20 Million Won
Type 4 Violation of Occupational Safety and Health Act	A Business Owner who Violates the Safety Measures under the Occupational Safety and Health Act, Article 23, paragraph 1 to 3 or Health Measures under the Article 24, paragraph 1 and Causes Death of an Employee	Occupational Safety and Health Act, Article 66-2	Imprisonment Not Exceeding 7 Years or Fine Not Exceeding 100 Million Won



## DEFINITION OF SENTENCING FACTORS

### 01 | CASES WHERE THE VICTIM IS ALSO PRIMARILY RESPONSIBLE FOR THE ACCIDENT OR EXTENT OF THE DAMAGE

- This indicates cases in which one or more of the following factors apply:
  - Cases where the victim was fully aware that the place was at risk for accidents nevertheless entered the place voluntarily
  - Cases where the victim was working under the influence of alcohol or drugs and fell after losing balance
  - Cases where the victim substantially violated the duty of personal safety by turning off the compulsory safety device or loosening the safety hook while working because of mere uncomfortableness
  - Cases where the victim was involved in the installation of the facility that directly caused the accident and was fully aware of the dangerousness of the facility
  - Cases with other comparable factors

### 02 | SPECIAL CONSIDERATIONS CAN BE TAKEN INTO ACCOUNT FOR CIRCUMSTANCES OF THE ACCIDENT

- This indicates cases in which one or more of the following factors apply:
  - Cases where the negligence of the co-actor caused the negligence of the offender and the co-actor's negligence was hard to predict
  - Cases with other comparable factors

### 03 | CASES WITH MINOR BODILY INJURIES (TYPE 2)

- 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.

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

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

## 05 | INSURANCE POLICIES

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- This indicates cases in which one or more of the following factors apply:
  - A comprehensive car insurance policy was purchased
  - An industrial accident compensation insurance policy was purchased
  - An insurance policy or mutual aid that compensates all or a substantial amount of damages caused by the offender's accident was purchased
  - Cases with other comparable factors

## 06 | CASES WITH SERIOUS BODILY INJURIES (TYPE 2)

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- Cases where the victim's physical injury caused the victim's life to be at risk or caused an incurable/curable disease.



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## 07 | CASES WHERE THE VIOLATION OF THE DUTY OF CARE OR DUTY OF OCCUPATIONAL SAFETY AND HEALTH MEASURES IS GRAVE

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- This indicates cases in which one or more of the following factors apply:
  - The person in charge of the duties while intoxicated with alcohol or drugs and was not able to perform ordinary duties
  - The person in charge was not legally qualified to be in the position. This includes not having a license
  - Cases where violation of the compulsory duty of safety could directly cause large-scale casualties
  - Cases with other comparable factors
    - ※ If this case falls under a separate crime, the offense shall not be considered as a multiple offense but shall be regarded as a single offense that is a factor for the adjusting sentencing range.

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## 08 | SERIOUS BODILY INJURIES WHICH DO NOT CONSTITUTE AS A GRIEVOUS INJURY (TYPE 2)

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

## 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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- 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 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, 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>• Caused death or grievous bodily</li> <li>• Cases where the degree of violation of the duty of care or duty of occupational safety and health measures is grave</li> <li>• Criminal history of the same offense (imposing of suspension of 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 the victim is also primarily responsible for the accident or extent of the damage</li> <li>• Special considerations can be taken into account for circumstances of the accident</li> <li>• Cases with minor bodily injuries</li> <li>• No prior criminal history</li> <li>• Victim opposes punishment (This includes genuine efforts to reverse the harm)</li> </ul>
General Consideration Factor	<ul style="list-style-type: none"> <li>• More than two incidents of suspension of sentence or more severe punishment</li> <li>• Serious bodily injuries which do not constitute as a grievous injury</li> <li>• Had not taken care measures after the accident</li> <li>• Destroying evidence or attempting to conceal evidence after the commission of the offense</li> <li>• Lack of social ties</li> <li>• Drug or alcohol addiction</li> <li>• Absence of efforts to reverse damages</li> <li>• Absence of remorse</li> </ul>	<ul style="list-style-type: none"> <li>• Strongly-established social ties</li> <li>• Expresses sincere remorse</li> <li>• No criminal history of the suspension of sentence or imposing of other sentences more severe</li> <li>• Cases of elderly offenders</li> <li>• Cases of physically ill offenders</li> <li>• Cases where the arrest of the offender would cause severe hardship to the offender's dependent family member</li> <li>• Registered insurance</li> <li>• Significant amount of money deposited</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 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 the sentence section comprehensively.